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Senate

The Senate met at 9:45 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

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

Let us pray.

Eternal Lord God, who illuminates our paths with love and laughter, hallowed be Your Name. Lord, thank You for life's clouds and storms that position us to receive Your deliverance. Thank You also for refusing to move our mountains but instead giving us strength to climb them. Give us the wisdom to see spiritual things in life's commonplace happenings. May a baby's cry or a falling leaf or the gentle dew or a golden sunset whisper to us about the sacred.

Today, bless our dedicated lawmakers and each member of their staffs who routinely deliver excellence in the midst of the frenetic. May they never forget Your promise to always be with them. Guide them today with fresh insights on living abundantly. Supply all their needs, for the kingdom, the power, and the glory belong to You. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Good morning, Mr. President.

The Senate will be in a period of morning business until 11 a.m. The first half of the time will be under the control of the majority leader or his designee, and the remaining time will be under the control of the Democratic leader or his designee.

Following morning business at 11, the Senate will resume consideration of S. 1637, the JOBS bill, also known as the FSC/ETI bill. The bill managers were able to make some progress during yesterday's session by working through several amendments. As a reminder, a cloture motion was filed with respect to the FSC bill. That vote will occur tomorrow. We hope, if cloture is invoked, we can finish the bill this week. It is still possible we could consider related amendments during today's session. Therefore, rollcall votes are possible throughout the day, although we do not anticipate any vote prior to our respective policy luncheons. If there are votes, obviously Senators will be notified.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The minority whip.

VOTE ON OVERTIME

Mr. REID. Mr. President, last night there was an exchange between the distinguished Senator from Kentucky and myself, pleasant as it always is between the two of us, regarding the overtime vote that we believe is essential to moving forward on this legislation that will be before the Senate at 11 o'clock today. My friend, the senior Senator from Kentucky, said we had voted on this once before.

I wanted to make sure what the facts were. There is no question that I was right. We did vote on it once before. We voted on it in the Senate and it passed by a nice margin. It was voted on in the House and passed by a nice margin. It was on the Omnibus appropriations bill.

Magically, when it came back after the conference, it was stricken, even though it had passed both Houses of the legislature by a large margin.

The point is, having had a vote on the overtime bill should not take away the fact that it was stripped in conference with Democrats not participating in the conference. We believe that overtime is important.

On my trip home last week, I visited fire stations and police stations. The first thing they talk about is: What is happening to our overtime? People in America are concerned by the hundreds of thousands, if not millions. That is why we demand a vote on overtime.

The PRESIDENT pro tempore. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, very briefly, my good friend from Nevada and I discussed this last night and I listened carefully to what he just said. I want to make one adjustment as we get the facts before our colleagues.

On the amendment to prohibit the Labor Department from going forward with the 541 regulations, that was approved in the Senate. We voted on it earlier. It was not approved in the House. That is why it was a matter in conference.

As my good friend from Nevada pointed out, it was subsequently not agreed to in the conference. There was an additional vote in the House on a motion to instruct conferees, which came out the way my friend from Nevada suggests; but on the vote that counted, the House of Representatives did not approve the effort to block the Department of Labor from going forward with the overtime regulation.

As my friend from Nevada conceded, we have voted on this once and I am rather confident, given the persistence of Members on that side of the aisle, at some point we will probably vote on it again. But this underlying bill is a bill that is widely supported on both sides of the aisle. Sanctions have already been imposed on March 1 on American

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

businesses. I would like to see, and I know the majority leader would like to see, and the vast majority of the Senate would like to see this bill approved so we can move on with other matters that will come before the Senate.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until 11 a.m., with the majority leader in control of the first half of the time, and the Democratic leader or his designee in control of the remaining time.

Does the minority leader seek recognition?

Mr. DASCHLE. I do, Mr. President.

The PRESIDENT pro tempore. The minority leader is recognized.

DISTURBING PATTERN OF CONDUCT

Mr. DASCHLE. Mr. President, I want to talk this morning about a disturbing pattern of conduct by the people around President Bush. They seem to be willing to do anything for political purposes, regardless of the facts and of what is right.

I don't have the time this morning to talk in detail about all the incidents that come to mind. Larry Lindsay, for instance, seems to have been fired as the President's Economic Adviser because he spoke honestly about the costs of the Iraq war. General Shinseki seems to have become a target when he spoke honestly about the number of troops that would be needed in Iraq.

There are many others, who are less well known, who have also faced consequences for speaking out. U.S. Park Police Chief Teresa Chambers was suspended from her job when she disclosed budget problems that our Nation's parks are less safe, and Professor Elizabeth Blackburn was replaced on the Council on Bioethics because of her scientific views on stem-cell research.

Each of these examples deserves examination, but they are not my focus today. Instead, I want to talk briefly about four other incidents that are deeply troubling.

When former Treasury Secretary Paul O'Neill stepped forward to criticize the Bush administration's Iraq policy, he was immediately ridiculed by the people around the President and his credibility was attacked. Even worse, the administration launched a government investigation to see if Secretary O'Neill improperly disclosed classified documents. He was, of course, exonerated, but the message was clear: If you speak freely, there will be consequences.

Ambassador Joseph Wilson also learned that lesson. Ambassador Wilson, who by all accounts served bravely under President Bush in the early 1990s, felt a responsibility to speak out on President Bush's false State of the Union statement on Niger and uranium. When he did, the people around the President quickly retaliated. Within weeks of debunking the President's claim, Ambassador Wilson's wife was the target of a despicable act.

Her identity as a deep-cover CIA agent was revealed to Bob Novak, a syndicated columnist, and was printed in newspapers around the country. That was the first time in our history, I believe, that the identity and safety of a CIA agent was disclosed for purely political purposes. It was an unconscionable and intolerable act.

Around the same time Bush administration officials were endangering Ambassador Wilson's wife, they appear to have been threatening another Federal employee for trying to do his job. In recent weeks Richard Foster, an actuary for the Department of Health and Human Services, has revealed that he was told he would be fired if he told Congress and the American people the real costs of last year's Medicare bill.

Mr. Foster, in an e-mail he wrote on June 26 of last year, said the whole episode had been ''pretty nightmarish.'' He wrote: ''I'm no longer in grave danger of being fired, but there remains a strong likelihood that I will have to resign in protest of the withholding of important technical information from key policymakers for political purposes.''

Think about those words. He would lose his job if he did his job. If he provided the information the Congress and the American people deserved and were entitled to, he would lose his job. When did this become the standard for our government? When did we become a government of intimidation?

And now, in today's newspapers, we see the latest example of how the people around the President react when faced with facts they want to avoid.

The White House's former lead counterterrorism adviser, Richard Clarke, is under fierce attack for questioning the White House's record on combating terrorism. Mr. Clarke has served in four White Houses, beginning with Ronald Reagan's administration, and earned an impeccable record for his work.

Now the White House seeks to destroy his reputation. The people around the President aren't answering his allegations; instead, they are trying to use the same tactics they used with Paul O'Neill. They are trying to ridicule Mr. Clarke and destroy his credibility, and create any diversion possible to focus attention away from his serious allegations.

The purpose of government isn't to make the President look good. It isn't to produce propaganda or misleading information. It is, instead, to do its best for the American people and to be accountable to the American people.

The people around the President don't seem to believe that. They have crossed a line—perhaps several lines—that no government ought to cross.

We shouldn't fire or demean people for telling the truth. We shouldn't reveal the names of law enforcement officials for political gain. And we shouldn't try to destroy people who are out to make our country safer.

I think the people around the President have crossed into dangerous territory. We are seeing abuses of power that cannot be tolerated.

The President needs to put a stop to it, right now. We need to get to the truth, and the President needs to help us do that.

The PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

THE CARE ACT

Mr. SANTORUM. Mr. President, I rise to offer a unanimous consent request having to do with the CARE Act. I noted that a week ago the Senator from South Dakota, the Democratic leader, sent a letter suggesting we should move forward on this legislation. I wanted to take him up on his suggestion. I believe, as he says in his letter, it is important for us to take a piece of legislation that passed with over 90 votes, has passed the House of Representatives, and give it the opportunity to be negotiated between the House and the Senate so we can get it to the President's desk in a timely fashion.

I want to put in the RECORD about a dozen articles, letters, and press releases from a variety of groups—everything from the United Jewish Communities, to the Catholic Health Association, to the Farm Bureau, to the National Conference of State Legislatures, all of which are asking to either put this legislation on the bill we have before us or, more preferably, get this bill to conference where we can work out the differences.

I ask unanimous consent that this information be printed in the RECORD.

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

UNITED JEWISH COMMUNITIES,
Washington, DC.

CHARITABLE GIVING AND SOCIAL SERVICES BLOCK GRANTS

2004 PRIORITY: ENACT CHARITABLE GIVING TAX INCENTIVES AND RESTORE FUNDING FOR THE SOCIAL SERVICES BLOCK GRANT

For decades, many Jewish organizations have partnered with government to provide a wide range of social services for people in need. In 2004, UJC has made it a priority to support restoration of funding for Social Services Block Grants and tax incentives for charitable giving as a way to ensure and expand critical nonprofit services.

In 2003, both the Senate and the House of Representatives overwhelmingly passed legislation that would create new charitable giving tax incentives—specifically, IRA charitable rollovers and tax deductions for non-itemizers. Current tax law requires that

IRAs be fully taxed before they can be transferred to a charity, substantially reducing both the amounts transferred and the size of the contributor's tax deduction. The proposed IRA rollover provision—in what is generally referred to as the CARE legislation—would permit tax-free donation of IRAs to charities. The non-itemizer provision would allow individuals who do not itemize deductions on their tax returns to receive a deduction for charitable gifts.

The Senate-passed CARE bill would also restore funding to the Social Services Block Grant (SSBG); the House bill did not include the SSBG funding increase. The SSBG provides Federal grants to the States on a formula basis, which are then allocated to local agencies. SSBG programming is delivered through countless agencies that provide adult day care, kosher Meals on Wheels and other nutrition programs, employment training for the homeless, immigrants and refugees, and counseling. SSBG is currently funded at $1.7 billion—a cut of more than $1.1 billion since 1995. The budget cuts have forced social services providers, including Federation agencies, to discontinue services and reduce benefits for families in need. The current shortfalls in State budgets will make SSBG funding even more crucial over the next few years.

The CARE legislation's new incentives for charitable giving, as well as restoration of SSBG to its 1995 level of $2.8 billion are vital to meeting the needs of the most vulnerable members of our communities. UJC is working hard to ensure passage of a CARE bill that would enable Federations and other charitable non-profits to access new sources of planned giving and restore vital SSBG funding.

MARCH 11, 2004.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: We urge you to support an amendment by Senators Santorum and Lieberman to attach the Charity Aid, Recovery and Empowerment Act of 2003 (CARE Act) to S. 1637, the Jumpstart Our Business Strength (JOBS) Act. While we have not taken a position on S. 1637, we see this as an opportunity to pass the CARE Act.

The CARE Act, which the Senate has already approved by an overwhelming 95–5 vote, will provide crucial assistance to charities and the people they serve by restoring $1.3 billion in funding to the Social Services Block Grant (SSBG) program; allowing non-itemizers to claim charitable deductions on their taxes to spur additional private giving; creating a Compassion Capital Fund to provide technical assistance and capacity building for faith-based and community groups; and authorizing $33 million to establish group maternity homes for young mothers.

Restoring SSBG funding is especially crucial given the state of the economy and the severe fiscal crises facing the states. States use SSBG funding to assist community groups and religious agencies that serve working families, abused and abandoned children, persons with disabilities, and the frail elderly.

We support these provisions in the CARE Act because they are among the very few active legislative initiatives that will help low-income families and the most vulnerable members of our society. If enacted, they will strengthen the partnership between government and religious and other community groups to meet the basic human needs of all in our country, a partnership that is demanded by the moral scandal of so much poverty in the richest nation on earth.

We urge you to vote ''yes'' on the amendment to add the CARE Act to S. 1637.

Sincerely,

THEODORE Cardinal MCCARRICK,
Archbishop of Washington, Chairman, Domestic Policy Committee, United States Conference of Catholic Bishops.

THOMAS A. DESTEFANO,
President, Catholic Charities USA.

Rev. MICHAEL D. PLACE, STD,
President and Chief Executive Officer, Catholic Health Association of the United States.

ALLIANCE FOR IDA TAX CREDITS,
Washington, DC, March 11, 2004.

Hon. ROY BLUNT,
Majority Whip, House of Representatives, Capitol Building, Washington, DC.

Hon. RICK SANTORUM,
Chairman, Republican Conference, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR REPRESENTATIVE BLUNT AND SENATOR SANTORUM: The Alliance for Individual Development Account (IDA) Tax Credits—a consortium of philanthropic organizations, businesses, industry associations, and organizations of elected officials created to champion tax credit legislation for IDAs—is strongly committed to enacting needed tax incentives to help working, low-income families save, build assets and move into the financial mainstream. The Alliance has been a consistent supporter of the Savings for Working Families Act, which is Title V of S. 476, the CARE Act of 2003, as it will provide tax credits to create 300,000 IDAs across the country. We also strongly support upcoming efforts to finally begin conference deliberations of S. 476, and H.R. 7, the Charitable Giving Act of 2003, and encourage these conference discussions to include the IDA provisions of S. 476 as part of any final agreement regarding S. 476 and H.R. 7.

IDAs are endorsed by President Bush and have received considerable bipartisan support in the House led by Representatives Joe Pitts and Charles Stenholm and in the Senate by Senators Rick Santorum and Joe Lieberman, as these policymakers recognize the importance of rewarding work, savings, and self-reliance by low-income families and individuals. Passage of Title V of S. 476 presents an opportunity to enact sound asset-building tax policy for a segment of our society that traditionally does not benefit from existing wealth building, tax-based incentives.

IDAs are targeted, matched savings accounts held by financial institutions and credit unions, which help low- and moderate-income families and individuals buy their first home, start a small business, or expand post-secondary education. No federal resources are provided until people work, save their own hard-earned dollars, fulfill financial education requirements, and meet their savings goals. In addition, IDA accountholders have to meet strict program standards and safeguards to ensure that IDAs are a hand-up, and not a handout.

The upcoming conference deliberations on S. 476 and H.R. 7 provides both the House of Representatives and the Senate with an historic opportunity to show its support for helping working, low-income families who want to build a better future and achieve their piece of the American Dream. Including the Savings for Working Families Act in the final conference agreement on the CARE Act/Charitable Giving Act will provide the necessary matching dollars to make IDAs a reality for hundreds of thousands of working-poor individuals and families and will help those who want to help themselves.

Thank you in advance of your support for IDAs. If you have any questions or need any additional information on how IDAs work, please call Sandi Smith at the Corporation for Enterprise Development at 202–408–9788.

America's Community Bankers
Association for Enterprise Opportunity
Center for Social Development
Consumer Federation of America
Corporation for Enterprise Development
Credit Union National Association
Economic Security 2000
Education, Training and Enterprise Center
Entergy
Enterprise Corporation of the Delta
Financial Services Roundtable
First Nations Development Institute
Foundation for the Mid South
H&R Block
Ibero American Chamber of Commerce
Institute for Responsible Fatherhood
Levi Strauss & Co.
National Association of Homebuilders
National Bankers Association
National Black Chamber of Commerce
National Center for Neighborhood Enterprise
National Conference of State Legislatures
National Congress for Community Economic Development
National Federation of Community Development Credit Unions
National Housing Conference
National Organization of African Americans in Housing
New America Foundation
Progressive Policy Institute
RESULTS
Shorebank Corporation
The Empowerment Network
The Enterprise Foundation
US Pan Asian American Chamber of Commerce
United Way of America
Wal-Mart

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, March 9, 2004.

DEAR SENATOR: On behalf of the National Conference of State Legislatures (NCSL), we urge you to adopt Amendment 2670 to the S. 1637—Jumpstart Our Business Strength (JOBS) Act. This amendment, offered by Senators Santorum and Lieberman, would add the language of S. 476 (the CARE Act) which passed the Senate 95–5 on April 9, 2003 into the underlying bill. The CARE Act will enhance the role of faith-based and community based organizations in the delivery of social services and provide much needed technical guidance and assistance to states without compromising the states' role in the implementation of social services to people in need. The CARE Act reflects a thoughtful and harmonized approach to the inclusion of faith-based organizations in providing services at the state level.

It is laudable that the CARE Act increases funding for the Social Services Block Grant (SSBG). The SSBG is an essential source of funds for community and home-based services to the most vulnerable segments of our society including the disabled, elderly and children. We cannot expand the role of faith-based and community programs without increasing the funds available for these programs. We support the Individual Development Account provisions, as such accounts are an important tool to promote self-sufficiency that will complement state efforts to reform welfare. We are especially pleased to see that the CARE Act provides funding to states for seed money and for technical assistance to the states to support administering the provisions of the bill. NCSL greatly appreciates Senators' Santorum and

Lieberman commitment to this legislation and their willingness to work with NCSL to resolve our outstanding issues.

We support the CARE Act and urge you to vote for Amendment 2670 during floor considerations of the JOBS Act. For further information about NCSL's position, please contact Sheri Steisel, Federal Affairs Counsel and Director, Human Services Committee or Tamra Spielvogel, Policy Associate, State-Federal Relations in NCSL's Washington, DC Office at 202/624–5400.

Sincerely,

MARTIN R. STEPHENS,
Speaker of the House, Utah,
President, NCSL.

AMERICA'S SECOND HARVEST,
March 10, 2004.

Hon. TOM DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: I'm writing to you today because times are desperate for the food banks in South Dakota. We need your help in the passage of important legislation pending before the Senate. In tens of thousands of local food pantries, soup kitchens and emergency shelters the lines of needy Americans requesting short-term food assistance are increasing. These increasing lines of needy families include the faces of the working poor, the recently unemployed and children. As these lines grow, I continue to hear from our member food banks what sounds like a broken record: ''there's more requests for food, and it's hard to keep pace.''

Last year, you joined 94 other Senators in the common call that we need the CARE Act now more than ever. Now, America's emergency food providers are asking you to continue your strong commitment to America's hungry by supporting an amendment to the JOBS Act, S. 1637, which would allow the provisions of the Senate-passed Charity, Aid, Recovery and Empowerment Act of 2003 (the CARE Act, S. 476/H.R. 7) to move forward.

As you know, the CARE Act includes a strong food donation tax incentive provision that we estimate will create more than 878 million new meals over the next 10 years, much of that food coming from farmers, ranchers, and small businesses. The need for this tax law change is urgent. Today, the USDA estimates that nearly 96 billion pounds of food in the United States is wasted, dumped, plowed over or destroyed. If even one percent of that food was donated, rather than dumped, we would be able to feed hundreds of thousands more needy Americans. Simply put, we have a strong moral obligation to stop the waste, and get this food on the tables of the people who desperately need it.

Passage of Senate Amendment 2670 is critical for the emergency food providers in DC and the America's Second Harvest nationwide network of food banks and food rescue organizations working so hard to encourage food donations within the food industry. The provisions in the Santorum-Lieberman amendment are very important to companies trying to decide how to dispose of their surplus food.

We're hoping we can continue to count on you to make sure this amendment is adopted and the CARE Act becomes law. Thank you for consideration.

Sincerely,

ROBERT FORNEY,
President and CEO,
America's Second Harvest.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC.

STATEMENT BY BOB STALLMAN, PRESIDENT, AMERICAN FARM BUREAU FEDERATION, REGARDING THE CARE ACT

WASHINGTON, D.C., March 11, 2004.—''Congress can provide important hunger-relief assistance by enacting the CARE Act of 2003. The legislation has been adopted by both chambers, endorsed by President Bush, and is awaiting conference.

If enacted, the law would create incentives to allow all farmers and ranchers to deduct the costs and value of food donated to hunger-relief charities, regardless of how their farming business is organized. This will enable us to get more food to hungry people who can't afford to feed their families. The CARE Act would increase the amount of food provided to needy people by an estimated 878 million new meals over the next 10 years.

Passage of the CARE Act could not come at a better time. The American Farm Bureau Federation and America's Second Harvest just completed a successful year of activity with a program called ''Harvest for All.'' Throughout the year, farmers across the nation donated food, funds and people power with the goal of creating a hunger-free America. Both organizations, in partnership with Syngenta, are working together to ensure that every American can enjoy the bounty produced on American farms and ranches. Those efforts will be greatly enhanced by enactment of the CARE Act.''

MARCH OF DIMES,
Washington, DC, March 4, 2004.

Hon. THOMAS DASCHLE,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR DEMOCRATIC LEADER DASCHLE: On behalf of more than 3 million volunteers and 1400 staff members of the March of Dimes, I am writing to urge you to vote for Senate Amendment 2670 to S. 1637, the Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) bill. This amendment provides much needed tax incentives to encourage charitable giving.

As you know, many of America's charities are facing heightened financial challenges due to the soft economy and increasing reliance on services offered through community based programs. Tax incentives to encourage increased charitable giving are needed now more than ever. The March of Dimes strongly supports the following two provisions that we believe will stimulate additional charitable donations and create greater equity in the tax code:

Creation of a charitable tax deduction for individuals and couples who do not itemize on their tax returns; and

An IRA Charitable Rollover provision that would allow donors who are at least 59½ to rollover amounts from a traditional or Roth IRA to create a life income gift and donors who are at least 70½ to be eligible to rollover amounts as direct gifts.

If enacted, these provisions would benefit the March of Dimes and other charities that rely on small donations, by creating incentives for current donors and encouraging others to become donors. The donations stimulated by these changes in the tax code would provide increased resources for expanding the Foundation's investment in cutting-edge research, widening the distribution of education materials aimed at preventing birth defects and infant mortality, and increasing support of community-based programs to improve birth outcomes.

March of Dimes volunteers and staff in every state as well as the District of Columbia and Puerto Rico stand ready to work with you to secure enactment of this important amendment. Thank you for your consideration.

Sincerely,

MARINA L. WEISS, Ph.D.,
Senior Vice President, Public Policy and Government Affairs.

AMERICA'S BLOOD CENTERS,
Washington, DC, March 18, 2004.

Senator THOMAS A. DASCHLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DASCHLE: We are writing to ask that you allow the Charity, Aid, Recovery, and Empowerment Act of 2003 (CARE Act—S. 476) and the Charitable Giving Act of 2003 (H.R. 7) to go to a conference committee. Members of America's Blood Centers, such as United Blood Services of South Dakota and Siouxland Community Blood Bank, which together support the blood needs of all South Dakota patients, strongly endorse this legislation and specifically support a provision contained in both bills that corrects an inequality by extending to not-for-profit independent community blood centers certain exemptions from the Federal excise tax.

In spite of their importance in maintaining America's volunteer donor blood supply, community-based blood centers do not enjoy the same status as the Red Cross blood centers under the Federal tax code. Even though the Red Cross is exempt from paying Federal excise taxes for its blood-related activities and functions, America's independent, community-based, not-for-profit blood centers are not. These taxes directly impact the ability of blood centers to provide mobile blood collections, conduct telerecruiting of donors, and engage in other similar activities. The tax exemption will significantly help our centers and other community-based blood centers by allowing us to allocate more of our funding to what we do best—collecting blood for the millions of Americans who rely upon us.

The differences between the House and Senate versions of the charitable giving bills are small. Now is the time to take the steps needed to turn this legislation into law. America's Blood Centers strongly urge you to support a successful conference and quick passage of this legislation to level the playing field among blood collection organizations and demonstrate your strong support for the importance of independent, community-based, not-for-profit blood centers. Please contact ABC's CEO Jim MacPherson (jmacpherson@americasblood.org); 202–654–2902 if you have any questions. We appreciate your attention to this concern and thank you in advance for your responsiveness.

Sincerely,

LOUIS KATZ, M.D.,
President.

Mr. SANTORUM. Mr. President, this is a bill that has been a bipartisan bill. The Senator from South Dakota has mentioned on numerous occasions, and again in this letter, that the concern is—and in the newspaper article—that things have been put in conference that were not either the scope of the conference or slipped in without the minority's knowledge of what was going to happen.

I just ask the Senator from South Dakota and all those who are objecting to this bill going to conference to look at the history of this legislation.

The history of this legislation has been bipartisan. Senator JOE LIEBERMAN and I have worked to put this bill together. It has priorities on the Democratic side. It has priorities

on the Republican side. We have worked to take out everything that could be controversial.

At a press conference we had the other day, Senator LIEBERMAN said this bill is simply all good. There is not anything bad or controversial. There is not any kind of strong opposition to this bill on either side of the aisle. If there was strong opposition on either side of the aisle, it would not be in this bill. We have a bill that provides money to those who are serving those in need in our society. We have a bill on which the track record through the Finance Committee and through the Senate floor has shown we have worked together.

Senator GRASSLEY and Senator BAUCUS have worked together in committee to pass a bill unanimously out of that committee, on a bipartisan basis. When it came to the floor, there were concerns. We were able to take care of those concerns and pass a bill. I believe it was 95 to 5.

As we were going through the passage, we had some concerns as to some things the House might be interested in putting in this bill, some faith-based provisions some Members on the Democratic side had concerns about. We received a letter from the House saying they had no intention of doing that. In a sense, we were able to preconference some of the concerns to make sure we were trying to pass something good and helpful to those agencies and individuals wanting to help people in need in our society. At a time when many in this Chamber are clamoring about those who are falling through the cracks, this is an opportunity for us to get literally billions of dollars, some of it Government money but most of it contributed by individuals, to groups which get favorable tax treatment for doing so.

We set up individual development accounts, which has been a high priority of Senator LIEBERMAN, Senator FEINSTEIN, myself, and others on both sides of the aisle. We have a laundry list of very positive things this legislation does, and we have a history of bipartisan cooperation.

With some of the other legislation that may have been brought forward, I understand why the Senator from South Dakota may say, well, I do not want to take the chance, let's say, of the FSC bill, for example, or something going to conference; we do not know what is going to go on there and there may have been controversies around it.

There has been no controversy around this bill. Other bills have passed and gone to conference we did not have great controversy about, we had a broad consensus about, and they were allowed to be worked out. For some reason, this was the first one grabbed and it has been held on to now for quite some time.

One final thing. Senator FRIST, the leader, and I have given a commitment the Democrats will be fully involved in this conference; there will be no backdoor meetings because, candidly, Senator LIEBERMAN and I have worked hand in glove on this. We continue to work hand in glove, as have Senator BAUCUS and Senator GRASSLEY.

We will continue to work with our colleagues on the other side of the aisle because we believe it is so important to get done. I believe basically the four corners of the bill are fairly well established. It is now working on how we do it.

Another thing that shows bipartisan cooperation is we have actually been working on a bipartisan basis on offsets. I know the Democratic leader has been rather insistent about having the tax provisions offset. We have been working, again in a bipartisan manner, on the Finance Committee. I know Senator LIEBERMAN and myself have been trying to find offsets to get this bill in a position to get strong bipartisan support. I would make the point there may be instances in which the Democratic leader can justifiably say there has not been a cooperative venture in getting a bill through the Senate and we are hesitant about taking a bill to conference because of that. That has not been the case on this bill.

The Senator has the commitment from the leader and myself that it will not be the case in conference, and I am hopeful that word and the track record of this bill will have some influence over the Democratic leader's decision to allow this bill to move forward in the process so we can get a good negotiation going with the House of Representatives to get this done.

UNANIMOUS CONSENT REQUEST—H.R. 7

I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 7, the charitable giving bill. I further ask unanimous consent that all after the enacting clause be stricken, that the Snowe amendment and the Grassley-Baucus amendment which are at the desk be agreed to en bloc; that the substitute amendment which is the text of S. 476, the Senate-passed version of the charitable giving bill, as amended by the Snowe and Grassley-Baucus amendments, be agreed to; that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table; further, that the Senate insist upon its amendments and request a conference with the House; and lastly, that the Chair be authorized to appoint conferees with a ratio of 3 to 2, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER (Mr. SMITH). Is there objection?

Mr. DASCHLE. Mr. President, reserving the right to object, I will respond to the Senator from Pennsylvania by saying there are two issues. One is process and the other is substance. I think there is ample opportunity for us to agree on substance. The distinguished Senator from Pennsylvania and I have talked on a few occasions in recent weeks about this matter and it comes down to two questions: the social services block grant and the importance we place on fully funding it, and the need for offsets to the tax provisions in this legislation.

We agree there should be tax provisions. We agree there should be an SSBG provision. What we have not agreed to is how we resolve ways in which to fully fund them and to offset the costs involved with the tax provisions of the bill. That is a substantive question.

Then there is a procedural question. The Senator from Pennsylvania continues to insist the only way to resolve the procedural issue is by forcing this bill to conference. As I have said to him on several occasions, we are very reluctant without the concurrence of the House leadership that there will be the kind of bipartisan participation we need to resolve these issues in a fair way. He has given his assurance, but he has also indicated to me privately he cannot commit for the House, and I understand that. I would not expect him to.

We have done a lot of work between the House and the Senate in the last two Congresses in the way I have proposed we resolve these issues. We send the bill over to the House. The House deals with the amendments. We preconference or we negotiate the amendment and either through conference or a final ratification of the bill the legislation is sent to the President.

We have actually resolved our differences with the House without a conference on 51 occasions during the 107th Congress, and already this year we have resolved our differences with the House on 19 occasions on a whole array of bills: the veterans benefits bill, the Healthy Forest Act last year, the Syrian Accountability Act, the military tax bill. All of these issues have been preconferenced and resolved in a way that has allowed us to work through our differences, with the assurance we would have the kind of involvement and participation I expect and all of our colleagues expect with regard to the conferencing or the working out of the differences between the two versions. I ask unanimous consent that we simply remove references to the conference in the request made by the distinguished Senator from Pennsylvania so we can do what we have done on 19 occasions so far in this Congress: Send the bill to the House, let us resolve our differences through negotiation, and send the bill to the President, as we all want.

The PRESIDING OFFICER. Does the Senator from Pennsylvania so modify his request?

Mr. SANTORUM. No, Mr. President, I do not. I ask that my unanimous consent be acted upon.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. With the objection raised by the Senator from Pennsylvania, I, too, would have to object.

The PRESIDING OFFICER. The objection is heard. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I am very disappointed we cannot get agreement. As the Senator from South Dakota said, there are two major issues. They are not particularly complex issues, but they are ones in which I think it is important for us to be in a position to be able to drive to a resolution. There has been no talk about extraneous matters being brought in. This is simply the four corners of this bill trying to be worked out. The way we have done it historically in this Congress and previous Congresses is to sit down with both bodies in a conference and work it out. I am very disappointed we do not have the opportunity to get that done for this very important bill.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. I want to make sure the record is clear. We have not actually resolved our differences in the House on a majority of occasions through conference. We have actually done the opposite. We have done what I have suggested we do with this bill. On 51 occasions in the 107th Congress and on 19 occasions so far in the 108th Congress, we have not gone to conference. We have resolved these matters by sending the bill to the House and worked on legislation either in preconference or through negotiation. I am fully prepared to do that again in this case and look forward to working not only with the Senator from Pennsylvania but others who want to see this legislation passed as I do.

I yield the floor.

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, parliamentary inquiry: What is the status of time now under morning business?

The PRESIDING OFFICER. The majority leader or his designee controls the next 19 minutes 40 seconds. The minority leader has 30 minutes 24 seconds, and he would have the remainder of that time until 11 o'clock.

Mr. STEVENS. Is the time equally divided between now and 11 o'clock?

The PRESIDING OFFICER. It is not now. The majority leader has used some time already. They have remaining 19 minutes.

Mr. STEVENS. The minority used no time?

The PRESIDING OFFICER. That is what the clock reads.

Mr. STEVENS. Very well.

The PRESIDING OFFICER. The minority has used 30 seconds.

Mr. REID. Mr. President, if the Senator will yield, the time Senator DASCHLE used was under leader's time. We have some speakers on our side. We know you have speakers on your side. I think it is pretty clear, based on the conversation on the floor last evening and today between Senator MCCONNELL and this Senator, that not much is going to happen on the bill today.

I ask if the Senator from Alaska wishes to have morning business in addition to what is now left? We would be happy to agree to that. We have three Senators on our side who wish to speak in morning business.

Mr. STEVENS. Mr. President, I ask that the floor management check with the leader, to see if there is any objection to restoring the concept there be 1 hour equally divided.

Mr. REID. I am confident that if there is some problem at a subsequent time we will be happy to take that time away, because I am confident it would not be. So I ask there be—let's make it 11:15, an extra 2 minutes, and the time be equally divided?

Mr. STEVENS. I support that and ask unanimous consent that be the case.

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

Mr. REID. If the Senator would just yield for one other unanimous consent request, on our side we have three speakers. We have Senators SCHUMER, DORGAN, and CARPER on our side—I am sorry, Senators SCHUMER, WYDEN, DORGAN—and Senator CARPER also wishes to speak. I ask the time be equally divided among those four Senators on our side, in the order I have just announced.

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

Mr. STEVENS. Mr. President, it is my understanding the first half of this 1-hour period is under the control of the majority; is that correct?

The PRESIDING OFFICER. The Senator is correct.

The Senator from Alaska.

ENERGY

Mr. STEVENS. Mr. President, the Energy Committee has introduced a revised energy bill. Swift passage of this bill is vital. We should not underestimate the widespread and important consequences that this comprehensive energy legislation will have for the future of our Nation.

American citizens and businesses rely on our ability to stabilize energy prices and provide them with the energy resources they need. Now, in the post-9/11 world, our energy development and production has taken on an additional level of importance. Our national security is dependent upon our ability to decrease our reliance on foreign energy sources, particularly from unstable or unfriendly regimes.

The comprehensive energy policy embodied by this new bill is also critical for ensuring our economic growth. High energy prices impact our economy in many ways, and our ability to stabilize energy prices will have far-reaching consequences for our overall economic health and growth.

The United States is recovering from a recession, but this recovery is threatened by sustained high energy prices which will increase real interest rates, the rate of inflation, and reduce gross domestic product growth.

This first chart shows that situation. I call it to the attention of the Senate. As crude oil prices go up, there are changes in our gross domestic product. We have seen these effects firsthand already. High energy prices, which rose 4.7 percent in January and another 1.7 percent in February, greatly contributed to an increase in consumer prices. The Department of Labor recently announced that those prices jumped .3 percent in February and another .5 percent in March. Consumers are paying more for food, goods, and energy bills. High energy prices are essentially acting as a consumer tax, leaving Americans with less disposable income for travel, home buying, restaurants, retail establishments, and daily living.

Record high gasoline prices only intensify this problem. Gasoline prices rose 8.1 percent in January and an additional 2.5 percent in March. Last week the average price at the gas pump reached $1.72 per gallon, with California leading at an average of $2.10 at the pump. These prices are an additional constraint on the consumer spending power. For every 1 cent increase at the pump, we see $1 billion lost in consumer spending capability.

The rise in fuel prices also greatly impacts our aviation and trucking industry. Our airline industry has lost over $25 billion in the last 3 years. Sustained high jet fuel costs of $1 per gallon, which is double that of 1998–1999, continues to hamper the health of our critical transportation industry. High energy prices also prevent job creation for the transportation sector. The Air Transport Association estimates for every $1 increase in the price of fuel, they could fund 5,300 airline jobs. The increase in these prices is staggering.

Every homeowner in America feels the pressure of high energy prices. Home heating costs for the 2002–2003 season were up 12 percent for natural gas, 7 percent for propane, and 2 percent for electricity. This winter alone, natural gas prices were 60 percent higher than last year—60 percent higher than last year. Estimates show that consumers may pay more than $200 billion this year in energy costs. This is an enormous and unnecessary burden on our economy.

Overall, it is estimated that since 2000 consumers paid $111 billion more than they did in the previous 3 years for natural gas alone. This increase cost industrial consumers $57 billion, commercial customers $21 billion, and residential consumers $33 billion.

This second chart shows that situation. We have had job losses throughout the country because of this change in energy prices. Look at that: In California alone, 250,000 jobs. It has had an amazing impact. High energy prices have had a devastating impact on American jobs. Since 2000, when the energy crisis began, we have lost 2.9 million jobs related to the cost of energy. Sustained high energy prices have the potential to lower our gross domestic product, which could cost the U.S. an

additional 770,000 to 2.7 million jobs. The jobs issue is an energy issue. If we want to deal with the jobs issue, we must pass the energy bill.

The industrial energy consumers of America have stated that high energy prices, most in natural gas, contributed to the loss of almost 2.8 million manufacturing jobs. Chart No. 3 deals with this problem. Since 1982, jobs in the oil and gas industry have declined by one-half, from over 700,000 jobs to roughly 330,000 jobs.

As chart No. 4 shows, the chemical industry lost jobs. As gas prices go up, the number of chemical industry jobs goes down. The price of energy is directly related to the loss of jobs in this country.

Since 2000, our chemical industry has lost 85,000 jobs. This industry employs more than 1 million Americans, and 5 million Americans have jobs that depend upon the chemical industry. More of these jobs are threatened as major chemical companies across the United States are closing their factories and moving to countries which provide cheaper natural gas.

This jeopardizes millions of well-paying American jobs that will not be replaced unless we have energy. Moving these industries offshore not only contributes to job losses but it increases our burgeoning trade deficit. Our chemical industry once was a major exporter, generating a $16 to $18 billion trade surplus. Last year the chemical industry generated a trade deficit of $9.6 billion, contributing to an overall U.S. trade deficit of over $530 billion. That deficit, too, is related to energy availability and the cost of energy.

High energy prices are threatening our fertilizer industry. Up to 90 percent of the cost of producing fertilizer is directly linked to the cost of natural gas. Between 2001 and 2003, eight U.S. nitrogen fertilizer manufacturers permanently closed. That is one-fifth—20 percent—of all the United States fertilizer production. Additionally, our ammonia factories are operating at 60 to 65 percent capacity. Why? Because of the cost of natural gas.

The impact of high energy prices is acutely felt by the agriculture community. The energy costs account for 6 percent of farm production costs. Farmers spent between $1 and $2 billion more this year to plant crops. In 2003, farmers paid $350 per ton for fertilizers, more than twice what they paid just 1 year previously. That is a 100-percent or more increase in the cost of fertilizer in 1 year.

The good news is a worsening crisis is avoidable. The United States has the natural resources to increase our energy supply. But inconsistent Government policies discourage exploration, development, and the use of our own natural resources—our own energy resources.

Over 95 percent of undiscovered oil and 40 percent of undiscovered natural gas is located on Federal land. These public resources can secure our energy needs. Today the Government encourages use of natural gas but discourages exploration and development of domestic natural gas. As a result, most major energy companies, including some which operate in my own State of Alaska, are abandoning the United States and investing in and developing energy resources in other countries.

A recent article shows while the 4 major oil and gas companies realized $21 billion in cashflow from their U.S. oil and gas activities, they only reinvested $9.15 billion back into the United States. Less than half of the money they paid was invested here to increase the supply of gas.

This lack of reinvestment makes us dependent on foreign sources of energy from unstable or unfriendly regimes. More and more we are dependent on foreign sources.

This industry generates jobs and revenues in other countries at our own expense. These new jobs should be American jobs and that energy royalty income should be coming into our Government. The receipts generated by that economic activity would help reduce the deficit, provide new jobs, fund the war on terror, and support many of the domestic programs we cannot fully fund.

Despite the obvious benefits of domestic energy exploration and development, today we rely on foreign imports for over 60 percent of our oil supply. Imagine that. It was about 33 percent at the time of the embargo on oil in the 1970s. Now it is over 60 percent. We are 60 percent reliant on foreign oil, and more people oppose the development of the oil resources on the North Slope of my State. Currently, we also rely on 16 percent for foreign sources for our natural gas supply. Energy imports make up the largest portion of our foreign trade deficit.

This is chart No. 5. It shows the natural gas consumption outlook. In the last 10 years, demand for natural gas has increased by 19 percent, and that number is projected to grow by 50 percent in the next 25 years. Absent a new supply of natural gas, we will likely see a gap of 15 billion cubic feet per day or 6 trillion cubic feet per year in the next 10 years.

This chart shows the difference between our consumption and the projection into the future. We are growing more reliant on foreign sources for our natural gas. We are already 60 percent reliant for oil. This chart shows that as the years go by we are going to be more reliant on foreign sources for natural gas. It will be expensive natural gas. It has to be gasified, transported in cryogenic tankers, and then regasified when it gets here. Our own natural gas is pumped out of the ground and shipped in a pipeline. The costs associated with foreign reliance are going to be staggering. That means more American jobs lost.

The Natural Petroleum Council found that to bridge this gap, $1.2 trillion dollars must be invested in new exploration and production in the United States by 2025. Unless we pass an energy bill to bring certainty to American energy policy, that investment will not take place. I repeat: Unless this bill is passed, there will be no new investment in the production and development of oil and gas resources in the United States.

The high impact of energy prices can be seen at all levels of our economy. High energy prices have produced job losses, trade deficits, and constraints on consumer spending and economic growth. But the most disturbing aspect of this problem is the fact that Congress has been debating comprehensive legislation since 2001. I don't think we have passed a real energy bill in 12 years. We are squabbling here in Congress while high energy prices burn our economy and destroy American jobs.

In April of 2002, the Senate passed H.R. 4, the Energy Policy Act of 2002, by a vote of 88–11. Then the bill died in conference.

In July of 2003, after months of intensive debate, the Senate passed H.R. 6, the Energy Policy Act of 2003. However, in November of that year the Senate rejected cloture by a vote of 57–40, 3 votes short of having an energy bill.

We were elected as public officials to improve the lives of American people, to enact laws and to formulate policies designed to ensure the strength and economic viability of our Nation. By failing to enact a comprehensive energy policy for our Nation, we have failed the American people. American businesses and citizens are struggling out of recession and meaningful and sustainable economic recovery. Job creation will only come with stable energy prices, and they will come only if we pass an energy bill and send it to the President.

A comprehensive energy policy is necessary to secure domestic energy security and to support American jobs. Given the negative impact of high energy prices on our Nation, we should act quickly to address this situation.

As I said, the Energy Committee has introduced a revised energy bill which encompasses a comprehensive and balanced natural energy policy. This bill will increase domestic energy supplies, encourage energy conservation, stabilize energy prices, bring certainty to American energy policy for our businesses and consumers, and ensure our energy security. It contains provisions designed to increase oil and gas exploration and development, while at the same time promoting energy conservation and alternative and renewable energy resources. This bill is a jobs bill. It will create more than 800,000 new jobs. Many of those jobs will be the result of a major component of this energy bill, which is authorization for the building of the Alaska natural gas pipeline.

Our gas pipeline will create over 400,000 jobs in and of itself, including 7,000 construction jobs, thousands of manufacturing jobs necessary to create

equipment, and thousands of infrastructure jobs. It will meet approximately 10 percent of our country's natural gas needs. Over 4 billion cubic feet per day will come from Alaska to decrease our dependence on foreign gas and imports of liquefied natural gas. It will generate over $40 billion in revenue for the American Government, instead of sending that money overseas.

Chart 7 shows the 800,000 energy bill jobs. The renewable fuel standard provision of this new bill will create in and of itself 214,000 new jobs. It is estimated this provision will increase farm revenue by $51 billion over the next 10 years. This reduces the overall farm payments currently expended by the Federal Government by $5.9 billion.

In a time when the Federal budget deficit is increasing, it is incredibly important we find some cashflow to offset this spending.

I am still convinced unless Congress acts to ensure greater domestic production of our oil resources, our energy security is jeopardized.

Given the importance of Congress enacting a comprehensive energy policy this year, I urge the Senate to move swiftly to pass this Energy bill. I can think of not one thing the Senate can do to assist the American people more, that will restore American jobs, than acting quickly on the Energy bill that has just been reintroduced.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I agree with the Senator from Alaska. Having worked for several years on this Energy bill, it seems to me there is nothing more timely than to move forward. This is a policy. We think it is for tomorrow, but it is looking forward. It is a balanced policy that has alternative fuels. It has clean air. It has conservation and efficiency, as well as domestic production. We need to do this. I hope we move forward.

IRAQ

Mr. THOMAS. Mr. President, a year ago we started the Iraqi freedom activity. I will talk a little bit about what has been accomplished this past year, to recognize all those who have done so much to have a successful operation there. We are moving toward completion—hopefully not too long in the future, but we have accomplished a great deal. We recognize and thank those who have given so much to continue to fight for freedom, in this case in Iraq and, of course, around the world.

I am sorry this has become so much of a political issue. The fact is, we are talking about finishing a task we started. It is not something that ought to be constantly talked about as a political issue in a Presidential election. Certainly we ought to be talking about some of the successes that have occurred there.

I had the opportunity to visit Iraq and Afghanistan. I was impressed with the things that have been done and are being done by our troops there, by other Americans there seeking to work for a secular government and freedom in that part of the world. I hope we can be more positive about it than we have been, particularly in the media.

I was especially interested to read an editorial in the newspaper ''Wingspan'' from Laramie County Community College in Cheyenne, WY. It was partially about a young man named Nathan Span, and written by Ashley Colgan, the co-editor of this college paper. Marine Corporal Nathan Span, at the age of 22, is a two-time war veteran and has only good things to say about the risks he has taken. He was in Operation Enduring Freedom and Operation Iraqi Freedom, and returned home in December of 2003. It was interesting what Ashley had to say.

On this one-year anniversary, I remind people that although the war may be somewhat political, it is not so to the men and women who fought and still fight in Iraq. Americans should remember that at one point we fought for our freedom from oppression, and we also had to seek help. All I ask for Americans to remember is what soldiers in Iraq represent: Freedom.

Ashley goes on to say:

I understand the fear, pain, and confusion but why get angry at what I feel is America's attempt to make the world a better place. Many Americans feel misled and lied to by the administration, but let's keep in mind the greater good for which the soldiers are fighting. Soldiers in Iraq feel they are setting an example of what America will not tolerate from a malicious dictator.

Corporal Span is a young man who just returned from spending part of his life in Iraq and Afghanistan. In the editorial, Span says, ''For those who have fought for it, freedom has a taste that the protected will never know.''

I will talk a little bit about where we are. Certainly, most recognize this action in Iraq was necessary for a number of reasons. Saddam Hussein's regime harbored and supported terrorists and was consistently an aggravating factor in the Middle East. He had attacked his neighbors and launched wars of aggression. Saddam had a history of possessing and using chemical and biological weapons, in violation of the terms of the cease-fire agreement in 1991 of the Gulf War, and numerous United Nations resolutions.

The best intelligence available at the time showed Saddam Hussein to be a growing threat to the United States. I am pleased the President acted swiftly and decisively before the threat became imminent. The mission in Iraq is critical to winning the global war on terrorism. The war on terrorism remains an aggressive effort to bring not only the perpetrators of September 11 to justice but also those who supported, aided terrorism. This has been policy from day one in Iraq and clearly fits this definition.

The conclusion that Saddam Hussein was hiding chemical and biological weapons while conspiring to rebuild the nuclear program was also reached in the Clinton administration, the United Nations, and a number of other western governments, including several that actively opposed the war. In fact, regime change in Iraq has been a U.S. policy since 1998. It is clear that some of the prewar intelligence on which decisions may have been made were not complete, perhaps were flawed, but the fact remains the President acted in good faith based on the best intelligence available at the time.

But cynical political efforts, of course, have portrayed the President as deliberately misleading the public and remaining dishonest. Rather than playing the election year politics with this issue, we need to focus on correcting the existing programs, focus on the future and where we are going, and how to complete the task to ensure that our leaders have accurate and reliable information on which to implement policy in the future.

I hope the mission of the September 11 Commission that we hear so much about, the talk about it, what should have been done and was not done—what we ought to do is keep this from happening in the future. That is really the issue. This idea of seeking to assess blame in the past is immaterial. The point is, What can we do differently to avoid something of this kind happening in the future? We all know what is going on with respect to those issues.

Where are we today? Two weeks ago, the Iraqi Governing Council unanimously signed an interim constitution toward a secular government, an amazing change in that part of the world. It guarantees freedom of religion and expression, the right to assemble, to organize political parties, the right to vote, the right to a fair and speedy and open trial. It prohibits discrimination on gender, nationality, religion, and arbitrary arrests and detention.

Of course, what the terrorist enemy fears most is a free and democratic Iraq. Freedom, liberty, and democracy are threats to all that oppose it. They will not see this happen without a fight.

Our challenge is to stay there until we have completed our goals. The situation remains dangerous and volatile. The cost of freedom is high. Thanks to the selfless devotion and hard work of our men and women in uniform, we continue to make definite and visible progress toward a goal of returning a free and stable country to the Iraqi people.

Iraqis are much better off today than they were under Saddam Hussein. The Middle East is more stable and the United States is safer with Saddam out of power. Operation Iraqi Freedom is the right action. We are winning the war in Iraq and the war on terrorism.

I thank those who have participated, those service men and women who have given so much for this kind of freedom to be achieved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Mr. President, there is a unanimous consent agreement that has been made, an order dividing the time on the Democratic side. Senator CARPER is not going to come, so that being the case, I ask unanimous consent that Senator SCHUMER be given 10 minutes, Senator WYDEN be given 10 minutes, and Senator DORGAN be given 10 minutes—in that order, changing the order now in effect.

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

Mr. REID. Senator SCHUMER is on his way.

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. SCHUMER. 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. SCHUMER. Mr. President, I ask unanimous consent that I be recognized for 10 minutes of our side's morning business time.

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

The Senator from New York.

THE 9/11 COMMISSION

Mr. SCHUMER. Mr. President, I would like to talk a little bit about the 9/11 Commission which, of course, is right now beginning to interview some of the most high-level people in our Government. The Commission has an important and, I would say, sacred mission, and that mission is to find out what happened and why so many people were killed in the tragedy of 9/11. Of course, many of those people were from my city and State—the vast majority. Some of those people I knew: someone I played basketball with in high school, someone who was a businessman who befriended me on the way up, someone who was a brave firefighter from the Marine Park neighborhood from where I come. And the families mirror—of course with greater intensity—the determination of the American people to get to the bottom of this.

The unfortunate situation is the 9/11 Commission—which is bipartisan and has an important mission that transcends any politics, any one administration, any one Secretary of Defense or Secretary of State or President—is being thwarted as it tries to do its work. They have not been given documents. They have been delayed. Even to this day, Condoleezza Rice has said she will not testify to the Commission in public, even though she was in probably the most sensitive staff position there could be in regard to figuring out the signals before 9/11 and what should be done as a result of 9/11.

I think this is regretful. I think this shows, unfortunately, a pattern in this administration of not wanting facts, of sort of making up your mind first and then trying to get the facts to fit that.

It is no secret I have been sympathetic to the President on the war in Iraq. I disagree with certain things he did, but I voted for the war. I voted for the $87 billion. I think we have to fight terrorism. And I do think it is easy to second-guess. I also believe we could get so hamstrung and do nothing that the terrorists would gain more than they have.

Having said that, if there is one thing we thrive on, if there is a thing that is a hallmark not only of winning a successful war on terrorism but of defending the very democracy the terrorists hate and fight, it is that all information come out so we can make an accurate assessment.

I have to tell you, as you look at it, it seems this administration does not want all the facts to come out and, in fact, oftentimes thwarts facts coming out; and then, when they hear facts they do not like that come out not because of administration auspices, they start kneecapping the bringer of bad news.

This has not just happened in one instance; this has happened in instance after instance after instance. Today there is a whole machine discrediting Richard Clarke—certainly disagree with his arguments, certainly disagree with his interpretations of what happened in the White House.

There are two sides to every argument. But to say Mr. Clarke—who, until 2000, according to the newspapers, was a registered Republican, whom I know well, whose sole mission was to defend us against terrorism—to call him names and say he is motivated by partisan politics and he has one friend in the John Kerry campaign, that does a disservice to America; to do the same thing to Mr. Foster, who had numbers on how much the prescription drug bill would cost; to do the same thing to Ambassador Wilson; to do the same thing to Chief of Staff General Shinseki, this is a pattern that does not do the President, the White House, or the administration proud. In fact, it has an antidemocratic tinge to it that should make all of us worry, that should make all of us troubled by what has happened.

Probably the last analogy to 9/11 was Pearl Harbor. And what did this country do? What did Franklin D. Roosevelt and the leaders of this country do? They said: We need to find the facts as to why we were so unprepared. Might those facts have damaged people in office? Surely. But, nonetheless, pursue the facts we did, and a comprehensive report on why America slept was issued.

This 9/11 Commission is in that tradition. Yet this 9/11 Commission has been thwarted every step of the way. Governor Kean is a Republican, greatly respected, not a partisan man. The vice chairman is Lee Hamilton, whom I served with in the House—the same way, a Democrat, but not regarded as partisan. In fact, sometimes the Democratic leadership in the House would tear their hair out at Lee Hamilton's bipartisan nature.

Yet there is almost a fear of facts coming out. What does this say to the American people? Do we believe our country is right? I do. Do we believe, unlike other countries, that we search for the truth, even though that truth sometimes creates bad currents, dissension, whatever, but that truth is the hallmark of our democracy? I do. I think the vast majority of Americans do. I think if you ask President Bush, he would say he does.

But yet, over and over again, with the 9/11 Commission, with Richard Clarke, with Mr. Foster, with Ambassador Wilson, there has been not only an aversion to facts coming out but a kind of ''McCarthyism'' in sort of calling names at the person who had a different interpretation instead of debating whether their interpretation was right or wrong.

This is bad for our democracy. This does not bring credit to this President or the Presidency. This has to stop. I hope today, as the 9/11 Commission begins to interview a series of very important witnesses—two Presidents, two Vice Presidents, many of their leaders—maybe we can turn over a new leaf; that maybe, instead of stonewalling and name-calling and hiding from the truth, this administration will say, look, when you are President you have the powers of the incumbency, but it is also a tough country to govern and sometimes you have to take one for the truth, you have to take one because the facts do not quite square how you thought they did, and explain that to the American people.

I see my colleague from Oregon in the Chamber, and I know he is going to speak on the same subject.

But, again, this 9/11 Commission is extremely important. As Santayana said: Those of us who don't learn the lessons of history are condemned to repeat them. As a New Yorker, I believe that particularly in regard to 9/11. If we cannot get a full, unvarnished, nonpartisan reading of the facts—an analysis of why we were caught so unprepared on that awful day, 9/11—it will hurt us in fighting this war on terrorism, which I believe will be with us for a generation.

If we start off in a way that we are afraid of the facts, if we start off seeming to believe only one side is right and the motivation of anyone who disagrees is suspect, I fear we will not win the war on terror because we will not learn what has happened and we will not be able to correct the mistakes that have been made by many different people of both political parties in the past.

My final plea to our President at 1600 Pennsylvania Avenue is, don't hide the facts. Don't be afraid of the facts. Don't try to undermine those who will present the facts. Our country will be better and stronger for it if you can stick to those rules.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 10 minutes.

Mr. WYDEN. Mr. President, I thank my colleague from New York for taking this time. I want to spend a few minutes trying to put in context the debate about Mr. Clarke's new book. It seems to me that first and foremost this debate is about more than ''he said/she said.'' Invariably that is what these discussions become fairly quickly. I want to review a couple of instances that have caused me to be particularly concerned about the way the Clarke book has been handled.

When former Ambassador Wilson was concerned that the administration had no evidence that the Iraqis had attempted to buy yellow cake from Nigeria, there was a very significant effort to try to discredit him. When former Treasury Secretary O'Neill, a close friend of the Vice President, in effect talked about the administration going after Saddam Hussein, everybody in the administration said he was all wet as well. Now we see the same tactic employed against Mr. Clarke, who served both Republican and Democratic administrations, beginning with the Reagan administration.

Having worked closely with Mr. Clarke on a number of issues relating to cyber terrorism, Mr. Clarke has been very critical of actions taken by executive branch officials of both political parties.

My sense is that, when you look at what people such as former Post reporters Bob Woodward and Carl Bernstein have said over the years, you don't go with a story unless you have two independent sources to confirm it. What you have this morning is Mr. Clarke in effect confirming Secretary O'Neill's account of the administration's focus on Saddam Hussein.

That is particularly important. These are two people with a long history of working in Washington, DC. Both of them have been fiercely independent. Both are known for calling the issues on the basis of how they see them. In effect, you have Mr. Clarke now confirming Secretary O'Neill's account with respect to the focus on Saddam Hussein.

There is an old saying that all roads lead to Rome. It seems the administration so often clearly believes that no matter what the evidence was at any particular time, essentially everything led to Saddam Hussein.

It is clear that Saddam Hussein, throughout his leadership in Iraq, consistently looked for opportunities to inflict pain and trauma on the people of that country. It is beyond question that this was an evil individual. But at the same time, it is critically important that we be in a position to follow the facts.

I sit on the Senate Intelligence Committee. I have always tried to work in a bipartisan way. I see the Presiding Officer of the Senate, Mr. SMITH. He and I together have tried to set an example of bipartisanship. That is the way we need to proceed in this critical area. When you have the Clarke book backing up what former Secretary O'Neill said, that ought to set off alarm bells. That ought to set off alarm bells with respect to exactly how information is filtered now in the executive branch.

I am hopeful we will see this independent inquiry get to the bottom of the situation and find out exactly what transpired after this critical situation with the attack on our country. It is important that our Nation get the facts. It is important that they are found in a dispassionate fashion. Now with this new book by Mr. Clarke making it clear that he shares the judgment of Secretary O'Neill, it ought to renew a concern in the Congress and a concern on a bipartisan basis that this country has a right to know, this country has a right to the facts. Certainly the question of responsibility for 9/11 is an issue the American people should be able to see in a dispassionate fashion, what really happened and how it happened. If anything, the events of the last week reaffirm in my mind how important it is that the American people get the real story.

I yield my time. I note the Senator from North Dakota is on the floor as well. He and I have worked together on many issues. Certainly on the foreign policy arena, we share the view that these issues have to be worked on in a bipartisan way. I will continue to focus on the evidence and focus on that evidence no matter where it leads.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, let me follow on the comments of my colleagues from New York and Oregon. The issue of 9/11 is very important. I have spoken a couple of times about it previously, only because we created a commission to take a look at what happened with respect to 9/11, events leading up to it and following, to try to understand what happened, how did it happen, and what lessons can we learn.

I have been very distraught that the 9/11 Commission has actually had to issue subpoenas. This Commission that we, with the President, have impaneled to find the answers of what happened and what we can learn has had to issue subpoenas to our government to get information. I don't understand that. Why on earth should this Commission have had to use any subpoena power at any time?

Why would not the administration have said to all of the agencies under their control, anything this Commission wants, anything they ask for—they are doing the country's work—provide complete information? Instead, they have met with roadblocks. I do not understand that.

I learned this morning that National Security Adviser Condoleezza Rice is willing to testify but not in public and in limited circumstances. The fact is, on Sunday she was a guest on all five network morning shows. She has plenty of time to do that, but somehow there is not enough time to appear publicly before the 9/11 Commission to give testimony. I do not understand that. I believe and hope that all Republicans and Democrats, this President and this Congress, just want the unvarnished facts, what happened and what can we learn from it.

I know in recent days there have been discussions about a number of books that have been written. I was on the floor also and spoke about former Treasury Secretary O'Neill's book. The Secretary described circumstances where almost instantly, in meetings in the White House, the question posed by the President and the Vice President and Mr. Wolfowitz and others was, What about Iraq? Let's get the evidence on Iraq. Suggesting that there was only one issue, and that was to use 9/11 to get Iraq.

My colleague from Oregon said it well. The leader of Iraq was a murderer. We are unearthing football-field-sized graves in Iraq.

This man was a butcher, no question about that. But there are bad people around the world who are in place now and there are no plans in this Chamber or at the White House to go after them.

The pretext of dealing with Iraq was that they had weapons of mass destruction, we were told. The CIA and others provided secret briefings to us, and Condoleezza Rice, George Tenet, and many others provided the evidence. Secretary Rumsfeld said, ''We know where those weapons of mass destruction are, where they exist.''

The Secretary of State went to the United Nations and laid it out with pictures and slides and said, ''Here is the evidence.'' It turns out that evidence wasn't accurate. So Mr. O'Neill writes a bit about that. Now Mr. Clarke writes a book about it. He is not a Democrat; he is a Republican. There is now an industry in the last 24 hours to try to destroy his credibility. I don't know Mr. Clarke. I don't believe I have ever met him. All I know is that legitimate questions are being raised about these issues, about intelligence, about Iraq, and about the commission that has been impaneled to look into 9/11.

It all has the same kind of origin; that is, let's not ask questions, let's not disclose this or that, let's keep it all secret, if we can. Part of this shroud of secrecy that Mr. Krugman writes about, in fact, I believe in this morning's New York Times, also relates to something we learned last week that is of incredible importance. We learned last week that this issue of the Medicare bill being discussed on the floor of the Senate—adding prescription drugs to Medicare—that the estimates of the cost of that proposal that were given to Congress were wrong and, in fact, the administration had estimates that would have had a substantial impact, perhaps, on the debate on that legislation. They had those estimates, but the

person who had them, the chief actuary—again, no Democrat, just a career public servant who, by all accounts, is a wonderful public servant—had the estimates and was told: If you provide the real estimates to Congress, you will be fired.

If anything demands an investigation, it is that. It demands an immediate investigation. If you cannot rely on information coming from the executive branch about programs we are considering on the floor of the Senate because someone threatened to fire someone if they tell the truth to the Congress, there is something radically wrong. So it doesn't matter whether it is Mr. Clarke who writes a book and describes what he found in the White House. He also worked, as you know, for the Clinton administration. He worked for the first George Bush Presidency. He has worked for George W. Bush for the last couple of years. He writes a book and raises serious questions about the information that was used to decide to focus on Iraq rather than on al-Qaida. I think many of us now, at least in the rearview mirror, look at that and say moving from Afghanistan to Iraq and not continuing to focus on the destruction of al-Qaida may have been a serious mistake.

How did that happen? Why did that happen? These are legitimate public policy questions. I suppose there is politics in some of it. I think the well-being and future of this country depends on our getting this right. We talk about the quality of intelligence and the questions about that, and whether intelligence information was misrepresented.

Look, the next potential terrorist attack against this country will be thwarted—if it is thwarted, and we certainly hope it is—by good intelligence. We must rely on our intelligence system. Is there something wrong with that system? If there is, it must be fixed now. It is not sufficient just to say, somebody wrote a book, so let's trash this person time and time again. That is not what we ought to do. We ought to get to the bottom of what is happening here, what caused all these things to happen, what can we learn about it and what can we do to protect our country.

Mr. President, I yield the remaining time I might have to the Senator from Delaware, Mr. CARPER. How much time remains?

The PRESIDING OFFICER. Just under 7 minutes.

ENERGY INDEPENDENCE

Mr. CARPER. I thank my colleague for yielding. Before he leaves the floor, I want to take a moment and thank him for his leadership on another issue. As we have sought to become more energy independent, Senator DORGAN has led the charge, saying maybe part of that would be to practice better conservation. He focused, among other things, on the efficiency of air-conditioners. It may sound like a small thing, but in the scheme of things, it is a big step. I thank him for his leadership on that.

I bought gasoline in my hometown of Wilmington, and I think it cost $1.77 per gallon, a little higher than it has been in recent months. I read a news account the other day that said we might be looking at prices as high as $3 per gallon in some parts of America before the end of the summer. We are also hearing a fair amount of concern about the price of not just gasoline but of natural gas. Natural gas is what we use to provide a feedstock for many of our chemical companies. A lot of agribusinesses use it for fertilizers. Natural gas is also the fuel of choice for many of the new electric-generating powerplants that are being built across this country.

I want us to go back in time about 4 years to the last year of the Clinton administration. In 2000, the Clinton administration suggested, through regulation, that we call on the makers of air-conditioners in this country to create and begin selling more energy-efficient air-conditioners in 2006. Something was adopted called the SEER 13, seasonal energy efficiency rating. The idea behind the regulation was that, by 2006, air-conditioners would have to be 30 percent more energy efficient than those currently available. We adopted a standard that was implemented and then withdrawn by the Bush administration in the following year or two, and it was replaced by a less rigorous standard.

There has been a court battle over the last year or so, and the outcome is that the court battle has sustained the more rigorous standards, the SEER 13 standard, which says that manufacturers in this country, by 2006, should be producing air-conditioners that are 30 percent more efficient than those available in 2000. That may or may not sound like a very big deal, 30 percent more energy efficient, but I ask my colleagues to think about this. When was the last time we had a blackout during March or April or May or, frankly, in October, November, December? I don't recall one. My guess is that you don't, either. We have them, for the most part, in the summer. We have blackouts, for the most part, when temperatures get hot and people turn on their air-conditioners.

If we begin buying more energy-efficient air-conditioners in 2006, we will do a couple of things: One, reduce the likelihood of blackouts and the kind of calamity they create for our economy; two, we reduce the need to build new electric powerplants. Some 48 fewer electric powerplants will have to be built because of the higher standard. In addition to that, we will reduce, with a higher efficiency standard for air-conditioners, the emissions of carbon dioxide from our electric-generating plants by 2.5 million tons by 2020.

In addition, if we are building more power-generating plants that will use natural gas, it will have a positive effect on the price of natural gas and, I think, a positive effect on the manufacturing industry in this country.

The second district court has ruled that the Clinton standard—the SEER 13 standard—should prevail. Last week, the association that represents the air-conditioning manufacturers joined, saying they thought they could build and begin selling, by 2006, air-conditioners that met the more rigorous standard.

I hold a letter signed by 53 colleagues, Democrats and Republicans, that was sent last week to the President.

It is a letter that simply says: Mr. President, we do a lot of good for our country. We can help ourselves on the manufacturing side. We can help ourselves by building fewer electric-power-generating plants. We can reduce the price of natural gas to some extent. We can reduce the emissions that are coming out of our electric-power-generating plants by millions of tons of CO2 each year. We can do that, Mr. President, if the administration does not appeal the decision of the second district court.

If the Association of American Air-Conditioning Manufacturers can say we have the ability to live up to this more rigorous standard, more than half the Senate can say: Mr. President, we believe we, too, have the ability to live by this more rigorous standard.

I am tempted to say let's let sleeping dogs lie. But rather than say that, let's let the more rigorous standard stand. Whether or not we pass an energy bill this year or not—we need an energy policy desperately—I will say one thing: One good component of energy policy in this Nation is conservation. One good way to conserve a whole lot of electricity, particularly starting in 2006, is making sure that when we turn on the air-conditioners in our homes, offices, and buildings, they are meeting the more tough and rigorous standard. That would be a good thing for America.

I ask unanimous consent that a copy of this letter signed by 53 of our colleagues be printed in the RECORD.

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

U.S. SENATE,
Washington, DC.

Hon. GEORGE W. BUSH,
The White House,
Washington, DC.

MR. PRESIDENT: A recent federal court decision regarding energy efficient air conditioners is a significant victory for consumers, for the environment, and for our nation's energy future. We respectfully request that you do not appeal the decision to the U.S. Supreme Court.

Last month, the U.S. Court of Appeals for the Second District (Natural Resources Defense Council et al v. Abraham, Docket 01–4102) affirmed that central air conditioners sold beginning in 2006 must be at least 30 percent more energy efficient than those available today.

Air conditioners are a necessary modern convenience but are also major users of electricity. On hot days, cooling homes and businesses is the largest category of electricity demand. Requiring air conditioners to be as energy efficient as possible will begin to reduce the stress on the electricity generation and transmission network and decrease the likelihood of blackouts that many regions of the country experience during warm weather conditions.

Air conditioners that meet the Seasonal Energy Efficiency Rating 13 standard will provide benefits for consumers, the environment, and the nation. The SEER 13 standard will alleviate the need for additional electricity production and transmission resulting in as many as 48 fewer power plants required by 2020. This standard will also result in less harmful air pollution being emitted into the atmosphere. Moreover, by 2020 power plant emissions of carbon dioxide will be 2.5 million tons lower as a result, and emissions of mercury, sulfur dioxide, and nitrogen oxides will also be held down resulting in cleaner air and healthier citizens.

Finally, the higher standard can be expected to save businesses and residential consumers $1 billion per year in lower electricity bills. Lower electricity bills will recover the slightly higher purchase cost for the more efficient air conditioners in less than 18 months.

As the Congress continues to debate the future of our nation's energy policy, this court decision is one that should be embraced and encouraged, not appealed.

Respectfully,

Tom Carper, Susan Collins, Byron L. Dorgan, Peter Fitzgerald, Jeff Bingaman, Dick Durbin, Jack Reed, Lincoln D. Chafee, Charles Schumer, Deborah Stabenow, Dianne Feinstein, Daniel K. Akaka, Elizabeth Dole, Ernest Hollings, Patty Murray, Lamar Alexander, Judd Gregg, Carl Levin, Olympia Snowe, Joseph Lieberman, Paul Sarbanes, Max Baucus, Maria Cantwell, Patrick Leahy, Joe Biden, Russell D. Feingold, Jim Jeffords, Jay Rockefeller, Frank Lautenberg, Ben Nelson, Hillary Rodham Clinton, Barbara Boxer, Barbara A. Mikulski, Christopher Dodd, Jon Corzine, John E. Sununu, Mark Dayton, Arlen Specter, Bill Nelson, Bob Graham, Ted Kennedy, Gordon Smith, Ron Wyden, Robert C. Byrd, Herb Kohl, Tim Johnson, John Edwards, John F. Kerry, Thomas Daschle, Daniel Inouye, Kent Conrad, Harry Reid, Richard Lugar.

The PRESIDING OFFICER. Who yields time? Is there further morning business?

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous unanimous agreement, morning business is closed.

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1637, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1637) to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

Pending:

Harkin amendment No. 2881, to amend the Fair Labor Standards Act of 1938 to clarify provisions relating to overtime pay.

McConnell motion to recommit the bill to the Committee on Finance, with instructions to report back forthwith the following amendment:

McConnell (for Frist) amendment No. 2886, in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 2898

Mr. GRASSLEY. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment No. 2898 to the instructions to the motion to recommit S. 1637.

The amendment follows:

At the end of the instructions (Amdt. No. 2886) insert the following:

SEC. . This act shall become effective one day following enactment of the legislation.

Mr. GRASSLEY. I ask for the yeas and nays.

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

The yeas and nays were ordered.

AMENDMENT NO. 2899

Mr. GRASSLEY. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment No. 2899 to the amendment numbered 2898.

The amendment follows:

In the pending amendment strike ''one'' and insert ''two''.

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

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, let me take a few moments to review where we are on this legislation.

First, I don't want to sound melodramatic but this is an important bill. This bill would help to create and keep good manufacturing jobs where they should be; that is, in America.

We need to move this bill. The Senate conducted 3 days of debate on the bill, one of them a Monday without rollcall votes, and this is our fourth day on the bill. In that time, we might say, the Senate has considered and adopted a good number of amendments. Let me just list them.

We have adopted, first, the managers' amendment on leasing shelters; the managers' amendment making modifications to the revenue provisions; the committee substitute. We have also adopted the Bingaman amendment to expand the research credit; the Hatch-Murray amendment to extend the research and development credit. We have further adopted the McConnell amendment to protect American workers; the McCain amendment on defense; the Dodd amendment to protect American workers; the Bayh amendment to extend expiring provisions; the Bunning amendment to extend the net operating loss carryover provision; and the Bunning-Stabenow amendment to accelerate the phase-in of the manufacturing deduction.

That is quite a bit. A lot of legislation adopted, amendments passed already. Now, under the previous order, Senator HARKIN has offered his amendment on the Department of Labor's overtime regulations and that is the pending first-degree amendment.

Regrettably, in my view, the assistant majority leader offered a motion to recommit the bill and filed cloture on that motion to recommit. This morning the majority filled that amendment tree by offering a couple of secondary amendments.

There may come a time, after full and fair debate and amendment on the bill, when I would support a motion to cut off debate. But under the current circumstances, I will oppose that cloture motion. This is a bill about jobs, about quality jobs here in America. Senator HARKIN's amendment is also about the quality of jobs in America. This is not some amendment out of left field. The Senator from Iowa is not trying to change the subject, for example, to gun control or Medicare or reproductive choice, but rather he is staying on the subject. He is talking about jobs.

His amendment, although relevant, may not be strictly germane within the meaning of that term in Senate procedure. The effect of this cloture motion, if adopted, would be to block a vote on the Harkin amendment. I will not be a party to that effort. On a major bill such as this one, Senators deserve a full and fair opportunity to offer and get votes on amendments. We should allow that process to continue.

Even though this cloture motion has brought the Senate to something of an impasse, I remain hopeful. I am hopeful because I believe after the Senate recognizes that the votes are not there to block the Harkin amendment, the Senate can then reach an agreement limiting amendments to the bill to a reasonable number. I believe we can then work through this bill and bring it to completion by the end of the week. It is important that we do so. We need to respond to the European Union's sanctions, sanctions that impose a harmful tax on dozens of American products. Most importantly, we need to do what

we can to help to create and keep jobs in America.

I urge a prompt vote on the Harkin amendment, that we reach an agreement limiting amendments to a reasonable number, and then move on to complete this bill.

I yield the floor.

Mr. GRASSLEY. Mr. President, last night the majority leader set up a process for moving this bill to a cloture vote. This is not our preferred route for moving what is clearly a bipartisan bill voted out of committee 19 to 2. The two dissenting votes happened to be Republicans, not Democrats. This is clearly a bipartisan bill. A bipartisan bill should not require a cloture vote to get passed.

I remain hopeful we will be able to work out an agreement on moving the bill forward without the need for this extraordinary parliamentary process, but if cloture is the only way to move this bill, then I hope everybody will support cloture. We need to support cloture in the same bipartisan manner we used to build this bill. It is urgent that we move this bill immediately.

This bill reduces the income tax on goods manufactured in the United States and sold overseas so we can create jobs in America. We give a priority on taxation to goods made in America.

Everybody in this body is concerned about outsourcing. If we want to do something about keeping jobs in America and adding to the number of jobs in America, this bill will do it. It is going to make our costs of operation less and consequently competitive with world competition. That is why we call it the JOBS bill.

The reason we are in a bad position right now is because under the international agreements we have on trade, the World Trade Organization has ruled that our pretax policy is an illegal export subsidy, and consequently the World Trade Organization has authorized Europe to do up to $4 billion a year in sanctions against U.S. exports.

It isn't just the case of our tax system causing us to not be competitive. On top of that, we now have $4 billion of sanctions to further weigh down our ability to compete in the export market. These sanctions began on March 1. These sanctions started at 5 percent, which is just like a 5-percent sales tax on the stuff we are going to sell. The rule of Economics 101 is if you tax something at a higher rate, you get less of it. But not only is it 5 percent now, it is going to be 5 percent for each month we do not conform our tax laws to our trade agreements.

Remember, we have trade agreements because the U.S. Congress enacted those trade agreements. It has been done by a majority of the representatives of the American people. One percent a month can take us all the way up to a maximum of 17 percent over the course of a year. By November, we are going to have a 12-percent tax on our exports. This is a very serious threat for all States because the sanctions hit a wide range of products—agricultural, timber, and manufacturing products that we sell overseas.

We need to get this issue behind us very soon or we will never get this bill passed and we will continue to have this mounting level of taxation on our products being exported to a point where we are even more uncompetitive, to a point where workers may be laid off; whereas just the opposite can happen if we pass this legislation. We are going to be able to make our manufacturing more competitive and across the board with a wider range—not just for big corporations in America but for individuals that export, for sole proprietorships that are in manufacturing; you name it. People are going to get the benefit of a lower rate of taxation if they manufacture in America—not if they have a company in America and they manufacture overseas but just American jobs, American products made in America, or if a company wants to come over here and invest in America and build a plant and hire American workers, they will get the benefit of it as well.

We had 3 or 4 days on this bill 2 weeks ago. We started on it again yesterday. I think it is very important that we move ahead on this legislation. But the opening debate and the procedural shenanigans confirm my worst fears because there are some on the other side who want to use this legislation to move things that are unrelated to making our industry competitive and unrelated to the motivations behind this bipartisan bill.

Senator BAUCUS and I agreed on an order of amendments that would improve the bill and broaden important relevant issues. That agreement was undermined by the process coming from the other side of the aisle.

It means Members there presumably do not know the importance of this legislation, do not want to debate the substance of the bill but debate everything else. In a sense, this bipartisan bill is being turned into a political football. That is inexcusable because we have worked hard throughout this process to make sure everyone's concerns, both Republican and Democrat, were incorporated into this bill. You do not play political games with a bipartisan bill that affects the jobs of manufacturing workers across this land.

I take a moment to talk about how bipartisan this bill is. It is bipartisan and was built that way from the ground up. It is the construction that began when my friend and colleague, Senator BAUCUS, was chairman of the Finance Committee. Senator BAUCUS held hearings on this issue in July 2002 to address the FSC/ETI controversy going on within the World Trade Organization. The title of the hearing was ''The Role of the Extraterritorial Income Exclusion Act in the International Competitiveness of U.S. Commerce.'' Talk about a chairman taking his responsibilities seriously, Senator BAUCUS did.

Even then we were concerned about the outsourcing of jobs. We were concerned about American manufacturing being able to compete with the global environment we are in. We heard at that time vital testimony from a crosssection of industries that would be adversely affected by the repeal of this extraterritorial income act.

We also heard from U.S. companies that were clamoring for international tax reform more broadly than FSC/ETI because our tax rules were hurting their competitiveness in the foreign markets. If you want to create jobs in America, and we have a tax system that makes us uncompetitive, would you not expect the Congress of the United States to respond, and respond in a bipartisan way to that problem for our manufacturers? Or if you did not, why would you harangue about outsourcing? You need to do something about it.

These companies that testified in the summer of 2002 told us their foreign competitors were running circles around them because of our antiquated international taxing rules. During this hearing, we had our colleagues, Senator BOB GRAHAM of Florida and Senator HATCH of Utah, express concerns about how our international tax laws were impairing the competitiveness of U.S. companies. After some discussion on forming a blue-ribbon commission to study this problem, we all decided that decisive action was more important than the usual commission approach that usually ends up with a lot of public relations and high talk but no action.

During that hearing, then-Chairman Baucus formed an international tax working group that was joined by Senator GRAHAM, Senator HATCH, and this Senator, and was open to any other Finance Committee Senator interested in this issue. The bipartisan Finance Committee working group formed the basis for the bill we are debating this very minute. We directed our staff to engage in an exhaustive analysis of many international reform proposals that have been offered. Our efforts were intended to glean the very best ideas from as many sources as possible.

Senator BAUCUS and I also formed a bipartisan, bicameral working group with the chairman and ranking member of the Ways and Means Committee of the other body in an effort to find some common ground on dealing with this repeal of FSC/ETI. Obviously, that did not go so well because the other body has come out with legislation somewhat different than ours. Consequently, they are finding it very difficult to get the votes to pass it in the other body. That is another reason, if we move quickly, maybe we can impress upon the House of Representatives that this body can function, this body works; we have a good product and maybe that will encourage bipartisanship in the House of Representatives.

Through this working group we continued our efforts in cooperation with

Senator HATCH, Senator BOB GRAHAM, and other members of the Finance Committee who wanted to do what was fair and what was right in complying with this World Trade Organization ruling. We continued our bipartisan efforts when I became chairman in 2003. In July last year, we held two hearings on the FSC/ETI and international reform issues. One hearing focused on: ''An Examination of the United States Tax Policy and Its Effect on Domestic and International Competitiveness of United States-Based Operations,'' building upon the very successful hearing that chairman BAUCUS had in 2002.

Our second hearing was entitled ''United States Tax Policy and Its Effects on International Competitiveness of United States-Owned Foreign Operations,'' as opposed to United States-based operations in the first hearing. These two hearings concluded our final bipartisan effort in reviewing all of the policy options that led to the creation of the bill that is before the Senate right now.

Let me again emphasize there is not one provision in this JOBS bill that was not agreed to by both Republicans and Democrats. We have acted in good faith. We have acted in the best of faith to produce a bill that takes American manufacturing jobs and ensures that our companies remain the global competitors we want them to be. We did this in a fully bipartisan manner, which is what the American people expect on such an important issue as manufacturing jobs in our Nation's economic health.

These efforts that have been expended to bring this bill to this point are apparently not enough for some. They still view this whole process as political punt, pass, and kick competition. I now realize there are some who do not want this bill to pass, and maybe not having it passed will serve their political end. They want economic downturns that continued sanctions will produce to continue economic doldrum.

Several weeks ago, an article in the Washington Post quoted a Democratic tax aide as saying: ''There is not a lot of incentive for us to figure out this problem.'' The Democratic aide went on to say that allowing the extraterritorial income controversy to fester would yield increased sanctions that somehow would benefit the Democrats in November. That is an appalling statement because we hear the concern that is legitimately expressed about outsourcing.

We have a bill before the Senate that can do something about outsourcing. We have a situation before the Senate that if we do not pass this bill, not only will we not have some tax advantage we thought we once had, but we will have the sanctions on top of that to weight down American industry so more people are laid off.

How can Members one day give a speech about outsourcing and the next day slow down a bill that does something about outsourcing? Outsourcing only comes as a matter of competition. There is not any American businessperson sitting around anyplace that decides, I want Mary's job to go to India. I want Pete's job to go to China. I want Ralph's job to go to Russia.

There is not any American businessman who speaks in terms of: I don't want this American to have a job, because they would not have hired them in the first place.

This outsourcing happens because they look at what their competition is paying to produce a product. In the economics of business, when you are a businessperson, wherever in the world, if you do not make a profit, you are not going to be in business. So a businessperson seeing that he is not competitive, that is where you lead to outsourcing.

Now these American manufacturers come and testify before our committee. They tell us what makes them noncompetitive. One is the cost of capital in America being high. We have an opportunity to reduce the cost of capital and, at the same time, encourage manufacturing in America. That is what this bill does.

So everyone on both sides of the aisle who talks about outsourcing—I do myself—needs to band together if we are serious about doing something about outsourcing and get behind this effort to get the bill passed because manufacturers tell us this bill will help. And, for sure, they know these sanctions that are on American manufacturing now are an additional burden they cannot withstand.

America's farmers and manufacturing workers must not pay the price for the sort of stonewalling we are seeing. Efforts to delay this bipartisan bill with unrelated measures is a bad excuse. Why would they raise political issues that are unrelated to this bill in an attempt to undermine the JOBS Act?

Delay will allow sanctions to continue and drive down our economy. That will allow sanctions to increase to 12 percent by the November elections. Maybe that is too tempting for some people who are worried about the election instead of the next generation to pass up.

I am hopeful we will see the best politics ends up being good policy. That is what we have with this bill. We help domestic manufacturers. We help U.S. companies compete overseas. Putting politics ahead of good policy is exactly the wrong approach. In effect, this political game does not help those who face the sanctions. It does not help domestic manufacturers and workers in those industries.

A vote against this bill is a vote to continue European Union sanctions, already at 5 percent—6 percent in April, 7 percent in May, 8 percent in June, 9 percent in July, 10 percent in August, 11 percent in September, 12 percent in November.

We are here to represent the interests of the United States. On this bill, we are here to represent the interests of jobs in America. We are here to represent the symbol ''Made in America.''

If we do not pass this bill, whether people realize it, they are representing the interests of the European Union, because it is the European Union which is going to benefit with European jobs.

We have 5.6 percent unemployment in America, which is probably less unemployment than most of my life in politics as an index of how the economy is going. But still, it is bad to have 5.6 percent unemployment. What is worse than the 5.6 percent unemployment is the people who are complaining about the 5.6 percent unemployment and not passing this bill that is going to make employment in America better.

Oh, maybe they are looking over to Germany. Their unemployment rate went up last month to 10.7 percent. By not passing this bill, we might help some German workers get a job, some of the German unemployed get a job. Well, I do not think we ought to put the interests of the European Union first.

The only way to honor our trade obligations and to make American business competitive and to create jobs in America is to pass this bill and repeal the extraterritorial income provisions of our law. It is very simple. It is so simple that is why this is a bipartisan bill. As I said before, I hope the leadership of this body can cooperate, both Republican and Democrat, to focus on this legislation, to focus on the task at hand, and particularly on the other side where all the amendments are coming from, to know the importance of passing this bill, not stalling this bill, and moving forward.

Repealing FSC/ETI raises about $55 billion over 10 years, and 89 percent of that money comes from manufacturing. It gives us an opportunity to use that $55 billion to emphasize American manufacturing, the creation of jobs in America, and to use that $55 billion as an incentive to American manufacturers to manufacture here and not to manufacture overseas.

We need to send that money back to the manufacturing sector because if we do not, then besides these sanctions, we have a $50 billion tax increase on American manufacturing.

The Congressional Budget Office says we have lost 3 million manufacturing jobs since July of 2000. Is this manufacturing decline something the Bush administration did? No. It started in July of 2000. A $50 billion tax increase will not stimulate manufacturing jobs.

Again, simple principles of economics 101: If you tax something more, you get less of it.

The JOBS bill uses all of the money from the FSC/ETI repeal to give a 3 percentage point tax cut on all income derived from manufacturing in the United States. Let me emphasize: just in the United States. It is not for manufacturing by American companies overseas.

The relief applies not only to big manufacturers but sole proprietors,

partnerships, farmers, individuals, family businesses, multinational corporations if they are manufacturing in America, and also plain big or small foreign companies that set up manufacturing plants in the United States.

We also include international tax reforms, mostly in the foreign tax area, and most of which benefit manufacturing.

Our bill also includes the Homeland Reinvestment Act, which has broad support in both bodies of the Congress.

The Finance bill is revenue neutral. That is another thing we have to do: have it carefully crafted in order to get bipartisan support for this legislation and not add to the deficit; there are both Republicans and Democrats who do not want to pass a tax bill that loses revenue. So we have the ability, by extending Customs user fees—and, more importantly, by shutting down illicit tax shelters, corporate tax shelters, and closing abusive corporate tax loopholes—to raise money to do even more than we have described to be able to do some reform of the international taxing regime generally beyond just FSC/ETI.

As with all bills, there is never complete agreement on this approach. That is even considering the fact it was voted out of committee in a bipartisan way 19 to 2. Remember, all Democrats voted for this bill to come out of committee.

Our bill contains a haircut on the rate reduction some of us would like to remove and others would like to retain. Some Members prefer a reduction in the top corporate rate across the board in place of the international reforms and the manufacturer's rate cut in this bill. I understand the desire for this simpler approach cutting taxes, but a top level rate cut would only go to the biggest corporations of America. Local family-held S corporations and partnerships, which presently get some extraterritorial income benefits, get nothing from this. If we redirect FSC/ETI money to an across-the-board corporate cut, then the manufacturing sector will be the revenue offset. In other words, we are going to be shifting from tax advantages from manufacturing to services where we have some problem, but I think we generally agree not as much of a problem as we have in manufacturing.

The international tax reforms largely fix problems our domestic companies face with the complexities of the foreign tax credit. These reforms are necessary if we are to level the playing field for U.S. companies that compete with our trading partners. The Finance Committee bipartisan bill has been improved with an amendment to extend the research and development tax credit through the end of 2005. That is a domestic tax benefit that incentives research and development, makes our businesses competitive and prepared for the next generation of technology. This, however, translates also into good, high-paying jobs for workers in America and not overseas.

In addition to the previously agreed upon R&D amendment, there are several additional provisions to improve this bill. We have the amendment by Senators BUNNING and STABENOW, a bipartisan amendment to accelerate the manufacturing deduction. This amendment ensures the tax relief and related economic benefits of the bill are provided more quickly to those hurt by the repeal of FSC/ETI. This is now part of the bill.

Second, there is an amendment I offered with Senator BAUCUS to extend for 2 years tax provisions that have expired. Some expired in 2003, some this year. This includes items such as the work opportunity tax credit and the welfare-to-work tax credit which have been merged and simplified into a single credit as proposed by Senator SANTORUM and others in the bill S. 1180. This is now a part of the legislation.

A third provision on net operating losses is also included. This provision allows companies that operated at losses during the difficult economic conditions of last year to offset those losses against their income of the previous 5 years. So this provision is going to accelerate tax relief to companies that need it to continue operations and to continue their recovery from the recent economic difficulties. This provision is now in the bill.

The JOBS bill before us also contains many other items that are widely supported by the Members. We have enhanced the amount of transition relief for U.S. manufacturing companies that will be harmed by the FSC/ETI repeal. We have enhanced depreciation provisions, brownfield revitalization, mortgage revenue bonds. We allow deductions from private mortgage insurance for people struggling to afford a home.

The bill includes tax benefits for reservist employees that provides a tax credit to employers for wages paid to reservists who have been called up to active duty. We have extended and enhanced the Liberty Zone Bonds for the rebuilding of New York City, particularly requested by its two Senators. We have increased industrial development bond levels to spur economic development. We have included the Civil Rights Tax Fairness Act. We have provided for rail infrastructure and broadband.

All of these benefits are being held hostage because some Members are pushing politically motivated votes on an issue that is not even in this bill. Let's get on with the business at hand and finish it. Let's put good economic policy first in the Senate.

We do have the issue of cloture which comes up periodically when we have to get to the completion of legislation. I, for one, was hoping this cloture would not be filed. That is the way Senator BAUCUS and I hoped it would happen. I have to deal with the fact it is filed. My colleague Senator BAUCUS has to deal with that fact as well. This needs to be dealt with on a little higher plain than from bill to bill.

I propose to the leadership of the Republican and Democratic caucuses that somehow, if we are going to get between now and adjournment this fall, without a lot of waste of time on the part of the Senate and the 100 Members equally affected, that we get a list of the so-called amendments I referred to as politically motivated. I think the other side sees they have certain issues that ought to get before the American people, ought to be discussed. Republicans have some of those issues as well that Democrats would just as soon we not bring up. I don't know why there can't be some agreement unrelated to a specific bill before the Senate that certain of these issues are going to be brought up, and we will find someplace to handle one on this bill, one on another bill, a third one on another bill, so they don't get dumped at one time all on one piece of legislation. Then we know ahead of time what the situation is; there will be a plan for the functioning of the Senate.

I should not speak for Senator BAUCUS but I believe I can. He comes from a philosophy that this place ought to work, that it ought to make product. We ought to do our job. And I am sure that even though he might have a different view than I do on this issue of cloture, he wishes it were not that way. I wish it were not that way. He wishes there was a plan before us to move every important piece of legislation in an expeditious way because that is what we are sent here to do. We all ought to want to make this place work because when it does not work, it makes all of us look bad. It puts the good of the American people secondary to politics, whether it is Republican politics or Democratic.

I yield the floor.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. The parliamentary inquiry I would like to make is where are we right now on the bill? Are we on the motion to recommit, at this point?

The PRESIDING OFFICER. The motion to recommit is pending.

Mr. HARKIN. I understand also that a cloture motion has been filed on the motion to recommit.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Since there is a motion to recommit that is pending, is it not in order for an amendment to be made to that motion?

The PRESIDING OFFICER. Amendments have already been made to the motion to recommit.

Mr. HARKIN. Do I understand that both a first-degree and second-degree amendment have been made already?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. So, therefore, no amendments, then, are allowed, under the rules of the Senate, to be made to the motion to recommit?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Further inquiry, Mr. President: Yesterday this Senator offered an amendment dealing with overtime. Is that amendment still pending?

The PRESIDING OFFICER. The amendment is still pending.

Mr. HARKIN. Is it further correct to say that if cloture is invoked, this amendment would fall, that it would not be allowed under the rules of the Senate?

The PRESIDING OFFICER. If the motion to recommit is adopted, the Harkin amendment would be vitiated.

Mr. HARKIN. I understand that. But then this Senator would be allowed to offer my overtime amendment on the new bill that will be before us at that point?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Further inquiry, Mr. President: If, however, cloture is invoked on the motion to recommit, is it not true that this Senator's amendment then would fall and not be allowed, under the rules of cloture, or am I wrong? Maybe my amendment would be allowed.

The PRESIDING OFFICER. The question is on whether, if cloture is invoked——

Mr. HARKIN. Yes.

The PRESIDING OFFICER. If cloture is invoked, then the amendment would be nongermane.

Mr. HARKIN. I understand that. I want to make it very clear for those who may be watching in their offices and not present on the floor. If cloture tomorrow, when it ripens, is invoked, we will not be allowed to vote on an overtime amendment; is that correct? Because it will be deemed to be nongermane under the rules of cloture, is that correct?

I repeat my question. I want to make it clear to those who are watching in their offices and may not be on the floor right now. Under the rules of germaneness, under the rules of the Senate, because of the parliamentary tactics just taken by the majority, having a motion to recommit and then sort of filling the tree, as we call it around here in parliamentary parlance, having the first-degree amendment and the second-degree amendment and then filing cloture—that was filed, I guess, yesterday—that through all of this parliamentary maneuvering, if in fact the Senate votes for cloture, on Wednesday, on tomorrow, then Senators will be denied a right to vote on my overtime amendment; is that not correct?

The PRESIDING OFFICER. The difficulty in answering the question is based on the motion that is pending, which is the motion to recommit as opposed to the cloture vote, and the cloture vote depends upon whether the motion to recommit passes or not.

Mr. HARKIN. I will ask one more time because I want to get this straight. There is pending a cloture motion. That cloture motion will be voted on tomorrow; is that not correct? It will ripen tomorrow.

The PRESIDING OFFICER. The Senator is correct. It will ripen.

Mr. HARKIN. If in fact there is a vote tomorrow on cloture and cloture is invoked—that is, a majority of the Senate votes yes on cloture—then this Senator's amendment on overtime will not be allowed under the rules of the Senate pertaining to germaneness; is that correct?

The PRESIDING OFFICER. It will not be allowed on the motion to recommit.

Mr. KENNEDY. Will my amendment be allowed on the bill that is then before the Senate?

The PRESIDING OFFICER. The bill will be pending before the Senate with a new substitute that is amendable.

Mr. HARKIN. Then under the rules of Senate, if cloture is invoked, this Senator's amendment would not be allowed, I understand, because it will be nongermane.

The PRESIDING OFFICER. The new substitute will be fully open to amendment. The Senator can then offer his amendment to the substitute.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my good friend, the chairman of the committee, for his remarks. I am quite hopeful, frankly, that we can reach an agreement fairly quickly so that we can move on this bill. At the present moment, we are at an impasse with the cloture motion filed, and the amendment tree is filled up.

I expect it is the wish of the majority to eventually avoid a vote on the amendment offered by Senator HARKIN. I believe Senator HARKIN deserves a vote. I believe the vast majority of Senators on both sides of the aisle would like to move quickly on this legislation—reach agreement on a number of amendments that would be in order so we can move quickly.

Based on my conversations with Senators and with the leadership, I have every expectation that we can reach that agreement quite soon—hopefully, this afternoon. This is the Senate. Every Senator deserves an opportunity to offer his or her amendments. We also have to reach agreements. We have to pass legislation. It requires compromise. I do believe we will reach that agreement which, necessarily, will be the result of compromise, fairly quickly.

I urge Senators to push their interests, as they should, but push them in a way where we can get an agreement to pass this legislation. I hope we will do that this afternoon.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. 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. Mr. President, I understand that under a previous order the Senate is going to recess at 12:30 p.m.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Mr. President, we are in a situation where it looks as though the majority on the other side simply does not want to vote on my overtime amendment. They are going to do everything they can to try to prevent it.

Again, there is talk about delay and who is delaying this bill. Look, I offered my amendment the other day and we could have had a vote by now. I was willing to enter into a time agreement. They would not do it. I offered the amendment under a unanimous consent agreement reached with the other side to bring it up. Now, the parliamentary games being played are not on this side; they are on the other side. One really has to ask, Does the other side really want to get this bill through?

Again, I have no doubt that the chairman, my friend and colleague from Iowa, wants to get it through. He is chairman. Having been in that position before on another committee, I know you want to get your bill through. I have no doubt that the Senator from Iowa would like to get the bill through. It looks as though the leadership on that side—either the leadership or the administration; I don't know who is calling the shots—is simply saying they don't want to have a vote on overtime.

It is really unfortunate that they have now filed cloture on this bill. My friend and colleague from Iowa, and others on the other side, have referred to this as a jobs bill. They keep talking about it is a jobs bill. Well, all I can say in response to that is I believe the ranking member of our committee, Senator BAUCUS from Montana, would like to get the bill through, we would like to get completion of this bill and get it through, but that does not mean we should not be allowed to offer some reasonable number of amendments to try to improve it as we see fit. They may win, they may lose, but at least we ought to be allowed the right to offer and debate some amendments within reasonable timeframes.

One of the most important job-related amendments is the amendment on overtime. How could we possibly tell the American people with a straight face that we are passing a ''jobs bill'' on the Senate floor but we are not addressing the issue of overtime pay and the administration's proposed regulations that would have the effect of taking overtime pay protection away from millions of American workers?

This is an issue that goes right to the heart, the gut, of our American workforce: The right to be paid time and a half when one works over 40 hours a week. It has been in the law since 1938. Yet, as I said yesterday and I will continue to point out, last year the administration came out with a proposed set

of regulations to change the underlying overtime law. They did it without having one public hearing. Imagine that, changing something so fundamental to the American work ethic as the right to overtime pay without having a public hearing.

They put out the proposed regulations and the American public responded with thousands—I have heard maybe 60,000 to 70,000 comments. Then last summer, after a number of us had gotten wind of what they were trying to do and we started reading the proposed regulations, we offered an amendment on the Senate floor that would have basically denied that part of the overtime regulation that would take away this overtime right.

That amendment I offered last summer passed the Senate. It was bipartisan. I have heard a lot of references to the fact that this bill is a bipartisan bill. Well, the amendment I am offering is a bipartisan amendment because it was voted on last summer by both Republicans and Democrats and passed in the Senate, 54 to 46. Around here, that is pretty bipartisan.

Basically, what that amendment said is, no, we are not going to agree with the administration's proposed changes on overtime rules. If the administration wants to make fundamental changes in overtime rules, they ought to do it in the time-honored manner: work with Congress, have public hearings around the country, and then let Congress and the administration get together to revise, if revision is needed, overtime laws. But that is not the way the administration did it.

Again, if I hear correctly people on the other side say we are slowing down or stopping this bill, I am sorry; it does not ring true. This bill could have been brought up last fall, and it was not. We just spent a whole week in the Senate debating a gun bill that failed with over 90 votes against it. What was that all about? Why did we spend over a week doing that when we could have been doing this bill, if this bill is so important?

One has to raise some questions about what is going on because when one reads some of the publications around here—this was in Congressional Quarterly Today about this bill. According to the Congressional Quarterly, the chairman of the House committee, Congressman THOMAS:

> . . . told the Tax Executive Institute, a group of corporate tax officials, on Monday that lobbyists seeking specific changes in international tax rules had effectively stymied his bill, according to the Associated Press.

So it is not us who are stymying this bill. Again, there are some corporate lobbyists downtown who are. Again, from CQ Today:

> Meanwhile, House Ways and Means Chairman Bill Thomas, R–California, told a group of business tax officials on Monday that the current House version of the bill (H.R. 2896) was probably doomed.

So it is not us who are slowing this bill down, not at all. This Senator would like to see this bill get through. I think there are some good things in this bill. That does not mean we should not be allowed to offer our amendments and have an up-or-down vote on those amendments.

A jobs bill? Well, fine, call it a jobs bill, but do not tell me this is a jobs bill and then say we cannot have a vote on our overtime amendment. That is about jobs. We know it is about jobs because we know, common sense dictates, if an employer can work a person longer than 40 hours a week and not have to pay overtime, why, it would be much better to work the person longer, pay them less, and then not hire any new workers.

At a time when we have 9 million Americans out of work, we have a jobless recovery in this country, why would we now be wanting to give employers another incentive not to hire new workers?

We had an agreement to consider my amendment. It was the fourth amendment in the series we agreed to prior to last week's recess, but no sooner was I able to offer my amendment last evening than the majority leadership decided to move to recommit the whole bill and to file cloture on that motion.

I am not sure how that meets our previous agreement to take up my amendment, but that is where we are now. A motion to recommit the bill is pending. I would like to talk about overtime. I would like to have an amendment about overtime and have a vote on it. As my parliamentary inquiries earlier this morning showed, we can go through this whole charade, motion to recommit, file a cloture, we can vote on that, and we can still come back with this amendment.

I suppose then they will file cloture on the bill. That is why it was wrong on the majority side to file cloture on this motion to recommit and why I hope we will oppose that cloture motion and deny cloture until we can get a right to offer our amendments and have a vote on our amendments.

We are not asking for unlimited debate. I would agree with the manager of the bill right now to a time limit on my amendment with an up-or-down vote. So it is not about us stalling this bill. Forget about that. Get that out of your head. That is not what is happening. What is happening is the majority side simply does not want to vote on overtime. Why? Because I think they are afraid, and the vote will be even stronger this time than it was last summer because more and more American workers, more and more people have found out what this administration downtown is trying to do to their overtime pay.

I will be on the floor waiting for every opportunity to offer this amendment and to get a vote on it. If the other side believes that somehow by going through this charade and slowing this bill down and somehow blaming us for it when we are not doing this is somehow going to get rid of this overtime amendment, well, I am sorry to disappoint them. We are going to continue to debate and have a vote on this overtime amendment. It is that crucial, that important, to the American worker that this Senate express itself once again and say no to the administration, that we are not going to let them trample on the rights of American workers and take away their right to overtime pay if they work over 40 hours a week.

I see my time has expired. I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:29 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. ALEXANDER).

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT—Continued

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, the matter before the Senate is what?

The PRESIDING OFFICER. The second-degree amendment by Senator GRASSLEY.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, the Senator from Connecticut, Mr. DODD, wishes to speak for 15 minutes. I ask following that, the Senator from Massachusetts, Mr. KENNEDY, be recognized.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Senator from Nevada for securing the time. I may not need all of that time. I want to take a few minutes to express my deep concerns about the pending amendment. I am in favor of the pending amendment. My concern is that an effort will be made to somehow avoid having to vote on this critical issue, the issue of overtime pay.

First, let me commend Senator HARKIN of Iowa for being so tenacious and patient about this amendment. He has offered this proposal in the past. We carried the amendment, as I recall, in the Chamber, only to watch the matter be dispensed with and dropped in conference.

He has tried to bring up this matter before. In fact, prior to the recess period, Senator HARKIN was on the floor of this Chamber for a number of hours, trying to get a vote. I think he agreed

to a simple 20 minutes or 25 minutes of debate on whether we would be able to prohibit the administration from implementing a new regulation that would take overtime away from millions of working Americans.

I have no doubt about the outcome of the vote if we can actually get a vote. I have no doubt the overwhelming majority of our colleagues, if given the chance to express themselves on the proposed regulation by the administration, would support the Harkin amendment. We have done that already. I think that is where Members are, both Democrats and Republicans.

But a determined minority here will not allow us to have this vote. We will not get the chance to express whether we believe that hard-working Americans who work beyond their 40 hours ought to get paid for the overtime work they do.

I was stunned to learn not only is the administration proposing the regulation that would prohibit overtime pay for people, but actually, within administration documents, they instruct employers on how to craft their working relationships with their employees to avoid paying overtime pay, moving people into whole new classifications they had never held.

I am baffled that the administration has unveiled such an antiworker, antifamily proposed regulation. It is simply one more bad economic policy decision that I think is indefensible, and I think we would like a chance, both Democrats and Republicans, to express ourselves on this proposal.

I am determined, along with the Senator from Iowa and many others, to stay here and do whatever we have to do to get an up-or-down vote on whether we ought to ban people from collecting overtime pay when they work those hours.

Mr. KENNEDY. Will the Senator yield?

Mr. DODD. I will be happy to yield to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I join the Senator in cosponsoring the Harkin amendment.

Is the Senator familiar with the fact that the Republican leadership has now done a parliamentary maneuver so there is absolutely no opportunity for this institution to act on the Harkin amendment dealing with overtime; that they have taken the rules of the Senate and are so unwilling to address the amendment of the Senator from Iowa that they have effectively foreclosed any opportunity for the Senate of the United States to act this afternoon, late afternoon, this evening, or at any time until after the cloture motion?

Can the Senator from Connecticut possibly tell us why the Republican leadership would want to deny the people's representatives in the Senate the opportunity to express their view on an issue that affects approximately 8 million workers in this country?

Mr. DODD. I thank the Senator. The Senator from Massachusetts has been a Member of this Chamber for a number of years, and I have been here for almost a quarter of a century. I say to my colleague from Massachusetts, I was born at night but not last night.

You can use the rules of this institution for various purposes. It seems clear to this Member that the reason the Republican leadership—a determined minority within the majority—is engaging in these parliamentary sorts of gymnastics is because they know the outcome. I suspect a strong majority of us would speak with a resounding voice in saying no, you shouldn't implement a rule that would prohibit hard-working Americans from collecting overtime pay. This is particularly troublesome at a time when so many are out of work and where two incomes in a family may be necessary to keep up with the mortgage payments, or to pay college tuition, or make car payments. We cannot deprive 8 million Americans who today have the right to collect overtime. The only reason the Republican leadership is prohibiting a vote is because they know the outcome—the amendment would pass.

Mr. KENNEDY. Mr. President, as the Senator remembers, we had a vote on this measure on September 10, 2003. To substantiate what the Senator has pointed out, they voted 54 to 45 in the Senate to retain overtime, and in the House of Representatives it was 221 to 203. This was a matter of 7 or 8 months ago when we had this body speak in a bipartisan way and the House of Representatives speak in a bipartisan way. Still we find the Republicans are denying the Senate an opportunity to express its will.

Does the Senator not agree with me that this is sending a message to every working family in this country that we have Republican opposition to the increase in the minimum wage, Republican opposition to extending the unemployment compensation, and Republican opposition to halting the proposal that will eliminate overtime for some 8 million Americans; that one can conclude this administration is not on the side of working families?

Mr. DODD. Again, I thank my colleague for his question. I don't know how you can draw any other conclusion than my colleague from Massachusetts has.

As I recall—again, my colleague has a wonderful sense of history, and I think my memory is not bad but correct me if I am wrong—during the Reagan administration, during the Bush administration, the President's father, extended unemployment benefits in those years when people were out of work. I think during both Republican and Democratic administrations, they said we ought to extend those unemployment benefits and raise the minimum wage. But in this administration's case, the answer is a resounding no. Not only do they not allow us to vote on those matters and extend those benefits as every administration has over time, but, of course, they are going a step further and proposing regulations.

Let me be clear so people understand. If you are among one of 250 current white-collar occupations, if you are a nurse, a firefighter, a police officer, emergency medical training personnel, health technician, clerical worker, surveyor, chef, if you are in those categories and many more, even though your work obligations don't change at all, it gives your employer the right to reclassify you as no longer someone who qualifies for overtime pay. Even though your work doesn't change, you will be deprived of overtime pay, no matter how many hours you work. I don't understand.

Mr. KENNEDY. Will the Senator yield?

Mr. DODD. I am happy to yield to my colleague.

Mr. KENNEDY. Will the Senator not agree with me that for the first time in the history of the overtime laws this administration has stated if individuals in the military—I am reading from their proposed regulation of March 31, 2003. They talk about training in the Armed Forces, stating if you are a member of the National Guard and are called up to go over to Iraq, you take a training program in order to try to provide greater protection and defense for the men and women in your unit, you come back here to the United States, you go back to your workplace, and you think you are entitled to overtime, under their proposal, make no mistake about it, you are excluded.

I draw the attention of the Senator to the comments of the very distinguished head of a veterans organization. The Senator has mentioned the categories of those who will be made ineligible for an increase in overtime. This is a letter to Secretary Chao from Thomas Corey, national president of the Vietnam Veterans of America, dated February 17, 2004:

> [We] would like to make you aware that the proposed modification of the rules would give employers the ability to prohibit veterans from receiving overtime pay based on the training they received in the military. This legitimizes the already extensive problem of ''vetism'' or the discrimination against veterans.

There it is. That is what their proposal is all about. I don't blame the other side for not wanting to have a vote on it.

Has the Senator ever heard of such a time when we have American servicemen spread all over the world being called on—and the National Guard and Reserve—to get some training, and they come back and go back to work, and there comes the boss who says, Well, you have some training in the military, and you are out?

Mr. DODD. Mr. President, I had heard some reports about this. I had never seen this letter before, but I find it incredible. Like many of my colleagues, I have attended various meetings with the families of guardsmen and reservists who have deployed to Afghanistan

and Iraq over the last number of months. I have also been at armories in my State as the men and women have come back from their service there. I have even visited with our troops in Iraq for a few days in December. I cannot believe that these men and women, many of whom have spent a year boots-on-the-ground overseas would be treated in this way. These men and women have already had to put their jobs and families on hold as they go over for a year—maybe getting back for a week or so. It is hard enough to do that, hard enough to be away, hard enough to go through the perils of serving in a war zone as these young men and women are doing. But I find it stunning to also be told because of the training they may receive in order to help us rebuild Iraq and defend their fellow men and women in the uniform, that the training they got now deprives them of getting as much as 25 percent of their income. I am told that as much as 25 percent of the earning power of an average worker in this country comes from overtime pay. People coming back who just served their country, who put their life on the line, and been away for a year, are now being told if they got job training over there, they will no longer be eligible for overtime pay. That is incredible.

Mr. KENNEDY. I draw the attention of the Senator to the comments from the National Association of Manufacturers.

The NAM applauds the department for including this alternative means of establishing that an employee has the knowledge required for the exception [from the overtime protections] to apply . . . For example, many people who come out of the military . . .

There it is again, the National Association of Manufacturers praising that part of the Bush proposal.

We are talking about those who are serving in the Armed Forces now, and we know 40 percent of the combat arms in Iraq are National Guard reserve units. We find out that those individuals who get that extra training, which is essential in order to help protect the lives of their fellow servicemen, are told when they come back home, too bad, you are not going to get your overtime pay.

I ask the Senator if this has been his experience. I have a chart, as well, regarding workers without overtime protections being more than twice as likely to work longer hours.

The point I have heard the Senator from Connecticut and the Senator from Illinois make is, if you do not have the protections, some think you will have to work a little bit longer, but it will not make much difference.

This chart from the Labor Department shows what happens in the two cases: where workers are paid time and a half for overtime and where they are not.

The PRESIDING OFFICER (Mr. VOINOVICH). The time of the Senator from Connecticut has expired.

Mr. KENNEDY. I had requested to be recognized following the Senator.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized under the previous order.

Mr. KENNEDY. Mr. President, this is on my time.

This chart shows if you do not have overtime protections, you are twice as likely to work more than 40 hours a week and three times as likely to work more than 50 hours a week.

Without overtime protections, hold onto your seat, employers will make you work twice as hard after hours.

Does the Senator agree with me that the Bush Administration is not only denying fair compensation on a proposal that has been in effect since the 1930s, but the message ought to go out to workers across this country they are going to work a great deal longer, a great deal harder because without the overtime protection, that is the record. They will be exploited in the workplace.

Mr. DODD. I thank my colleague for the question. I see our friend from Illinois, as well, so I will not take much time.

I am glad the Senator pointed this out. It reinforces the argument I mentioned a moment ago that according to Labor Department studies, this elimination of overtime pay for 250 job classifications will reduce the earning power of the average working family by 25 percent. What the Senator from Massachusetts is saying is not only will you have less pay, but you will have to work longer hours, as well.

I am glad the Senator referenced the Fair Labor Standards Act of 1938. We went through World War II, we went through Korea, Vietnam, through economic downturns, and no administration ever suggested the kind of changes in overtime pay this Bush administration is advocating today.

I urge, as my colleague from Massachusetts has, give us a chance to vote. Give this body a chance to express its will on whether we think during these times of economic hardship people ought to be able to get overtime pay.

If you are a nurse, clerical worker, firefighter, a reporter, a paralegal, dental hygienist, graphic artist, the list goes on, those are the job classifications in which you will be denied overtime pay. Your work remains the same, you do not get the extra pay, you work longer hours.

Let's vote on the Harkin amendment. Let's have an up-or-down vote to determine whether this body believes overtime pay ought to still be the practice in this country.

Mr. KENNEDY. I ask a final two questions of my friend from Connecticut.

When we are talking about police officers and nurses and firefighters, they are the categories we rely on for homeland security. They are the backbone of homeland security. Here we are in the Senate effectively saying to those workers, we are going to take away your overtime pay. The Republicans are saying that because they will not let us get a vote on it.

We have a lot of problems in this country, but I don't believe one of the problems is that we are paying our firefighters, our nurses, and our police officers who are on the front line of homeland security—I don't think the principal problem we have is we are paying them too much.

The Senator from Connecticut is the leader in this body with regard to children and children's issues. I have a chart that looks at the number of children hungry in this country. We are seeing an expansion of hunger in this country. We do not talk about it a great deal in this body, but it is a direct result of the fact working families are having a hard time making ends meet. They have not gotten an increase in the minimum wage, unemployment compensation has been denied, they are facing the threat of loss of overtime. We have 13 million hungry children. I ask the Senator, we have the other problem with 8 million unemployed, 8 million workers who will lose overtime, the low minimum wage for 7 million, 3 million more Americans are living in poverty because of the economic policies of the last 3 years, and 90,000 workers a week are losing their unemployment benefits. Regarding the impact of all these economic policies on children, I am wondering if the Senator would address this issue briefly. It is important when we are talking about these issues, we are not just talking about technical questions of overtime; we are talking about real people with real lives and people who are facing some very challenging times.

Mr. DODD. Mr. President, again I thank my colleague from Massachusetts. He has in a sense answered the question himself with these numbers. It is hard to believe, given the times, the hardship, 90,000 people a week are exhausting their unemployment insurance benefits.

We know of the pressures that exist on families already. We know how hard it is today economically. It is not an uncommon story to hear, whether you are in the home State of the Presiding Officer in Ohio, or Massachusetts, Illinois or Connecticut, to have families where two, three, and four jobs are held in order to make ends meet and how critically important it is to have that income coming in.

When we read about jobs being outsourced across the country, being shipped off to India and China, and the administration is saying that that is a good thing for the economy, when 2.6 million manufacturing jobs have been lost, many of which have left the country, we have to be concerned about the future of America's families. These are all pressure points on these families who are living on the margins. We are not talking about families who are necessarily in poverty but families who are struggling to provide for their basic needs, trying to prepare for children

going on to college, seeing to it they get a good education, keeping them properly clothed, and in good health.

Forty-four million Americans do not have health care. The overwhelming majority of that 44 million are working people with two incomes. That is the average. Over 80 percent of the 44 million people without health care are working families. Now you take up to 25 percent of their income away and make them work longer hours. How is that balancing work and family?

This body took 7 years to pass the Family and Medical Leave Act with the help of my good friend from Massachusetts. We tried to make it possible for people to balance their needs, but now, this administration is depriving these families and their children from receiving basic necessities.

I am glad my colleague from Massachusetts has raised the issue beyond just the numbers and statistics we cite.

These are real people and real lives out there struggling to make ends meet. And now the Republican leadership is depriving this body a chance to vote on this amendment which would prohibit the administration from moving forward with their overtime proposal. I am glad my colleague made the point about the firefighters, about the EMT services, about the police officers. These are the first responders on homeland security. This administration is not only turning their back on veterans and people in uniform who are going to be shoved into the class of not getting overtime pay, but even our first responders now are going to be asked to pay a price as well.

Let's vote on the Harkin amendment. Let's have an up-and-down vote to determine whether or not this body believes overtime pay ought to still be the law of the land and not relegated to a handful of people.

So, Mr. President, I thank my colleague for his efforts. I am glad to join with him as a cosponsor of the Harkin amendment.

Mr. KENNEDY. Mr. President, I underline once again what the Senator from Connecticut has been saying about the average wage in 2001. The average wage of the jobs we lost in 2001 was $44,570, according to the Bureau of Labor Statistics. The average wage of the jobs we are gaining today is $35,000, down 21 percent. This is outside of the overtime. These are the new jobs. This is the average wage today of the new jobs being created, $35,000; $44,000 of the jobs we lost in 2001.

This is what is happening, and we are saying to these workers: Well, that is not bad enough. We are going to deny you overtime pay. We have been denying you an increase in the minimum wage for 7 years. We are going to deny you unemployment compensation—90,000 people a week. These are the facts. The average wage of jobs lost was $44,570 to but only $35,410 for the jobs gained.

As this chart shows you, American workers are working longer and harder than workers in any other industrial nation in the world. Look at this line right over here. The United States is right at the top. Americans are working longer, they are working harder, and they are falling further and further and further and further behind. And what is the answer of this administration? Cut overtime. We can do better. What is the answer of the Republican leadership? Deny us a chance to do something about it. That is what we are faced with.

Well, it seems to me that hopefully Americans will have their answer sometime soon. If we are not able to on this bill, I know the Senators from Connecticut and Illinois share my view. I know the Senator from Iowa does. This is just the beginning. This is the opening shot. I tell our Republican friends, this issue is coming at you again and again and again. Make no mistake about it. You don't like to vote on it? Too bad. These families are suffering out there, and we are going to keep bringing this up, again and again and again and again, until you do vote on it.

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

Mr. KENNEDY. I am glad to yield.

Mr. DURBIN. I thank the Senator from Massachusetts and the Senator from Connecticut. I think what we hear in this discussion should be described in simple terms to those following this debate. We are asking, on the floor of the Senate, for an up-or-down vote for Members to be counted on the question of whether the Bush administration will, for the first time in the history of the law, restrict overtime pay to American workers.

Since the law was created in 1938 establishing overtime, each successive administration that has changed the law—Democrat and Republican—has expanded the class of workers eligible for overtime.

But this time, this administration, which has witnessed almost 3 million jobs eliminated in America, has now suggested that we should reduce and eliminate overtime for 8 million American workers.

I say to the Senator from Massachusetts, it is part of a pattern. The Bush administration is not sensitive to the real needs of working families. They have resisted the efforts of the Senator from Massachusetts to increase the minimum wage for 7 years. Think about how many people are working one, two, and three jobs to try to put enough money together to keep their families in a good home, to pay their basic bills. Yet they resist increases in the minimum wage.

Then, when you ask them about these jobs going overseas, the Bush administration's economic adviser says the outsourcing of jobs to India and China is a good thing. Where does he live? Where does he get his advice? This man is trapped in a textbook. He should get out on Main Street and talk to real families. The outsourcing of jobs overseas is not a good thing. It is costing us jobs in America.

When the Senators from Massachusetts and Connecticut stand up and say, well, for goodness' sake, at least take pity on unemployed Americans, help them keep their families together, pay for their health insurance now that they have lost their jobs, consistently, on the floor of the Senate, the other party—the Republican Party—votes against the extension of unemployment benefits.

In my State we have thousands of people unemployed who have no benefits coming in. How do you keep it together under those circumstances?

And the last point—an important one we are discussing—is the idea that we would eliminate overtime pay for 8 million workers. I think the Senator has made such a positive and important point. Who are these workers? They are firefighters; they are policemen; they are nurses.

I do not know about the State of Massachusetts. In the State of Illinois, we have a serious shortage of nurses. Hospitals come to me and say: Can you help us bring nurses in from the Philippines and overseas? We don't have enough nurses. And this administration says we are going to eliminate overtime pay for nurses? What will that do to us? Fewer and fewer health care professionals in hospitals cannot make America healthier or safer, and that is what they are proposing.

But today I believe the Senator from Massachusetts has brought to us the icing on the cake. Now we have this administration saying, when it comes to overtime, if you happen to be a soldier in the military or an activated guardsman or reservist, and you serve your country, and are trained in service, pick up skills, when you come home, because of this Bush administration proposal, you will be disqualified from overtime pay.

It is almost incredible to say those words: That men and women leave their families with the 233rd unit of the Illinois National Guard, military police, and are gone for a year over in Iraq—who are coming home in a few weeks, thank God; their families have waited patiently—but if they made the mistake of picking up a new skill while they were activated, they could be disqualified from overtime pay when they return to their job. That is exactly what the Bush administration is proposing.

We hear so many speeches about how Members of the Senate are going to stand up for fighting soldiers, stand up for the vets. I ask the Senator from Massachusetts, when it comes to the Bush proposal to eliminate overtime for those vets who have been trained in the military, how can this possibly be a demonstration of our support and admiration for the men and women in uniform?

Mr. KENNEDY. Well, it is beyond comprehension, I say to the Senator,

that in this proposal the administration has yielded to the recommendation of the National Association of Manufacturers, that those who get special skills in the military would not qualify for overtime. And I read that particular provision in the proposed regulation.

I ask unanimous consent to print the paragraph in the RECORD, dated March 31, of the proposed rules that talk about training in the Armed Forces.

[From the Federal Register Mar. 31, 2003]

(d) The phrase ''customarily acquired by a prolonged course of specialized intellectual instruction'' generally restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word ''customarily'' means that the exemption is also available to employees in such professions who have substantially the same knowledge level as the degreed employees, but who attained such knowledge through a combination of work experience, training in the armed forces, attending a technical school, attending a community college or other intellectual instruction.

Mr. KENNEDY. It is right in there. And it was requested by the National Association of Manufacturers. They made a comment about how happy they are it is in there. It is one of the most offensive proposals this administration has made.

I want to just make a final comment and respond to what the Senator has mentioned with regard to the nurses because this is so important, as I know the Senator is concerned about the issue of the quality of health care.

This is from Cathy Stoddart of Mingo Junction, OH, a nurse at the Allegheny Regional Hospital in Pittsburgh:

. . . President Bush and the Republican members of the House and Senate are trying to take away the one thing that discouraged hospital administrators from forcing nurses to work overtime. If you think nurses are running away now, just wait until their employers start telling them they have to work a 20 hour shift and aren't getting overtime pay for a single minute of it!

This proposal affects the quality of health care. We talked about the standard of living for working families and the challenges they are facing over a lack of an increase in the minimum wage, over the lack of unemployment compensation, and now there is the overtime proposal. This is going to have a dramatic impact and adverse effect on the quality of health care in this country. And for what? And that is because of the urging of the National Association of Manufacturers, the Chamber of Commerce urging the administration to find a way to cut back on overtime for 8 million workers in this country.

I thank the Senator from Illinois for raising not only what this issue is going to mean for working families, but what the impact is going to be on, in this case, health care and other vital services.

We have talked about veterans. In that regard, I bring to the attention of the Senator Randy Fleming, who writes:

I am also proud to say that I am a military veteran. I have worked for Boeing for 23 years. The training I received in the Air Force qualified me for a good civilian job. The second thing is overtime pay. With the overtime, I have paid for my kid's college education. The changes this administration is trying to make in the overtime regulations would break the government's bargain with the men and women in the military, close down the opportunities that working vets and their families thought they could count on.

When I signed up back in 1973, the Air Force and I made a deal that I thought was fair. They got a chunk of my time and I got training to help me build the rest of my life. There was no part of the deal that said I would have to give up my right to overtime pay. You have heard of the marriage penalty. I think what these new rules do is create a military penalty. If you get your training in the military, no matter what your white-collar profession is, your employer can make you work as many hours as they want and not pay an extra dime. If that is not a bait and switch, I don't know what is.

I have no doubt employers will take advantage of this new opportunity to cut our overtime pay. They will say if they can't take out our overtime pay, they will have to eliminate the jobs. It won't be just the bad employers because these rules will make it very hard for companies to do the right thing. The veterans and other working people will be stuck with less time, less money, and a broken deal.

There it is, in real life, Randy Fleming, a veteran who looks down the road in the eyes of his children, hard working, played by the rules, served our country, acquired some skills, and he is looking to the future.

This is a lousy proposal. It doesn't deserve to be favorably considered. But our Republican friends are refusing us, denying us the opportunity to get a vote on it. I know the Senator from Iowa would be willing to agree to an hour of debate, a half hour of debate, 15 minutes of debate—we know what the issues are—to get a vote. The idea to use the rules of the Senate to deny the Senate the ability to express its will on this issue is an enormous insult to working families all across the country and one they will not forget easily.

Mr. HARKIN. Will the Senator yield?

Mr. KENNEDY. I am glad to yield.

Mr. HARKIN. I thank the Senator from Massachusetts for his continued strong support of our working families, especially on the issues of the minimum wage and overtime. I was listening to the Senator talk about the issue dealing with training in the armed services. I ask the Senator, is it not true that since 1938, when we have gone through World War II, the Korean War, the cold war, the Vietnam War, Gulf War, everything else, during that time our young men and women who served in the military who got training and then later got out were still eligible for overtime pay regardless of the kind of training they got?

Mr. KENNEDY. The Senator is absolutely correct. I welcome his historical memory on this issue. We have been involved in conflicts—Vietnam, Korean War, World War II—with Republican and Democratic administrations, and at no time during those conflicts did we ever say the skills that were developed in the military were going to effectively preclude you from receiving overtime. This is the first time with this administration. The Senator is correct.

Mr. HARKIN. I ask the Senator further, would this not then set up the oddest kind of circumstance with a veteran and a nonveteran? Let's say two young people just got out of high school. They see these ads on television that say join the Army, be all you can be, get all this training to help you out. One friend decides to go in the Army. The other doesn't. It is a volunteer force. The person who goes in the Army gets training as an aerospace mechanic on engines or something like that, and comes out. The other person has not gone in the military, has different jobs, gets some kind of on-the-job training. Could this not set up a circumstance where if both of them were working for the same company, the person who entered the military and got that training, because of the way it is written in the rules, could be classified exempt from overtime, and the person who didn't go in the military would still get the overtime for the same exact job? Wouldn't this be the kind of situation that could arise?

Mr. KENNEDY. The overtime rule is unfair. As the Senator knows, particularly today, when so much of the combat arms are National Guard—probably 40 percent of the combat arms in Iraq today are National Guard and Reserve—these are people getting these skills, going back home, and getting the jobs. They are not staying in there 5, 7, 10 years. They are receiving these skills now, and these skills are necessary in terms of protecting the members of their squad or unit, to ensure that the military mission is going to be advanced.

I would be interested in the Senator's reaction. I mentioned Randy Fleming, who is a military veteran and served in the Air Force from 1973 to 1979, got training in the military, and used overtime to pay for the tuition of his children. He says: When I went in the service, I went in the service to get that training. No one told me that after I served 6 years in the Air Force and got my training, that in the twilight period of my life, because I received that training 20 years ago, I am going to be denied the overtime pay I had planned to put aside to educate my daughter. No one told me, he said in his letter. You talk about a marriage penalty. Here it is, a penalty against us. Where

is the fairness? Where is the justice? Isn't the word of the United States good on this?

I commend the Senator for bringing up this historical background because we have never done that to the veterans.

I mentioned earlier the letter to Secretary Chao from Thomas Corey: We would like to make you aware that the modification of the rules would give the employers the ability to prohibit veterans from receiving overtime pay based on the training they received. This legitimizes the already extensive problem of vetism, discrimination against veterans.

This is it. I put the section in the RECORD of the proposal. I think there are many reasons to be against this proposal, but the signal it sends to the families of our servicemen couldn't be more unfortunate.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was listening with interest to my colleagues from Massachusetts and Iowa talk about the overtime issue. I was thinking about this in the context of jobs.

One of the great debates we have is an economy that apparently is growing but producing really no new jobs. We are about 2.5 million jobs down from 3 years ago. Last month's jobs numbers were pretty anemic—I think 12,000 jobs, almost all of them government jobs.

I was thinking about the announcement 2 weeks ago that scheduled to create this manufacturing jobs czar that had been promised last fall. The administration is going to create a jobs czar because they are concerned about jobs, so they announced a ceremony that was going to be held to introduce their jobs czar. And then just before it happens, it is called off because the jobs czar is in China visiting his manufacturing plant he has moved from Nebraska to China. Everybody in the Administration was embarrassed about that. They are going to have a jobs czar that actually moved some of his American jobs to China. He was over there visiting his employees when the President was prepared to announce a new jobs czar for U.S. jobs.

It seems to me that the 40-hour workweek has always been about creating jobs, because if you can work employees 50 hours, 60 hours, 70 hours, and there is no consequence to it, then you don't have to create new jobs.

You just work your current employees overtime, on and on. But for 60 or 70 years in this country we have decided if you are required to work more than 40 hours a week, you have a right to be paid overtime. That is incentive to create jobs for the amount of work that is available or necessary for that amount over 40 hours. So at a time when we are losing jobs, and when jobs are the issue, I ask my colleague from Iowa, isn't it the case this overtime proposal actually retards the creation of new jobs, and to keep the 40-hour workweek and to get rid of this goofy proposal from the Department of Labor would actually be job creating?

Mr. HARKIN. Mr. President, the Senator has put his finger on it. This proposal by the administration to take away the rights of up to 8 million Americans on overtime is what I call a job-killing proposal. The Senator is absolutely right. It is common sense.

Look, if you have people working and you can work them over 40 hours and not pay them time and a half, but regular pay, why would you hire anybody else? You would just work them longer. In fact, I say to the Senator—and he may well be aware of this—when they put out the proposed rules, they put out certain examples on how employers could get around paying overtime. One of the proposals—I will read it into the RECORD later; I have done it previously—was to say, look, what you do is simply reclassify your workers; you then pay them a little bit less, but work them longer so your out-of-pocket expenses are the same, but you work them over 40 hours a week. What a deal.

This is like the IRS telling people how to cheat on their taxes and giving them information on how to get around the IRS Code. At a time when we need jobs in this country, this is another disincentive to creating jobs. Not only do they want to outsource jobs to other countries, I say to my friend; they now want to tell the American worker to work longer every week and don't expect to get paid any more for it.

Mr. DORGAN. As I walked over to the Chamber a few moments ago, it occurred to me there is almost never someone walking around this building, or standing out in front of the building who is advocating on behalf of working families, saying my job is to be here to make sure the voice of working families is heard in the Halls of Congress. There are a lot of people with shiny shoes, suspenders, and Cohiba cigars here and they are paid well to look after the big interests of this country, and they do a great job, God bless them. But the fact is working families don't have so much influence, regrettably, in Washington, DC. They don't have people here looking after their interests.

I am talking about those families in this country who know about second jobs. Why? Because they work second jobs. They know about second shifts. Why? Because they have the second-shift job. They know about second-hand, they know about second mortgages, and about second everything. Now they are worried about job security and about whether they will keep their jobs, about whether their jobs will be exported to China because they cannot compete with 33-cent labor. Now they have to worry about a proposal that says, for 70 years we have had a 40-hour workweek, and we are thinking of changing that so the big employers have the opportunity to work you 50 hours a week or 60 hours a week if we choose.

We go to bed at night in this country feeling good and safe. Why? Because the men and women from our police forces are driving up and down the streets to keep us safe. We go to bed not worrying about fires because we have firefighters out there who are awake all night. Many of them work extra hours and are paid overtime for it. That is an important part of their family's income.

Now we are told by the Department of Labor we would like to change all that after almost 70 years; we don't think employers ought to pay overtime. My colleague had it right. In fact, the sole job of some consulting companies it is to say to corporations, we are going to find a way with these rules to allow you not to have to pay overtime to your employees. I don't understand it.

I watched this morning when my colleague from Iowa was on the floor. I don't understand why we are not voting on this amendment. We voted on it before. The Senate already expressed itself. We said we support this amendment. I don't have the foggiest idea what those who are now scheduling this place think they are accomplishing. This isn't going away. This is going to be voted on. Perhaps not 5 minutes from now, maybe not 5 hours from now, but the Senate will vote. When the Senate votes on this, the Senate is going to say the Department of Labor should not be allowed to promulgate those rules. Why? Because the Senate, by and large, has a sense of fairness about this. The only way the leadership can stop this is to prevent a vote.

That is why we are here today, trying to force a vote. But those who have their foot in the door are doing it for one reason. They would lose a vote if they had it. They are going to have it and lose it. It will probably be tomorrow or next week, but this vote will happen and they are going to lose it. Why? Because there is a basic sense of fairness, in my judgment.

Finally, I come back to the proposition I started with. This kind of rule at this point is a way of saying we don't need more jobs in this country. Eliminating overtime for 6 or 8 million people is a way of saying we don't care about creating jobs. If you cannot work people overtime, over 40 hours, without paying time and a half—if you cannot do that, you have to create jobs to do the extra work. That is the way the system works. That is what has allowed the economy to grow. That is what produces new jobs.

Those who now support this proposition—the administration, Department of Labor, the majority party in Congress—that these overtime rules ought to be changed after 60-some years and prevent overtime payments to 6 million or 8 million people, they are the ones who are saying, apparently, we don't need new jobs in this

country. They don't stand for creating new jobs. I cannot think of a worse position to take at this point than, in the face of diminishing jobs and jobs moving overseas and outsourcing and those issues, for somebody to come to this floor and say, by the way, let's cut down even more on jobs by forcing people to work longer without paying them overtime. This makes no sense to me at all.

Again, my colleague is doing a service to the Senate by standing here and saying we are going to vote on this.

Mr. HARKIN. If the Senator will yield. Again, I thank the Senator from North Dakota for not forgetting his populace roots of North Dakota. When the Senator speaks on the floor, as he just has, he speaks with clarity, common sense, and the wisdom of the common man and woman. That is why I have always admired the Senator from North Dakota.

What he has just said strikes right at the heart of what the common man and woman in this country feel—that their rights to at least overtime pay, if they are working over 40 hours, are being taken away without their having anything to say about it.

As the Senator pointed out very clearly, we are not being allowed our right to represent the common man and woman—his constituents in North Dakota, my constituents in Iowa, or anywhere else in this country—in getting a vote on the Senate floor as to whether we will permit the administration to take away those overtime rights.

I say to the Senator this is something that should not be allowed to happen on the Senate floor. I thank the Senator for his stalwart support for our working men and women and for insisting we have a vote on this Senate floor. The Senator is absolutely right that we are having all kinds of games being played, all kinds of little parliamentary tricks, so we will not vote on this.

There is one other thing I want to ask the Senator from North Dakota, who also has a keen insight and judgment on issues dealing with fairness and taxation and jobs going overseas.

This morning, the senior Senator from Iowa, who is the chairman of the Finance Committee, went on to talk about how if we do not pass this bill there are going to be tariffs because the WTO said we are in violation, and so therefore we have to change the law or we are going to have to start paying tariffs.

I am reading from what basically he said this morning: The sanctions began on March 1, 5 percent. The Senator from Iowa said: It is like a 5-percent sales tax on everything we are going to sell overseas or stuff we are going to sell overseas. He said by March it would be 5 percent; 6 percent in April; 7 percent in May; 8 percent in June; 9 percent in July; 10 percent in August; 11 percent in September; 12 percent by November.

So will the Senator from North Dakota help me clear up my thinking on this? I hear now that the Republicans, since they do not want to vote on the overtime amendment, may actually pull the bill, kill this bill, which means then we will have to pay tariffs to Europe, we will have to pay a penalty, that may amount, according to the Senator from Iowa, up to $4 billion a year. Am I correct, I ask the Senator from North Dakota, that they would rather pay tariffs to Europe than overtime to our workers?

That is what they are saying. If they pull this bill, we will have to pay these tariffs; we will be paying money to Europe but we will not be paying overtime. Does the Senator from North Dakota see it that way, that somehow because they do not want to vote on overtime they will pay tariffs to Europe but not overtime to our people? I ask the Senator from North Dakota what kind of fairness is there to our working people in that?

Mr. DORGAN. That is an interesting construct of the debate, and I think a reasonably accurate one. This underlying bill, while it has some flaws, would pass the Senate, in my judgment, and will pass the Senate. Those who are the architects of the bill and bring it to the floor want to bring it in a circumstance where they say, oh, by the way, this is our idea and you cannot add any of your ideas to it.

What the Senator from Iowa is doing is using the only alternative available to him to try to stop something that diminishes and destroys jobs in this country and destroys the opportunity to create more jobs.

The Senator from Iowa is perfectly within his rights to offer this amendment. The Senate already expressed itself on this amendment. Republicans and Democrats have said: We believe we ought to stop the Department of Labor from issuing these rules on overtime. It is not a radical position. The Senate has already taken this position. It had the vote.

I conclude by trying to put this in some perspective. I find it interesting that there are people in our political system who like organized labor as long as it is overseas. I will describe a story of something that happened. My colleague was perhaps there at the time. There was a joint session of Congress held in Washington, DC. As joint sessions are in almost all cases, it was a majestic situation. The House and Senate come together in the House Chamber. It is normally when the President gives a State of the Union Address, but sometimes a foreign leader is invited to speak to a joint session of Congress.

On this day, at the backdoor of the House of Representatives, a man was introduced to a joint session as Lech Walesa from Poland. I will never forget the day because this man, probably 5′8″ tall, kind of chubby cheeks, red cheeks and a handlebar mustache, walked to the front of the room of the House and the applause began. It went on and on and on and on.

Then this man, no politician, no diplomat, no scholar, no intellectual, no military hero, told his story. I will never forget the speech he gave that day. The story briefly was this: He was a worker in a shipyard in Gdansk, Poland. He had been fired from his job as an electrician because he was leading a strike to organize workers. He was fired by the Communist government. On a Saturday morning, he was back in the shipyard in Gdansk, Poland, leading a strike of workers in that shipyard once again against the Communist government. He told us that the Communist secret police grabbed him and beat him severely. They took him to the edge of the shipyard and they hoisted him up unceremoniously over the barbed wire fence and threw him on the other side of the fence in this shipyard in Gdansk, Poland.

He told us that he lay there face down bleeding. Remember, this is an unemployed electrician who was leading a strike for a free labor movement against a Communist government. He lay there on that Saturday morning, bleeding face down in the dirt, wondering what to do next. The history books, of course, tell us what he did next. He pulled himself back up, climbed right back over the fence into that shipyard, and then 10 years later he was introduced in the House of Representatives to a joint session of the Congress as the President of the country of Poland.

This is what he said to us: We did not have any guns. The Communist government had all the guns. We did not have any bullets. The Communist government had all the bullets. We were only armed with an idea, and that is workers ought to be free to choose their own destiny. He said: My friends, ideas are more powerful than guns.

This man was no intellectual, no politician or diplomat, he was an unemployed electrician. And 10 years later he walked into this building as the President of his country, saying that workers have rights.

Our country embraced him. Our country embraced the effort and the sacrifice by Lech Walesa and so many others in the country of Poland in support of workers rights, in support of labor unions, in support of the very things we are talking about today.

It is interesting that it was Lech Walesa and Poland that lit the fuse that created a free Eastern Europe. In country after country, he lit the fuse that started it all and changed the world—the power of one and the power of an idea.

My colleague from Iowa is talking about the power of an idea, and this is not a new idea; it is a timeless truth. Yes, there are some timeless truths, and that is working people have a right to expect to be treated fairly. This country is not just about people at the top; this is about people at the top and the bottom and everything in between.

In my part of the country, we understood a century and a half ago, as the

wagon trains moved across the landscape in North Dakota heading west, that one does not move a wagon train ahead by leaving some wagons behind. We understood that long ago. The same is true with respect to policies in this country, especially economic policies.

The things that represented the root and the core of belief for Lech Walesa of Poland was represented on the streets of America 75 to 100 years ago about the rights of workers.

Business has rights, workers have rights, investors have rights. I understand all of that. Now we are talking about the right of people who for 60 years have understood the rules, and the rules are that if one's employer wants to work a person more than 40 hours a week, they have a right to expect to be paid overtime.

All of a sudden, for millions of families, law enforcement folks, firefighters and others, this administration wants to say: We are changing that rule; we believe employers have a right to tell you to work 50 or 60 hours and they do not need to pay you overtime.

As I said before, that is a quick way to say we do not need to create new jobs. We will just overwork existing workers. It is not fair. There is a basic sense of fairness in this Congress. That is why when this is voted on, as it was before, it will pass.

The basic contention of Senator HARKIN is that this is, at its root, unfair. It changes the rules of the game.

You can talk a lot about this country of ours. I suppose in political campaigns there is way too much negative talk about our country. But there is a lot right about our country, and much of what has been right about our country has been manifested by people who have gone to the streets and gone to the ballot boxes and effected positive change that has improved the lives of working people and raised an entire middle class in this country which did not previously exist.

This is a big issue and an important issue. It is probably not as big or important to anybody in this Senate who doesn't get paid overtime. But there are millions of families who rely on overtime, who work hard every day to get the extra hours and get the overtime pay because that is the way they send their kids to school and buy their schoolbooks and send their kids to college or buy the spring clothing—to those families, it is important. I come back again to say those are the families who know about second: Second choice, second mortgage, second shift, second job, and too often, in my judgment, they get shortchanged here in Congress.

But they will not, I repeat not, be shortchanged if the Senator from Iowa and I and others who demand a vote on this provision get a vote because we will win that vote. We won it before in the Senate. We will win it again. When we win that vote, we will stop the Department of Labor from doing this, and we will, in my judgment, have advanced two things: No. 1, the respect for the rights of American workers; and, No. 2, we will have forced the creation of additional jobs in this country, something that is desperately needed at a time when we see far too many jobs going overseas.

I don't know what the time situation is of the Senator from Iowa, but I want to make one more comment. I talk about jobs overseas because it is the core of this issue about jobs that brings me to the floor to talk about overtime. I have spoken a good number of times about this issue and I am going to talk one more time for a minute.

The symbol of outsourcing of jobs is for me Huffy bicycles. We all know about Huffy bicycles. They are 20 percent of the American marketplace. Buy a good Huffy bicycle, buy it at Sears, Kmart, buy it at Wal-Mart. It used to be made in Ohio by American workers. I am sure they were proud of their jobs. I don't know any of them. Eleven dollars an hour they were paid to make Huffy bicycles.

Between the handlebar and the fender they put a little decal on Huffy bicycles and the decal was the American flag. But Huffy bicycles are not made there anymore. They are made in China. The decal isn't an American flag anymore. They changed the decal. In fact, I was told it was the last job the workers in Ohio had to do, was replace on existing inventory the American flag decal with a decal of the globe. Huffy bicycles are made in China by people making 33 cents an hour, working 7 days a week, 12 to 14 hours a day. The workers in Ohio can't compete with 33 cents an hour. That is the struggle of American workers these days. It is a big struggle. We have big questions to answer. We have trade policies we must try to set right. We have to deal with all these issues. We have to find some way to stand up for the interests of American jobs and American workers.

This overtime issue is just one piece of that, just one piece. But to some families it is everything. It is the way they send their kids to school; it is the way they help pay their mortgage; it is the way they help provide the income to raise their families. So this is a big deal to many families in this country.

For the 6 to 8 million families, workers who are affected by this, I think they owe a great debt of gratitude to my friend, Senator HARKIN from Iowa. I will stand with him as will many of my colleagues to say he has a right to get this vote. When we get this vote we are going to win. We are going to do it not because we want to have a political argument with anybody; we are going to do it because this is very important to millions of Americans families who, all too often, are left behind in public policy here in this Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank my friend and colleague from North Dakota for the eloquence of his statement and I thank Senator DORGAN for his unwavering support through all the years I have been privileged to know him and be his friend, his unwavering support for the common man and woman in this country, for working families, for our farmers and ranchers out in the West and the Midwest.

Senator DORGAN is always eloquent in his remarks. As you listen to Senator DORGAN speak, you can hear the voice of that average man and that average woman out there who are not big time lobbyists down here on K Street; as Senator DORGAN said, they don't have the shiny shoes and suspenders and whatever else. They are out there working every day, feeding and clothing their families. They have a decent life. They give their kids a good education. They do what they can to make sure their kids have a little bit better life than they have had. It is called the American dream. And no one has been a stronger supporter of ensuring that American dream for our working families than the Senator from North Dakota, Mr. DORGAN.

I thank him for all that support through all the years and for carrying on the fight for overtime and making sure our workers are paid the overtime that is due them when they work over 40 hours a week.

Earlier today I pointed out the chairman of the House Ways and Means Committee, Congressman THOMAS from California, according to the Congressional Quarterly, told a business group yesterday he thinks this foreign tax bill we have before us is doomed. Those were his words. He pointed the finger at the business community, according to today's issue of the national journal Congress Daily. Mr. THOMAS, in other words, was blaming K Street lobbyists for this bill's likely demise in the House.

It seems to me what we have is a bill that is already being slow-walked by some of the majority leadership in the Senate because the leaders on the other side don't want to vote on overtime. I hope we don't hear anything from the other side saying somehow we are to blame for slowing down this bill. We had a unanimous consent agreement. My amendment was in line to be offered. I offered the amendment in good faith. I was even asking if we could have a time agreement. Imagine that. I offered the amendment. I offered a time agreement. I couldn't even be given a time agreement by the other side.

Then the Republican side goes ahead and files this motion to recommit with an amendment on it and then they filed cloture and all this gobbledygook parliamentary stuff. What it means is we will not vote today. We will have a cloture vote tomorrow. They will not get cloture. Then I hear rumors the leadership on the Republican side will then pull the bill and somehow blame Democrats, blame Democrats, us, our side, for not getting this bill through.

I will tell you, talk about chutzpah. That is like the person who went before the judge for having killed his parents and then threw himself on the mercy of the court because he was an orphan.

The other side is responsible for killing this bill. Have no doubt. Make no bones about it. They are responsible because they don't want to vote on overtime. They don't want to vote. They get kind of wobbly in the knees. Their ankles get weak. They break out in a cold sweat when they think they might have to vote on whether to uphold the administration's proposed rules that will take overtime pay away from hard-working American families. They have to vote against the administration.

Sometimes we are called upon to represent our constituents. As hard as that may be to believe by some, sometimes we are called upon to represent our constituents, not the administration but to represent our people.

The administration may want to take away overtime pay. That may be their position. But at least we ought to have the right to vote on whether we ought to uphold that decision.

I know it may come as a shock to many Americans, but sometimes we are not allowed to vote in the Senate. We are not allowed to vote on an amendment. I have my amendment pending. They won't let us vote on it because they filed this cloture motion, this parliamentary device.

As the Senator from North Dakota said, I don't care how many times we have to be here. We will be back, we will be back, we will be back to vote on whether we are going to take overtime pay away from American workers.

If we don't vote on it tomorrow, we will vote on it some other time, or my friends on the other side will continue to pull bill after bill after bill because they don't want to vote on it. Maybe they think they can just go ahead and issue the final regulations. Then it will be sort of a fait accompli. Evidently, we will not do anything.

I am sorry, Mr. President. If that is the case, we will be back with an amendment to say they will not go into effect until we have had open and public hearings on these regulations.

We will have a vote on it. My friends on the other side of the aisle are just putting off the inevitable. Maybe for one reason or another they don't want this bill to go through anyway. That is kind of an odd position, as I said to the Senator from North Dakota. As the chairman of the committee said this morning, under the international agreements we have on trade, the World Trade Organization rules that our pretax policy is an illegal export subsidy, and consequently the WTO has authorized Europe to go up to $4 billion a year against certain U.S. exports. The sanctions began on March 1. They started at 5 percent. Then they go up 1 percent a month, all the way up to 17 percent over the course of a year. I don't want to pay those tariffs. I don't want to pay those penalties.

I would like to get this bill through. The other side, though, simply because they do not want a vote on overtime, is saying they are going to go ahead and pay these tariffs. It seems to me what they are saying is they would rather pay tariffs to Europe than overtime to workers. That is exactly what is happening. Pay the tariffs to Europe but don't pay overtime to our workers.

A lot has been said about the American worker and working families. I wonder how many people know that right now American workers work longer per year than anyone else in the industrialized world. This chart shows it. For the years 2002 and 2003, American workers are working in the United States almost 2,000 hours a year—more than Australia, Japan, Spain, Canada, the United Kingdom, Italy, Sweden, or Germany. Not only are we working longer hours per year, we are now being told if we work overtime we will not get paid for it.

Do you know what is going to happen if these rules go into effect? This bar will go way up because then employers will work their employees longer because they don't have to pay them overtime. We already work longer.

What is the history of this bill? This kind of gets to the crux again of what is happening here with the proposed rules on overtime. I said last summer when I offered this amendment and it was adopted by the Senate, the biggest impact of taking away overtime pay protection would be on women. People wondered why I said that. Why would women be impacted most? For two reasons: One, because the annual hours worked by middle-income wives with children in 1979 were 895 hours a year. By the year 2000, that had gone to 1,308 hours a year. Women with children are working more—not quite double but almost—than what they were a mere 21 years ago.

Most of these jobs are in certain types of clerical positions in which women have been engaged. Some of them are in positions which are going to be reclassified under the proposed rules as ''professions.'' These are the kinds of jobs that are mostly held by working women, and mostly by working mothers. The biggest impact will be on working women. The initial wave of impact will be on working women.

I have a statement from Susan Moore of Chicago. She said:

> I am currently entitled to time and a half under Federal law. I know for a fact that is the reason I am not required to work long hours like the project managers who are not entitled to overtime pay. My supervisor has to think hard about whether to assign overtime to me because he has to pay for my time. That means more time for my family and that time is important to me. If the law changes and I lose my right to overtime pay, I will be faced with the impossible choice of losing time with my family or losing my job.

This is a statement from Sheila Perez of Bremerton, WA. She said:

> I began my career as a supply clerk earning $3.10 an hour in 1976. I entered an upward mobility program and received training to become an engineer technician with a career ladder that gave me a yearly boost in income. It seemed, though, that even with a decent raise every year, I really relied on overtime income to help make ends meet.
>
> I am a working single parent. There are many more single parents today with the same problem. How does one pay for the car that broke down or the braces for the children's teeth? Overtime income has been the lifesaver to many of us.
>
> When I as a working mother leave my 8-hour day job and go home, my second shift begins. There is dinner to cook, dishes to wash, laundry and all the other housework that must be done which adds another 3 to 4 hours to your workday. When one has to put in extra hours at work, it takes away from the time needed to take care of our personal needs.

Listen to Sheila Perez who is from Bremerton, WA, a single parent. She says:

> It only seems fair that one should be compensated for that extra effort of working overtime. Overtime is a sacrifice of one's time, energy, physical and mental well-being. Compensation should be commensurate in the form of premium pay as it is a premium of one's personal time, energy and expertise that is being used.

If I might interpret what Sheila Perez is saying, she says: I am a single parent. I work hard. I rely on overtime. When I get home from work, I have another job taking care of my kids, doing all of my laundry. My time with my kids at home on the weekends is my premium time. If I am being asked to give up my premium time to work on the job, I ought to be given premium pay.

I can't say it any better than Sheila Perez. Again, it is another example why this is going to hit working women the hardest.

I am just notified that CongressDaily, as of 3 p.m., which was only about 40 minutes ago, had this statement. CongressDaily comes out during the day, and at 3 p.m. said:

> A senior GOP leadership aide reiterated today that GOP leaders will refuse a floor vote on the amendment from Senator Tom Harkin, D–Iowa, to strike a labor provision involving overtime pay for white-collar workers.

I don't know if that is true. It is being reported in CongressDaily at 3 p.m. that they will refuse a floor vote on my amendment; refuse it. Why is it they get so wobbly in the knees, with weak ankles, and break out in a cold sweat? Maybe they are just afraid of George Bush. Maybe they are afraid of the administration downtown.

I say to my friends on the other side of the aisle, don't be afraid of them; be afraid of the people you represent. They are the ones who pay your salary. They are the ones who vote to send you here. They are the ones whose overtime is being assaulted, not the President and the people down at the White House.

Last summer in August, Peter Hart Research Associates, a well-known national pollster, did a poll. This was the question: There is now a proposal to change the Federal law that determines which employees have the legal

right to overtime pay. This proposal would eliminate the right to overtime pay for 7 million employees who now have that right. Do you favor or oppose this proposal? In favor, 14 percent; oppose,74 percent.

That is not even close. I can understand why the other side would not want to vote on this. Maybe they feel dutybound, politically bound, party bound to support their President. Therefore, they would not want to vote because they know 74 percent of the American people are opposed to this proposal to take away their overtime pay, the right to overtime pay.

This is an issue that strikes, as so many before me have said, at the heart of fairness and equity to American workers. What could be more fair than if you have to work over 40 hours a week, you have to be paid time-and-a-half overtime? That is the Fair Labor Standards Act, 1938.

What is a little known fact is that a debate raged in this country for a long period of time—I would say almost 40 years from the end of the 19th century to the middle of the 20th century, at least until 1938—on restricting the number of hours that an American worker had to work without getting some kind of extra pay. Remember, in those days we even had child labor; we got rid of that. The American workers were working 50, 60, 70 hours a week with no protection by labor unions, no rights whatever. Finally, slowly but surely, organized labor grew, more and more rights were attained by our workers, and then the debate ensued about how many hours a week should a worker work without being paid overtime.

A little known fact: In 1937, this Senate, in this very Chamber in which we find ourselves today, right here in this Chamber, the Senate, in 1937, voted to establish a 30-hour workweek. Imagine, right here in the Senate where we are standing, the Senate, in 1937, voted for a 30-hour workweek. The debate ensued, and finally, by 1938 they compromised. The compromise was a 40-hour week with time-and-a-half overtime. Think about that: the Senate, in 1937, actually voted to establish a 30-hour workweek. Today, we cannot even get a vote in the Senate on whether we will pay people overtime to work over 40 hours a week. We cannot get a vote on it.

That says something about the difference of the Senate in 1937 from the Senate in 2004. I wonder how many votes the Senate would get today if someone offered a vote to establish a 30-hour workweek. Do you think it would get 10 votes? In 1937 they got a majority of the votes, right here in the Senate. Yet now they are working longer and longer hours every year. More and more people are being made to work over 40 hours a week and not being paid for it.

The reason I hear so much is we need to reclassify workers. The reclassification they are talking about basically would hit women the hardest, would reclassify them as being professional and therefore exempt from overtime. Again, they have done this without having one public hearing. I think they thought they could get by with it; just issue these rules and that would be the end of it. The American people have spoken loudly and strongly, saying they are not going to sit down and let their rights to overtime pay be taken away.

Congress Daily, today at 3 p.m. says, quoting a senior GOP leadership aide, GOP leaders will refuse a floor vote on my amendment.

As I said a week or so ago—and I see my colleague from California—and I am not in the habit of quoting the present Governor of California, the movie actor, but I will quote him in saying ''I'll be back.'' We'll be back. This is not going to go away. If the other side thinks by doing these parliamentary tricks that somehow we will give up, they are wrong.

Mrs. BOXER. Will the Senator yield?

Mr. HARKIN. We will not give up because we are fighting for the rights of American workers to have justice and fairness in their working conditions. As Sheila Perez said, from Bremerton, WA, if she is forced to give up her premium time, her time with her family, she ought to get premium pay.

We will continue to fight for this.

Mrs. BOXER. Will the Senator yield?

Mr. HARKIN. I am delighted to yield.

Mrs. BOXER. I was hoping my friend would stay. I would like to ask a series of questions and give him some information. Does the Senator have the time to stay?

Mr. HARKIN. Why don't I yield the floor so the Senator can be recognized.

Before I do, let me thank my colleague from California, Senator BOXER, for her longtime unyielding support for our working families. No one has fought harder, more consistently, and with such eloquence than the Senator from California. I know the people of California recognize in Senator BOXER they have a fighter who will not give up and who will not back down in fighting for their families' rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank my friend, Senator HARKIN, for his wonderful words. It means so much to me coming from him, someone who has been in this Senate for so many years, a voice of the working people. By the way, that is most of the people in this country who have to work for a living. In many families, as we know, two people are working, and in many families they work overtime to be able to pay the bills and college tuition and health care, and on and on. This issue is crucial.

I also thank Senator BAUCUS for being so strong in his support of allowing a vote on this amendment.

It is very important because, as my friend said today at lunch—I had the honor of listening to Senator HARKIN speak as he made the point—how can you do a jobs bill and not look at the issue of overtime, which if the administration has its way will be taken away from probably 8 million people? As my friend, Senator HARKIN, relayed the history, it is a stunning situation that we find ourselves refighting the issue of overtime in the 21st century.

I wish to share with my colleague something that is very interesting, a bit of correspondence that has gone back and forth. When I saw Secretary Chao—by the way, I find her to be a very nice person. I like her. We have a very nice personal relationship. This is not personal. I asked her about the regulation. I said: My people at home are very afraid of this regulation because they think they will be denied overtime.

She said: Oh, it's hardly going to affect anybody.

I said: All right. Instead of asking you about every category, let me tell you that my police men and women, my firefighters, and my paramedics—my first responders—are very concerned about losing their overtime.

She said: Senator BOXER, not a chance. This is not even going to happen.

So I wrote her a letter, and I said: Secretary Chao, you know I oppose this. I am very worried about it. Can you please explain to me why I should not be worried? So she writes back a letter. I wrote her on February 9, and on February 26 I was very pleased that she answered the letter, and she explains why, in her opinion, firefighters and first responders and policemen will not be impacted.

Mr. President, I ask unanimous consent to have printed in the RECORD my letter to Secretary Chao and her response.

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

U.S. SENATE,
HART SENATE OFFICE BUILDING,
Washington, DC, February 9, 2004.

Secretary ELAINE L. CHAO,
U.S. Department of Labor,
Washington, DC.

DEAR SECRETARY CHAO: As you know, I object to the Department's proposed regulations on ''white collar'' overtime exemptions to the Fair Labor Standards Act. The proposed changes threaten overtime pay protections for millions of Americans. I oppose any proposal that threatens overtime pay for vast numbers of hardworking Americans.

I have heard from a variety of professionals with concerns about this rule. I am particularly concerned that the International Union of Police Associations (IUPA) estimates that 50% of police officers would lose overtime protection under the current DOL proposal. And, according to the American Nurses Association, ''this proposed rule could virtually eliminate every registered nurse in an 'administrative position' from overtime pay.'' According to the Economic Policy Institute, 234,000 licensed practical nurses would lose their overtime protection under your proposal.

I know that you disagree with that conclusion. You testified before the Senate in January that the Department's overtime reform

proposal ''will not eliminate protections for police officers, firefighters, paramedics, and other first responders.'' You went on to add other professions that would not be affected including nurses.

First responders themselves disagree with your claim. I write to ask you to explicitly exclude these categories of workers from your final rule. That would provide the certainty our first responders need to ease their fears of losing overtime pay. They stand ready to respond to another crisis resulting from everything from the spread of a deadly virus to a terrorist attack. As they stand prepared to protect us, the least we can do is protect the overtime pay they deserve.

Sincerely,

BARBARA BOXER
U.S. Senator.

SECRETARY OF LABOR
Washington, DC, Feb 26, 2004.

Hon. BARBARA BOXER,
U.S. Senate, Washington, DC.

DEAR SENATOR BOXER: Thank you for your letter dated February 9, 2004, regarding the Department of Labor's proposal to update Part 541 of the Fair Labor Standards Act regulations, known as the ''white collar exemptions.'' You expressed particular concern about the impact of the proposed regulations on police officers, fire fighters, paramedics, and nurses. I appreciate the opportunity to respond.

As I testified on January 20, in a hearing before the Senate Labor-HHS Appropriations Subcommittee, we take strong issue with the claim that these reforms—even as proposed—would take away overtime pay from rank and file public safety employees.

First, police officers, fire fighters, paramedics, and other first responders are not white collar employees. They do not perform office or non-manual work. By definition, they are not covered by Part 541.

Second, a large number of such employees—such as those represented by the International Union of Police Associations—are covered by collective bargaining agreements, which are not affected by the current or proposed regulations. We also believe it is unrealistic for unions to claim that overtime pay granted under a current collective bargaining agreement is likely to be revoked during a new negotiation. That would imply that the union could not obtain any wage or benefit for members outside of what is required by law. For example, that is clearly not the case for registered nurses represented by a union.

Third, many public safety employees, as well as nurses, are paid on an hourly basis. Hourly workers are not affected by Part 541 under either the current or proposed rules.

Moreover, those public safety employees who are paid on a salary basis and may be earning less than $22,100 a year will immediately gain overtime protection under our proposed rule. They would be among the estimated 1.3 million low-salaried workers who would gain overtime protection who do not have it today. The Fraternal Order of Police (FOP), the nation's largest police union, and the International Association of Fire Fighters (IAFF) have stated that they do not oppose the Department's rule. They believe many of their members would benefit by it.

Registered nurses (RNs) can already be classified as exempt professionals under current law, based on their education and duties. The proposed regulation makes no change in this regard for registered nurses. The fact is, however, that many RNs are paid on an hourly basis, or are covered by a collective bargaining agreement, and therefore would be entitled to overtime pay under current law. You may be interested to know that the Department of Labor recently collected over $200,000 in back wages for RNs in New Jersey who had been wrongly denied overtime pay.

We disagree with the Economic Policy Institute's estimate that 234,000 licensed practical nurses (LPNs) would lose their right to overtime pay. LPNs, with all due respect for their skills and service, would not meet the test for exempt professional under either current law or the proposed regulation.

The final regulations are still in development. I can assure you, however, that it is not our intention to deny overtime pay to police officers, fire fighters, paramedics, or LPNs, or to change the current rules with respect to RNs. You and many others have recommended that we make this intent explicit; and, of course, we will take this and all the other comments and opinions that have been put forward into careful consideration.

Sincerely,

ELAINE L. CHAO.

Mrs. BOXER. Well, it did not end there, I say to my friend from Iowa. I got a visit from police officers in my office here in Washington, and what is on their agenda, the first thing? Overtime. I said: Well, look, I am going to do everything I can to protect you. I raised this issue with Secretary Chao. She answered my letter. She says you have nothing to worry about. Will you please go over her answers, and can you please comment back to me as to what you think of her opinion on whether you will lose overtime?

So I have blown up for you to see, I say to Senator HARKIN and Senator BAUCUS, something you might be interested in. These quotes go side by side.

Secretary Chao says in her letter to me:

First, police officers, firefighters, paramedics, and other first responders are not white collar employees. They do not perform office or non-manual work.

So, therefore, she is essentially saying they will not fit into this revision of the rules because they are not white-collar employees. This is what she says about police officers.

This is what my police officers write back:

Many police officers do not drive black and white patrol vehicles and perform only enforcement/patrol duties. Police officers also serve in investigative and other capacities. As such they do not wear uniforms and a great deal of their work is performed in an office.

So here she is saying they are not white-collar employees and they say many times their work is in the office.

In cold case units—

You know what a cold case is: an old case. They call it a cold case. They just put it aside—

The vast preponderance of their duties entail reviewing files and records in the office.

With the increased use of technology many officers are spending more and more of their time performing office, non-manual type work to facilitate the detection and basis for apprehension of criminal suspects.

Without an explicit non-exempt status—

This is the key point—

Local agencies interpreting the regulation may well determine that those employees are white collar and perform office work—and then exclude them from overtime coverage. If this were to occur, many of the most talented officers would choose not to be promoted (to the detriment of the Department) due to monetary concerns.

So with all due respect to Secretary Chao, who is, as I say, a friend, her comment that they are not white-collar employees is not at all clear. So that is one difference.

Now let's go on to the other differences. This is why my police officers are absolutely in favor of what Senator HARKIN wants to do, which is to reverse the move of the administration.

Secretary Chao's letter says:

Second, a large number of such employees—such as those represented by the International Union of Police Associations—are covered by collective bargaining agreements, which are not affected by the current or proposed regulations. We also believe it is unrealistic for unions to claim that overtime pay granted under a current collective bargaining agreement is likely to be revoked during a new negotiation.

So that is her second point. First, they say they never do white-collar work. Wrong. Now she says their collective bargaining agreements could never be overturned.

Let's see what the California police officers say:

The clout of independent police associations varies widely. Some would be able to protect their contract-required overtime, others would not. Many overtime provisions in collective bargaining agreements refer to the regulations or statutory requirements. Those overtime provisions would end with statutory or regulatory changes and would not even extend to the next negotiations.

To assume that it is ''unrealistic'' that contract provisions once granted would not be revoked is simply ignorant.

Those are strong statements.

Contract provisions are frequently revoked during the collective bargaining process. The regulatory or statutory requirements currently in place have held at bay any attack of the overtime agreement.

Regulatory and statutory requirements have been a major contributing factor in the successful recovery of moneys owed and withheld by employers in violation of respective collective bargaining agreements.

Mr. HARKIN. Will my colleague yield?

Mrs. BOXER. Yes, I yield to my friend.

Mr. HARKIN. I thank my colleague for pointing this out. I think this does clarify it. Because who better to respond than the people being affected, the police officers?

Mrs. BOXER. Exactly.

Mr. HARKIN. I say to my friend from California that this, right here, is very instructive:

We also believe it is unrealistic for unions to claim that overtime pay granted under a current collective bargaining agreement is likely to be revoked during a new negotiation.

I ask the Senator, am I correct that what she is actually saying is, however, now overtime pay will be a negotiable item?

Mrs. BOXER. Exactly.

Mr. HARKIN. See, now it is nonnegotiable.

Mrs. BOXER. Exactly the point.

Mr. HARKIN. Am I right on that?

Mrs. BOXER. Right. They say right here:

If it was such a foregone conclusion that represented employees could negotiate and maintain overtime protections absent statutory and regulatory requirements, the law and regulations would never have been made applicable to any workers under a collective bargaining agreement.

Mr. HARKIN. I thank the Senator from California. This really does point out what is very important.

Again, I ask the Senator if I am correct in my interpretation, because I want to make sure I am clear on this, that right now, for these certain classes that are not being reclassified as it exists, if you work over 40 hours a week, you have a contract negotiation that is not even negotiable because you are covered by overtime law.

Mrs. BOXER. That is right. You have the statutory protection, which they are now going to take away from these workers. They are taking it away and saying: Well, you can fix it with your collective bargaining.

Mr. HARKIN. See, that is it.

Mrs. BOXER. And she says, you have it anyway in your collective bargaining, which is not always the case. I think what the police officers have done, in dissecting this, is to be the truth tellers here.

There is one more chart. Secretary Chao says in her letter:

Third, many public safety employees, as well as nurses, are paid on an hourly basis. Hourly workers are not affected by Part 541 under either the current or proposed rules.

This is what the California police officers say:

Employers have made determinations on who is exempt based on the totality of the regulatory requirements. Some will view any modification as a basis to reconsider exempt status. Collective bargaining agreements generally do not state that employees are ''hourly'' employees. Employers would challenge that assertion.

So that is another point.

Then Secretary Chao says:

Moreover, those public safety employees who are paid on a salary basis and may be earning less than $22,100 a year will immediately gain overtime protection under our proposed rule.

They say:

Fine. But this does not apply to and will not affect any California public safety officers.

Thank God we pay them more than $22,100 to protect our lives and our children's lives. So that is a useless deal in this category of workers.

Lastly, she writes:

I can assure you, however, that it is not our intention to deny overtime pay to police officers, fire fighters, paramedics, or LPNs, or to change the current rules with respect to RNs.

Here is what the police officers say:

We in police work subscribe to a common rule: Say what you mean, mean what you say and memorialize it in print. If the intent is not to deny overtime, then put it in writing.

By the way, that was in my first letter I sent to Secretary Chao. I said: You keep saying they are not affected. Why don't you change your rule and simply exempt first responders, and then at least my police and firefighters and nurses and paramedics will not be so upset.

Mr. HARKIN. The Senator has done something of great value to all of us by bringing this out. A lot of the time we hear these things, but this puts it in focus.

The Secretary says:

Hourly workers not affected by part 541 under either the current or proposed rules.

But is there anything in the proposed rules that would prevent an employer from saying: OK, you were an hourly worker. We have now reclassified you. You are now a professional. Don't you feel good? You are now a professional. And guess what. You don't get overtime.

There is nothing to stop them from doing that.

Mrs. BOXER. Even more to the point, collective bargaining agreements generally do not state that employees are hourly. So it is very easy for an employer to say: Show me in your contract where it says you are hourly, even if you formally are. So people are going to be stuck, and they are not going to get their overtime pay.

At the end of the day we have to get back to this bottom line. The Secretary says:

I can assure you, however, it is not our intention to deny overtime pay to police officers, fire fighters, paramedics. . ..

I say to my friend, put it in writing. I think that is pretty obvious. They will not put it in writing.

I am so happy that my friend brought this up. When I first approached Secretary Chao, we had a very friendly conversation. It was right out here.

I said to her: My people are up in arms. Talk to me. What are you doing?

Well, it is hardly going to affect anybody, she said.

I said: Well, if it is going to affect hardly anybody, why bother? That doesn't make any sense.

Then I said: My policemen, my firemen, my first responders are really over the top on this.

And she said: They are not affected.

That is why I wrote to her and said put it in writing. She said: It is not necessary, they are exempt because they are not white collar, and all the rest.

Here we find out from the police officers themselves how silly the Department of Labor position is because of the fact that many of our criminal cases are solved now on computers in the office, doing investigatory work.

I don't know exactly what is going on except an effort to undermine working conditions and pay for millions of people.

I want to read one more letter and then I will leave the floor. This is from SGT Mark Nichols, President of the Santa Ana Police Officers Association in Orange County:

Public safety in California is facing a major crisis as we try to get back on our feet fiscally. To eliminate the Federal non-exempt provision at this time when dollars are scarce would be akin to placing a huge bull's eye on the already beleaguered morale of our members. We are currently stretched further than is prudent. To give our employers the opportunity possibly of stretching us even further to save an extra buck or two could be devastating to a profession already facing recruitment and retention problems.

We are a profession that works 24 hours a day, seven days a week, 365 days a year. I personally left a salaried position to join police work. Being compensated for extra work at the overtime rate was a big factor in my decision. We are continually required to extend our workday or return to work from off duty time. This is a difficult enough job, with its disruptions and hardships placed on our members and our families. To even allow for the possibility that police officers could lose their non-exempt status and overtime provisions is irresponsible.

I thank my friend. I know he has to go to other Senate business. I will ask for a quorum call in a moment. But I will yield to him for one more comment. I just say thank you on behalf of my police officers, my nurses, my first responders. I can't thank you enough.

Mr. HARKIN. The Senator, basically, is thanking the wrong person. The Senator should look in the mirror if she wants to thank someone. The people of California are privileged to have a fighter like BARBARA BOXER representing them in the Senate. I mean that. Not only is the Senator a personal friend of mine but someone I admire so much because she never backs down. When Senator BOXER speaks, you hear clearly the voices of the common man and woman, the person who doesn't have a voice here, individuals who will never set foot on the Senate floor, who never will be privileged to speak in this hallowed Chamber. The Senator from California speaks for them.

Mrs. BOXER. I thank the Senator. He made my day. I am so privileged that he would say such words to me. On this issue, we will not back down. We will stand together with many of our colleagues. Interestingly, a majority of the Senate already voted with the Senator. All we are asking is give us a vote on behalf of the policemen, the policewomen, the first responders, the firefighters, the nurses, the paramedics. Let us make sure we do not take away their overtime pay because to do so would be an enormous hardship on them and on their families at a time when we should be elevating them in status and saying to them, thank you, not only in pictures that we love to show with our arms around them—and we all do that—but in deeds. We really mean what we say, and we say you will not lose your overtime pay.

I hope we can get a vote on this important amendment and move on to the rest of the bill which is quite important.

I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHAFEE). 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. REID. Mr. President, last week, I was in Nevada and I visited a number of police stations and fire stations. Let me direct our attention to the Henderson Police Department that I met with. The chief, the deputy chief, and a number of police officers were there. It was time for a shift change. A number of hard-working police officers were there. I expected them to talk about homeland security and their obligations as first responders. They wanted to talk about that, of course, about the unfunded mandate passed on to police departments in Nevada and all over the country. Henderson, NV, is the second largest city in Nevada. By most standards, it is not really large—about 250,000 people. It is a suburb of Las Vegas, where I went to high school.

They didn't want to talk about homeland security and first responders initially; they wanted to know what is happening to their overtime. That is what is on the minds of firefighters and police officers all over America. As has been established on the Senate floor in the last 2 days during the pendency of the Harkin amendment and efforts to deprive us of a vote on that, people in our country are very concerned about what this administration is doing regarding overtime. This affects about 8 million working men and women in this country. Specifically, it is directed to police officers, who I talked about; firefighters, who I have talked about; and nurses.

A group of young people visited me today in my office upstairs. They were here representing a group of young Jewish leaders from Las Vegas. I asked them what they were going to do and what they were doing. One young lady said she was a student studying to be a nurse. She had less than 2 years to go to complete her degree. I didn't say anything, but what I wanted to say is, Do you know what has happened with this administration? They are trying to take away your overtime. They are trying to make it so that if you are working in a hospital and there is work that needs to be done, you can do it, but you won't get paid for it. I didn't say that to her, but that is what I felt like saying.

Being a chef now is very in vogue. When I was younger, to have somebody say they were going to go to school to be a cook, you didn't hear much about that. Now there are a lot of young men and women who go to school to learn to be a chef. That is the thing to do; it is one of the things to do. They work very hard. People don't realize how hard they work. As their jobs require, especially when big things are going on in the restaurants and they get a convention or some kind of a wedding or anniversary, they are required, because they have a lot of work to do, to work more than 8 hours a day, 40 hours a week. Under the proposal we have from the President, they won't be able to get their overtime. Anyone making more than $22,000 a year is, in effect, prevented from getting overtime.

Clerical workers: Why would you want to take the ability of somebody required by virtue of their work to put in extra time and not be paid for it?

Mr. President, the Fair Labor Standards Act, more than 50 years ago, said if a person works more than 8 hours a day, more than 40 hours a week, except under contractor situations, and some other exemptions—few in number—they are to be paid extra, time and a half, and for working holidays, double time, meaning they work 1 day and get paid as if they worked 2.

Physical therapists, reporters—that is a strange way to punish reporters, but I guess you can do it that way. If you are in the middle of something big, you can just say ''stop'' because you are not going to get paid.

Paralegals, dental hygienists, graphic artists, bookkeepers, lab technicians, and social workers—these are the people included in the 8 million Americans who would lose overtime protection under the proposal of President Bush. That is a shame. It is too bad and it is not fair.

When these police officers and firefighters ask me about overtime—when you go to these kinds of meetings, you don't want to be partisan. That takes away the purpose of your being there. What was I to say? I could only respond that our President has suggested—I should not say suggested—he has directed this. There is now, of course, a rule in effect, which is working its way through the process, to take away the ability of people who make more than $21,000 a year to make overtime pay. I told them that.

They are worried about their overtime pay. Families depend on overtime. It is not just the firefighters I saw in Reno or the police officers I met at Henderson whom I spoke about. It is families all over the country who depend on overtime.

As I have indicated, it is not only the firefighters, not only the police officers, nurses, flight attendants, preschool teachers, cooks, secretaries, fast-food shift managers, but 8 million others will lose their right to overtime pay under the new rules the administration wants to adopt.

We hear speeches on this floor, we hear speeches at high school graduations, we hear lectures given to us from the time we are kids until the time we pass on that this country is built upon hard work, that hard work has enabled generations of Americans to own a home, buy a car, do things to make a stronger community and give their children a good education. They say if one works hard in America, that is all it takes.

Americans have been willing to work hard and reach their goals. We are working longer now than we ever have before. Almost one-third of the labor force in our country regularly works longer than a 40-hour week. Twenty percent, 2 out of every 10 workers in America, work up to 50 hours a week. The Fair Labor Standards Act recognized employers would take advantage of employees if they were not required to pay overtime. That is why the Fair Labor Standards Act was passed.

The principle of overtime pay for those who work more than 40 hours a week was part of that act. It was the main purpose of that act. This legislation recognized hard work rewarded those who worked the hardest. Families who work hard depend on overtime pay. In fact, families that work overtime earn 25 percent of their pay in overtime. The administration's proposal would cut their pay by 25 percent.

It would also mean fewer jobs. Why? Of course it would be fewer jobs, because why would an employer bother hiring somebody else when they can just have whoever is working—a nurse, a clerical worker, a reporter, a graphic artist, a social worker—why hire another one? Just make them work more hours. They may not have to work a full shift, just have them work 2 or 3 hours a day. That way they will not have to hire a new person.

Of course, it would mean fewer jobs because companies would simply force their employees to work longer hours instead of hiring new workers. In the current economic condition, when millions of Americans are out of work during this administration, the last 3 years, there have been almost 3 million jobs lost. It does not make sense to do something that will stifle the creation of new jobs when in the private sector we have already lost almost 3 million jobs. Even for the workers who would still qualify for overtime, this is a bad rule, because some by contract would allow people to be paid overtime. Why? Because big companies would force overtime-exempt workers to put in longer hours and cut the hours of those qualified for overtime.

This rule is bad for so many reasons. It punishes working families by cutting their pay. It prevents the creation of new jobs and dishonors hard work, which is one of the things I have talked about, one of those things that has made this country great. Well, these are strong, convincing arguments, not because I made them, but because they are common sense. That is what has been said on this floor during the last 2 days.

Last night, I asked, why are my colleagues going to try to invoke cloture? I heard they were going to file a petition for cloture. I asked that question when we were doing our closing, when the distinguished majority whip said he was sending a petition to the desk to invoke cloture. I asked, why would he do that?

I cannot understand why he would do that. I asked why, because the House overwhelmingly said they wanted to have this overtime rule rescinded, and

in the Senate we voted to rescind this rule.

My distinguished friend, the senior Senator from Kentucky, said we voted on it once. Why do we need to vote on it again?

Let me show my colleagues what we are talking about. The majorities in the Senate and in the House voted against the Bush overtime proposal on September 10 of last year. Yes, we had a vote on it once before. My distinguished friend is right, September, October, November, December, January, February, March—yes, we had one. I counted it on my fingers. It was more than 6 months ago when we had a vote in the Senate, 54 to 45. It did not go party-line votes, but it was close. There were some courageous Republicans who voted against the party line, one of whom is sitting in the chair. They voted against this issue, and it passed.

Not long after that, less than a month after that, the House, by a party-line vote said, no, we do not want to rescind it, they knew they were wrong because of what I have said today, that it punishes working families, it prevents the creation of new jobs, it dishonors hard work, and they recognized that. So by a vote of 221 to 203, the House voted to have the instruction go to the conferees to take what happened in the Senate and rescind what the President had done.

In the middle of the night, the Republican majorities in the House and Senate, without a single Democrat being present, took the Harkin-Kennedy amendment—that is this amendment right here, passed by a vote of 54 to 45—out of the omnibus bill. It comes to the floor and it is not in the bill. Surprise, surprise. Even though it passed, they took it out.

Yes, my friend from Kentucky is right; we had a vote on it over 6 months ago, and by some phantom-like work in the middle of the night, contrary to what I think are rules of fairness, and just brute power, they stripped this from the bill.

By recorded votes, the House and the Senate said they wanted this rule changed, but in spite of our constitutional framework, in spite of the rules we have in the Senate and House and the rules that work to keep the two bodies working together, they were abrogated and we came up with this strange situation.

No, the conferees did not follow these heavy votes. When this bill was rolled into the omnibus, the conference committee struck it. I repeat, the conference committee, which excluded Democrats, ignored the votes of Congress and in doing so ignored the voice of the American people.

I respect the opinions and views of every Member of the Senate, whether or not I agree with those views, because I know every Senator was elected by the citizens of their State. Every Member's opinion carries weight with me because I believe every person in America has a right to be heard. In order for the people to be heard, the votes of those who represent them must count for something in Congress. Unfortunately, the conference committee that stripped Senator HARKIN's overtime amendment out of the Omnibus appropriations bill said our votes do not count; the voice of the people does not count; the voice of the people does not matter. Meeting behind closed doors, the committee disregarded the will of Congress and ignored the voice of the American people. So we have to have another vote on this.

We have had those on the other side of the aisle say this is an important bill. Why are we doing this?

Senator HARKIN has said he would take a time agreement. What does this mean? We have unlimited debate in the Senate. I think Senator HARKIN would take 15 minutes, give the majority 15 minutes, and then vote, an up-or-down vote on whether we want to have a rule in the United States that police officers, nurses, cooks, clerical workers, firefighters, physical therapists, reporters, paralegals, dental hygienists, graphic artists, bookkeepers, lab technicians, and social workers and on and on—8 million people are not going to be able to get overtime. I want a vote here. We want a vote. We are entitled to a vote. The only vote we had, the voice of the people, was stricken in the middle of the night. If this is an important bill, can't we afford 15 minutes to vote on this amendment?

The reason they don't want a vote on this amendment is because they know this amendment of Senator HARKIN will pass and the Secretary of Labor will have to issue new directions.

The purpose of the underlying amendment is to protect the jobs of American workers. It is a measure that protects the overtime pay of 8 million people, 8 million people who have families. Remember, 20 percent of these people work up to 50 hours a week; 25 percent of them depend on this overtime pay to make car payments, house payments, furniture payments, to send their kids to school. The voices of the American people are clear, just as the voices of the police officers and firefighters I met in Nevada last week were clear. They want us to protect the overtime pay their families depend on. We have a duty as legislators, national legislators, to stand and speak for the people we represent.

This bill, which is an important tax bill, the majority is willing to take down. The majority is willing to take down this important tax bill that we support on our side. They are willing to take it down, to have it go into limbo as so many other things do, like the gun legislation, like other bills. We can't seem to have closure on much of anything around here because the majority is unwilling to take tough votes. If it is something they disagree with, procedurally they just block us from voting on it.

This matter, that is, overtime pay for 8 million people, is going to be something we are going to vote on. The responsibility for this bill being taken down is not at the hands of the Democrats. It is at the hands of the majority party, the Republican Party, which refuses to have a vote on repealing a decision made by the President of the United States that takes away overtime pay for people who make more than $22,000 a year, as I have listed on this chart. It is wrong.

I told people twice yesterday that seeking to do away with this amendment by a parliamentary maneuver is not going to accomplish anything. We are wasting time. I can just see it now. The majority leader is going to come here and say we don't have time to do these important pieces of legislation; we are so busy.

We are busy wasting time. That is what we are doing. We wasted yesterday. We wasted all day today. We are having a cloture vote tomorrow. Cloture will be defeated. But to even show the complicity of what is happening here by my friends on the other side of the aisle, they were unwilling—they didn't have the nerve to file cloture on the underlying bill. Why? Because it would show directly what they were doing with the Harkin amendment. So they have developed this very interesting procedure where they have a motion here to recommit. The only reason they are doing it this way is so they do not have a direct attack on the FSC/ETI bill, the underlying bill here, and the Harkin amendment. They are going around that and saying we have this motion to recommit. If cloture is invoked, the bill comes back in its regular form.

Say whatever you want to say in however many ways you want to say it, this is an attempt to stop Senator HARKIN from having a vote on this overtime issue. It is wrong. No matter how many times people say we are going to be able to vote on it some other time, the record is replete with our cooperating in the first few months of this legislative session.

We have said to Senator HARKIN on many occasions, Let us go ahead and do this legislation. Let us work on this legislation. You can offer it on the next piece of legislation. And then the next piece of legislation.

We are at the end of the rope. The American people will no longer let us avoid this issue. This is an issue that must be addressed and we are going to address the issue because it is the right thing to do. Eight million Americans are depending on us, and $22,000—it is as if somebody who makes $22,000 a year and then gets overtime pay is committing some type of crime. Is that ruining our country? As I established here statistically, no, it is not. It is good for our country. Overtime pay creates more jobs. It rewards hard work. It allows people to maintain their standard of living—which isn't very high. Remember the starting point is $22,000 a year.

I hope in the days and weeks to come and the few months we have left in this

legislative session, where we have 13 appropriations bills to pass and many other items, people remember the wasted time this week. All we want is a simple vote on overtime. Fifteen minutes of debate and vote. They will not let us do that because they know it would show the President of the United States is wrong, wrong in trying to take away overtime pay from people who make $22,000 a year or more. It is wrong.

They will not let us vote on this. We are going to continue coming back as often as we have the opportunity. They will not be able to escape this. I feel really bad about this bill, which is important to our country. The majority is willing to take down a bill that is important to the competitive nature of our country. They are willing to take this bill down because they don't want a vote on overtime pay because it makes the President look bad. I should tell them the President looks bad anyway on this issue. They are not going to take away the damage done here. Why not let us vote and get rid of that ridiculous rule he has issued and get back to allowing people to be rewarded for working hard and creating new jobs? It is an issue we need, to make sure people are honored for hard work, rewarded for hard work, not punished.

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

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

Mr. KYL. Mr. President, I would like to speak about the Harkin amendment. I wasn't here for the earlier conversation, but I was advised about some of the arguments that have been made. It concerns me because people are concerned about the proposed rules that have been promulgated by the Department of Labor. I think it is incumbent upon us to clarify the situation so American workers are not frightened of these proposed rules because of the mischaracterization by certain people.

The amendment here would stop the rules from going into effect. I fear there are things being said about these rules that are very inaccurate, misleading, and therefore are frightening people into thinking somehow the rules would prevent them from receiving overtime pay, when the reality is more people would be ensured they could qualify for overtime pay than is the case today.

I want to speak for a few moments to try to allay the fears of people so they are not concerned about these proposals and they embrace them, because the possibility of overtime extends to a larger universe of people than it does today. I will talk about this for a moment. The amendment would prohibit the Department of Labor from pursuing this proposed rule, which clarifies something called the white-collar exemption from the FLSA overtime rules, or the Fair Labor Standards Act rules.

What it has to do with is the requirement that non-white-collar workers are entitled to overtime under certain circumstances. The question is, how do we define the non-white-collar workers as opposed to the white-collar workers to understand who is entitled to receive compensation for the overtime and who is not. The proposed changes would actually guarantee payments to 1.3 million low-wage workers who were not entitled to overtime before. I think this is the key point. It does not take away people; it adds to the number of people who would qualify for overtime.

This is one of the ways in which that occurs: It would raise the minimum salary level at which workers are ensured overtime pay from $155 to $425 a week, $22,100 annually. So it raises the level at which this kicks in, which would be the largest increase since the law was enacted in 1938. So we are making the availability to a much larger group of people, people at a higher salary level, than has ever been the case.

It will actually ensure that the lowest 20 percent of all salaried workers get pay of time and a half for overtime work. Now, that is a substantial increase in the number of American workers who will be ensured overtime pay. This is so important because I have heard from workers who have personally spoken to me and they are very frightened about this. They believe that somehow or another these proposed rules are going to make it more difficult for them to get overtime pay. The reality is that a lot more people are going to be ensured that they will receive overtime pay. First, as I said, because we are raising the level of people who would be covered. That is the largest reason why we can make that claim.

Another thing that this proposed rule does is to clarify the definitions of who is actually covered and who is not covered. In recent years, there have been a large number of class action lawsuits that have been brought over this definition of white-collar status; therefore, the question of whether they are exempt from overtime requirements. This has actually surpassed the Equal Employment Opportunity class action lawsuits in number, and there are a lot of those. The trial lawyers end up making millions of dollars off of this confusion in the current system over the definition. This law would eliminate all of that cost and all of the wasted energy in litigation and paying a lot of trial lawyers by clarifying who is covered and who is not covered.

Now let's talk a little bit about that definition because, once again, people are asking whether they are going to be covered anymore; they will be exempt from this guarantee of overtime pay with the new definitions. I want to make it very clear that in most of the situations I have heard described that just is not true.

Employees who earn more than $65,000 annually would be exempted from the overtime pay requirements if their job involves executive, administrative, or professional duties. Now, again, we are talking about time-and-a-half pay. When one is making over $65,000 a year and they are in an executive position, the theory is that they can negotiate their own salary, that they are not in the situation in which they would be getting time and a half for the time they put in, and that is the reason for this particular exemption.

Those who earn between $22,100 and $65,000 will remain eligible for overtime pay if they meet what is called the short test. That determines whether they are exempted white-collar workers. That test basically includes definitions such as whether one supervises two or more employees, whether they have the authority to hire and fire or they need an advanced degree or some kind of specialized training. One would have to clearly be in one of those categories in order not to be guaranteed the protection of this time and a half for overtime. That is between $22,100 and $65,000.

There is a study out that I think also has some faulty data in it which have skewed the effect of the proposed rule that has been used by the opponents of the proposed regulation and by the supporters of the amendment that would prevent the regulation from going into effect. The claim is that 8 million workers would become exempt from overtime pay requirements based on this so-called EPI study. One of the reasons that the number is so large is because the study counts part-time workers who do not work 40 hours a week and therefore do not receive overtime pay.

Well, we have to extract all of those workers in order to have a relevant cohort because one has to work 40 hours a week in order to qualify for overtime pay.

The study also includes individuals who are not affected by the rule. Again, I do not see how one can have a valid study that allegedly shows how many people would no longer qualify if a lot of people are included in the study who do not qualify in the first instance. So it is very unclear what the actual number of people would be who would not qualify for the overtime pay.

Clearly, this study is fatally flawed in those two significant respects and therefore it should not be used to scare people into suggesting they would no longer be covered.

I will give some other examples of different professions in which there have been questions raised, and I think it is important we allay the fears of these people. Cooks are concerned, people who cook in restaurants, for example. Well, all cooks are not exempted from the overtime pay in the proposal.

Only chefs who have college degrees in the culinary arts will be deemed white-collar workers and therefore exempt from this requirement. So when one hears the conversation about all of the cooks who are no longer going to be entitled to time and a half because that is—I mean, when a person is working in a restaurant, for example, there is a lot of time and a half involved in that and here we are not talking about most of the people. The people who would be exempted are only those who have a college degree in culinary arts, which does not represent most of the people who are actually doing the cooking.

One of the arguments is as to the process, and there has been a suggestion that this rule was just passed in the middle of the night and somehow people are not aware of it. Nothing could be further from the truth. Prior to the drafting of the rule, the Department of Labor held over 40 meetings of stakeholders, people who had an interest in the proposed rule, 50 different interest groups, including, by the way, 16 labor unions. Some of the labor unions have raised questions, I think some will support it, but the bottom line is they were included in the consultations.

I am advised that the Department of Labor invited 80 groups to participate in these stakeholder meetings. So I do not think anybody can claim this was done in the middle of the night.

I ask unanimous consent that a letter which was provided to me—it was sent to the majority leader and minority leader from the Grand Lodge Fraternal Order of Police—be printed in the RECORD.

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

GRAND LODGE,
FRATERNAL ORDER OF POLICE®,
Washington, DC, March 22, 2004.

Hon. WILLIAM H. FRIST,
Majority Leader, U.S. Senate,
Washington, DC

Hon. THOMAS A. DASCHLE,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MR. MAJORITY LEADER AND SENATOR DASCHLE: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our concerns regarding an amendment which is expected to be offered tomorrow on the floor of the Senate concerning the proposed regulations governing the exemptions from overtime pay under the Fair Labor Standards Act (FLSA), and to renew our opposition to any such effort which would have the effect of delaying or hindering the Department of Labor's (DOL) ability to issue a final rule.

On 31 March, DOL published a Notice of Proposed Rulemaking in the Federal Register to revise and update the exemptions from overtime under the FLSA for executive, administrative and professional employees. The F.O.P. was the first union to weigh in on behalf of America's law enforcement community regarding the proposed change and recommended the exclusion of public safety personnel from the Part 541 or ''white collar'' exemptions from overtime—including those employees who are classified as exempt under the existing regulations. We argued that the exclusion of these employees was necessary due to the increased burdens placed on public safety officers following the terrorist attacks of 11 September 2001.

Since the beginning, it has been clear from our dialogue with Secretary of Labor Elaine L. Chao and Department officials that it was never their intention to cut overtime for public safety employees. Thus, we decided that the interests of our members could best be served by working cooperatively with the Department. Based on our dialogue with DOL, we are confident that when the final regulations are issued, that overtime pay will be available to even more police officers, firefighters and EMTs than is possible under the current regulations.

The F.O.P. believes that amendments such as the one which may be offered on Tuesday do not take into consideration the police officers, firefighters and EMTs who are currently exempt, who must work longer hours when the terrorist threat level goes up, and who are ineligible to receive overtime compensation. Nor do we think it is the best possible result that Congress should reaffirm that the existing executive, administrative, and professional exemptions are acceptable for our nation's first responders. Instead, our efforts with the Department of Labor and others have been geared towards ensuring that overtime compensation is available to all those public safety employees whose continued performance of overtime work is vital to the security of our nation.

These regulations offer an important opportunity to correct the application of the overtime provisions of the FLSA to public safety officers. We are therefore concerned that the adoption of any amendment with respect to the Department's revisions to the Part 541 regulations will undermine our efforts to successfully protect overtime compensation for more than 1 million public safety officers, and hinder DOL's ability to issue a final rule. During the public comment period on the proposal, the Department received nearly 80,000 comments from individuals across the nation. The purpose was to solicit feedback and suggested changes to the original proposal before issuing final regulations. None can say with any degree of certainty what changes DOL has made to their proposed rule and what its final scope will be. In essence, all of the concerns which have been expressed to this point are based solely on the pre-public comment draft proposal, and on conjecture over what is feared will or will not be part of the final regulation. That is why the F.O.P. believes that the regulatory process should be allowed to move forward unimpeded, and that Congress should reserve acting on this issue until after the regulations have been promulgated as a final rule.

On behalf of the more than 311,000 members of the Fraternal Order of Police, we respectfully request your assistance in opposing the adoption of any amendment which would delay the issuance of a final rule. I cannot express to you the critical importance of this issue to our membership. Thank you in advance, and please do not hesitate to contact me, or Executive Director Jim Pasco, through our Washington office if we can be of any assistance whatsoever.

Sincerely,

CHUCK CANTERBURY,
National President.

Mr. KYL. The author of the letter in the first paragraph—I will not cite the entire letter but the national president of the Fraternal Order of Police, whose name is Chuck Canterbury, wrote this:

I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our concerns regarding an amendment which is expected to be offered tomorrow on the floor of the Senate concerning the proposed regulations governing the exemptions from overtime pay under the Fair Labor Standards Act, and to renew our opposition to any such effort which would have the effect of delaying or hindering the Department of Labor's ability to issue a final rule.

The reason I quote that letter is to make the point that this is the FOP, a very large and important union in our Nation today, which would like to see this rule issued. It is an illustration of one of the groups that has been involved in the process that understands what the Department of Labor is doing and appreciates the positive effect of the rule that has been proposed.

I also want to make it clear that this is only a proposed regulation. After the rule is promulgated by the Department, obviously there would be a final implementation of the rule. At the earliest, that would come out next year sometime, and clearly the Senate would have the ability at that time to address any complaints about the final rule. The agency, I am advised, has received over 80,000 comments with respect to its proposed rule and is currently working its way through those comments. So this is not something that is going to be happening tomorrow. Once they get through all of those comments, they will promulgate the final rule, again perhaps coming out sometime next year. The Senate, in any event, would have plenty of time to work on it.

That is essentially what I wanted to say, to make the point that those who have been scared or frightened by some of the comments about this proposed rule should stop and get more information about the rule. They should listen to some of the debate we are trying to bring to the floor and contact the Department of Labor if they have a question, or contact our offices so we can clarify what this proposed rule really does. We can make it clear it is not being put into effect to take a bunch of people out of the market for time-and-a-half guarantee of overtime, but in point of fact it would actually guarantee that more people would have the ability to get overtime, and because of the clarification of definitions, it would remove the potential for even more litigation that simply raises confusion about whether people are covered.

We can make it clear we are talking about people who make a lot of money, who have a lot of control over the negotiation of their salaries, who have supervision over other employees, and so on. Those are the people who are being exempt. It is not the people who are just regular workers, who don't supervise a lot of people, who don't hire and fire people, and so on. Those folks may or may not wear white collars to work, but the bottom line is they are not exempt from the requirements under the Fair Labor Standards Act to provide them time and a half for overtime for the hours they actually work. It is important to get that message out to folks; that it is not something about

which they should be concerned. Rather, the intention behind the rule is to clarify and expand the number of people eligible for it.

I hope folks who have concerns about that will be in touch with us so we can allay those concerns. Perhaps the amendment I am talking about will come up for a vote, perhaps it will not. If it does, I hope it is defeated because we need to move forward with the regulations the Department is working on right now and see them promulgated. Once that occurs, you will see labor unions and workers all over the country looking at the final product and saying, yes, that is fair. That is protective of me. It clarifies the situation, and we can support it.

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 the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, the junior Senator from Arizona is someone for whom I have the highest regard. He is articulate. He always makes a good presentation. I am glad he is a neighbor of the great State of Nevada.

But I have to say the one question he didn't answer is, Why don't we just vote on this? Why don't we just have a vote on this overtime issue? We have agreed to have Senator HARKIN spend 15 or 20 minutes summarizing his arguments, the majority can take whatever time they believe appropriate, and then we can vote on this issue and move on to this most important underlying bill.

My friend from Arizona, who is the first person who has come to try to defend the overtime proposal of the President, says the study is faulty, that it is really not 8 million people, and some are part-time.

Let's say it is faulty, which I don't think it is, but let's say it is only 6 million people.

I would also say, of course, more people would qualify for overtime pay because whatever they are doing is allowing people who now are not entitled to overtime pay, people who really don't make much money—we would allow them to have overtime pay under the proposed rule.

Let them do it. Let them have overtime. No one is trying to stop them from having overtime. What we criticize is why would we want to make one group of workers disadvantaged to try to advantage another group of workers? Let's let them all be entitled to overtime, time and a half. That seems to be the fair thing to do. I see nothing wrong with giving people who are not making much money now the ability to get overtime. We support that. But why disadvantage others?

Of course, we are told it is in the definition of ''white collar.'' Can you imagine the litigation and problems it is going to cause in the workforce—who is a chef, who is a cook, who is a physical therapist?

This is an issue that is important to millions and millions of working men and women in this country. We believe the rule is not right for the American people. We believe people should be rewarded for hard work. We believe we should create more jobs, not take away jobs. This proposal will not reward hard work, and it will take away people's honest efforts to be rewarded for hard work.

We are willing to vote, as had been done last September when we voted in this body by a large margin to rescind the rule. The House of Representatives, by more than 220 Members, said they wanted to do what the Senate did, the same thing. We voted on it twice. It was taken out in the middle of the night in a secret conference, with no Democrats present. Why can't we vote on it again? We believe that is what we should do. Let's vote on whether the President and his people are right or wrong.

We are willing to debate this issue in public, not secretly. We are willing to state our position and simply go forward as the Senate and the House have already spoken and get rid of this rule, which is unfair.

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. SESSIONS. 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. SESSIONS. Mr. President, I want to continue to discuss the white-collar exemptions on the overtime legislation and the amendment we are dealing with. I want to express how frustrating it is to see a very carefully constructed proposal by the Secretary of Labor, Elaine Chao, being mischaracterized, therefore placing fear in the American people through the misrepresentation of the nature of these regulations.

First of all, Secretary Chao is one of the finest public servants I know. From the time she gets to work in the morning until the time she gets home late at night, she is committed to making this a better country, a good country to live and work in. She wants to do something about these regulations that have not been changed since 1954 in any significant way. They need to be updated. Her proposed rule changes have received 70,000 comments. The Department of Labor is considering those, and they ought to be able to update these regulations. There is no doubt about it. It is time to do that.

The impact has been completely misrepresented. We need to talk about it. I think the reason, frankly, is that we are in a political season. People want to make this a political issue. If they can go around and say, Mean old President Bush wants to deny you your overtime and you can't get overtime anymore, and they can stir this up and make these complaints, then they think some people might believe it. But it is not right. What is being said is not right. It is not fair.

The Department of Labor has proposed changes to the regulations governing the overtime exemption under the Fair Labor Standards Act, also known as the white-collar exemption.

The regulations defining which workers are entitled to overtime were written in 1954 and have not been updated to reflect the ongoing changes in the workplace. Today's workers are operating under the rules that are 50 years old.

These rules include job descriptions like ''gang leader,'' ''ratesetter,'' and ''Linotype operator.'' Therefore, it is easy to understand why many businesses have trouble identifying which workers qualify for overtime and which are exempt under current law.

The proposed rule increases the minimum salary requirements for overtime from as low as $155 a week to $425 a week.

Let me talk about that. Let us get this straight.

A worker making as little as $155 a week today could be denied overtime if they are classified in a supervisor capacity. Under the rules of the Secretary of Labor, if you made $425 a week or less, you are automatically entitled to overtime no matter what job title some business might give you. That is going to help a lot of people, I submit. According to the Department of Labor, this change would result in 1.3 million Americans who earn less than $22,100 per year being guaranteed overtime compensation. That is not so now. A worker can be classified as some sort of supervisor making $18,000 or $20,000 a year and not get overtime.

Under the current regulations, a person earning $14,300 annually who works behind the counter at a restaurant, for example, and is called a manager could be denied overtime compensation. The new regulations would guarantee overtime pay to this person and others making less than $22,100. They would be guaranteed it. That is a lot of people. It means a lot to those people.

Additionally, the Department of Labor projects 10.7 million workers who currently qualify for overtime will have all of those protections strengthened, including nurses, chefs, secretaries, unionized workers, and first responders.

Following discussions with the Department of Labor, the Fraternal Order of Police, a major organization representing thousands of police officers who we deal with from the Judiciary Committee on a regular basis and who is actively engaged in defending the interests of their members, released a statement recognizing the fact that police officers will still receive overtime compensation under these new regulations. The President of the National

Fraternal Order of Police, Chuck Canterbury, said:

> Thanks to the leadership of Secretary Chao, we have no doubt that overtime pay will continue to be available to those officers currently receiving it and, if the new rules are approved, even more of our Nation's police officers, firefighters, and EMTs will be eligible for overtime. This development was possible because this is an Administration that listens to the concerns of the FOP, and because of their commitment to our Nation's first responders.

I think that is a strong statement. And for months now we have been hearing how these regulations are going to hurt policemen, firemen, and emergency medical technicians.

That is not true. It is false. In fact, it is going to guarantee a lot of people overtime who are not receiving it today.

According to the Human Resource Policy Association, the proposed changes would impact about 12.6 million workers—it sounds like a lot—12.6 million workers out of 134 million workers. About 10 percent of workers would be affected. Of that 12.6 million affected, 12 million would now qualify for overtime or have their current overtime protections strengthened—not reduced, strengthened—12 million out of 12.6 million who are affected will have their protections strengthened. The other 644,000 workers—highly educated individuals earning an average of $50,000 per year—might be subject to reclassification under these regulations. That is what it is focusing on. The proposed rules would clarify the regulations affecting millions of workers.

By updating these rules, the Department of Labor would ease the burden on employees and employers who find it difficult to navigate the often confusing and outdated regulations governing proper compensation, including overtime pay. Additionally, the Department will be better able to enforce the law once clarifications are made.

I know the Presiding Officer is a lawyer, a former attorney general and justice of the Texas Supreme Court, and knows litigation. As a lawyer in private practice not too many years ago—maybe not long before I came to the Senate in the mid 1990s—I represented a friend I grew up with who is a bulldozer operator, a heavy equipment operator. He is a good guy. He had a dispute with his employer. He thought maybe he was entitled to overtime pay because he ran heavy equipment. The company said, No, you are a contractor. I said, Friend, I think you are right. We filed a lawsuit, and we had to go to court. We eventually settled before trial, and we got him overtime. I think he was legally entitled to overtime under current Federal regulations. Whether he should have been, I do not know. But it makes it clear that these rules and regulations are confusing. He had to pay me a lawyer's fee to represent him. I do not know how much it cost the court or how much it cost the company to pay their lawyer to defend the lawsuit. But this kind of thing happens too much.

I represented one more overtime case. She was a clerical person at an entity, and she thought she was being unfairly treated. I looked at her case and it was not a lot of money. I talked to her and I thought she was right. We filed a lawsuit. They agreed eventually to pay her overtime after some haggling and discussion back and forth.

Do you know where she worked? Do you know who her employer was? It was a union local. They agreed to pay and they admitted she was not properly paid overtime. If we make it clearer so that it is indisputable what overtime is and what it is not, we will see less confusion.

Lawsuits over violations of the Fair Labor Standards Act are increasing each year. According to the HR Policy Association, in 2001 the number of Fair Labor Standards Act class action lawsuits actually exceeded the number of Equal Employment Opportunity class action lawsuits.

In Carpenter v. R.M. Shoemaker Company, the court ruled that a project superintendent making around $90,000 annually was not an exempt employee and was thus entitled to overtime even though the employee supervised three large construction projects for a construction management company.

These laws are complex. If I were a plaintiff and I were representing someone, I would try to figure out a way to get my client in there and get them overtime, too. But I don't think that is what Congress had in mind when it created a statute where a guy making $90,000 a year that supervises three large construction projects can receive overtime compensation. That sounds like a supervisor to me. I bet the company did not lose the lawsuit for any other reason than there was probably a violation of the complex Federal law written in 1954, 50 years ago.

In Hashop v. Rockwell Space Operations, the court decided that ''network communications systems instructors'' who had advanced degrees in physics, mathematics, and engineering, and trained personnel were not exempt because they used technical manuals and made decisions in groups. These things are pretty complicated.

Under the current rule we have employees earning $90,000 a year or possessing advanced degrees qualifying for overtime. This is not the low-wage worker we keep hearing about in our debate. Fundamentally that is what Secretary Chao's regulations are focused on, these high-wage employees who are supervisors and are slipping in and claiming overtime when that was not the intention of Congress.

Many employers worry about incurring large unexpected litigation costs due to their inability to properly interpret these confusing rules. Even lawyers and Department of Labor investigators can have difficulty deciphering the line between exempt and nonexempt employees. By clarifying the line—who is a salaried employee and who is not—we can reduce the number of lawsuits brought under this section, and we can make sure more people get paid overtime properly from the very beginning. If you make less than $22,100 a year, you get overtime. That is a bright line. That is what we ought to have more of, more bright lines in this Congress so there is a lot less confusion. If you make less than that, you get overtime. That will pick up a tremendous number of people today who have been classified as some sort of manager or supervisor but have made much less than $22,100 and, as a result of these changes, they are going to gain benefits. I believe far more will benefit than will lose under these proposed regulations. By clarifying that, we can reduce lawsuits.

In 1938, when the Fair Labor Standards Act was passed, the Congress instructed the Secretary of Labor to make changes to the white-collar exemption rules. That was part of the congressional instruction, to make changes in the white-collar exemption rules. It was understood, I assume, at that time that they had not worked everything out fully and more work needed to be done on these regulations.

The Department of Labor has now issued these proposed regulations. They issued them in March of last year. Everyone has seen them. They have been published. They have received in response to these proposed regulations over 70,000 comments during the 90-day comment period. Secretary Chao is doing her job. She is seeking to update and modernize these regulations to make them fit the contemporary needs of America today. We do not have gang leaders being paid wages today. I don't think that job description any longer exists. There is a lot of need for improvement and change. Secretary Chao is on the right track. They will continue to refine these regulations if there is a problem.

There is no plot here to try to undermine the right of working Americans to receive overtime. That is a completely bogus and political argument we are in at this time. Frankly, politics is intervening too much in our debate of late. I guess that is the nature of American government. We will have to put up with it. I am getting a bellyful of it and think we need to set the record straight whenever possible.

I am looking at another group that has been asserted would lose benefits under this, the Non-Commissioned Officers Association of the United States of America. They wrote a letter to BILL FRIST, the majority leader in the Senate. They said:

> It is a blinding glimpse of the obvious that neither the current rules nor the revised proposal will negatively impact those who serve or have served in the [United States] uniformed services. In fact, this association's direct discussions with DOL leads us to the conclusion that the proposed rule relative to

the revised ceiling for annual income (increased from $8,060 to $13,000) will greatly expand the pool of eligible workers for overtime compensation.

I ask unanimous consent to have this letter printed in the RECORD.

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

NCOA,
Alexandria, VA, January 29, 2004.

Hon. BILL FRIST,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: The Non Commissioned Officers expresses its grave concern that America's military personnel and veterans are being used as an ''emotional'' ploy to delay the Department of Labor implementation of the Fair Labor Standards Act relative ''white collar'' exemptions. Claims that military members involved in the War on Terrorism and this Nation's veterans will have their employment status elevated to ''exempt'' based on military training and experience and lose opportunity for overtime compensation are patently incorrect. The Association regrets that some would wrongfully use such false allegations concerning impact to America's service members to garner emotional and legislative support to delay the final rules for implementation of FLSA.

It is a blinding glimpse of the obvious that neither the current nor the revised proposal will negatively impact those who serve or have served in the Uniformed Services. In fact, this association's direct discussions with DOL leads us to the conclusion that the proposed rule relative the revised ceiling for annual income (increased from $8,060 to $13,000) will greatly expand the eligibility pool for worker overtime compensation.

It is outrageous that unsubstantiated claims are reaching America's Soldiers, Sailors, Marines, and Airmen currently in harm's way that their future return to civilian jobs will result in a reclassification of their employment status. It is clear from our discussions with the Department of Labor that the proposed rule makes no changes from the current regulation and case law regarding military training and eligibility for overtime payments.

NCOA will continue to monitor the rights of all service members and pursue DOL intervention if the intent of any program or interpretation of the published rules would negatively impact those who have served in the Uniformed Service of this Nation. NCOA will remain vigilant to ensure their employment rights.

Sincerely,

GENE OVERSTREET,
President/CEO.

Mr. SESSIONS. We need to let this process work, allow the Secretary of Labor to evaluate these comments and continue her process of establishing fair and modernized overtime regulations.

I yield the floor.

Mr. SANTORUM. Mr. President, I rise to commend the Senate for the passage yesterday by unanimous consent an amendment to extend for 2 years the Work Opportunity and Welfare to Work tax credits, and to make certain improvements to these programs that will make them even more effective in helping Americans transition from welfare to work. These credits clearly belong in a bill whose name is JOBS; I can think of few programs that have created jobs and provided basic workplace skills to a segment of the population that is badly in need of these resources with the efficiency and low cost of WOTC and W-t-W. I can also think of few jobs programs that have as positive an impact as these have on scarce state welfare resources. I am also pleased that Senator BAYH joined me as a cosponsor of this bipartisan amendment. I would also like to thank Chairman GRASSLEY and Senator BAUCUS for their support of this important initiative as part of a larger package of extenders.

WOTC and W-t-W are also key elements of welfare reform. Employers in the retail, health care, hotel, financial services, and food industries have incorporated this program into their hiring practices and through these programs, more than 2,700,000 previously dependent persons have found work.

A recent report issued by the New York State Department of Labor bears this out in economic terms. Comparing the cost of WOTC credits taken by New York State employers during the period 1996–2003—for a total of $192.59 million—with savings achieved through closed welfare cases and reductions in vocational rehabilitation programs and jail spending—for a total of $199,89 million—the State of New York concluded that WOTC provided net benefits to the taxpayers even without taking into account the additional economic benefits resulting from the addition of new wages to the GDP or reductions in other social spending such as Medicaid.

In that regard, the New York State analysis concluded that the roughly $90 million in wages paid to WOTC workers since 1996 generated roughly $225 million in increased economic activity. Perhaps even more importantly, the study found that roughly 58 percent of the TANF recipients who entered private sector employment with the assistance of WOTC stayed off welfare.

I mention the New York State study because it is the first of its kind; however, I am certain that similar conclusions would be reached in the Commonwealth of Pennsylvania or any of the other 48 States and the District of Columbia. These programs work and do so at a net savings to taxpayers. In fact, over a 7-year period there were more than 111,000 certifications for both WOTC and W-t-W in Pennsylvania alone enabling many to leave welfare and find private sector work. The legislation is supported by hundreds of employers throughout Pennsylvania and around the country.

WOTC and W-t-W have received high praise as well from the Federal Government. A 2001 GAO study concluded that employers have significantly changed their hiring practices because of WOTC by providing job mentors, longer training periods, and significant recruiting outreach efforts.

Mr. President, WOTC and W-t-W are not traditional government jobs programs. Instead they are precisely the type of program that we should champion in a time when we need to be fiscally responsible. These are efficient and low cost public-private partnerships that have as their goal to provide a means by which individuals can transition from welfare to a lifetime of work and dignity.

Under present law, WOTC provides a 40-percent tax credit on the first $6,000 of wages for those working at least 200 hours, or a partial credit of 25 percent for those working 120–399 hours. W-t-W provides a 35-percent tax credit on the first $10,000 of wages for those working 400 hours in the first year. In the second year, the W-t-W credit is 50 percent of the first $10,000 of wages earned. WOTC and W-t-W are key elements of welfare reform. A growing number of employers use these programs in the retail, health care, hotel, financial services, food, and other industries. These programs have helped over 2,200,000 previously dependent persons to find jobs.

Eligibility for WOTC is currently limited to: (1) Recipients of Temporary Assistance to Needy Families in 9 of the 18 months ending on the hiring date; (2) individuals receiving Supplemental Security Income, SSI, benefits; (3) disabled individuals with vocational rehabilitation referrals; (4) veterans on food stamps; (5) individuals aged 18–24 in households receiving food stamp benefits; (6) qualified summer youth employees; (7) low-income ex-felons; and (8) individuals ages 18–24 living in empowerment zones or renewal communities. Eligibility for W-t-W is limited to individuals receiving welfare benefits for 18 consecutive months ending on the hiring date. More than 80 percent of WOTC and W-t-W hires were previously dependent on public assistance programs. These credits are both a hiring incentive, offsetting some of the higher costs of recruiting, hiring, and retaining public assistant recipients and other low-skilled individuals, and a retention incentive, providing a higher reward for those who stay longer on the job.

Despite the considerable success of WOTC and W-t-W, many vulnerable individuals still need a boost in finding employment. This is particularly true during periods of high unemployment. There are several legislative changes that would strengthen these programs, expand employment opportunities for needy individuals, and make the programs more attractive to employers. These changes are reflected in legislation which I introduced along with Senator BAUCUS, S. 1180, and these changes are as follows:

The administration's budget proposes to simplify these important employment incentives by combining them into one credit and making the rules for computing the combined credits simpler. The credits would be combined by creating a new welfare-to-work target group under WOTC. The minimum employment periods and credit rates for the first year of employment under the present work opportunity tax credit would apply to W-t-W employees.

The maximum amount of eligible wages would continue to be $10,000 for W-t-W employees and $6,000 for other target groups—$3,000 for summer youth. In addition, the second year 50-percent credit under W-t-W would continue to be available for W-t-W employees under the modified WOTC.

Under current law, only those ex-felons whose annual family income is 70 percent or less than the Bureau of Labor Statistics lower living standard during the 6 months preceding the hiring date are eligible for WOTC. The administration's budget also proposes to eliminate the family income attribution rule.

Current WOTC eligibility rules heavily favor the hiring of women because single mothers are much more likely to be on welfare or food stamps. Women constitute about 80 percent of those hired under the WOTC program, but men from welfare households face the same or even greater barriers to finding work. Increasing the age ceiling in the ''food stamp category'' would greatly improve the job prospects for many absentee fathers and other ''at risk'' males. This change would be completely consistent with program objectives because many food stamp households include adults who are not working, and more than 90 percent of those on food stamps live below the poverty line.

I am very pleased that President Bush proposed a 2-year extension for these programs in his budget, as well as some useful modifications and improvements. The administration along with all of us in Congress are eager to continue our efforts to create jobs in America. The amendment would provide for a 1-year extension of current law to facilitate a transition period and then in the second year implement these important changes.

I would prefer a permanent extension which would provide these important programs with greater stability, thereby encouraging more employers to participate, make investment in expanding outreach to identify potential workers from the targeted groups, and avoid the wasteful disruption of termination and renewal. A permanent extension would also encourage the state job services to invest the resources needed to make the certification process more efficient and employer-friendly. Yet the cost is a significant consideration in the current budget environment even though this is an excellent use of tax incentives which ultimately saves government resources while expanding opportunity for Americans.

Finally, I commend the Senate for acting on this amendment and encourage support for cloture tomorrow and quick completion of this important underlying jobs bill. WOTC and W-t-W expired at the end of last year, and even though the extension we propose is retroactive, these programs will not be fully effective until they become law. The individuals who enter the workforce under these programs, and our States, that benefit greatly from the reduction in welfare that these programs generate, deserve quick action by the Senate on this bill. I urge all of my colleagues to support its passage.

Ms. COLLINS. Mr. President, I am pleased today to rise in support of the amendment offered by Senators GRASSLEY and BAYH that would extend certain tax provisions to prevent their expiration.

The Grassley-Bayh amendment contains a number of useful provisions, but one in particular that I commend to my colleagues would extend for two more years the $250 deduction provided to teachers who purchase supplies for their classrooms out of their own pockets. Senator WARNER and I were the principal authors of this law.

This is a modest, but appropriate, step toward recognizing the invaluable services that teachers provide each and every day to our children and to our communities. So often teachers in Maine, and throughout the country, spend their own money to improve the classroom experiences of their students. While many of us are familiar with the National Education Association's estimate that teachers spend, on average, $400 a year on classroom supplies, a more recent survey demonstrates that they are spending even more than that. According to a report released last year by Quality Education Data, the average teacher spends more than $520 a year out of pocket on school supplies.

I have visited more than 100 schools in Maine, and everywhere I go, I find teachers who are spending their own money to improve the educational experiences of their students by supplementing classroom supplies.

The teacher tax relief we passed overwhelmingly in the last Congress was a step in the right direction. As Tyler Nutter, a middle school math and reading teacher from North Berwick, ME, told me, ''It's a nice recognition of the contributions that many teachers have made.'' I commend the authors of this amendment for including the extension of the Collins-Warner Teacher Tax Credit on this important piece of legislation, and I invite all of my colleagues to join us in recognizing our teachers for a job well done.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Iowa.

Mr. GRASSLEY. Is our situation such that we are on the JOBS bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. We have a very important vote tomorrow. That vote is cloture to stop an effort to bring nongermane issues into and stall this bill.

I spoke this morning, spending a great deal of time explaining how the JOBS bill is a fully bipartisan bill built from the ground up in a bipartisan manner. We cannot get anything through the Senate that is not bipartisan. We can get a lot of things through the House of Representatives that are partisan but not through the Senate.

Now we are facing an attempt to defeat this bipartisan measure by injecting politically charged amendments into the JOBS bill regarding an issue that is not even dealt with in this bill. Somebody wants to write a law.

Why does the other side insist on amending this important bill for a matter that is not even the subject of this legislation? We need to focus on what is in this bill and what will be killed if we do not get cloture approval tomorrow.

We know the only way this bill can pass is by a ''yes'' vote tomorrow on stopping debate and moving to finality. But will the Democrats say no to cloture? Will they go on record opposing the provisions that are in this bill—very important provisions for creating jobs in America, preserving jobs in manufacturing, answers to concerns that the people of this body have expressed about outsourcing, about not enough manufacturing jobs being created?

If you look at this bill, you will find, then, that there is very important provisions for creating jobs that the other side is preparing to kill, so, in a sense, their vote tomorrow will be a vote contrary to what they have been complaining about for a long period of time about this recovery not providing enough jobs, and particularly about jobs going overseas.

This bill will prevent that. I do not understand why people would not vote to move a bill along that is going to solve a lot of the problems about our not creating enough jobs in manufacturing. If this bill does not move along, actually the situation is going to get worse, and we are going to lose jobs that we presently have in manufacturing.

So why would they be prepared to kill this bill? This bill will end $4 billion a year of tariffs put on U.S. exports by Europe. Those tariffs are already being imposed against U.S. exports of grain, timber, paper, and manufactured goods. We can end those tariffs now at 5 percent, growing 1 percent a month into the future. We can end them with this bill. But will the Democrats say no?

A vote against the JOBS bill is a vote in favor of that 5-percent tariff going up 1 percent a month into the future. And that goes up very fast, making our business, our American manufacturing uncompetitive.

The Congressional Budget Office says we have lost 3 million manufacturing jobs since the manufacturing downturn started 6 months before President Bush became President. This bill provides $75 billion of tax relief to our manufacturing sector to promote rehiring in U.S.-based manufacturing. But will the Democrats say no?

The Democrats claim they are worried about the scope of the proposed overtime regulations. The regulations are not even final yet. But how can you worry about overtime if you do not have a job in the first place? Shouldn't

we first worry about creating manufacturing jobs and take care of overtime on another bill instead of slowing this one up? Or will the Democrats say no?

The money from the FSC/ETI repeal gives a 3-percentage point tax rate cut on all income derived from manufacturing in the United States. It is not for manufacturing done offshore. We start this tax relief immediately.

This manufacturing rate cut relief applies to sole proprietors, partnerships, farmers, individuals, family businesses, multinational corporations, even foreign companies that set up manufacturing plants in the United States to manufacture here with American workers. This should keep the Government out of their pockets while they try to recover from the economic downturn. That is what this bill is all about: helping these manufacturing companies recover from the economic downturn. Now, will the Democrats say no to the opportunity to help American manufacturing?

This bill includes international tax reforms, most of which benefit American manufacturing, to keep it competitive in the global marketplace.

This bill also includes the Homeland Reinvestment Act, which has broad support in both the House and the Senate. It has both Republican and Democrat sponsors. But will the Democrats say no?

This bill extends the research and development tax credit through the end of 2005, something very necessary to keep our industry ahead of the curve, building for the next product, building for the next service, particularly in the technical areas. This is a domestic tax benefit that incentivizes research and development, translating into good, high-paying jobs for workers here in America, not across the ocean. But will the Democrats say no tomorrow on the cloture vote?

In addition, there are several additional provisions that are important to this bill. Senators BUNNING and STABENOW sought to accelerate the manufacturing deduction. This ensures that the tax relief and related economic benefits of the bill are provided more quickly to those hurt by the repeal of FSC/ETI.

The bill extends, for 2 years, tax provisions that expired in 2003, last year. Some of them already expired. Some of them are expiring this year. They need to be included because those incentives are very important to the prosperity of companies that rely upon these tax incentives. This would include items such as the work opportunity tax credit, helping young people, helping low-income people to get jobs, to get job training. It helps to move people from welfare to work because we have tax credits that do that.

Why would any Democrat vote against the extension of the welfare-to-work tax credits, moving people out of welfare, where they are assured a life of poverty, into the mainstream of America, the world of work where you have a chance to move up the economic ladder? Over here, in welfare, you never have a chance to move up. We have tax credits to help. Will the Democrats say no to these tax credits to help low-income people get into the world of work, to move above, to improve themselves, to get out of poverty?

There is a provision also in this bill on net operating losses that will accelerate tax relief to companies that need it to continue operations and recover from recent difficulties. The reason for doing that is they have some tax credits. They do not have income to write it off against. This gives them some benefit helping them to enhance their recovery.

We have enhanced depreciation provisions to help the ailing airline industry, the manufacture of airplanes—Boeing, in my State where avionics are made for airplanes, Rockwell Collins—because you cannot, under existing depreciation laws, get something into completion by this deadline because it takes so long to build an airplane. This will extend provisions that were meant to help industry a year ago if they got long timelines to get something finished.

There are new homestead provisions. This provides special assistance for businesses in counties that are losing population. This is rural economic development, providing incentives for newly constructed rural investment buildings, for starting or expanding a rural business in a rural high-outmigration county. Will the Democrats say no to that rural economic development?

This bill includes brownfields revitalization. The bill waives taxes for tax-exempt investors who invest in the cleanup and remediation of qualified brownfields sites. Will the Democrats say no to helping clean up the environment? Would that vote comport with the rhetoric you hear on the environment from the other side of the aisle?

Mortgage revenue bonds: This proposal would repeal the current rule that mortgage revenue bond payments received after the bond has been outstanding for 10 years must be used to pay off the bond, rather than issue new mortgages.

There are 70 Senate cosponsors to this bill. Would the Democrats justify voting no on cloture to kill a provision that 70 of their colleagues support?

We allow deductions for private mortgage insurance for people struggling to afford a home. Anyone planning to vote no on this one? Would they vote no on allowing the cost of mortgage insurance to be written off as one writes off interest on a mortgage? That is helping a lot of young people to get a home that they would not otherwise be able to afford. I know home ownership is the highest it has been in the history of our country. Maybe they are saying: We have enough Americans owning homes. Why help some other people this way? It is in this bill. If they vote no tomorrow, they are voting against helping those homeowners with their mortgage insurance costs.

This bill includes a tax credit to employers for wages paid to reservists who have been called to active duty. Would Democrats say no to the guardsmen and reservists who are defending our country, helping us win this war, by voting no tomorrow?

We have extended and enhanced the Liberty Zone bonds for rebuilding New York City. The two Senators from New York have talked to me about them. Are they going to vote no tomorrow and say no to the Liberty Zone bonds helping New York City at a time when Ground Zero begs for help? Will they tie up funding for the Liberty Zone in order to prove a political point for a Labor Department overtime regulation that has not yet been finalized? If it had been finalized, there is an opportunity for an expedited procedure for congressional veto of those very same regulations they don't want. This is not the last train out of the station. There are other opportunities to fight these battles and probably in a more appropriate way than a nongermane amendment on legislation that ought to pass, that is going to preserve and create jobs in manufacturing. Where are the priorities of the other side of the aisle?

We also have in this bill increased industrial development bond levels to spur economic development. We have bonds for rebuilding school infrastructure. We have included tribal bonds which apply the same rules to Native American tribes issuing tax exempt bonds to finance facilities on a Native American reservation that apply to tax exempt bonds that we allow State and local governments to use. Are Senators of the other party going to vote against the Native American Indian provisions of this bill?

We have a tribal new markets tax credit. This amendment would add $50 million annually in the new markets tax credit dedicated to community development entities serving Native American reservations, if there is a poverty rate of over 40 percent. Are they going to say no to helping those needy Americans?

We have included a Civil Rights Tax Fairness Act so when people have been harmed in violation of their civil rights, they can go to court and get justice. Do you know what happens when they get justice? We have some people paying income tax on what they pay their lawyers so when it is all said and done, a big settlement, sometimes the people who have been harmed get nothing because of the unfair taxation of that award. Are the Democrats going to say no to those people who have had their civil rights violated? They can't get justice in court. That doesn't sound like the other party, does it?

Is it worth killing off these important priorities over a regulatory issue that has already been voted on by the Senate? How many times do we have to express our view on something?

We also have in this bill a special dividends allocation rule that benefits agricultural cooperatives. We have other farm provisions that help cattlemen receive tax free treatment if they replace livestock with other farm property where there has been drought, flood, or other weather-related conditions within 2 years from the date the livestock has been sold. Last year we heard a lot from the other side of the aisle about not helping the farmers who have been hurt by drought. Here is an opportunity to help some people through tax problems they have as a result of something beyond the control of the family farmer. Are they not going to give those farmers an opportunity to have help?

We have a provision that allows payment under the National Health Service Corps loan repayment program to be exempt from tax. Every Senator here has rural America in their State. We are always saying there is not adequate health delivery services in some parts of our country in rural America. We set up the National Health Service Corps to provide services there. They still have a hard time getting adequate service, but we have provisions in here for additional incentives for people to serve rural America. I hear from my colleagues that we have to do something about health care in rural America. We have an opportunity tomorrow in this legislation to do something about it. Will the Democrats vote no tomorrow?

We have a proposal to allow the itemized deduction for unreimbursed vehicle use for rural letter carriers. Why does that come before us? Because every time you drive a quarter of a mile and you stop at a rural mailbox to leave mail, and then go on to the next farmer's box to leave mail, that vehicle has higher costs than if it was going down the road 60 miles an hour and never stopping. The Tax Code ought to reflect a little bit different business deduction for that automobile as opposed to a business vehicle that doesn't stop at every mailbox.

We have provisions in this bill to enhance broadband expensing provisions. We always hear from the other side that the quality of life in rural America can never be equal to that of cities if they don't have the same IT access. This gives that IT access. I hear Members of the other side of the aisle talk to me about broadband tax credits. We have an opportunity to do that now. Are they going to say no to what they have been asking me to do for the last 2 or 3 years?

We provide real infrastructure tax credits, the so-called short-line credits. This bill provides $500 million over 3 years in Federal tax credits to States for intercity passenger rail capital projects. Eligible intercity passenger rail projects include planning, track rehabilitation, upgrade, development and relocation, security and safety projects, passenger equipment acquisition, station improvement, intermodal facilities development, and environmental review and impact mitigation.

States may transfer credits directly to short-line and regional railroads. They are going to say no to that?

Finally—here is something for the New York Senators—the proposal makes $100 million in tax credits available to New York to be used on rail infrastructure projects in the New York Liberty Zone.

Will the Democrats say no? Will they vote against cloture tomorrow and thereby kill these measures? Will they do this over a proposed regulation which, as Senator KYL and Senator SESSIONS just explained, is being misrepresented and used as a political scare tactic?

All of these benefits are being held hostage because the other side is pushing a politically motivated vote on an issue that is not even in this bill.

The leadership on the other side doesn't really want to debate the substance of this bill. Sometimes I get that feeling. They would prefer to turn this bipartisan bill into a political football.

This is inexcusable because we have worked very hard throughout this process to make sure everyone's concerns, both Republican and Democrat, were incorporated into this bill. I related all of those. There is no reason this bill should not get almost unanimous support. In fact, it was voted out of committee 19 to 2. Now we have opposition from the other side. I don't understand.

Anyone who votes against cloture tomorrow is effectively voting against all of the items I just listed. This should not happen on a bill that is meant to create jobs in America, with an emphasis upon manufacturing jobs.

Several weeks ago, there was an article in the Washington Post quoting a Democratic tax aide—unidentified—saying, ''There's not a lot of incentives for us to figure out this problem.''

The Democratic aide went on to say that allowing the extraterritorial income controversy to fester would yield increased sanctions—increased tariffs—on American products going to Europe, which would benefit the Democrats in November.

That is a very appalling statement. I don't think that staff of either party are paid to think in terms of politics. They ought to be paid to think in terms of policy and, in the end, if they think about policy, they have good politics.

Efforts to delay this bipartisan bill with unrelated measures is a poor excuse. So let's get on with the business at hand and finish this bill. Vote on cloture tomorrow, approve cloture, have finality on the bill, and when we do all that, we are going to put a jobs creation bill ahead of partisan politics, put these important benefits I just listed ahead of some concern that we have about an administrative regulation that hasn't even been issued yet. Let's stop playing politics and put the Senate back to work and move the JOBS bill forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

TRIP TO THE MIDDLE EAST

Mr. LAUTENBERG. Mr. President, I wish to talk about a trip I took last week to the Middle East. I was privileged to travel with a group of colleagues to Israel, the Palestinian territories, Jordan, Syria, Iraq, Kuwait, and Qatar. I will discuss it in two parts.

One part is what we saw happening in Iraq and the apprehension, the concerns we all had with the confusion, the chaos that exists there, the continued loss of life among our troops, and the inability to cope with a relatively new form or a new mode of warfare where remote bombs are set off by people who are some distance away from the place of the explosion, seeing a target they particularly want to get to, and the prospect that will continue to be an ever-increasing part of the mechanism of war. It is so tough to fight against that kind of weaponry, that kind of a remote attack.

The people are courageous. They are dedicated. I had a chance to meet with some of our troops. I particularly met with a group from New Jersey. I got the same impression from all with whom I met. These are people who really want to do the right thing. They are not mercenaries. They are there because of the obligation they feel toward resurrecting or helping the revitalizing of Iraq and turning over to them their own responsibilities for governing.

Our people are young. Frankly, even though I served in World War II and was myself young—I was 18 when I enlisted—our military personnel today look different. They seem to be more educated. They seem to be more thoughtful. Their bravery is unquestioned. They are out there doing their duty even though there are risks all over the place which we saw in abundance.

We left Iraq about an hour before the explosion took place at the hotel. We were not at the hotel, but we were nearby. We were in the air when the bomb went off. It was simply, if I can say that, a replay of what happens every day there, whether it is Iraqis being killed or Americans being killed or coalition troops being killed. The death and the violence is ever present.

I believe we are on a path to try to make it right, but what we have to recognize is that we are not free to leave, even though there is a proposal that goes into place on July 1 for a governing council made up of Iraqis that will purportedly take over. I say ''purportedly'' not because I am disdainful of the effort—I am not at all—but for the lack of readiness for governing.

They need 73,000 policemen, for instance, and they have in the low twenties in uniform now. It is very hard to control the chaos, the turbulence, and the confrontations that

occur with such a small police force. It is going to take a long time, maybe a couple of years, to get the police force to the size they need. They also need an army.

What is the conclusion? The conclusion is we cannot leave there, and we have to face up to it. There are 130,000 troops coming in to replace existing personnel on the ground who have been there long enough to be rotated. Nobody believes we are going to be able to pack our bags on July 2 and start to go home. We are going to be there a long time, and I hope we will have the courage to face up to the funding necessary and put it in the budget and say what it is we are doing there.

We are adding to the total indebtedness of the country, but yet we hide it. We appropriated $166 billion thus far, and it looks as if we are going to have a supplemental request for $50 billion to $75 billion in the not too distant future, and it is on the side.

We have to support our people. You have no idea how disappointing it is when I talk to young people who are serving. I said: If you can be totally candid with me, tell me what your complaint is. Is it the accommodations? Is it where you live? Is it how you live? Is it the food you get? No, no, no.

One young man, a captain, said to me: Mr. Senator, I will tell you what bothers me. I see some of our coalition friends, people who are helping us in this quest of ours, who have the latest in bulletproof vests. The ones we have are not as good and they do not protect us as well as they should.

We have seen that in the papers, but here when you come face to face, you see the faces of people who are wearing those vests, who are trying to protect themselves while they do their duty, I can tell you this: Five Senators—all of us—were wearing the latest in flak gear. It was a sad commentary on where things are to hear them say they do not have it.

They point to their weapons. I think they were M–16s. I carried a Carbine when I was in the Army, so that is not a familiar weapon to me. They said the coalition people had better, newer rifles, lighter, more efficient. Why should that happen? They needed trucks and armored vehicles, and they did not have them. Why should that happen? When we look in the paper, just yesterday, and see the problem is in the transportation of the materials to Iraq, that the manufacture of these products has taken place but we can't get the materials there, it is very disappointing. I hope we will be able to do something to accelerate the pace of providing the protective gear and the equipment they need.

Today I want to discuss another part of the trip. The volatile situation in Israel—the Middle East altogether—was difficult to witness. We went to Israel and the other places I mentioned—the Palestinian territories, et cetera.

The other visit was taking place with the Prime Minister of Israel and a few people from his staff. Suddenly activity took place and people were running out and coming back with notes. The Prime Minister of Israel reported to us: We have just had a suicide bombing in Ashdod, which is a port community in Israel, and 10 people were killed and many more wounded.

I watched this man, who I have known over the years, deflate and age in years in just a few minutes, whipped by the knowledge that more of his citizens, innocent civilians, had been killed.

I volunteered the notion that he may want to adjourn the meeting and take care of the business he had to take care of, the duties he had to deal with. He said, no, as Prime Minister of the Jewish state, unfortunately, we learn to live with adversity and we must carry on, so we will carry on the meeting.

It was a painful thing to witness. It happens so frequently. We are in a state of shock when we hear it and see it, and I know the pain that must go through their community because it affects so many people. It is the dead, the injured, their friends, their families, their fellow workers, and those with whom they serve in the military. The pain is an excruciating whirlpool, it touches so many people. When we look at that, we say, what is it that permits this kind of slaughter of innocent people to take place?

Now we hear the shrieking about the assassination, we will call it that directly, of Sheikh Yassin, the man who invented Hamas and all the horrible deeds they carried out. This is after the third suicide bombing attack in Israel in the year 2004. The death toll now stands at 941 Israelis killed by terrorism since the start of the intifada in September of 2000.

Israel is a tiny country with a small population of 6.3 million people. To put the terrorist toll in perspective, if the United States were to suffer such a wave of terror attacks, over 50,000 Americans would be dead, almost the same number we lost over 10 years in Vietnam, 58,000. In Britain, it would have translated into approximately 9,000 fatalities. Imagine the impact that has in this single day when 10 people are killed from that attack. It is the equivalent of 500 people. If we had a killing in 1 day of 500 people by terrorists, we would be, as we were in Vietnam, in national mourning. These relative numbers underscore the impact of terrorism on the Israelis.

Israel has seen 130 attempted suicide bombings since September 2000. In the latest incident, 10 Israelis lost their lives, leaving behind dozens of children, grandchildren, spouses, parents and, as I said, friends and workers and those with whom they served in the military.

As I looked at the pictures in the papers of the 10 victims, most of whom were under 40, with families to support, I asked myself: What could it take for 2 young Palestinian kids, 17 years old, to be capable of perpetrating such atrocities against innocents?

One of the main reasons that takes place, in my view, is the Palestinian Authority Chairman Yasser Arafat has not only failed to rein in the terrorists but he is actively supporting a culture that incites young people to commit such acts. Arafat's Al Aqsa Martyrs Brigade claimed responsibility for the attack, along with Hamas. They take pleasure in this. Large crowds of Palestinians in the West Bank celebrated the attacks by honking their car horns, firing guns into the air and distributing candy to passersby for the killing of innocent people. The Palestinian Authority did nothing to stop these celebrations.

By the way, I have never heard of a celebration taking place, with all the violence that has been visited upon Israel, when they killed some Palestinians, never. As a matter of fact, there are times when soldiers in the Israeli army have refused to serve, saying their conscience disturbed them such they did not want to serve in those territories.

There have been many times when Israeli civilians or soldiers have been punished for attacks on Palestinians within their community. That is the difference in the cultures. One culture celebrates death and destruction, and the other mourns the victims on both sides of the boundary.

The reality is Yasser Arafat has instituted a deliberate policy of preaching and encouraging hate. Books they have in the school system teach them to hate the Israelis, to hate the Jews. For example, on March 13, 2004, Palestinian Authority-controlled television carried a speech by a sheikh in Gaza in which he said the Jews are the sons of apes and pigs and the extremists and terrorists who deserve death while we deserve life since we have a just cause.

I was on a TV program one day with a representative of the Arab organization here, and I said this violence has to stop; you have to come to some peaceful arrangement, some detente. He said: Not as long as the occupation continues.

He was an American of Palestinian heritage. So I said, well, would you say Native Americans living in America, people who had their country wrested from them in the late 1600s, early 1700s, would have the justification to strap bombs on their backs and go into the Federal Reserve Bank or the Supreme Court or places such as that and blow them up and say this is an occupation?

The Presiding Officer is a man of learning and experience, and I would ask: How many times have borders moved as a result of combat, as a result of war? It has happened many times. Those adjustments remain in many instances.

When we look at the reason for this killing, instead of saying stop it, once and for all, Arafat should speak out and say, stop the killing. We should

not lend him a hand of help, not a nickel's worth of assistance or anything else until he gives up that post and turns it over to people.

We met with the finance minister from the Palestinian Authority. He was a reasonable individual, wanting to make peace, wanting to stop the violence. The Palestinians cry as much as the Israelis cry when they lose a son or a daughter. The false belief they are going to some kind of martyrdom does not relieve them of the sadness of the loss of a family member.

We learned something else. There was an emergency meeting in Yasser Arafat's compound in Ramallah following the suicide bombing at the Ashdod port. Arafat refused his cabinet's call to use Palestinian security forces against terror organizations.

Palestinian cabinet ministers, such as the interior minister and the commander of the national security forces, pleaded with him to act against Hamas and Fatah's military wing, the Al Aqsa Martyrs Brigade. He refused to intervene. He is an accomplice in these killings no matter how they try to deny it. He provides no useful service to his ''leadership in the Palestinian community.'' He incites them to violence.

We went to Syria, and all President Assad wanted to talk about was the Israeli-Palestinian conflict. There are borders, 600-mile borders. He couldn't stop the people from crossing the border. We know who is crossing the border. He didn't know. He said there were people in innocent travel, business, recreation, family, et cetera. Meanwhile, terrorists are flooding into Iraq, many of them coming across the Syrian border.

That is what happens there. It is the corrupt leadership that has people believing the way out is to kill themselves and to kill Israelis and other innocent people. We don't know what the reach is. To the train bombing in Spain or other acts of violence in other parts of the world? But this notion that violence is an acceptable form of behavior is outrageous, and Arafat is allowing Palestinian society to be undermined and destroyed by a reign of terror. He has chosen to allow terrorism to flourish. Because of Arafat's lack of action, not only are Israeli children being orphaned and Israeli society terrorized, but also the Palestinian people's dream of living in a secure, free, and vibrant state is being destroyed.

I still believe all roads and roadmaps lead to a two-state solution. When I was in the region last week, I urged the Israeli leadership to try to meet and resume direct contacts with Palestinian officials in order to try to make progress toward a settlement. I told Prime Minister Sharon that his plan to withdraw from the Gaza Strip was a good start. Such a withdrawal, however, must be done in coordination with Palestinian and international officials to ensure there is a viable infrastructure to govern the people and to prevent Hamas and the Islamic Jihad from overrunning the Gaza Strip.

I also encouraged the Israeli Prime Minister to work with the international community to resume progress on the roadmap and to begin looking at how to withdraw remote Jewish settlements from the West Bank as well as from the Gaza Strip. Yet any real progress on the roadmap depends on the speedy emergence of new Palestinian leaders who realize that a healthy Palestinian state cannot be built on a foundation of terror and violence. On this point, there should be no concessions, no flexibility, no turning a blind eye.

Today we see pictures of angry mobs in the Arab world protesting the death of Sheik Yassin, the head of Hamas. The Israeli military's strategy of targeted assassinations is questionable and controversial. But I have to ask my colleagues, if someone is standing in your kid's schoolyard with a gun in his hand, what would you do? Would you meet with him and confer about what he ought to do or would you take advantage of the opportunity of the moment and abolish the threat? Do you eliminate the threat immediately or abide by the Marquis of Queensbury rules when dealing with terrorists? These are difficult questions, but given the lack of real leadership on the Palestinian side, the Israelis are trying to find the best way to protect their population from terror.

Peace in the Middle East begins with the removal of Arafat from power. It is a step the Palestinians must take if they want to move their nation forward. Peace will not be obtained through terror but only through peaceful negotiation. It is something Yasser Arafat clearly does not understand, but we have to help him understand. We can't give him any other help of any kind. As a matter of fact, whatever sanctions we can put on him and his corrupt government, we ought to do it.

It is very painful to witness, I understand, for those who are engaged in the innocent pursuit of life, to suddenly come face to face with someone who has been encouraged to give up his life. What kind of false notion is this, that somehow or other you get rewarded for losing a son or daughter and get a financial reward? I think what we ought to do is try to trace those financial rewards to the countries that offer them. Maybe friends like Saudi Arabia ought to step up and do their share to not permit this to happen, to not permit these militant groups to exist in their society.

I can tell you one thing. After our visit there, I am more convinced than ever that we must protect Israel no matter what we have to do to see that she survives. It is not because we just love those people. It is because we love the American people. It is because we want to protect America's interests. It is because we don't want to have American troops in the middle of that mad world, with corrupt governments who siphon off the wealth of their countries while their people in those communities starve and have no opportunity for themselves.

That is the interest I see we have in a strong Israel. It is not just the informational exchange. That is important. But it is the fact of Israel sitting there as a reminder to those corrupt countries, and it is an extension of democracy. It is not an extension of the United States. It is not the 51st State. It is an extension of democracy, and it shows what people can do when they can take a malaria-ridden nation and change it into a thriving agricultural and scientific nation. That is the example that has to be set and that is the one that has to be understood and we ought not to equivocate and say there is violence on both sides. That is the wrong message. You can't say that because that only encourages terrorism. It says violence on one side begets violence on the other side.

I said it before. I have never heard an Israeli, and I know many, nor have I ever seen the country, celebrate the death of children on the other side of the boundary. I have never seen them celebrate when men, women, and children who are innocent are killed—never.

But in the Palestinian community they celebrate by shooting off guns and handing out candy to kids and parading, happy that they have taken someone out of the family, a child, a sister or brother, mother, father—outrageous. Outrageous.

We have to stand steadfast in our support of Israel. We have to insist that Arafat step aside and provide them the right leadership, and there is leadership there but they don't have a chance to operate because he robs them of that opportunity.

It was a wonderful opportunity we had to see what was taking place there and be able to report back and shape our thinking based on the need.

Support our troops. Commend them for what it is that they do in accordance with the tenets of democracy and ultimately decency. We can argue whether we should be there or we should not be there, but we are there and we have to support those people as fully as we can, everyone who wears a uniform. We have to be proud of them. They do their duty splendidly.

With those thoughts, Mr. President, I yield the floor and suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate

now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

ASBESTOS LEGISLATION

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the bill, S. 1125, which provides for relief on the serious problem facing America involving asbestos.

I have had a number of inquiries on the status of the bill. I recently received a comprehensive memorandum by former Chief Judge Edward R. Becker for the Court of Appeals for the Third Circuit. I thought it would be useful to comment as to the status of this bill at the present time.

Asbestos litigation has caused some 67 bankruptcies in America, and the injuries from asbestos have left workers without compensation and suffering from mesothelioma, asbestosis, and other very serious ailments. In July, the Judiciary Committee passed out S. 1125. I voted for it. It was a vote pretty much along party lines. We passed it out of committee so we could take the next step looking toward floor action.

But the bill required a great deal of evaluation, analysis, and significant changes. I contacted senior Circuit Judge Edward R. Becker, who had been chief judge of the Court of Appeals for the Third Circuit until May 5 of last year. Since he had been involved in major asbestos litigation, I thought he would have special insights into this issue and this problem. He is one of America's leading Federal jurists, if not the leading Federal jurist. He received the Devitt award last year as the author of many scholarly opinions. He was a district judge from 1970 to 1982. He has been on the Court of Appeals for the Third Circuit from 1982 until the present time.

I think bringing in a Federal jurist to help on a legislative matter is unprecedented. During the month of August, when the Senate was in recess, 2 full days were spent in Judge Becker's chambers in Philadelphia, where I attended, and we had representatives from the manufacturers of asbestos; insurance companies, which insured asbestos manufacturers; reinsurers, who reinsured the insurers; representatives of the AFL–CIO, representing the injured parties; and trial lawyers, also representing the injured parties.

Since those two meetings in August, there have been a series of additional meetings in Washington in my office, where Judge Becker has attended. One meeting involved Majority Leader BILL FRIST. Another meeting involved representatives of the Department of Labor. In total, there have been some 15 meetings. We are scheduled to have our 16th one on Thursday of this week.

The bill—the product of very inventive thinking by the chairman of the committee, Senator HATCH—has created a fund, funded initially at $104 billion. It has subsequently been increased. The thrust was to create a schedule of payments very much like workers' compensation, where there would not have to be proof of causality, proof of liability; but once the damages were established coming from asbestos, the payments would follow this schedule.

The situation has been compounded, as I say, by the bankruptcy proceedings and the reorganization of some 67 companies. The law has been that workers, or others exposed to asbestos, could be compensated for the full range of their potential injuries even if they had not yet sustained those injuries—a result which I submit does not make good sense in a context where many people who have serious injuries, mesothelioma, asbestosis, and others who are not being compensated at all. This seeks to correct those inequities.

We have wrestled with a great many of the problems, and we have solved a great many issues. Enormous progress has been made on others. We have had the cooperation of many Senators. Senator HATCH has had representatives at the meeting. Senator LEAHY, the ranking Democrat, has had representatives there. The majority leader, Senator FRIST, and the Democratic leader, Senator DASCHLE, have had representatives there. Senators DODD, CARPER, FEINSTEIN and NELSON have also participated with representatives present. Judge Becker prepared a very comprehensive memorandum, dated March 16, outlining the evaluation of the current status of ongoing efforts to achieve a consensus among the manufacturers and insurers, the trial lawyers, and the AFL–CIO.

It is my view that this is the kind of bill that cannot be enacted unless there is a consensus. Unless there is agreement among all of the stakeholders or parties, I think we will not be able to enact this important legislation. If this legislation were to be enacted, it would be an enormous stimulus to the economy and would take these many companies that are in bankruptcy proceedings out of those proceedings so that they become again productive.

Many of those companies are in my home State of Pennsylvania and many across the country.

That is a very brief summary as to where we stand. We will be back at work on Thursday. We are determined to solve these problems. I am optimistic they can be solved. The majority leader has stated his intention to bring this matter to the floor for a vote some time next month. I think we are very close to knowing whether we can resolve these issues, and we will continue to try to do that.

I repeat, I am optimistic we can resolve the issues. The stakes are very high. We have many injured workers who are relying upon some answer to their just compensation. The companies are looking for an answer, and the economy needs to be stimulated and also looks for an answer.

I ask unanimous consent that the memorandum from Senior Chief Judge Edward R. Becker, dated March 16, 2004, be printed in the RECORD.

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

MEMORANDUM

Date: March 16, 2004.
To: Senator Arlen Specter.
From: Judge Edward R. Becker.
Re: Pending Asbestos Legislation S. 1125 (Fairness in Asbestos Injury Resolution Act) (Status Report on Progress of our Mediation).

You have asked that I memorialize my evaluation of the current status of our ongoing efforts to achieve a consensus among the manufacturers and other defendant companies, the insurers, the reinsurers, organized labor, and the trial lawyers, i.e., the stakeholders concerned with S. 1125, so as to facilitate consideration of the legislation by the Senate and make possible its ultimate passage in a form satisfactory to the stakeholders and the Senate. This is an interim evaluation. I will be in better position to evaluate the situation after the weekly meeting this Thursday, March 18, 2004. That is because at our meeting of March 11, it was represented to us that draft legislative language with respect to a number of key issues, including ''start-up'' of the National Trust Fund, on which the stakeholders are apparently close to consensus, will be presented on March 18. The start-up consensus, as I understand it, is to have the insurers and manufacturers put up substantial sums on ''day one'' so that the Fund can be jumpstarted and exigent claims can come right into the Fund and not have to linger in the tort system. I have urged that language be drafted to authorize Bankruptcy Courts to approve immediate payments by the Tier 1 (Chapter XI) companies into the Trust Fund. I will give you a follow-up evaluation after the March 18 meeting.

As you know we have made enormous progress over the last few months on quite a number of issues, and already have a clean consensus draft of a comprehensive administrative structure for processing claims which, subject to review by Senate Legislative Counsel, can go right into the bill. Based on representations at recent meetings, I believe that we can expect (consensus) bill language in the next week or two, tying up the few loose ends on the administrative structure, particularly the statute of limitations issue and the definition of exigent claims. The issue of limits on attorney's fees will also have to be resolved, but I think that is do-able. I also expect very shortly consensus bill language covering non-discrimination by health insurers with respect to coverage against workers receiving benefits under S. 1125; and engrafting into S. 1125 Health Insurance Portability & Accountability Act (HIPAA) presumptions regarding exposure criteria; i.e., rebuttable presumptions concerning the extent to which employment (a) in specific industries, (b) in specific occupations within those industries, and/or (c) during specific time periods constitutes ''significant occupational exposure.''

There are quite a number of other issues on which the stakeholders represent that they are close to agreement including:

1. Values as a range
2. Timing of payments
3. Exclusivity for all asbestos related claims (silica, etc.)
4. The anatomy of medical monitoring
5. Collusive default judgment

6. The smoking matrix.

These matters can, I believe, be put into consensus bill form quickly, and I will seek to establish a timetable at Thursday's meeting.

Another key area on which the parties seem close to agreement is the status of settlements and pending cases. The views that you expressed—that a case that has been settled should be out of the National Trust—seemed to be accepted by all. There were two caveats. One related to partial settlements—with some but not all potential defendants, but I believe that a formula can be worked out to deal with that situation. The second related to generalized agreements between plaintiffs' counsel with large inventory of cases and insurance carriers as to the terms of settlement when the cases become ripe. I do not believe that such ''settlements'' should qualify. I believe that other pending cases should go into the S. 1125 National Trust. I note, however, that there are 300,000 pending cases, and unless start-up can be quite effective Labor would prefer that they be processed in the tort system. I still believe that the pending claim issue is resolvable.

Another critical area where much progress has been made is ''sunset.'' Based on representations at last week's meeting, I believe that we are in striking distance of an agreement on sunset, including the timing of sunset; program review (so as to anticipate the need for sunset); and return to the tort system. There is some disagreement as to whether the return to the tort system should be in state or federal court. I understand that your position is that the return should be to federal court, so as to avoid the excesses of certain state jurisdictions. I agree, and believe that the stakeholders, with the exception of the trial lawyers, will be satisfied with that result. Another sunset-related issue that is under discussion and needs resolution is whether, in the event of sunset, the Tier 1 companies (those presently in Chapter XI) go back to the Bankruptcy Court, so as to assure that funds dedicated to Bankruptcy not be dispersed (disbursed) at large. I believe that issue too to be capable of early resolution.

In our recent meeting with high officials of the railroad industry and the rail unions, we discussed in depth the treatment of rail workers with asbestos disease under S. 1125. It was the position of the rail unions that the preemption by S. 1125 of the right of rail workers to file claims under the Federal Employers Liability Act (FELA) is unfair because non-rail workers maintain their full rights to seek workers' compensation from their employers for asbestos related diseases. However, our discussion revealed that the supposed discrimination was largely illusory because 95% of the rail workers with asbestos disease are retired and would have no traditional workers' compensation claims. It was acknowledged by all that the scheme of S. 1125 does leave non-retired rail workers modestly worse off than their non-rail counterparts, and we charged the stakeholders with coming up with a formula that would create parity. We are awaiting the results of their deliberations. If they do not reach agreement, the Senate could settle it.

The insurers and reinsurers are struggling to come up with an allocation formula that would obviate the need for an Asbestos Insurer's Commission (appointed by the President). If they cannot, the Commission can remain in the bill (as a kind of ''club''—for S. 1125 already provides that if an allocation formula is agreed to by all participants in each insurer group and approved by the Commission and the House-Senate Judiciary Committees, the Commission will terminate. Section 212(2). I have entreated the stakeholders to work on a redraft on the Asbestos Insurer's Commission language, §219 et seq., which is presently cumbersome, and they have agreed to do so. At the very least, the requirement of 100% agreement seems too high. I note that the creation of a Commission is not a matter of great urgency because it is anticipated that the start-up payment of both the insurers and reinsurers will be very substantial, postponing the need for a Commission decision on allocation. We also discussed last week mechanisms for assuring the contributions (and collecting of contributions) from offshore reinsurers. A number of potential statutory provisions were discussed, and I think that this aspect of the matter can be resolved.

We had a good deal of discussion last week about what to do with pending bankruptcies. I expressed the view, based upon a conversation that morning with the bankruptcy judge who is handing most of the asbestos bankruptcy cases, that it will be quite some time, at least a year and probably a good deal longer, before the major bankruptcies can be resolved; even if plans are agreed upon and are confirmed, the insurers will appeal. Consequently, I urged that the pending bankruptcies be folded into the National Trust. The Tier 1 (Chapter XI) companies are liable under S. 1125 for roughly 20% of the Trust funding, so that their participation in the National Trust is essential. Additionally, it appears that, with fast start up, the claimants will receive compensation from the Trust Fund much more quickly then they would from the bankruptcy trusts. I believe that the stakeholders are comfortable with this view. Drafting is simple.

It appears that Labor feels that the Tier 1 companies should pay more than S. 1125 provides, i.e. what they would pay on bankruptcy. The Tier 1 companies, however, point out that they will already pay a significantly greater percentage then the non-bankrupt companies, and further argue that any effort to make them pay into the Trust Fund the amount they might have to pay in bankruptcy is not sound, because: (1) in most cases these amounts are at present speculative (usually agreed to by only one class of creditors), and, at all events, subject to approval of the Bankruptcy Court (in one case the Court disapproved); (2) the deal under S. 1125 is different because in bankruptcy they are forever discharged whereas under S. 1125 they may be back in the tort system; and (3) companies such as Armstrong would be dealt a body blow by such a provision. Since the increment is at most $1 billion, I do not think that this is a ''deal breaker.''

I turn now to the few remaining issues. Medical screening and education for high risk workers must be resolved. I do not think that one is too tough. Some technical bankruptcy issues such as the problematic floating Chapter XI lien and some points raised by the Bankruptcy Administration Division of the Administrative Office of the United States Courts must be resolved. These are just drafting problems. There are, however, three critical issues remaining, the second and third of which will make or break the bill, and they are related.

The first is subrogation of workers' compensation payments (health insurer subrogation is apparently not a problem). Labor firmly believes there should be no subrogation; it represents that no similar federal program provides for it. The insurers and business think there should be subrogation to avoid ''double dipping.'' One major manufacturer represented at the talks did not see failure to provide for workers comp subrogation as a problem, but others thought that the failure to mention subrogation in the bill would alter future behavior by encouraging more comp claims. We charged the stakeholders with ascertaining the dollar amounts involved. I suspect that they are not as great as imagined, especially in view of the number of workers with asbestos disease who are retired. These appears to be a will to work this out.

The second issue is ''transparency''—the need to assure Labor and the claimants that the funding formula (for insurers and especially manufacturers and other defendants) will yield the sums projected by the bill's sponsors. Labor maintains that on the present record there is no way to know this. Business concedes that there is no extant list of the companies who will be in the various tiers, and that there will not be one. The companies acknowledge that they must come up with a solution to the transparency problem, whether it is joint or several liability, or guarantees, or surcharges, or something else, or there can be no consensus. They have promised to come up with something.

The final—and most difficult issue—is the funding level. Labor claims that the projected $114 billion is grossly inadequate to pay the needed compensation to the injured workers. This matter is well beyond my portfolio. I believe that Labor must come down considerably from the Leahy-Kennedy values, and that business must ''sweeten'' considerably the Frist values. If all the other issues can be worked out, perhaps the Senate leadership can prevail on the stakeholders to reach agreement on the projected dollars.

One final comment. I cannot praise too highly the representatives of the stakeholders who have participated in our dialogue. They are working assiduously, constantly (two or three meetings per week), and, in my view, earnestly, and in a spirit of cooperation and in good faith to try to reach consensus. Senate staff has also been of very great help. I believe that if we can keep up the current pace for another four weeks, five at the most, we can get the job done. I may be wrong. The dollars may be the final stumbling bloc, However, I am prepared to give it my ''best shot,'' and to come to your office every week to work with you to keep the ball rolling.

TRIBUTE TO HANH THAI DUONG

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Hanh Thai Duong, a woman who epitomizes the American dream. Duong is the owner of a restaurant in my hometown of Louisville, KY, The Lemongrass Café.

Duong's journey from Vietnam to America is a miraculous one. In 1979, when she was only 10 years old, the Vietnamese government told her family that they would be able to leave Vietnam because of her father's Chinese ancestry, but only if they gave up all of their possessions and paid a sum in gold to the Vietnamese government. They decided the trip would be worth the risk, so they left everything behind and boarded a fishing boat that took them to a new life in Hong Kong.

A year later, with the help of a relative in Louisville and a number of Catholic charities, Duong and her family left Hong Kong for Kentucky. Duong's unwavering determination and a belief in the importance of an education, helped her work her way through the University of Louisville and earn a degree in finance and international business.

After her parents retired, Duong followed in their footsteps and opened her own restaurant, The Lemongrass Café;, bringing a taste of her native land to her new home. I ask my colleagues in the Senate to recognize and pay tribute to this remarkable woman.

Mr. President, I ask unanimous consent that the article, ''Restaurant a testament to Vietnamese family's drive'' from The Courier-Journal, be printed in the RECORD.

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

[From the Louisville Courier-Journal, Feb. 22, 2004]

RESTAURANT A TESTAMENT TO VIETNAMESE FAMILY'S DRIVE

(By Byron Crawford)

The Lemongrass Cafe in Louisville's Highlands neighborhood is more than a quaint oasis for Thai, Vietnamese and Chinese cuisine. It is a monument to one Vietnamese family's appetite for freedom and opportunity.

The cafe's proprietor, Hanh Thai Duong, 34, was 10 years old in 1979 when the Vietnamese government told her parents that because of her father's Chinese ancestry the family would be allowed to leave Vietnam—if they gave up all their possessions and paid the government a sum in gold.

''You really leave empty-handed, but my mom and dad were thinking for a better future for their children,'' Duong said. ''My parents always said that the United States was the land of opportunity. We left on a fishing boat for Hong Kong.''

Such voyages were treacherous. The boats were small and often unsafe.

The trips sometimes took weeks. Twenty to 30 passengers jammed into tight quarters and often went days without food. Pirates roamed the South China Sea, sometimes boarding the fishing vessels, killing, raping and taking women and children captives.

''We were lucky. It only took us four or five days to reach Hong Kong, but my aunt and her twins did not get to Hong Kong . . . for like a month or so, and one of the twins died of hunger and they ended up burying her out at sea,'' Duong said. ''As soon as my aunt stepped on the ground in Hong Kong, she passed away, too.''

Duong's baby sister was badly burned in an accident soon after the fishing boat reached Hong Kong Harbor and was taken to the mainland for treatment. The family lost track of the child for months but finally found her in a refugee camp. Duong's mother, not having seen the baby for months, did not immediately recognize her.

Another of Duong's aunts, who then lived in Louisville, sponsored the family to immigrate in 1980, and they were flown to America by Catholic Charities, which they later repaid. Duong's father, Trung Thai, had owned a successful grocery-supply business in Vietnam, and her mother, Nga, was a good cook. They opened a small restaurant from which they have since retired.

Duong married at an early age but was determined to get an education, and she worked her way through the University of Louisville to earn a degree in finance and international business. She and her husband, Edward Duong—who had twice been captured while trying to leave Vietnam in violation of government orders—later lived in New York City. But they soon decided that they preferred Louisville, where Edward Duong now works at Ford's Kentucky Truck Plant.

Hanh Duong's older brother and younger sister both earned degrees from UofL and are working in business. Another sister owns a nail salon and her youngest sister is working her way through college.

''You think about your parents' sacrifice for you and you don't want to fail,'' she said. ''You don't take things for granted and you don't give up easily.''

Duong has forgotten much of her early life in Vietnam, but a few vivid memories remain: one of her parents running with her for shelter as bombs exploded nearby, and her mother being wounded by a stray bullet near their home in Saigon (now known as Ho Chi Minh City).

Today, Duong works hard in the Lemongrass Cafe, on Bardstown Road to make happier memories for her children—a daughter, Cheryl, 17, a senior at Male High School and a Governor's Scholar who will enter the University of Kentucky next fall, and a son, Nick, 9, a student at Greathouse/Shryock Traditional Elementary School. Many of their grandmother's favorite recipes are helping to lure customers to their mother's cafe.

''Other than the delicious food, I guess it was just the simplicity of Lemongrass and the personality of Hanh that I like about the place,'' said Jeannie Treitz, a frequent customer.

A few years ago, Hanh said, she took her children to Vietnam to show them the country their parents and grandparents had fled.

''They were raised here and they don't know how people have to struggle in Vietnam,'' she said. ''I took them back so they could understand that they have bundles of opportunities here, and that they should work hard and never give up on anything.''

RFIDS AND THE DAWNING MICRO MONITORING REVOLUTION

Mr. LEAHY. Mr. President, today I outlined some of the privacy challenges we will soon face as new micro monitoring technologies begin to proliferate in our society. I spoke in particular about breakthroughs in Radio Frequency Identification, also known as RFID.

My remarks were offered at Georgetown University Law Center, during a conference on the legal and technological challenges of video surveillance. Micro monitoring is a subject that deserves the attention of the Senate and of the American people, and I ask unanimous consent the text of my address be printed in the RECORD in the interest of advancing this discussion.

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

THE DAWN OF MICRO MONITORING: IT'S PROMISE, AND ITS CHALLENGES TO PRIVACY AND SECURITY

In our post-9/11 world, technology often has been our crucial but silent partner in helping us to ramp up our law enforcement and national security capabilities. We in this city are profoundly aware of the new risks we face. But we also need to do it right. The public does not want false assurances, nor do they want to be unduly alarmed. What the American people want is to actually be safer. And we still have a way to go in accomplishing that.

TENSION BETWEEN LIBERTY AND SECURITY

In our constitutional system there is always tension between liberty and security and never more so than since September 11th. One of the difficult challenges we face is to strike the right midpoint. Our constitutional checks and balances are intended to help us do that.

The video technologies you are discussing today offer tools that are better, faster and smarter, on scales of magnitude that are unprecedented. As an advocate of emerging technologies who also has a keen interest in them, I watch these breakthroughs with great interest.

I have sought to find ways to encourage the commercial sector to create new products and opportunities, and I have promoted use of new technologies by law enforcement agencies, while also protecting consumer privacy and constitutional freedoms. That was the balance I sought to strike in my work on CALEA and in other legislation that blends law enforcement's needs, the needs of our robust technology sector, and the privacy interests of the American people. The hands-off approach to the Internet that I have favored is another example, and right now I am working with others to extend the Internet tax moratorium, to keep the Internet free from discriminatory and multiple state and local taxes.

ON THE CUSP OF A MICRO-MONITORING REVOLUTION

The marriage of information-gathering technology with information storing technology, manipulated in increasingly sophisticated databases, is beginning to produce the defining privacy challenge of the information age. Modern databases, networks and the Internet allow us to easily collect, store, distribute and combine video, audio and other digital trails of our daily transactions. We are on the verge of a revolution in micro-monitoring the capability for the highly detailed, largely automatic, widespread surveillance of our daily lives.

RFIDS

And one of the most dramatic and dazzling new challenges we all will be facing soon is the emergence of a relatively new, surveillance-related technology called radio frequency identification—R–F–I–D for short.

RFID tags are tiny computer chips that can be attached to physical items in order to provide identification and tracking by radio. Their potential invasiveness is obvious from their size, which already is surprisingly small. And they will only get smaller.

In their basic function, RFID chips are like barcodes, which by now are ubiquitous in our stores and offices and crime labs and manufacturing plants.

BARCODES ON STEROIDS

But RFID chips are like supercharged barcodes—barcodes on steroids, if you will. They are so small they can be tagged onto almost any object. They do not have to be in open view; RFID receivers just have to be within the vicinity—at a security checkpoint, in a doorway, inside a mailbox, atop a traffic light. And RFID chips can carry a lot more information than barcodes. Some versions are recordable so that they can carry along the object's entire history.

RFID chips are more powerful than today's video surveillance technology. RFIDs are more reliable, they are 100 percent automatic, and they are likely to become more pervasive because they are significantly less expensive, and there are many business advantages to using them. RFIDs seem poised to become the catalyst that will launch the age of micro-monitoring.

I have followed RFID technology for some time and have welcomed its potential for many constructive uses. I have supported the use of RFIDs in a Vermont pilot program for tracking cattle to curtail outbreaks, like mad cow disease, and our Vermont program

is now being emulated for a national tracking system. RFID technology may also help thwart prescription drug counterfeiting, a use the FDA encouraged in a recent report. Leading retailers like Wal-Mart and Target—as well as the Department of Defense—are requiring its use by suppliers for inventory control. Fifty million pets around the world have embedded RFID chips. Of course, many of us already have experience with simpler versions of the technology in ''smart tags'' at toll booths and ''speed passes'' at gas stations.

But this is just the beginning. RFID technology is on the brink of widespread applications in manufacturing, distribution, retail, healthcare, safety, security, law enforcement, intellectual property protection and many other areas, including mundane applications like keeping track of personal possessions. Some visionaries imagine, quote, ''an internet of objects''—a world in which billions of objects will report their location, identity, and history over wireless connections. Those days of long hunts around the house for lost keys and remote controls might be a frustration of the past.

These all raise exciting possibilities, but they also raise potentially troubling tangents. While it may be a good idea for a retailer to use RFID chips to manage its inventory, we would not want a retailer to put those tags on goods for sale without consumers' knowledge, without knowing how to deactivate them, and without knowing what information will be collected and how it will be used. While we might want the Pentagon to be able to manage its supplies with RFID tags, we would not want an al Qaeda operative to find out about our resources by simply using a hidden RFID scanner in a war situation.

DRAWING LINES

Of course these are just some of the foreseeable possibilities, and a lot depends on enhancements in the technology, reductions in costs, and developments in voluntary standard-setting, systems and infrastructure to manage RFID-collected information. But the RFID train is beginning to leave the station, and now is the right time to begin a national discussion about where, if at all, any lines will be drawn to protect privacy rights.

The need to draw some lines is already becoming clear. Recent reports revealed clandestine tests at a Wal-Mart store where RFID tags were inserted in packages of Max Factor lipsticks, with RFID scanners hidden on nearby shelves. The radio signals triggered nearby surveillance cameras to allow researchers 750 miles away to watch those consumers in action. A similar test occurred with Gillette razors at another Wal-Mart store.

These excesses suggest that Congress may need to step in at some point. When privacy intrusions reach the point of behavior that is absurdly out of bounds, we find ourselves having to deal with such issues as the ''Video Voyeurism Prevention Act,'' a bill now before Congress that would ban the use of camera to spy in bathrooms and up women's skirts, a practice that by now has even been given a name, ''upskirting,'' which I'm sure is as new to you as it is to most of us in Congress.

Other powerful new technologies are on the horizon, like sensor technology and nanotechnology. All the more reason to think about these issues broadly and to establish guiding principles serving the twin goals of fostering useful technologies while keeping them from overtaking our civil liberties.

With RFID technology as with many other surveillance technologies, we need to consider how it will be used, and will it be effective. What information will it gather, and how long will that data be kept? Who will have access to those data banks, and under what checks-and-balances? Will the public have appropriate notice, opportunity to consent and due process in the case mistakes are made? How will the data be secured from theft, negligence and abuse, and how will accuracy be ensured? In what cases should law enforcement agencies be able to use this information, and what safeguards should apply? There should be a general presumption that Americans can know when their personal information is collected, and to see, check and correct any errors.

These are all questions we need to consider, and it is entirely possible that Congress may decide that enacting general parameters would be constructive. It is important that we let RFID technology reach its potential without unnecessary constraints. But it is equally important that we ensure protections against privacy invasions and other abuses. Technology may also help with the answers—for example, ''blockers'' that deactivate RFID tags, and software that thwarts spyware.

BEGINNING A NATIONAL DIALOGUE

There is no downside to a public dialogue about these issues, but there are many dangers in waiting too long to start. We need clear communication about the goals, plans and uses of the technology, so that we can think in advance about the best ways to encourage innovation, while conserving the public's right to privacy.

We have seen this time and time again where a potentially good approach is hampered because of lack of communication with Congress, the public and lack of adequate consideration for privacy and civil liberties.

Take for example the so-called CAPPS II program. No doubt in a post-9/11 world, we should have an effective airline screening system. But the Administration quietly put this program together, collected passengers' information without their knowledge and piloted this program without communicating with us and before privacy protections were in place. The result was a recent GAO analysis that showed pervasive problems in the screening program and admissions that we are now set back in our efforts to create an effective screening system.

As another example, the Administration recently funded the MATRIX program to provide law enforcement access to state government and commercial databases. This was potentially a useful crime-fighting tool. But there was insufficient information about the program and about potentially intrusive data mining capabilities, and there were unaddressed concerns about privacy protections. Now 11 out of 16 states participating in the program have pulled out—many, citing privacy concerns—thus hampering the effectiveness of the information sharing program. Again, had some of these issues been vetted in advance, we may have been able to enhance law enforcement intelligence.

Just recently, there were reports about the FBI's new Strategic Medical Intelligence program, in which doctors have been enlisted to report to the FBI ''any suspicious event,'' such as an unusual rash or a lost finger. The goal of preventing bio-terrorism is important. But there are many unanswered questions about the program's privacy protections and its ability to identify truly suspicious events and not unrelated personal medical situations. Hopefully, this program will not be hampered by lack of communication and oversight.

I have written oversight letters to the Justice Department and to the Department of Homeland Security on all of these issues and am waiting for their responses.

I want to make sure that mistakes like those are not repeated, especially with RFID technology, where there is so much potential value. That is why I asked to speak with you today, to begin the process of encouraging public dialogue in both the commercial and public sectors before the RFID genie is let fully out of its bottle.

This is a dialogue that should cut across the political spectrum, and it should include the possibility of constructive, bipartisan congressional hearings. The earlier we begin this discussion, the greater the prospects for success in reaching consensus on a set of guiding principles.

When several of us from both parties banded together years ago to found the Congressional Internet Caucus, we were united by our appreciation for what the Internet would do for our society. Years later, we remain united, we remain optimistic, and partisanship has never interfered in the Caucus's work.

That is the spirit in which I hope a discussion can now begin on micro-monitoring.

Thank you for your interest in these cutting-edge issues, and thanks for this opportunity to share some ideas with you.

BUDGET SCOREKEEPING REPORT

Mr. NICKLES. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under Section 308(b) and in aid of Section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the First Concurrent Resolution on the Budget for 1986.

This report shows the effects of congressional action on the 2004 budget through March 22, 2004. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 2004 Concurrent Resolution on the Budget, H. Con. Res. 95, as adjusted.

The estimates show that current level spending is above the budget resolution by $14.1 billion in budget authority and under the budget resolution by $222 million in outlays in 2004. Current level for revenues is $244 million below the budget resolution in 2004.

This is my first report for the second session of the 108th Congress.

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

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 23, 2004.

Hon. DON NICKLES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2004 budget and are current through March 22, 2004 (the last day that the Senate was in session before the recent recess). This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, as adjusted.

This is my first report for the second session of the 108th Congress.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosures.

TABLE 1.—SENATE CURRENT-LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF MARCH 22, 2004

[In billions of dollars]

	Budget resolution	Current level [1]	Current level over under (-) resolution
On-budget:			
Budget Authority	1,873.5	1,887.5	14.1
Outlays	1,897.0	1,896.8	−0.2
Revenues	1,331.0	1,330.8	−0.2
Off-budget:			
Social Security Outlays	380.4	380.4	0
Social Security Revenues	557.8	557.8	*

[1] Current level is the estimated effect on revenue and spending of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made.

Note.—* = less than $50 million.

Source: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE SENATE CURRENT-LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF MARCH 22, 2004

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues	(3)	(3)	1,330,756
Permanents and other spending legislation [1]	1,117,071	1,077,878	(3)
Appropriation legislation	1,152,537	1,183,200	(3)
Offsetting receipts	−368,484	−368,484	(3)
Total, enacted in previous sessions	1,901,124	1,892,594	1,330,756
Enacted this session:			
Authorizing Legislation:			
Surface Transportation Extension Act of 2004 (P.L. 108–202)	7,880	0	0
Social Security Protection Act of 2003 (P.L. 108–203)	685	685	0
Total, authorizing legislation	8,565	685	0
Entitlements and mandatories: Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs	−22,156	3,472	(3)
Total Current Level [1] [2]	1,887,533	1,896,751	1,330,756
Total Budget Resolution	1,873,459	1,896,973	1,331,000
Current Level Over Budget Resolution	14,074	(3)	(3)
Current Level Under Budget Resolution	(3)	222	244

[1] Per section 502 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the current level excludes $82,433 million in budget authority and $36,782 million in outlays from previously enacted bills.

[2] Excludes administrative expenses of the Social Security Administration, which are off-budget.

[3] Not applicable.

Note.—P.L. = Public Law: * = less than $500,000.

Source: Congressional Budget Office.

INTERNATIONAL WOMEN'S DAY

Mr. FEINGOLD. Mr. President, I rise today to commemorate International Women's Day, which is celebrated around the world on March 8. For nearly a century, women's groups worldwide have paused on this day to celebrate the achievements and contributions of women around the globe. This day is also an opportunity to reflect on the challenges that women continue to face in their daily lives.

Despite the progress women have made in many countries, women worldwide continue to confront discrimination, violence and even slavery. In central Africa and, specifically, in the Democratic Republic of the Congo, DRC, sexual violence has increasingly been used as a weapon against women and girls. These horrific acts cannot be tolerated, and those responsible for these atrocities must be held accountable. At the same time, the international community must reach out to help provide medical and psycho-social support to women and girls affected by these horrors, and must work vigorously with civil society and local authorities to prevent these abuses in the future.

Sadly, these violent acts are not isolated instances. Rather, they are indicative of the violence occurring against women in many conflict zones. Experts note that women and girls are most affected by violence, economic instability, and displacement associated with warfare. At home, in flight or in refugee camps, they are frequently threatened by rape and sexual exploitation. Far too many victims of domestic violence and of human trafficking. In some countries, women fall victim to ''honor killings,'' a deplorable practice whereby women are murdered by male relatives for actions that are perceived to bring dishonor to the family. Other countries tolerate the burning of thousands of brides a year due to insufficient dowries.

While I am pleased that the United States has begun to address the global HIV/AIDS crisis, the pandemic continues to exact a terrible human toll on communities around the world, and in sub-Saharan Africa, it is having a particularly devastating effect on women. As the ranking member of the Senate Foreign Relations Committee's Subcommittee on African Affairs, I have had the opportunity to travel to numerous countries in Africa and see firsthand the devastating toll that HIV/AIDS and other infectious diseases are taking on the people of this continent. According to United Nations reports, over 25 million adults and children in Africa are infected with the HIV virus, the majority of them in sub-Saharan Africa.

Sub-Saharan Africa is the only region in which women are infected with the virus at a higher rate than men. UNAIDS, the United Nations Program on HIV/AIDS, reports that women make up an estimated 58 percent of the HIV-positive adult population in this region, as compared to 50 percent worldwide. Young women and girls are especially at risk. The United Nations reports that in this region 6 to 11 percent of girls age 15–24 are infected with HIV, whereas infection among boys of the same age group is 3 to 6 percent. International efforts to fight AIDS will not succeed unless we make a sustained and serious effort to address the factors that make women and girls so vulnerable to exposure. This means more than talking about legal rights, and more than talking about economic empowerment. It means that we must take action.

Despite these difficulties for women, encouraging signs of women's progress are also in evidence around the world. In Western and Central Africa, international courts are holding those responsible for crimes against humanity, including the use of rape as a weapon of war, accountable for their actions

In Mexico, indigenous women, who once lived in the shadows of a deeply patriarchal society, are increasing their influence in local communities. These women are increasingly buying small businesses and owning their own land, taking an aggressive stance against domestic violence and contributing to decision-making in their communities.

In Afghanistan, women are finally back in school. The new Afghan Constitution, approved on January 4, 2004, provides equal rights and duties under

the law to women and includes special provisions to encourage women's access to education and government. Restoring human rights, and, in particular, women's rights, is key to Afghanistan's successful reconstruction and transition to democracy.

Women of all cultures are being recognized on an international stage for their contributions. Notably, Shiri Edadi won the 2003 Nobel Peace Prize for her efforts to promote democracy and human rights in Iran, particularly for women and children.

The U.S. Senate can work toward protecting women's rights and improving the status of women domestically and internationally by acting upon the United Nations Convention on the Elimination of Discrimination against Women, or CEDAW. CEDAW is a comprehensive treaty on women's human rights addressing almost all forms of discrimination in areas such as education, employment, marriage and family, health care, politics and law. It has been over two decades since the United States signed this treaty, and it still awaits consideration before the Senate. Once again, I urge the Committee on Foreign Relations to take up this treaty and allow the Senate the opportunity to offer its advice and consent on this important convention.

International Women's Day celebrates the progress women have made in the face of adversity and pays tribute to women fighting against discrimination and other injustices. This year, Congress recognized Dorothy Height for her tremendous work for women's rights. Ms. Height, who fought against racism and violence toward African Americans, also battled for women's full and equal employment, increased educational opportunities, and institutions for women in the United States. This year, she was awarded a congressional gold medal for her contributions to our nation.

Women have made tremendous strides in the last century. In the United States, more and more women are attending college and earning postgraduate degrees. Worldwide, women are becoming increasingly active in the political process—more women are being elected to office and appointed to positions of power than ever before. In the year 2000, 11 countries were led by women.

While I recognize that women in the U.S. continue to make great advances, work remains to narrow the wage disparity between men and women. Although some progress has been made in narrowing the gender wage-gap since Congress enacted the Equal Pay Act in 1963, unfair wage disparities continue. I am proud to support legislative efforts to correct his discrepancy. In addition, I encourage the Senate to consider legislation to reauthorize the TANF program. I believe that any welfare reauthorization bill that passes the Senate should help to ensure that we are not just reducing the welfare rolls, but are also helping current and former TANF recipients break the cycle of poverty.

Unfortunately, violence against women is still all too prevalent in our country. Domestic violence is the leading cause of injury among women of child-bearing age. One out of every six American women have been victims of a rape or an attempted rape. Many rapes go unreported, and more than half of the women attacked know their assailant. We must continue to adequately fund state and local programs, including support shelters for women suffering from violent abuse in their homes. These safe havens deserve strong support and funding for the invaluable work they provide for women and communities around the country.

As we honor women and celebrate their accomplishments and contributions, we must recognize that there is still much more to be done in the struggle for gender equity. Discrimination and violence against women continue to exist at home and abroad. The United States and the rest of the international community must reaffirm their commitment to promote gender equality and human rights around the world.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

In Stafford, VA, Thomas Rivers heard that another boy thought he was cute. Rivers responded by shouldering the classmate in hallways at school, shouting slurs and spitting on him. The next year, 18-year-old Rivers attacked the boy by bashing him in the back of the head with a metal pole, nearly killing him.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

THE EUROPEAN COMMISSION AND MICROSOFT

Mr. ALLEN. Mr. President, I rise to address the European Commission's antitrust action against Microsoft. It is my understanding that antitrust authorities for the European Union member nations have given European Competition Commissioner Mario Monti their unanimous backing for a formal commission finding that Microsoft abused its market share of its Windows operating system for personal computers to leverage its way into related markets for networking and multimedia software. It is expected that the European Commission will hand down a formal decision finding that Microsoft is in violation of European Union antitrust laws.

By imposing harsh, unprecedented penalties upon Microsoft, the Commission has extended its view of competition and regulation beyond Europe and onto the United States—to the detriment of U.S. laws, industry and consumers.

For many years, the European Union and its member states have criticized the United States for adopting laws and regulations that, in the view of European policymakers, have had an extraterritorial reach. The European Commission in particular has consistently urged the United States to ensure that its legal determinations do not intrude into European affairs. We now have a clear example of the European Union not practicing what they preach.

If the Commission rules that Microsoft is in violation of European Union antitrust laws, it will undercut the settlement that was so carefully and painstakingly crafted with Microsoft by the U.S. Department of Justice and several state antitrust authorities. There can be no question that the U.S. Government was entitled to take the lead in this matter—Microsoft is a U.S. company, many if not all of the complaining companies in the EU case are American, and all of the relevant design decisions took place here. I would hope that if the Commission were cognizant of America's legitimate interests in this matter, it would act in a manner that complemented the U.S. settlement. I fear the Commission has selected a path that places its resolution of this case in direct conflict with ours.

This is not the only example of the Commission's overreaching in this case. In recent negotiations with Microsoft, the European Commission demanded that Microsoft agree to ensure that computer manufacturers who sell pre-installed versions of Windows also install three competing media players—an obligation that the Commission insisted on imposing not just within the EU, but globally. In spite of its objections to these requirements, Microsoft agreed to the Commission's approach in order to reach a settlement. I understand the Commission proposes to impose a fine of over $610 million on Microsoft—higher than any fine in the Commission's history. It has been suggested that the amount of this fine was based not only on Microsoft's conduct in the EU, but in the United States and elsewhere as well. One can only conclude that the Commission was not satisfied with how U.S. antitrust authorities and courts resolved the case against Microsoft, and therefore decided to act as a kind of supranational competition authority by fining Microsoft for its conduct worldwide.

The Commission's proposed ruling, as well as its negotiation tactics, is unprecedented in its scope. By proposing

to fine Microsoft for purported anticompetitive conduct and injuries in the United States, the European Commission is directly challenging the adequacy of the United States' own antitrust laws, including the settlement that Microsoft and U.S. authorities reached in the U.S. proceedings. In fact, the obligations proposed to be imposed on Microsoft by the Commission are precisely the type that the U.S. District Court and the U.S. Department of Justice rejected as undermining consumer welfare.

It is incumbent on the Departments of State and Justice to stand up not only for an important American company but more importantly for legitimate U.S. jurisdiction over alleged anticompetitive behavior in the United States. The U.S. and the EU are signatories to a 1991 comity agreement on antitrust issues which requires that one government defer to the other if the principal issues being investigated involve companies of one of the parties. Here, the EU is investigating a U.S. company based on complaints from other U.S. companies. If the U.S. Government does not make a clear and strong statement objecting to the EU's extraterritorial approach, we will lose influence and credibility for years to come to the detriment of all U.S. industry, as well as to U.S. consumers.

ADDITIONAL STATEMENTS

25TH ANNIVERSARY OF VETERANS UPWARD BOUND

• Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to commend the Veterans Upward Bound Program and all those associated with it on its 25th anniversary.

Hundreds of students at the University of Massachusetts have benefited from the program and gone on to earn bachelors, masters, and doctorate degrees. These veterans are using the same enthusiasm and drive that made them exemplary members of our Armed Forces, and are now vital forces for positive change in their communities.

For many years, the TRIO programs have been available to help more young men and women in our society to understand that college is within their reach. The Veterans Upward Bound Program does the same for veterans. It provides a bridge to help those who have served our country so well make the transition into college. Veterans learn how to use the benefits available from the Veterans Administration and from veterans' associations and State and local veterans programs to obtain the information and skills they need to qualify for college. Every year, nearly 5,000 veterans are served by this impressive program and go on to college.

Many of us share a strong commitment to the belief that each of us can make a difference in improving the world around us, and all of us must try. Enabling veterans to continue their education is in the best tradition of our country.

These are very difficult days in our history. As our service men and women return to civilian life, education can often have an essential and prominent role in their futures, and in the Nation's future too. Veterans Upward Bound programs are an important part of a nationwide grassroots effort to enable our veterans to improve their own lives and continue to keep our Nation strong in many different ways.

The talented professionals who carry out these programs so well deserve our gratitude. On this special anniversary, I commend them for all they do so well to make college a reality for our veterans.•

UNIVERSITY OF HAWAII WAHINE SOCCER PLAYER NATASHA KAI

• Mr. AKAKA. Mr. President, It is with great pride that I rise to recognize Natasha Kai of Kahuku, HI, for her extraordinary athletic achievements. As a forward for the University of Hawaii Rainbow Wahine soccer team, Natasha was recently named to the 2004 Women's Under 21 National Soccer team. This achievement marks the first time any female athlete from the State of Hawaii has acquired a position on this prestigious, nationally recognized team. After attending two training camps within the last month, Natasha competed amongst 40 of the country's top female athletes to earn a coveted spot on the national team.

The national team is currently in China and competing in a tournament with the hopes of making it to the 2004 Nordic Cup, the premier tournament to be held in Iceland later this summer. A few days ago, the national team secured its first exhibition match win triumphing over the Shanghai SVA team. Natasha made her international debut during that match and scored the first goal within the first three minutes of play. The national team is off to a successful start and has two more exhibition matches before they return home.

I am doubly proud that Natasha hails from Kahuku High School, which is one of the schools where I first entered the classroom as a teacher. As a multi-talented athlete at Kahuku, Natasha received four varsity letters each in soccer and track, as well as two in volleyball, and one each in basketball and cross country. Natasha was a two-time Oahu Interscholastic Association (OIA) All-Star soccer player, as well as a 2001 All-State player of the year. During her senior season, she led the Red Raider soccer team to a OIA division title win, a first for the school. Natasha earned State track and field honors in the 110 meter hurdles, high jump, and long jump, and was the two-time record holder and State champion in the 300 meter hurdles. In 2001, as a volleyball player she was voted to the OIA-East first team. Basketball accomplishments include being named to the OIA First-team and State Second-team that same year. In addition to her success on the field, Natasha also excelled in the classroom and was an honor student. As one of the most highly recruited female athletes in the State, Natasha decided to stay and pursue her athletic endeavors at the University of Hawaii at Manoa.

As a forward on the soccer field, Natasha is known for her explosive speed and skill when evading defenders and scoring goals. During her freshman year with the UH Wahine Rainbow soccer team, she started 16 of the 17 games she appeared in and broke eight school records. Natasha was named the 2002 Western Athletic Conference (WAC) freshman of the year and WAC player of the year, and captured all-WAC first team honors. As a 2002 UH Scholar athlete, she was also selected for the Soccer Buzz freshman All-West region first team and All-American third team. The freshman scored two hat tricks against Tulsa and Boise State during conference play and was named WAC Offensive Player of the Week three times. Last season as a sophomore, Natasha led the Nation in scoring with 29 goals and again received her second WAC player of the year and All-American honors. With the help of this skilled athlete, UH won a record 13 matches and secured its first conference title in 2003.

The athletic accolades of Natasha speak volumes of her character, love of the sport of soccer, and dedication to the game. I am confident that all the people of Hawaii, particularly her family and friends, take great pride in her great accomplishments. I wish Natasha and her teammates the best of luck while competing in the tournament and a safe journey home. Win or lose, I extend the support of the country and especially the support of all Hawaii. I thank Natasha for serving as a role model and for reminding us all that through hard work and determination, even what seems like a distant dream can be realized.•

NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK,

• Mrs. BOXER. Mr. President, I take this opportunity to recognize National Public Safety Telecommunicators Week.

In 1981, a 9–1–1 public safety dispatcher from the Contra Costa County Sheriff's Office, in my home State of California, first had the idea to designate one week each year to honor the work of public safety telecommunicators. In 1991, Congress issued a formal proclamation acknowledging National Public Safety Telecommunicators Week. In 1994, National Public Safety Telecommunicators Week became a permanent, federally designated week, observed annually during the second week of April.

I commend our Nation's public safety telecommunicators, usually the first and most critical contact our Nation's

citizens have when they need emergency services. Over 500,000 9–1–1 calls are made every day across the country. Telecommunicators provide the best emergency assistance they can to each of the callers. People depend on the skill, expertise and commitment of telecommunicators who help save lives by responding to emergency calls, dispatching emergency professionals and equipment and providing support to citizens in distress. Telecommunicators also serve as the vital link for our police officers, sheriffs and firefighters by providing them with information and insuring their safety.

Public safety telecommunicators have a tremendous responsibility to remain calm while handling stressful situations. Amid panic and fear from a caller, public safety telecommunicators obtain the necessary information, make critical decisions and quickly dispatch the assistance that saves lives and property. Although they may be anonymous to callers, each of these men and women deserve praise and recognition for their hard work, not only during National Public Safety Telecommunicators Week but every day.

I am proud of the heroic work of public safety telecommunicators, and I offer my sincerest thanks for their compassion and professionalism.●

TRIBUTE TO NORMAN M. RICH, M.D.

● Mr. SARBANES. Mr. President, today I pay tribute to Dr. Norman M. Rich, M.D., Professor and Chairman, Department of Surgery, F. Edward Hébert School of Medicine at the Uniformed Services University of the Health Sciences—USUHS. This week, on March 26, 2004, Dr. Rich will mark the end of his 44-year career in Federal service.

Dr. Rich's Federal career began in the U.S. Army where he served for 20 years as a career officer and physician from 1960 through 1980. As a military surgeon with academic interests in the management of injured patients and vascular surgery, he earned international recognition; his military awards include the Legion of Merit, the Bronze Star, the Meritorious Service Award and Vietnam Medals.

Dr. Rich was appointed as the Founding Chairman of the USUHS School of Medicine's Department of Surgery in August of 1977 and held that position until October of 2002. For the past 16 months, he has continued to serve as an advisor and mentor to the Acting Department Chairman.

As Founding Chairman, Dr. Rich was faced with the difficult task of establishing a Department of Surgery at a university where the campus had not yet been constructed. From the outset, Dr. Rich and his considerable reputation gave credibility to the newly established Uniformed Services University of the Health Sciences and enabled the recruitment of a competent faculty for its new Department of Surgery. He utilized his collaborative relationships, both nationally and internationally, to strengthen his department's curricula and lectures and thereby provided a military and academically unique environment for the over 3,400 USUHS medical school graduates and thousands more future uniformed medical students.

Dr. Rich can take pride in having developed an academically sound curriculum, recruiting competent faculty with military unique expertise, meeting the initial and on-going accreditation requirements for the School of Medicine, and creating a sound national and global reputation for the university. His efforts have aided the School of Medicine in attaining full accreditation and he has helped shape USUHS graduates into what the Secretary of Defense has dubbed ''the backbone of the Military Health System.'' Indeed, his efforts are reflected in the continued success of USUHS and its graduates and in the continued health of the millions of uniformed personnel and their families who have benefited from his extraordinary expertise.

During the course of his career, Dr. Rich has published over 300 manuscripts and authored or co-authored five books. Among these is the internationally recognized ''Vascular Trauma.'' He has served on 10 editorial boards, including the major peer-reviewed journals focusing upon his specialty. His recent awards include: the 2003 National Safety Council Surgeons' Award for Distinguished Service in Safety presented by the American College of Surgeons, the American Association for the Surgery of Trauma, and the National Safety Council; recognition as a Citizen & Apothecary of London in 2001; and, the J.E. Wallace Sterling Lifetime Alumni Achievement Award from the Stanford Medical Alumni Association.

Our Nation can be proud of Dr. Rich's long and distinguished career of service and I am pleased to join with his family, friends and colleagues in expressing appreciation for the significant contributions he has made to the health of the uniformed services and that of all citizens. I certainly wish him continued success and happiness in the years to come.●

SIEGLINDE KURZ

● Mr. BOND. Mr. President, today I would like to commend Mrs. Sieglinde Kurz on her outstanding career as a public servant. Mrs. Kurz received her Bachelor of Arts degree from Fontbonne College, in St. Louis, MO in 1961 and her Masters Degree in Health Care Management from Northwestern University, in Evanston, IL in 1976.

I have worked with Mrs. Kurz on numerous occasions and I have always been impressed by her consummate professionalism. Her selfless attitude and intense work ethic have consistently led her to do great things within the field of veterans' health care.

Mrs. Kurz began her career with the Department of Veterans Affairs in November 1965 as a research chemist in renal hypertension research at the St. Louis VA Medical Center.

During her illustrious government career, Mrs. Kurz was the administrative assistant to the Associate Director in Hines, IL; Associate Director of the VA Medical Center in Tomah, WI; Associate Deputy Regional Director for the Northeastern Region in Albany, NY; Associate Director of the VA Medical Center in Marion, IL; Director of Construction Project Coordination and Budget at VA Headquarters in Washington, DC; and Director of the VA Medical Center in Marion, IL. She left the Marion VA Medical Center to accept the position of Director at the St. Louis VA Medical Center.

Mrs. Kurz served as the Director of the St. Louis VA for 5 years and 8 months, a term spanning from May 1998 thru January 2004. The St. Louis VA is one of the largest and most complex facilities in the nation and it has steadily improved under her guidance.

Mrs. Kurz provided leadership for this dual division hospital by facilitating care for more than 36,000 veterans annually. The primary service area of metropolitan St. Louis includes 9 counties in Missouri and 14 counties in West Central Illinois. During her tenure in St. Louis she led a care team of 1900 full time employee equivalents.

Mrs. Kurz's stellar career includes a number of achievements.

As a leader in the field of health care management she served as a mentor for executive career field director trainees and VHA Health Care management trainees. She also achieved the status of diplomat in the American College of Healthcare Executives.

Mrs. Kurz was listed as one of the top female directors in the Missouri Hospital Association Newsletter, Summer 2003 Edition, and in Who's Who Among Top Executives in 1998–1999. In 1999, during her tenure as Director of the St. Louis VA Medical Center, she was recognized with the Vice-Presidential ''Hammer and Scissors'' award for her efforts in piloting the first Department of Veterans Affairs Canteen Integration.

During her time at the St. Louis VA, Mrs. Kurz worked tirelessly to improve veterans' access to care and she opened three new health clinics. She also supported her employees by providing educational opportunities for mid-level managers through programs such as mini-MBA. She promoted an open policy that allowed staff at all levels to communicate through employee and supervisory forums.

After 37 years of government service, Mrs. Kurz retired on January 31, 2004, having devoted countless hours to the welfare of American Veterans. On behalf of all veterans in the St. Louis area, I would like to thank her for her tireless efforts and wish her well in her retirement.●

IN RECOGNITION OF DAN TERRY

• Mrs. BOXER. Mr. President, I today honor of Dan Terry, who will be retiring this May after 31 years of service as president of the California Professional Firefighters, CPF, a statewide organization representing more than 30,000 career firefighters in over 150 affiliated local unions.

America's firefighters are the heroes of our times. We know that they are always going to be there protecting us through any challenge.

For more than three decades, as firefighters have protected us, Dan Terry has been protecting them. He has fought for safer working conditions and worked to increase firefighter education, training, and staffing.

Thanks largely to his extraordinary efforts, California firefighters are now covered by statewide legislation that guarantees binding interest arbitration, enhanced retirement benefits, survivor benefits, and firefighter illness presumption laws. Dan Terry has also fought to protect firefighters' right to earn overtime pay as well as disability and workers' compensation benefits.

A retired fire captain with more than 20 years of service on the front lines, Dan Terry was elected CPF president in May 1973. After 31 years in office, he remains passionate and dedicated to the cause of improving the lives of California firefighters and their families. Even after leaving the presidency of CPF, he will remain active in the organization and in the service of California families and the courageous firefighters who protect them every day.

On behalf of the people of California, I express our profound gratitude and admiration to Dan Terry for his outstanding service to our State.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6708. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pesticide Tolerances Fees; Suspension of Collection'' (FRL#7349–7) received on March 16, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6709. A communication from the Under Secretary of Defense, Comptroller, Department of the Defense, transmitting, pursuant to law, a report relative to the assessment of desktop computer management services; to the Committee on Armed Services.

EC–6710. A communication from the General Counsel, Department of Defense, transmitting, pursuant to law, the National Defense Authorization Bill for Fiscal Year 2005; to the Committee on Armed Services.

EC–6711. A communication from the Assistant Secretary, Department of the Army, Department Defense, transmitting, pursuant to law, a report relative to a project for ecosystem restoration for Villas and Vicinity, Cape May County, New Jersey; to the Committee on Armed Services.

EC–6712. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report of a violation of the Antideficiency Act within the Research and Education account and the Extension Activities account; to the Committee on Appropriations.

EC–6713. A communication from the Architect of the Capitol, transmitting, pursuant to law, a report of all expenditures during the period April 1, 2003 through September 30, 2003 from moneys appropriated to the Architect; to the Committee on Appropriations.

EC–6714. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report required by Executive Order 12957 relative to the national emergency with respect to Iran; to the Committee on Banking, Housing, and Urban Affairs.

EC–6715. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Prohibiting Directed Fishing for Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in Western Regulatory Area of the Gulf of Alaska''; to the Committee on Commerce, Science, and Transportation.

EC–6716. A communication from the General Counsel, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled ''Metal-Cored Candlewicks Containing Lead and Candles with Such Wicks'' (68 FR 19142) received on March 16, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6717. A communication from the Secretary of Homeland Security, transmitting, pursuant to law, a report relative to the United States Coast Guard's implementations of regulations under Public Law 104–55; to the Committee on Commerce, Science, and Transportation.

EC–6718. A communication from the Under Secretary for Commerce and Industry, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Export Administration Regulations: Penalty Guidance in the Settlement of Administrative Enforcement Cases'' (RIN0694–AC92) received on March 16, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6719. A communication from the Administrator, Office of Information and Regulatory Affairs, Executive Office of the President, transmitting, pursuant to law, a report relative to the Federal Government's use of voluntary consensus standards; to the Committee on Commerce, Science, and Transportation.

EC–6720. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Cirsium Loncholepis (La Graciosa Thistle)'' (RIN1018–AG88) received on March 15, 2004; to the Committee on Energy and Natural Resources.

EC–6721. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, South Coast Air Quality Management District'' (FRL#7628–3) received on March 16, 2004; to the Committee on Environment and Public Works.

EC–6722. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maine; Approval of State Implementation Plan Revision to PM10 PSD Increments'' (FRL#7625–3) received on March 16, 2004; to the Committee on Environment and Public Works.

EC–6723. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans: Kentucky Update to Materials Incorporated by Reference; Technical Correction'' (FRL#7636–9) received on March 16, 2004; to the Committee on Environment and Public Works.

EC–6724. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Indiana'' (FRL#7626–7) received on March 16, 2004; to the Committee on Environment and Public Works.

EC–6725. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Community-Based Urban and Peri-Urban Drinking Water Capacity-Building in Africa'' received on March 16, 2004; to the Committee on Environment and Public Works.

EC–6726. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category List of Hazardous Air Pollutants; Lesser Quantity Designations, Source Category List'' (FRL#7634–1) received on March 16, 2004; to the Committee on Environment and Public Works.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. DASCHLE:

S. 2223. A bill to expand the list of entities eligible to establish and maintain a qualified tuition program under section 529 of the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. BROWNBACK (for himself and Mr. ROBERTS):

S. 2224. A bill to establish the Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BURNS (for himself, Mr. BAUCUS, and Mr. CAMPBELL):

S. 2225. A bill to authorize an exchange of mineral rights by the Secretary of the Interior in the State of Montana; to the Committee on Energy and Natural Resources.

By Mr. CORZINE:

S. 2226. A bill to extend the period for COBRA coverage for recipients of trade adjustment assistance; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BIDEN (for himself, Mr. HOLLINGS, Mrs. MURRAY, Mr. SMITH, and Mr. ALLEN):

S. 2227. A bill to prevent and punish counterfeiting and copyright piracy, and for other purposes; to the Committee on the Judiciary.

By Mr. ALLEN:

S. 2228. A bill to authorize the issuance of a certificate of documentation with appropriate endorsement for employment in the coastwise trade and fisheries for the vessel CROYANCE; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 323. A resolution to authorize legal representation in United States of America v. Elena Ruth Sassower; considered and agreed to.

ADDITIONAL COSPONSORS

S. 595

At the request of Mr. HATCH, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 595, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financings to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 641

At the request of Mrs. LINCOLN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 641, a bill to amend title 10, United States Code, to support the Federal Excess Personal Property program of the Forest Service by making it a priority of the Department of Defense to transfer to the Forest Service excess personal property of the Department of Defense that is suitable to be loaned to rural fire departments .

S. 976

At the request of Mr. WARNER, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 1190

At the request of Mr. BINGAMAN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1190, a bill to expand and enhance postbaccalaureate opportunities at Hispanic-serving institutions, and for other purposes.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1786

At the request of Mr. ALEXANDER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1786, a bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

S. 1944

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1944, a bill to enhance peace between the Israelis and Palestinians.

S. 1992

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1992, a bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate privatization of the medicare program, to improve the medicare prescription drug benefit, to repeal health savings accounts, and for other purposes.

S. 1998

At the request of Mr. BINGAMAN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1998, a bill to amend title 49, United States Code, to preserve the essential air service program.

S. 2054

At the request of Mr. JOHNSON, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 2054, a bill to require the Federal forfeiture funds be used, in part, to clean up methamphetamine laboratories.

S. 2059

At the request of Mr. FITZGERALD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2059, a bill to improve the governance and regulation of mutual funds under the securities laws, and for other purposes.

S. 2076

At the request of Mr. BAUCUS, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2076, a bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicaid Services.

S. 2141

At the request of Mr. LUGAR, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2141, a bill to amend the Farm Security and Rural Investment Act of 2002 to enhance the ability to produce fruits and vegetables on soybean base acres.

S. 2157

At the request of Mr. BAUCUS, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2157, a bill to amend the Trade Act of 1974 to extend the trade adjustment assistance program to the services sector, and for other purposes.

S. 2158

At the request of Ms. COLLINS, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 2158, a bill to amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

S. 2165

At the request of Mr. REED, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2165, a bill to specify the end strength for active duty personnel of the Army as of September 30, 2005.

S. 2182

At the request of Mr. NELSON of Nebraska, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2182, a bill to amend the Farm Security and Rural Investment Act of 2002 to permit the planting of chicory on base acres.

S. 2193

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 2193, a bill to improve small business loan programs, and for other purposes.

At the request of Ms. SNOWE, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2193, supra.

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 2193, supra.

S. 2194

At the request of Mr. CORNYN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2194, a bill to amend part D of title IV of the Social Security Act to improve the collection of child support, and for other purposes.

S. 2208

At the request of Mr. ROCKEFELLER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2208, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to reduce the amounts of reclamation fees, to modify requirements relating to transfers from the Abandoned Mine Reclamation Fund, and for other purposes.

S. CON. RES. 14

At the request of Mr. SMITH, the name of the Senator from Arkansas

(Mrs. LINCOLN) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the names of the Senator from Illinois (Mr. DURBIN), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 168

At the request of Mr. CAMPBELL, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. Res. 168, a resolution designating May 2004 as ''National Motorcycle Safety and Awareness Month''.

AMENDMENT NO. 2667

At the request of Mr. SMITH, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 2667 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2683

At the request of Mr. SANTORUM, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of amendment No. 2683 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2690

At the request of Mrs. FEINSTEIN, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of amendment No. 2690 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2873

At the request of Mr. THOMAS, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 2873 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2880

At the request of Mr. DURBIN, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Nevada (Mr. REID) were added as cosponsors of amendment No. 2880 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 2888

At the request of Mrs. HUTCHISON, the names of the Senator from Texas (Mr. CORNYN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of amendment No. 2888 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE:

S. 2223. A bill to expand the list of entities eligible to establish and maintain a qualified tuition program under section 529 of the Internal Revenue Code of 1986; to the Committee on Finance.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2223

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

SECTION 1. ADDITIONAL ELIGIBLE ENTITIES FOR QUALIFIED TUITION PROGRAMS.

(a) IN GENERAL.—For purposes of section 529 of the Internal Revenue Code of 1986, an eligible educational institution shall be deemed to include a corporation—

(1) which is a transferee corporation (within the meaning of section 150(d)(3) of such Code) of a corporation described in section 150(d) of such Code, and

(2) a majority of the outstanding stock of which is owned by an employee stock ownership plan (as defined in section 4975(d)(7) of such Code).

(b) EFFECTIVE DATE.—Subsection (a) shall take effect with respect to any qualified tuition program established after the date of the enactment of this Act.

By Mr. BROWNBACK (for himself and Mr. ROBERTS):

S. 2224. A bill to establish the Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BROWNBACK. Mr. President, the great story of Kansas can be summed up in the State motto, ''Ad Astra per Aspera,'' to the stars through difficulties. Though only a short phrase comprised of four words, the meaning and passion behind the Kansas State motto are as profound as they are descriptive of a State that though smaller than some, was a catalyst for racial equality in this Nation.

From inception, Kansas was born in controversy—a controversy that helped to shape a Nation and end the egregious practice of chattel slavery that brutalized an entire race of individuals in this country. I cannot think of a more noble or more important contribution provided to our Nation—through arguably it was one of the most turbulent and darkest hours of our history. Without this struggle however, the battle to end persecution and transform our country into a symbol of freedom and democracy throughout the world would not have been realized.

This year marks the sesquicentennial of the signing of the Kansas-Nebraska bill which repealed the Missouri compromise, allowed States to enter into the Union with or without slavery. This piece of legislation, which was passed in May 1854, set the stage for what is now referred to as, ''Bleeding Kansas.'' During this time, our State, then a territory, was thrown into chaos with Kansans fighting passionately to ensure that the territory would enter the Union as a free State and not condone or legalize slavery in any capacity. At the end of a very difficult and bloody struggle, Kansas entered the Union as a free State and helped to spark the issue of slavery on a national level. However, Kansas' contributions to the realization of freedom in this Nation did not stop with the Kansas-Nebraska Act.

Keeping true to the motto, ''to the stars through difficulties.'' Kansas opened up her arms to a newly freed people after the Civil War ended. Many African Americans looked to Kansas for solace and prosperity when the South was still an uncertain place. Perhaps one of the best examples of Ad Astra per Aspera was the founding of a town in Kansas by African Americans coming to our State to begin their life of freedom and prosperity.

Founded in 1877, Nicodemus, which was named after a legendary slave who purchased his freedom, is the most recognized historically black town in Kansas. Nicodemus was established by a group of colonists from Lexington, KY and grew to a population of 600 by 1879.

However, Nicodemus is not the only Kansas contribution that shaped a more tolerant Nation. Kansas was also one of the first States to house an African American military regiment in the 1800s, the Buffalo Soldiers.

The Buffalo Soldiers were, and still are, considered one of the most distinguished and revered African American military regiments in our Nation's history. One of those regiments, the 10th Cavalry, was stationed at Fort Leavenworth, KS. In July 1866, Congress passed legislation establishing two cavalry and four infantry regiments that were to be solely comprised of African Americans. The mounted regiments were the 9th and 10th Cavalries, soon nicknamed ''Buffalo Soldiers'' by the Cheyenne and Comanche tribes. Lt. Henry O. Flipper, the first African American to graduate from the United States Military Academy in 1877 and commanded the 10th Calvary unit where he proved that African Americans possessed the quality of military leadership. Until the early 1890s, the Buffalo Soldiers constituted 20 percent of all cavalry forces on the American frontier. Their invaluable service on the western frontier still remains one of the most exemplary services performed by a regiment in the U.S. Army.

These are just a few examples of why I am pleased to join with my colleague from Kansas, Senator PAT ROBERTS, today and introduce the Bleeding Kansas National Heritage Area Act, which will not only serve to educate Kansans but the Nation on the important contributions—and in many cases the sacrifices—made in order to establish this proud State. The creation of this heritage area will ensure that this legacy is not only commemorated but celebrated on a national level.

Specifically, the Bleeding Kansas National Heritage Area Act will designate 24 counties in Kansas as the ''Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area.'' Each of these counties will be eligible to apply for the heritage area grants administered by the National Park Service.

The heritage area will add to local economies within the State by increasing tourism and will encourage collaboration between interests of diverse units of government, businesses, tourism officials, private property owners, and nonprofit groups within the heritage area. Finally, the bill protects private property owners by requiring that they provide in writing consent to be included in any request before they are eligible to receive Federal funds from the heritage area. The bill also authorizes $10,000,000.00 over a 10 year period to carry out this act and states that no more than $1,000,000.00 may be appropriated to the heritage area for any fiscal year.

Kansas has much to be proud of in its history and it is vital that this history be shared on a national level. By establishing the Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area, we will ensure that this magnificent legacy lives on and serves as a stirring reminder of the sacrifices and triumphs that created this Nation—a Nation united in freedom for all people.

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. 2224

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 ''Bleeding Kansas National Heritage Area Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The Bleeding Kansas National Heritage Area is a cohesive assemblage of natural, historic, cultural, and recreational resources that—

(A) together represent distinctive aspects of American heritage worthy of recognition, conservation, interpretation, and continuing use;

(B) are best managed through partnerships between private and public entities;

(C) will build upon the Kansas rural development policy and the new homestead act to recognize inherent strengths of small towns and rural communities—close-knit communities, strong local business networks, and a tradition of entrepreneurial creativity.

(2) The Bleeding Kansas National Heritage Area reflects traditions, customs, beliefs, folk life, or some combination thereof, that are a valuable part of the heritage of the United States.

(3) The Bleeding Kansas National Heritage Area provides outstanding opportunities to conserve natural, cultural, or historic features, or some combination thereof.

(4) The Bleeding Kansas National Heritage Area provides outstanding recreational and interpretive opportunities.

(5) The Bleeding Kansas National Heritage Area has an identifiable theme, and resources important to the theme retain integrity capable of supporting interpretation.

(6) Residents, nonprofit organizations, other private entities, and units of local government throughout the Bleeding Kansas National Heritage Area demonstrate support for designation of the Bleeding Kansas National Heritage Area as a national heritage area and for management of the Bleeding Kansas National Heritage Area as appropriate for such designation.

(7) Capturing these interconnected stories through partnerships with National Park Service sites, Kansas State Historical Society sites, local organizations, and citizens will augment the story opportunities within the prospective boundary for the educational and recreational benefit of this and future generations of Americans.

(8) Communities throughout this region know the value of their Bleeding Kansas legacy, but require expansion of the existing cooperative framework to achieve key preservation, education, and other significant goals by working more closely together.

(9) The State of Kansas officially recognized the national significance of the Bleeding Kansas story when it designated the heritage area development as a significant strategic goal within the statewide economic development plan.

(10) Territorial Kansas Heritage Alliance is a nonprofit corporation created for the purposes of preserving, interpreting, developing, promoting and, making available to the public the story and resources related to the story of Bleeding Kansas and the Enduring Struggle for Freedom.

(11) Territorial Kansas Heritage Alliance has completed a study that—

(A) describes in detail the role, operation, financing, and functions of Territorial Kansas Heritage Alliance, the management entity; and

(B) provides adequate assurances that Territorial Kansas Heritage Alliance, the management entity, is likely to have the financial resources necessary to implement the management plan for the Heritage Area, including resources to meet matching requirement for grants.

(12) There are at least 7 National Historic Landmarks, 32 National Register properties, 3 Kansas Register properties, and 7 properties listed on the National Underground Railroad Network to Freedom that contribute to the Heritage Area as well as other significant properties that have not been designated at this time.

(13) There is an interest in interpreting all sides of the Bleeding Kansas story that requires further work with several counties in Missouri interested in joining the area.

(14) In 2004, the State of Kansas is commemorating the Sesquicentennial of the signing of the Kansas-Nebraska Act, opening the territory to settlement.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To designate a region in eastern Kansas and western Missouri containing nationally important natural, historic, and cultural resources and recreational and educational opportunities that are geographically assembled and thematically related as areas that provide unique frameworks for understanding the great and diverse character of the United States and the development of communities and their surroundings as the Bleeding Kansas National Heritage Area.

(2) To strengthen, complement, and support the Fort Scott, Brown v. Board of Education, Nicodemus and Tallgrass Prairie sites through the interpretation and conservation of the associated living landscapes outside of the boundaries of these units of the National Park System.

(3) To describe the extent of Federal responsibilities and duties in regard to the Heritage Area.

(4) To further collaboration and partnerships among Federal, State, and local governments, nonprofit organizations, and the private sector, or combinations thereof, to conserve and manage the resources and opportunities in the Heritage Area through grants, technical assistance, training and other means.

(5) To authorize Federal financial and technical assistance to management entity to assist in the conservation and interpretation of the Heritage Area.

(6) To empower communities and organizations in Kansas to preserve the special historic identity of Bleeding Kansas and with it the identity of the Nation.

(7) To provide for the management, preservation, protection, and interpretation of the natural, historical, and cultural resources within the region for the educational and inspirational benefit of current and future generations.

(8) To provide greater community capacity through inter-local cooperation.

(9) To provide a vehicle, particularly in the four counties with high out-migration of population, to recognize that self-reliance and resilience will be the keys to their economic future.

(10) To build upon the Kansas rural development policy, the Kansas agritourism initiative and the new homestead act to recognize inherent strengths of small towns and rural communities—close-knit communities, strong local business networks, and a tradition of entrepreneurial creativity.

(11) To educate and cultivate among its citizens, particularly its youth, the stories and cultural resources of the region's legacy that—

(A) reflect the popular phrase ''Bleeding Kansas'' describing the conflict over slavery that became nationally prominent in Kansas just before and during the American Civil War;

(B) reflect the commitment of American settlers who first fought and killed to uphold their different and irreconcilable principles of freedom and equality during the years of the Kansas Conflict;

(C) reflect the struggle for freedom, experienced during the ''Bleeding Kansas'' era, that continues to be a vital and pressing issue associated with the real problem of democratic nation building; and

(D) recreate the physical environment revealing its impact on agriculture, transportation, trade and business, and social and cultural patterns in urban and rural settings.

(12) To interpret the effect of the era's democratic ethos on the development of America's distinctive political culture.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) MANAGEMENT ENTITY.—The term ''management entity'' means Territorial Kansas Heritage Alliance, recognized by the Secretary, in consultation with the chief executive officer of the State of Kansas, that agrees to perform the duties of a local coordinating entity under this Act.

(2) HERITAGE AREA.—The term ''Heritage Area'' means the Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area in eastern Kansas and western Missouri.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means the government of a State, a political subdivision of a State, or an Indian tribe.

SEC. 4. BLEEDING KANSAS AND THE ENDURING STRUGGLE FOR FREEDOM NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State of Kansas the Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall include the following:

(1) An area located in eastern Kansas and western Missouri, consisting currently of Allen, Anderson, Bourbon, Cherokee, Clay, Coffey, Crawford, Douglas, Franklin, Geary, Johnson, Labette, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Riley, Shawnee, Wabaunsee, Wilson, Woodson, Wyandotte Counties in Kansas and tentatively including additional counties in Kansas and western Missouri to be included in the development of the management plan.

(2) Contributing sites, buildings, and districts within the area will be recommended by the management plan.

(c) MAP.—Final boundary will be defined during the management plan development. A map of the Heritage Area shall be included in the management plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be Territorial Kansas Heritage Alliance, a nonprofit organization established in the State of Kansas, recognized by the Secretary, in consultation with the chief executive officer of the State of Kansas, that agrees to perform the duties of a local coordinating entity under this Act.

SEC. 5. AUTHORITIES, DUTIES, AND PROHIBITIONS OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—The management entity may, for purposes of preparing and implementing the management plan, use funds made available under this Act to—

(1) prepare a management plan for the Heritage Area;

(2) prepare reports, studies, interpretive exhibits and programs, historic preservation projects, and other activities recommended in the management plan for the Heritage Area;

(3) pay for operational expenses of the management entity incurred within the first 10 fiscal years beginning after the date of the enactment of this Act designating the Heritage Area;

(4) make grants or loans to entities defined in the management plan;

(5) enter into cooperative agreements with the State of Kansas, its political subdivisions, nonprofit organizations, and other organizations;

(6) hire and compensate staff;

(7) obtain money from any source under any program or law to be used for a regrant program requiring the recipient of such money to make a contribution in order to receive it;

(8) contract for goods and services; and

(9) offer a competitive grants program to contributing partners requiring a dollar-for-dollar match of Federal funds.

(b) DUTIES OF THE MANAGEMENT ENTITY.—In addition to developing the management plan, the management entity shall—

(1) give priority to the implementation of actions, goals, strategies, and standards set forth in the management plan, including assisting units of government and other persons in—

(A) encouraging economic viability in the Heritage Area in accordance with the goals of the management plan;

(B) establishing interpretive exhibits in the Heritage Area;

(C) increasing public awareness of and appreciation for the cultural, historical, and natural resources of the Heritage Area;

(D) supporting the restoration of historic buildings that are—

(i) located in the Heritage Area; and

(ii) related to the themes of the Heritage Area;

(E) the conservation of contributing landscapes and natural resources; and

(F) the installation throughout the Heritage Area of signs identifying public access points and sites of interest;

(2) prepare and implement the management plan while considering the interests of diverse units of government, businesses, private property owners, and nonprofit groups within the Heritage Area;

(3) conduct public meetings in conjunction with training and skill building workshops regarding the development and implementation of the management plan; and

(4) for any fiscal year for which Federal funds are received under this Act—

(A) submit to the Secretary a report that describes, for the year—

(i) accomplishments of the management entity;

(ii) expenses and income of the management entity;

(iii) each entity to which a grant was made; and

(iv) an accounting of matching funds obtained to meet grant guidelines;

(B) conduct an annual audit with a neutral auditing firm and make available for audit by Congress, the Secretary, and appropriate units of government, all records pertaining to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing expenditure of Federal funds by any entity, that the receiving entity make available for audit all records pertaining to the expenditure of their funds.

(c) PROHIBITION OF ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds received under this Act to acquire real property or an interest in real property.

(d) OTHER SOURCES.—Nothing in this Act precludes the management entity from using Federal funds from other sources for authorized purposes.

SEC. 6. MANAGEMENT PLAN.

(a) REQUIREMENTS.—The management entity shall:

(1) MANAGEMENT PLAN.—Not later than 3 years after the date funds are made available for this purpose, prepare and submit a management plan reviewed by participating units of local government within the boundaries of the proposed Heritage Area.

(2) COLLABORATION.—Collaborate with and consider the interests of diverse units of government, businesses, tourism officials, private property owners, and nonprofit groups within the geographic area of the Heritage Area in developing and implementing such a management plan.

(3) PUBLIC INVOLVEMENT.—Ensure regular public involvement, including public meetings at least annually, regarding the implementation of the management plan.

(b) CONTENTS OF MANAGEMENT PLAN.—The management plan prepared for the Heritage Area shall—

(1) present a comprehensive program for the conservation, interpretation, funding, management, and development of the Heritage Area, in a manner consistent with the existing local, State, and Federal land use laws and compatible economic viability of the Heritage Area;

(2) establish criteria or standards to measure what is selected for conservation, interpretation, funding, management, and development;

(3) involve residents, public agencies, and private organizations working in the Heritage Area;

(4) specify and coordinate, as of the date of the management plan, existing and potential sources of technical and financial assistance under this and other Federal laws to protect, manage, and develop the Heritage Area; and

(5) include—

(A) actions to be undertaken by units of government and private organizations to protect, conserve, and interpret the resources of the Heritage Area;

(B) an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that meets the establishing criteria (such as, but not exclusive to, visitor readiness) to merit preservation, restoration, management, development, or maintenance because of its natural, cultural, historical, or recreational significance;

(C) policies for resource management including the development of intergovernmental cooperative agreements, private sector agreements, or any combination thereof, to protect the historical, cultural, recreational, and natural resources of the Heritage Area in a manner consistent with supporting appropriate and compatible economic viability;

(D) a program for implementation of the management plan by the designated management entity, in cooperation with its partners and units of local government;

(E) evidence that relevant State, county, and local plans applicable to the Heritage Area have been taken into consideration;

(F) an analysis of ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Act; and

(G) a business plan that—

(i) describes in detail the role, operation, financing, and functions of the management entity for each activity included in the recommendations contained in the management plan; and

(ii) provides, to the satisfaction of the Secretary, adequate assurances that the management entity is likely to have the financial resources necessary to implement the management plan for the Heritage Area, including resources to meet matching requirement for grants awarded under this Act.

(c) PUBLIC NOTICE.—The management entity shall place a notice of each of its public meetings in a newspaper of general circulation in the Heritage Area and shall make the minutes of the meeting available to the public.

(d) DISQUALIFICATION FROM FUNDING.—If a proposed management plan is not submitted to the Secretary within 4 years of the date of the enactment of this Act, the management entity shall be ineligible to receive additional funding under this title until the date on which the Secretary receives the proposed management plan.

(e) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—The Secretary shall approve or disapprove the proposed management plan submitted under this title not later than 90 days after receiving such proposed management plan.

(f) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a proposed management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(g) APPROVAL OF AMENDMENTS.—The Secretary shall review and approve substantial amendments to the management plan. Funds appropriated under this title may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

SEC. 7. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—On the request of the management entity, the Secretary may provide technical and financial assistance for the development and implementation of the management plan.

(2) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall give priority to actions that assist in—

(A) conserving the significant cultural, historic, and natural resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(3) SPENDING FOR NON-FEDERAL PROPERTY.—The management entity may expend Federal funds made available under this Act on non-Federal property that—

(A) meets the criteria in the approved management plan; or

(B) is listed or eligible for listing on the National Register of Historic Places.

(4) OTHER ASSISTANCE.—The Secretary may enter into cooperative agreements with public and private organizations to carry out this subsection.

(b) OTHER FEDERAL AGENCIES.—Any Federal entity conducting or supporting an activity that directly affects the Heritage Area shall—

(1) consider the potential effect of the activity on the purposes of the Heritage Area and the management plan;

(2) consult with the management entity regarding the activity; and

(3) to the maximum extent practicable, conduct or support the activity to avoid adverse effects on the Heritage Area.

(c) OTHER ASSISTANCE NOT AFFECTED.—This Act does not affect the authority of any Federal official to provide technical or financial assistance under any other law.

(d) NOTIFICATION OF OTHER FEDERAL ACTIVITIES.—The head of each Federal agency shall provide to the Secretary and the management entity, to the extent practicable, advance notice of all activities that may have an impact on the Heritage Area.

SEC. 8. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act shall be construed to require any private property owner to permit public access (including Federal, State, or local government access) to such private property. Nothing in this Act shall be construed to modify any provision of Federal, State, or local law with regard to public access to or use of private lands.

(b) LIABILITY.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act shall be construed to modify any authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREAS.—Nothing in this Act shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) LAND USE REGULATION.—

(1) IN GENERAL.—The management entity shall provide assistance and encouragement to State and local governments, private organizations, and persons to protect and promote the resources and values of the Heritage Area.

(2) EFFECT.—Nothing in this Act—

(A) affects the authority of the State or local governments to regulate under law any use of land; or

(B) grants any power of zoning or land use to the management entity.

(f) PRIVATE PROPERTY.—

(1) IN GENERAL.—The management entity shall be an advocate for land management practices consistent with the purposes of the Heritage Area.

(2) EFFECT.—Nothing in this Act—

(A) abridges the rights of any person with regard to private property;

(B) affects the authority of the State or local government regarding private property; or

(C) imposes any additional burden on any property owner.

SEC. 9. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.—No privately owned property shall be governed by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such inclusion to the management entity.

(b) LANDOWNER WITHDRAW.—Any owner of private property included within the boundary of the Heritage Area, and not notified under subsection (a), shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 10. SAVINGS PROVISIONS.

(a) RULES, REGULATIONS, STANDARDS, AND PERMIT PROCESSES.—Nothing in this Act shall be construed to impose any environmental, occupational, safety, or other rule, regulation, standard, or permit process in the Heritage Area that is different from those that would be applicable if the Heritage Area had not been established.

(b) WATER AND WATER RIGHTS.—Nothing in this Act shall be construed to authorize or imply the reservation or appropriation of water or water rights.

(c) NO DIMINISHMENT OF STATE AUTHORITY.—Nothing in this Act shall be construed to diminish the authority of the State to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area.

(d) EXISTING NATIONAL HERITAGE AREAS.—Nothing in this Act shall affect any national heritage area so designated before the date of the enactment of this Act.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this Act shall be not more than 50 percent.

SEC. 12. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this Act terminates on the date that is 10 years after the date of the enactment of this Act.

Mr. ROBERTS. Mr. President, I am pleased to introduce, along with my distinguished colleague Senator BROWNBACK, a bill designating the Bleeding Kansas and the Enduring Struggle for Freedom National Heritage Area. This project has joined communities throughout eastern Kansas in an effort to document, preserve and celebrate Kansas' significant role in the political struggle that led to the Civil War and in other historic struggles for equality that took place in our state.

Designated by Congress, National Heritage Areas are places where natural, cultural, historic and recreational resources combine to form complete and distinct landscape. Our State, which has a proud heritage and compelling story, will benefit from this national designation that helps preserve and celebrate America's defining landscapes. By enhancing and developing historic sites throughout eastern Kansas, we will ensure that the traditions that evolved there are preserved.

During the Civil War, William Quantrill, the head of an infamous gang of Confederate sympathizers, lead a raid on Lawrence, KS. Though far from the main campaigns, this massacre caused Bleeding Kansas to become a prominent symbol in the fight for the freedom of all people, and the territory would become a battleground over the question of slavery. After

these attacks, the abolitionist senator Charles Sumner delivered his famous speech called ''The Crime Against Kansas,'' in which he brought the escalating situation into sharper focus for the Nation.

Almost 100 years later, Kansas became the battleground once again, as Oliver L. Brown fought to prove that separate among the people of this great Nation is not equal. In fact, we will soon celebrate the 50th anniversary of the Brown v. Topeka Board of Education Supreme Court decision, which was a landmark victory in the civil rights movement. These are but two of the many stories that will make up this heritage area, marking an important era in our Nation's history.

I'd like to commend the Lawrence City Commission, the Douglas County Commission, and the Lawrence Chamber of Commerce, who have worked diligently on Federal heritage area designation. And I encourage the Senate's swift passage of this important piece of legislation.

By Mr. BURNS (for himself, Mr. BAUCUS, and Mr. CAMPBELL):

S. 2225. A bill to authorize an exchange of mineral rights by the Secretary of the Interior in the State of Montana; to the Committee on Energy and Natural Resources.

Mr. BAUCUS. Mr. President, I am pleased to introduce today the Montana Mineral Exchange Act with Senators BURNS and CAMPBELL.

This bill will enable the Northern Cheyenne Tribe and eastern Montana to create jobs and provide a shot in the arm for a local economy that has been creative in forging its own destiny.

The Montana Mineral Exchange Act is the result of years of working together. President Geri Small has been a true advocate for the Northern Cheyenne Tribe as she has worked tirelessly on this project for years.

The Montana Mineral Exchange Act is a positive step forward in creating good-paying jobs and boosting economic development in Montana. This shows what Montana can do when we—the congressional delegation, the governor's office, the private sector, and the Northern Cheyenne—work together to develop our resources while creating jobs and protecting our quality of life. Development of this high-quality coal will allow Montana to move forward economically and compete with other energy producing states for jobs and market share. I'm glad I could work together with Governor Martz, Senator BURNS, Congressman REHBERG, Senator CAMPBELL and all of the parties involved to make this bill happen.

By Mr. CORZINE:

S. 2226. A bill to extend the period for COBRA coverage for recipients of trade adjustment assistance; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce legislation to ensure that displaced workers whose jobs have moved overseas have access to affordable health care coverage.

Under the Trade Assistance Adjustment Act, unemployed workers who have seen their manufacturing jobs shipped overseas are eligible for Federal subsidies to help them maintain their employer-based health coverage through COBRA. Unfortunately, while these workers have access to these Federal subsidies for 24 months, they only have access to COBRA coverage for 18 months. This discrepancy means that displaced workers are unable to fully utilize these subsidies. Indeed, the discrepancy creates the anomalous situation in which displaced workers can remain in their COBRA plan for 18 months, using the Federal subsidy to help defray their costs, but once their COBRA coverage runs out, they have six additional months of Federal subsidy available but lose their existing health coverage. This leaves them no choice but to seek coverage in the expensive individual market where they are not guaranteed coverage and where their subsidy may not be sufficient to help them afford coverage.

My legislation would fix this problem by making COBRA coverage available for the full 24 months that the subsidy is available. This will ensure that displaced workers can take full advantage of the assistance that Congress made available to them in 2002.

As more and more Americans see their jobs outsourced overseas, many struggle to provide health insurance for their families. We have lost 3,000 manufacturing jobs in February alone and have lost a total of 2.8 million since 2000. Congress took a critical step in authorizing Federal assistance for those who have lost these jobs. Now we must ensure that displaced workers have access to health coverage so that they can utilize this assistance. My legislation will ensure this.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows.

S. 2226

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

SECTION 1. EXTENSION OF COBRA COVERAGE PERIOD FOR TAA-ELIGIBLE INDIVIDUALS.

(a) ERISA.—Section 605(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1165(b)) is amended—

(1) in the subsection heading, by inserting ''AND COVERAGE'' after ''ELECTION''; and

(2) in paragraph (2)—

(A) in the paragraph heading, by inserting ''AND PERIOD'' after ''COMMENCEMENT'';

(B) by striking ''and shall'' and inserting '', shall''; and

(C) by inserting '', and in no event shall the maximum period required under section 602(2)(A) be less than the period during which the individual is a TAA-eligible individual'' before the period at the end.

(b) INTERNAL REVENUE CODE OF 1986.—Section 4980B(f)(5)(C) of the Internal Revenue Code of 1986 is amended—

(1) in the subparagraph heading, by inserting ''AND COVERAGE'' after ''ELECTION''; and

(2) in clause (ii)—

(A) in the clause heading, by inserting ''AND PERIOD'' after ''COMMENCEMENT'';

(B) by striking ''and shall'' and inserting '', shall''; and

(C) by inserting '', and in no event shall the maximum period required under paragraph (2)(B)(i) be less than the period during which the individual is a TAA-eligible individual'' before the period at the end.

(c) PUBLIC HEALTH SERVICE ACT.—Section 2205(b) of the Public Health Service Act (42 U.S.C. 300bb–5(b)) is amended—

(1) in the subsection heading, by inserting ''AND COVERAGE'' after ''ELECTION''; and

(2) in paragraph (2)—

(A) in the paragraph heading, by inserting ''AND PERIOD'' after ''COMMENCEMENT'';

(B) by striking ''and shall'' and inserting '', shall''; and

(C) by inserting '', and in no event shall the maximum period required under section 2202(2)(A) be less than the period during which the individual is a TAA-eligible individual'' before the period at the end.

(d) RETROACTIVE EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 933).

By Mr. BIDEN (for himself, Mr. HOLLINGS, Mrs. MURRAY, Mr. SMITH, and Mr. ALLEN):

S. 2227. A bill to prevent and punish counterfeiting and copyright piracy, and for other purposes; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise today to introduce the Anticounterfeiting Act of 2004, along with Senators MURRAY, HOLLINGS, SMITH, and ALLEN.

Two years ago, I held a hearing entitled, ''Theft of American Intellectual Property: Fighting Crime Abroad and At Home,'' and I issued a report on the status of our fight against this crime. Today, I attended a hearing chaired by Senator SPECTER on a similar topic, again driving home for me the serious problems encountered in today's world by American intellectual property.

What I have learned is that every day, thieves steal millions of dollars of American intellectual property from its rightful owners. Over a hundred thousand American jobs are lost as a result.

American innovation and creativity need to be protected by our government no less than our personal property, our homes and our streets. The Founding Fathers had the foresight to provide for protection of intellectual property, giving Congress the power to ''promote the progress of science and useful arts'' by providing copyrights and patents.

American intellectual property represents the largest single sector of the American economy, employing 4.7 million Americans. It has been estimated that software piracy alone cost the U.S. economy over 118,000 jobs and $5.7 billion in wage losses in the year 2000. Even more, the International Planning and Research Corporation estimates that the government loses more than a billion dollars worth of revenue every year from intellectual property theft.

To put that in perspective, with a billion dollars in additional revenue, the American government could pay for child care services for more than 100,000 children annually. Alternatively, $1 billion could be used to fund a Senate proposal to assist schools nationally with emergency school renovations and repairs.

There is another problem. Counterfeiters of software, music CDs and motion pictures are now tampering with authentication features. Holograms, certificates of authenticity, watermarks and other security features allow the copyright owners to distinguish genuine works from counterfeits. But now, highly sophisticated counterfeiters have found ways to tamper with these features to make counterfeit products appear genuine and to increase the selling price of genuine products and licenses. Put another way, not only do crooks illegally copy American intellectual property, they also now illegally fake or steal the very features property owners use to prevent that theft.

Copyrights mean nothing if government authorities fail to enforce the protections they provide intellectual property owners. The criminal code has not kept up with the counterfeiting operations of today's high-tech pirates, and it's time to make sure that it does. The Anticounterfeiting Act of 2004 updates and strengthens the Federal criminal code, which currently makes it a crime to traffic in counterfeit labels or copies of certain forms of intellectual property, but not authentication features. For example, we can currently prosecute someone for trafficking in fake labels for a computer program, but we cannot go after them for faking the hologram that the software maker uses to ensure that copies of the software are genuine.

In addition, many actions that violate current law go unprosecuted in this day and age when priorities, such as the fight against terrorism and life-threatening crimes, necessarily take priority over crimes of property, be they intellectual or physical. Moreover, the victims of this theft often do not have a way to recover their losses from this crime. For this reason, the Anticounterfeiting Act of 2004 also provides a private cause of action, to permit the victims of these crimes to pursue the criminals themselves and recover damages in federal court.

Current law criminalizes trafficking in counterfeit documentation and packaging, but only for software programs. The Anticounterfeiting Act of 2003 updates and expands these provisions to include documentation and packaging for phonorecords, motion pictures, other audiovisual works, and copies of other copyrighted works.

The existing provision with regard to counterfeiting addresses certain items of intellectual property, including motion pictures, software, and phonorecords. The Anticounterfeiting Act of 2004 updates the coverage of this statute to include other copyrighted works, such as books. As published books and ebooks begin to be subject to the piracy already witnessed by motion picture, softward and recording industries, they need the same protection.

This issue is not going way; to the contrary, it is growing, and Congress continues to focus on potential solutions, as evidenced by today's hearing in the Senate Judiciary Committee, and an upcoming hearing in the Foreign Relations Committee. The 2002 version of this bill did not manage to secure passage and enactment into law, but there is reason for optimism that this year its fate will be different. America's content providers, and the many jobs that depend on them, could certainly use the help.

America is a place where we must encourage diverse ideas, and with that encouragement we must protect those ideas. They are the source of our music, our art, our novels, our movies, our software, our products, all that is American culture and American know-how. The Anticounterfeiting Act of 2004 gives our ideas the protection they deserve.

I ask unanimous consent that the text of this 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. SHORT TITLE.

This Act may be cited as the ''Anticounterfeiting Act of 2004''.

SEC. 2. FINDINGS.

Congress finds that—

(1) American innovation, and the protection of that innovation by the government, has been a critical component of the economic growth of this Nation throughout the history of the Nation;

(2) copyright-based industries represent one of the most valuable economic assets of this country, contributing over 5 percent of the gross domestic product of the United States and creating significant job growth and tax revenues;

(3) the American intellectual property sector employs approximately 4,300,000 people, representing over 3 percent of total United States employment;

(4) the proliferation of organized criminal counterfeiting enterprises threatens the economic growth of United States copyright industries;

(5) the American intellectual property sector has invested millions of dollars to develop highly sophisticated authentication features that assist consumers and law enforcement in distinguishing genuine intellectual property products and packaging from counterfeits;

(6) in order to thwart these industry efforts, counterfeiters traffic in, and tamper with, genuine authentication features, for example, by obtaining genuine authentication features through illicit means and then commingling these features with counterfeit software or packaging;

(7) Federal law does not provide adequate civil and criminal remedies to combat tampering activities that directly facilitate counterfeiting crimes; and

(8) in order to strengthen Federal enforcement against counterfeiting of copyrighted works, Congress must enact legislation that—

(A) prohibits trafficking in, and tampering with, authentication features of copyrighted works; and

(B) permits aggrieved parties an appropriate civil cause of action.

SEC. 3. PROHIBITION AGAINST TRAFFICKING IN ILLICIT AUTHENTICATION FEATURES.

(a) IN GENERAL.—Section 2318 of title 18, United States Code, is amended—

(1) by striking the heading and inserting ''**TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT AUTHENTICATION FEATURES, OR COUNTERFEIT DOCUMENTATION OR PACKAGING**'';

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

''(a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

''(1) a counterfeit label affixed to, or designed to be affixed to—

''(A) a phonorecord;

''(B) a copy of a computer program;

''(C) a copy of a motion picture or other audiovisual work; or

''(D) documentation or packaging;

''(2) an illicit authentication feature affixed to or embedded in, or designed to be affixed to or embedded in—

''(A) a phonorecord;

''(B) a copy of a computer program;

''(C) a copy of a motion picture or other audiovisual work; or

''(D) documentation or packaging; or

''(3) counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 years, or both.'';

(3) in subsection (b)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3)—

(i) by striking ''and 'audiovisual work' have'' and inserting the following: '', 'audiovisual work', and 'copyright owner' have''; and

(ii) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(4) the term 'authentication feature' means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other physical feature that either individually or in combination with another feature is used by the respective copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, or documentation or packaging is not counterfeit or otherwise infringing of any copyright;

''(5) the term 'documentation or packaging' means documentation or packaging for a phonorecord, copy of a computer program, or copy of a motion picture or other audiovisual work; and

''(6) the term 'illicit authentication feature' means an authentication feature, that—

''(A) without the authorization of the respective copyright owner has been tampered with or altered so as to facilitate the reproduction or distribution of—

''(i) a phonorecord;

''(ii) a copy of a computer program;

''(iii) a copy of a motion picture or other audiovisual work; or

''(iv) documentation or packaging;

in violation of the rights of the copyright owner under title 17;

''(B) is genuine, but has been distributed, or is intended for distribution, without the

authorization of the respective copyright owner; or

''(C) appears to be genuine, but is not.'';

(4) in subsection (c)—

(A) by striking paragraph (3) and inserting the following:

''(3) the counterfeit label or illicit authentication feature is affixed to, is embedded in, or encloses, or is designed to be affixed to, to be embedded in, or to enclose—

''(A) a phonorecord of a copyrighted sound recording;

''(B) a copy of a copyrighted computer program;

''(C) a copy of a copyrighted motion picture or other audiovisual work; or

''(D) documentation or packaging; or''; and

(B) in paragraph (4), by striking ''for a computer program'';

(5) in subsection (d)—

(A) by inserting ''or illicit authentication features'' after ''counterfeit labels'' each place it appears;

(B) by inserting ''or illicit authentication features'' after ''such labels''; and

(C) by inserting before the period at the end the following: '', and of any equipment, device, or materials used to manufacture, reproduce, or assemble the counterfeit labels or illicit authentication features''; and

(6) by adding at the end the following:

''(f) CIVIL REMEDIES FOR VIOLATION.—

''(1) IN GENERAL.—Any copyright owner who is injured by a violation of this section or is threatened with injury, may bring a civil action in an appropriate United States district court.

''(2) DISCRETION OF COURT.—In any action brought under paragraph (1), the court—

''(A) may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain violations of this section;

''(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of this section; and

''(C) may award to the injured party—

''(i) reasonable attorney fees and costs; and

''(ii)(I) actual damages and any additional profits of the violator, as provided by paragraph (3); or

''(II) statutory damages, as provided by paragraph (4).

''(3) ACTUAL DAMAGES AND PROFITS.—

''(A) IN GENERAL.—The injured party is entitled to recover—

''(i) the actual damages suffered by the injured party as a result of a violation of this section, as provided by subparagraph (B); and

''(ii) any profits of the violator that are attributable to a violation of this section and are not taken into account in computing the actual damages.

''(B) CALCULATION OF DAMAGES.—The court shall calculate actual damages by multiplying—

''(i) the value of the phonorecords or copies to which counterfeit labels, illicit authentication features, or counterfeit documentation or packaging were affixed or embedded, or designed to be affixed or embedded; by

''(ii) the number of phonorecords or copies to which counterfeit labels, illicit authentication features, or counterfeit documentation or packaging were affixed or embedded, or designed to be affixed or embedded, unless such calculation would underestimate the actual harm suffered by the copyright owner.

''(C) DEFINITION.—For purposes of this paragraph, the term 'value of the phonorecord or copy' means—

''(i) the retail value of an authorized phonorecord of a copyrighted sound recording;

''(ii) the retail value of an authorized copy of a copyrighted computer program; or

''(iii) the retail value of a copy of a copyrighted motion picture or other audiovisual work.

''(4) STATUTORY DAMAGES.—The injured party may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of this section in a sum of not less than $2,500 or more than $25,000, as the court considers appropriate.

''(5) SUBSEQUENT VIOLATION.—The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated this section within 3 years after a final judgment was entered against that person for a violation of this section.

''(6) LIMITATION ON ACTIONS.—A civil action may not be commenced under this section unless it is commenced within 3 years after the date on which the claimant discovers the violation.

''(g) OTHER RIGHTS NOT AFFECTED.—Nothing in this section shall enlarge, diminish, or otherwise affect liability under section 1201 or 1202 of title 17.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The item relating to section 2318 in the table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting ''or illicit authentication features'' after ''counterfeit labels''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 323—TO AUTHORIZE LEGAL REPRESENTATION IN UNITED STATES OF AMERICA V. ELENA RUTH SASSOWER

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 323

Whereas, in the case of *United States of America* v. *Elena Ruth Sassower*, Crim. No. M–4113–3, pending in the Superior Court of the District of Columbia, the defendant has served subpoenas for testimony and documents upon Senators Orrin Hatch, Patrick Leahy, Saxby Chambliss, Hillary Rodham Clinton, and Charles Schumer, and on Senate employees Tamera Luzzatto, Chief of Staff to Senator Clinton, Leecia Eve, Counsel to Senator Clinton, Joshua Albert, Legislative Correspondent to Senator Clinton, and Michael Tobman, Director of Intergovernmental Affairs for Senator Schumer; and,

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members, officers, and employees of the Senate with respect to any subpoena, order, or request for testimony or documents relating to their official responsibilities: Now, therefore, be it

Resolved That the Senate Legal Counsel is authorized to represent the above-listed Senators and Senate employees who are the subject of subpoenas and any other Member, officer, or employee who may be subpoenaed in this case.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2891. Mr. BREAUX (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table.

SA 2892. Mr. BREAUX (for himself and Mr. HATCH) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2893. Mr. REID (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2894. Mr. KYL (for himself and Mr. NICKLES) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2895. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2896. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2897. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2898. Mr. GRASSLEY proposed an amendment to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra.

SA 2899. Mr. GRASSLEY proposed an amendment to amendment SA 2898 proposed by Mr. GRASSLEY to the amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra.

SA 2900. Mr. THOMAS (for himself and Mr. DASCHLE) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2901. Mr. MILLER (for himself, Mr. ALLARD, Mrs. CLINTON, Mr. SCHUMER, and Mr. CHAMBLISS) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2902. Mr. BOND submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2903. Mr. BOND (for himself and Mr. TALENT) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2904. Mr. BOND submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2905. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2906. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2907. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2908. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2909. Mr. GRASSLEY submitted an amendment intended to be proposed by him

to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2910. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2911. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2912. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2913. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2914. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2915. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2916. Mr. WYDEN (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2917. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2918. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2919. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2920. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2921. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2922. Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. KOHL, Mr. KENNEDY, Mr. EDWARDS, Mr. FEINGOLD, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2923. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2924. Mr. DORGAN (for himself, Mr. COLEMAN, Ms. CANTWELL, Mrs. MURRAY, Mr. BINGAMAN, and Mr. NELSON, of Nebraska) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2891. Mr. BREAUX (for himself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 137, between lines 8 and 9, insert:

''(4) DOLLAR LIMITATION.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the excess qualified foreign distribution amount shall not exceed the lesser of—

''(i) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

''(ii) the excess (if any) of—

''(I) the estimated aggregate qualified expenditures of the corporation for taxable years ending in 2005, 2006, and 2007, over

''(II) the aggregate qualified expenditures of the corporation for taxable years ending in 2001, 2002, and 2003.

''(B) EARNINGS PERMANENTLY REINVESTED OUTSIDE THE UNITED STATES.—

''(i) IN GENERAL.—If an amount on an applicable financial statement is shown as Federal income taxes not required to be reserved by reason of the permanent reinvestment of earnings outside the United States, subparagraph (A)(i) shall be applied by reference to the earnings to which such taxes relate.

''(ii) NO STATEMENT OR STATED AMOUNT.—If there is no applicable financial statement or such a statement fails to show a specific amount described in subparagraph (A)(i) or clause (i), such amount shall be treated as being zero.

''(iii) APPLICABLE FINANCIAL STATEMENT.—For purposes of this paragraph, the term 'applicable financial statement' means the most recently audited financial statement (including notes and other documents which accompany such statement)—

''(I) which is certified on or before March 31, 2003, as being prepared in accordance with generally accepted accounting principles, and

''(II) which is used for the purposes of a statement or report to creditors, to shareholders, or for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2003.

''(C) QUALIFIED EXPENDITURES.—For purposes of this paragraph, the term 'qualified expenditures' means—

''(i) wages (as defined in section 3121(a)),

''(ii) additions to capital accounts for property located within the United States (including any amount which would be so added but for a provision of this title providing for the expensing of such amount),

''(iii) qualified research expenses (as defined in section 41(b)) and basic research payments (as defined in section 41(e)(2)), and

''(iv) irrevocable contributions to a qualified employer plan (as defined in section 72(p)(4)) but only if no deduction is allowed under this chapter with respect to such contributions.

''(D) RECAPTURE.—If the taxpayer's estimate of qualified expenditures under subparagraph (A)(ii)(I) is greater than the actual expenditures, then the tax imposed by this chapter for the taxpayer's last taxable year ending in 2007 shall be increased by the sum of—

''(i) the increase (if any) in tax which would have resulted in the taxable year for which the deduction under this section was allowed if the actual expenditures were used in lieu of the estimated expenditures, plus

''(ii) interest at the underpayment rate, determined as if the increase in tax described in clause (i) were an underpayment for the taxable year of the deduction.

''(5) LIMITATION ON CONTROLLED FOREIGN CORPORATIONS IN POSSESSIONS.—In computing the excess qualified foreign distribution amount under paragraph (1) and the base dividend amount under paragraph (2), there shall not be taken into account dividends received from any controlled foreign corporation created or organized under the laws of any possession of the United States.

SA 2892. Mr. BREAUX (for himself and Mr. HATCH) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ___. REPEAL OF 10 YEAR RULE FOR QUALIFIED MORTGAGE BONDS; HOLIDAY FOR USE OF CERTAIN REPAYMENTS.

(a) REPEAL.—Subparagraph (A) of section 143(a)(2) (relating to qualified mortgage issue defined) is amended by striking the last sentence thereof.

(b) HOLIDAY FOR PREPAYMENTS.—Subparagraph (A) of section 143(a)(2) is amended by adding at the end the following flush sentence: ''Clause (iv) shall not apply to amounts received during 2004, 2005, and 2006.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts received after December 31, 2003.

SEC. ___. MODIFICATION OF PURCHASE PRICE LIMITATION UNDER MORTGAGE SUBSIDY BOND RULES BASED ON MEDIAN FAMILY INCOME.

(a) IN GENERAL.—Paragraph (1) of section 143(e) (relating to purchase price requirement) is amended to read as follows:

''(1) IN GENERAL.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is provided under the issue does not exceed the greater of—

''(A) 90 percent of the average area purchase price applicable to the residence, or

''(B) 3.5 times the applicable median family income (as defined in subsection (f)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to financing provided, and mortgage credit certificates issued, after the date of the enactment of this Act.

SEC. ___. DETERMINATION OF AREA MEDIAN GROSS INCOME FOR LOW-INCOME HOUSING CREDIT PROJECTS.

(a) IN GENERAL.—Paragraph (4) of section 42(g) (relating to certain rules made applicable) is amended by striking the period at the end and inserting ''and in areas designated by the housing credit agency as requiring higher income limits to support development costs and project feasibility, the term 'area median gross income' means the amount equal to the greater of—

''(A) the area median gross income determined under section 142(d)(2)(B), or

''(B) the statewide median gross income for the State in which the project is located.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 142(d)(2) (relating to income of individuals; area median gross income) is amended—

(1) by striking ''.—The income'' and inserting ''.—

''(i) IN GENERAL.—Except as provided in clause (ii), the income'', and

(2) by adding at the end the following new clause:

''(ii) AREA MEDIAN GROSS INCOME FOR LOW-INCOME HOUSING CREDIT PROJECTS.—In the case of any building which receives a low-income housing credit allocation under section 42 in areas designated by the housing credit agency (as defined in section 42(h)(8)) as requiring higher income limits to support development costs and project feasibility, the term 'area median gross income' means the amount equal to the greater of—

''(I) the area median gross income determined under clause (i), or

''(II) the statewide median gross income for the State in which the project is located.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) housing credit dollar amounts allocated after the date of the enactment of this Act, and

(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof.

SA 2893. Mr. REID (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 179, after line 25, add the following:

SEC. ___. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources), as amended by section 514 of this Act (as added by amendment no. 2687, as agreed to) is amended to read as follows:

''(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified energy resources' means—

''(A) wind,

''(B) closed-loop biomass,

''(C) biomass (other than closed-loop biomass),

''(D) geothermal energy,

''(E) solar energy,

''(F) small irrigation power,

''(G) biosolids and sludge, and

''(H) municipal solid waste.''.

''(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

''(3) BIOMASS.—

''(A) IN GENERAL.—The term 'biomass' means—

''(i) any agricultural livestock waste nutrients, or

''(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

''(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

''(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

''(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

''(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

''(i) IN GENERAL.—The term 'agricultural livestock waste nutrients' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

''(ii) AGRICULTURAL LIVESTOCK.—The term 'agricultural livestock' includes bovine, swine, poultry, and sheep.

''(4) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

''(5) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

''(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

''(B) the installed capacity of which is less than 5 megawatts.

''(6) BIOSOLIDS AND SLUDGE.—The term 'biosolids and sludge' means the residue or solids removed in the treatment of commercial, industrial, or municipal wastewater.

''(7) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).''.

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) QUALIFIED FACILITIES.—For purposes of this section—

''(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

''(2) CLOSED-LOOP BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

''(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

''(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

''(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

''(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than October 1, 2004,

''(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

''(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(3) BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using biomass (other than closed-loop biomass) to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which—

''(i) in the case of a facility using agricultural livestock waste nutrients, is originally placed in service after September 30, 2004 and before January 1, 2007, and

''(ii) in the case of any other facility, is originally placed in service before January 1, 2005.

''(B) SPECIAL RULES FOR PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (A)(ii) which is placed in service before October 1, 2004—

''(i) subsection (a)(1) shall be applied by substituting '1.2 cents' for '1.5 cents', and

''(ii) the 5-year period beginning on October 1, 2004, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—

''(A) IN GENERAL.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007.

''(B) SPECIAL RULE.—In the case of any facility described in subparagraph (A), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007.

''(6) BIOSOLIDS AND SLUDGE FACILITY.—In the case of a facility using waste heat from the incineration of biosolids and sludge to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007. Such term shall not include any property described in section 48(a)(6) the basis of which is taken into account for purposes of the energy credit under section 46.

''(7) MUNICIPAL SOLID WASTE FACILITY.—

''(A) IN GENERAL.—In the case of a facility or unit incinerating municipal solid waste to produce electricity, the term 'qualified facility' means any facility or unit owned by the taxpayer which is originally placed in service after September 30, 2004, and before January 1, 2007.

''(B) SPECIAL RULE.—In the case of any facility or unit described in subparagraph (A), the 5-year period beginning on the date the facility or unit was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any qualified facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.''.

(2) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(e) (relating to definitions and special rules), as redesignated by paragraph (1), is amended by striking paragraph (6) and inserting the following new paragraph:

''(6) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (d)(6)(A), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted to operate in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).''.

(3) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking ''subsection (c)(3)(A)'' in paragraph (7)(A)(i) and inserting ''subsection (d)(1)''.

(c) CREDIT RATE FOR ELECTRICITY PRODUCED FROM NEW FACILITIES.—Section 45(a) is amended by adding at the end the following new flush sentence:

''In the case of electricity produced after September 30, 2004, at any qualified facility originally placed in service after such date, paragraph (1) shall be applied by substituting '1.8 cents' for '1.5 cents'.''.

(d) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act)'' after ''project'' in clause (ii) (as so redesignated),

(4) by adding at the end the following new sentence: ''This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).'', and

(5) by striking ''TAX-EXEMPT BONDS,'' in the heading and inserting ''CERTAIN''.

(e) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—Section 45(e) (relating to definitions and special rules), as redesignated by subsection (b)(1), is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

''(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(f) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SECTION 45 CREDIT.—

''(A) IN GENERAL.—In the case of any section 45 credit—

''(i) this section and section 39 shall be applied separately with respect to such credit, and

''(ii) in applying paragraph (1) to such credit—

''(I) the tentative minimum tax shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the section 45 credit).

''(B) SECTION 45 CREDIT.—For purposes of this subsection, the term 'section 45 credit' means the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

''(i) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

''(ii) during the 4-year period beginning on the date that such facility was originally placed in service.''.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (2)(A)(ii)(II) of section 38(c) of such Code is amended by striking ''or'' and inserting a comma and by inserting '', and the section 45 credit'' after ''employee credit''.

(B) Paragraph (3)(A)(ii)(II) of section 38(c) of such Code is amended by inserting ''and the section 45 credit'' after ''employee credit''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold—

(A) with respect to facilities described in paragraphs (1) and (2)(A)(i) of section 45(d), as amended by this section, after December 31, 2003, in taxable years ending after such date, and

(B) with respect to all other facilities described in section 45(d), as amended by this section, after September 30, 2004, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after September 30, 2004, in taxable years ending after such date.

(3) CREDIT RATE FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after September 30, 2004, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on September 30, 2004) placed in service on or before such date.

SA 2894. Mr. KYL (for himself and Mr. NICKLES) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the amendment contained in the instructions insert the following:

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

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

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

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

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

Sec. 101. Repeal of exclusion for extraterritorial income.

TITLE II—REDUCTION OF TOP CORPORATE TAX RATE
Sec. 201. Reduction in corporate income tax rate.
TITLE III—ALTERNATIVE MINIMUM TAX RELIEF
Sec. 301. Reduction in corporate AMT rate.
Sec. 302. Increase in exemption from AMT for small corporations.
Sec. 303. Foreign tax credit under alternative minimum tax.
TITLE IV—ADDITIONAL PROVISIONS
Subtitle A—Provisions Designed To Curtail Tax Shelters
Sec. 401. Clarification of economic substance doctrine.
Sec. 402. Penalty for failing to disclose reportable transaction.
Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 404. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 405. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 407. Disclosure of reportable transactions.
Sec. 408. Modifications to penalty for failure to register tax shelters.
Sec. 409. Modification of penalty for failure to maintain lists of investors.
Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 411. Understatement of taxpayer's liability by income tax return preparer.
Sec. 412. Penalty on failure to report interests in foreign financial accounts.
Sec. 413. Frivolous tax submissions.
Sec. 414. Regulation of individuals practicing before the Department of Treasury.
Sec. 415. Penalty on promoters of tax shelters.
Sec. 416. Statute of limitations for taxable years for which required listed transactions not reported.
Sec. 417. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
Sec. 418. Authorization of appropriations for tax law enforcement.
Subtitle B—Other Corporate Governance Provisions
Sec. 421. Affirmation of consolidated return regulation authority.
Sec. 422. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.
Subtitle C—Enron-Related Tax Shelter Provisions
Sec. 431. Limitation on transfer or importation of built-in losses.
Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 433. Repeal of special rules for FASITs.
Sec. 434. Expanded disallowance of deduction for interest on convertible debt.
Sec. 435. Expanded authority to disallow tax benefits under section 269.
Sec. 436. Modification of interaction between subpart F and passive foreign investment company rules.
Subtitle D—Provisions to Discourage Expatriation
Sec. 441. Tax treatment of inverted corporate entities.
Sec. 442. Imposition of mark-to-market tax on individuals who expatriate.
Sec. 443. Excise tax on stock compensation of insiders in inverted corporations.
Sec. 444. Reinsurance of United States risks in foreign jurisdictions.
Sec. 445. Reporting of taxable mergers and acquisitions.
Subtitle E—International Tax
Sec. 451. Clarification of banking business for purposes of determining investment of earnings in United States property.
Sec. 452. Prohibition on nonrecognition of gain through complete liquidation of holding company.
Sec. 453. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
Sec. 454. Effectively connected income to include certain foreign source income.
Sec. 455. Recapture of overall foreign losses on sale of controlled foreign corporation.
Sec. 456. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
Subtitle F—Other Revenue Provisions
PART I—FINANCIAL INSTRUMENTS
Sec. 461. Treatment of stripped interests in bond and preferred stock funds, etc.
Sec. 462. Application of earnings stripping rules to partnerships and S corporations.
Sec. 463. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
Sec. 464. Modification of straddle rules.
Sec. 465. Denial of installment sale treatment for all readily tradeable debt.
PART II—CORPORATIONS AND PARTNERSHIPS
Sec. 466. Modification of treatment of transfers to creditors in divisive reorganizations.
Sec. 467. Clarification of definition of nonqualified preferred stock.
Sec. 468. Modification of definition of controlled group of corporations.
Sec. 469. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.
PART III—DEPRECIATION AND AMORTIZATION
Sec. 471. Extension of amortization of intangibles to sports franchises.
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Sec. 475. Reform of tax treatment of leasing operations.
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PART IV—ADMINISTRATIVE PROVISIONS
Sec. 481. Clarification of rules for payment of estimated tax for certain deemed asset sales.
Sec. 482. Extension of IRS user fees.
Sec. 483. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangement.
Sec. 484. Partial payment of tax liability in installment agreements.
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Sec. 486. Deposits made to suspend running of interest on potential underpayments.
Sec. 487. Qualified tax collection contracts.
PART V—MISCELLANEOUS PROVISIONS
Sec. 491. Addition of vaccines against hepatitis A to list of taxable vaccines.
Sec. 492. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
Sec. 493. Clarification of exemption from tax for small property and casualty insurance companies.
Sec. 494. Definition of insurance company for section 831.
Sec. 495. Limitations on deduction for charitable contributions of patents and similar property.
Sec. 496. Repeal of 10-percent rehabilitation tax credit.
Sec. 497. Increase in age of minor children whose unearned income is taxed as if parent's income.

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

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

(4) Section 275(a) is amended—

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

(B) by striking the last sentence.

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

(A) by striking:

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

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

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

(B) by striking subparagraph (B).

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

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

(c) EFFECTIVE DATE.—

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

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

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

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

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

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

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

(B) if the corporation does revoke such election—

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

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

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

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

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

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

(e) GENERAL TRANSITION.—

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

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

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

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

(B) PHASEOUT PERCENTAGE.—

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

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

(ii) SPECIAL RULE FOR 2004.—The phaseout percentage for 2004 shall be the amount that bears the same ratio to 100 percent as the number of days after the date of the enactment of this Act bears to 365.

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE II—REDUCTION OF TOP CORPORATE TAX RATE

SEC. 201. REDUCTION IN CORPORATE INCOME TAX RATE.

(a) IN GENERAL.—Subsection (b) of section 11 (relating to tax imposed on corporations) is amended by redesignating paragraph (2) as paragraph (6) and by striking paragraph (1) and inserting the following new paragraphs:

''(1) FOR TAXABLE YEARS BEGINNING AFTER 2009.—In the case of taxable years beginning after 2009, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000	$13,750, plus 33% of the excess over $75,000.

''(2) FOR TAXABLE YEARS BEGINNING IN 2006, 2007, 2008, OR 2009.—In the case of taxable years beginning in 2006, 2007, 2008, or 2009, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000	$13,750, plus 33.5% of the excess over $75,000.

''(3) FOR TAXABLE YEARS BEGINNING IN 2005.—In the case of taxable years beginning in 2005, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000	$13,750, plus 34% of the excess over $75,000.

''(4) FOR TAXABLE YEARS BEGINNING IN 2004.—In the case of taxable years beginning in 2004, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000 but not over $10,000,000.	$13,750, plus 34% of the excess over $75,000.
Over $10,000,000	$3,388,250, plus 34.5% of the excess over $10,000,000.

''(5) PHASEOUT OF LOWER RATES FOR CERTAIN TAXPAYERS.—

''(A) GENERAL RULE.—In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under paragraph (1), (2), (3) or (4) for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,000 ($11,750 in the case of taxable years beginning before 2006 and $11,375 in the case of taxable years beginning after 2005 and before 2010).

''(B) HIGHER INCOME CORPORATIONS.—In the case of a corporation which has taxable income in excess of $15,000,000 for taxable years beginning in 2004, the amount of the tax determined under the foregoing provisions of this subsection shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $50,000.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 904(b)(3)(D)(ii) is amended to read as follows:

''(ii) in the case of a corporation, section 1201(a) applies to such taxable year.''.

(2) Section 1201(a) is amended by striking ''the last 2 sentences of section 11(b)(1)'' and inserting ''section 11(b)(5)''.

(3) Section 1561(a) is amended—

(A) by striking ''the last 2 sentences of section 11(b)(1)'' and inserting ''section 11(b)(5)'', and

(B) by striking ''such last 2 sentences'' and inserting ''section 11(b)(5)''.

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

TITLE III—ALTERNATIVE MINIMUM TAX RELIEF

SEC. 301. REDUCTION IN CORPORATE AMT RATE.

(a) IN GENERAL.—Section 55(b)(1)(B)(i) (relating to amount of tentative tax for corporations) is amended by striking ''20 percent'' and inserting ''19 percent (19.5 percent for taxable years beginning in 2004 or 2005)''.

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

SEC. 302. INCREASE IN EXEMPTION FROM AMT FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 55(e) (relating to exemption for small corporations) is amended—

(1) by striking ''$7,500,000'' in the heading and the text of subparagraph (A) and inserting ''$15,000,000'',

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

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

SEC. 303. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

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

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

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

TITLE IV—ADDITIONAL PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or

the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account

the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''.

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

SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''.

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

SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''.

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''.

(3)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''.

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''.

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the

tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

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

SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 413. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''.

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''.

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''.

SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

''(A) the date on which the Secretary is furnished the information so required; or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''.

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

SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

Subtitle B—Other Corporate Governance Provisions

SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 422. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking ''Any person who—'' and inserting ''(a) IN GENERAL.—Any person who—'', and

(2) by adding at the end the following new subsection:

''(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.''.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''5 years'' and inserting ''10 years''.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking ''misdemeanor'' and inserting ''felony'', and

(ii) by striking ''1 year'' and inserting ''10 years'', and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking ''$100,000'' and inserting ''$250,000'',

(B) by striking ''$500,000'' and inserting ''$1,000,000'', and

(C) by striking ''3 years'' and inserting ''5 years''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

Subtitle C—Enron-Related Tax Shelter Provisions

SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATIONS ON BUILT-IN LOSSES.—

''(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

''(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

''(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

''(A) IN GENERAL.—If—

''(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

''(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

''(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

''(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.''.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation,

and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after February 13, 2003.

SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,'' and inserting ''or a REMIC to which part IV of subchapter M applies,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking ''and any regular interest in a FASIT,'', and

(B) by striking ''or FASIT'' each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking ''or a FASIT''.

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by inserting ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

''(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.''.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

''(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.''.

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking ''or a related party'' in the material preceding subparagraph (A) and inserting ''or any other person'', and

(2) by striking ''or interest'' each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

''(a) IN GENERAL.—If—

''(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

''(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

''(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

''Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable

years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

Subtitle D—Provisions to Discourage Expatriation

SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

"SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.

''(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

''(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

''(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

''(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

''(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group. Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation's stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

''(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

''(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

''(A) subsection (a)(2)(A) were applied by substituting 'after December 31, 1996, and on or before March 20, 2002' for 'after March 20, 2002' and subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent', or

''(B) subsection (a)(2)(B) were applied by substituting 'more than 50 percent' for 'at least 80 percent',

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

''(2) ACQUIRED ENTITY.—For purposes of this section—

''(A) IN GENERAL.—The term 'acquired entity' means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

''(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

''(3) APPLICABLE PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The term 'applicable period' means the period—

''(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

''(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

''(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

''(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

''(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

''(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

''(4) INVERSION GAIN.—For purposes of this section, the term 'inversion gain' means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

''(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

''(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

''(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

''(6) STATUTE OF LIMITATIONS.—

''(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

''(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

''(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

''(A) section 6662(a) shall be applied with respect to such underpayment by substituting '30 percent' for '20 percent', and

''(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

''(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

''(A) without regard to paragraph (2)(A)(ii) thereof, and

''(B) by substituting '25 percent' for '50 percent' each place it appears in paragraph (2)(B) thereof.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

''(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

''(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

''(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

''(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are

met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

''(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

''(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

''(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

''(ii) to treat stock as not stock.

''(2) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(3) FOREIGN INCORPORATED ENTITY.—The term 'foreign incorporated entity' means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

''(4) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any acquired entity, a foreign person which—

''(A) bears a relationship to such entity described in section 267(b) or 707(b), or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

''(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

''(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

''(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

''(ii) after such transaction, such acquired entity—

''(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

''(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to inverted corporate entities.''.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

''SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

''(a) GENERAL RULES.—For purposes of this subtitle—

''(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

''(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

''(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

''(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

''(3) EXCLUSION FOR CERTAIN GAIN.—

''(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by $600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

''(B) COST-OF-LIVING ADJUSTMENT.—

''(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the $600,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lower multiple of $1,000.

''(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

''(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

''(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

''(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

''(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

''(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

''(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

''(iii) complies with such other requirements as the Secretary may prescribe.

''(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

''(b) ELECTION TO DEFER TAX.—

''(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

''(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

''(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

''(4) SECURITY.—

''(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

''(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

''(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

''(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

''(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

''(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

''(7) INTEREST.—For purposes of section 6601—

''(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

''(B) section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(c) COVERED EXPATRIATE.—For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'covered expatriate' means an expatriate.

''(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

''(A) the individual—

''(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

''(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

''(B)(i) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

''(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

''(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

''(1) EXEMPT PROPERTY.—This section shall not apply to the following:

''(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

''(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

''(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

''(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

''(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

''(ii) an amount equal to the present value of the expatriate's nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

''(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

''(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan's behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

''(D) APPLICABLE PLANS.—This paragraph shall apply to—

''(i) any qualified retirement plan (as defined in section 4974(c)),

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

''(e) DEFINITIONS.—For purposes of this section—

''(1) EXPATRIATE.—The term 'expatriate' means—

''(A) any United States citizen who relinquishes citizenship, and

''(B) any long-term resident of the United States who—

''(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

''(2) EXPATRIATION DATE.—The term 'expatriation date' means—

''(A) the date an individual relinquishes United States citizenship, or

''(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

''(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

''(A) the date the individual renounces such individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

''(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

''(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

''(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

''(4) LONG-TERM RESIDENT.—The term 'long-term resident' has the meaning given to such term by section 877(e)(2).

''(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

''(A) the individual shall not be treated as having sold such interest,

''(B) such interest shall be treated as a separate share in the trust, and

''(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

''(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

''(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual's share in the trust.

''(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

''(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

''(i) paragraph (1) and subsection (a) shall not apply, and

''(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

''(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

''(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

''(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

''(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

''(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

''(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting '5 percentage points' for '3 percentage points' in subparagraph (B) thereof.

''(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

''(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

''(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

''(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in

the trust if the beneficiary held directly all assets allocable to such interests.

''(E) TAX DEDUCTED AND WITHHELD.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

''(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

''(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

''(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

''(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

''(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

''(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

''(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) QUALIFIED TRUST.—The term 'qualified trust' means a trust which is described in section 7701(a)(30)(E).

''(ii) VESTED INTEREST.—The term 'vested interest' means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

''(iii) NONVESTED INTEREST.—The term 'nonvested interest' means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

''(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

''(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

''(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

''(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

''(B) OTHER DETERMINATIONS.—For purposes of this section—

''(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

''(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

''(I) the methodology used to determine that taxpayer's trust interest under this section, and

''(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

''(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

''(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

''(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

''(h) IMPOSITION OF TENTATIVE TAX.—

''(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

''(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

''(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

''(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

''(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

''(1) IMPOSITION OF LIEN.—

''(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

''(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

''(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

''(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

''(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

''(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

''(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

''(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

''(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

''(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

''(A) the gift, bequest, devise, or inheritance is—

''(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

''(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

''(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.''.

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

''(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(3).

''(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.''.

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

''(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).''.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(l) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

''(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General's delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).''.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ''or (17)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''or (18)''.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking ''or (18)'' after ''any other person described in subsection (l)(16)'' each place it appears and inserting ''(18), or (19)''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

''(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after January 1, 2004.''.

(2) Section 2107 is amended by adding at the end the following new subsection:

''(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.''.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

''(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.''.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting ''or 877A'' after ''section 877''.

(B) The second sentence of section 6039G(e) is amended by inserting ''or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))'' after ''877(a))''.

(C) Section 6039G(f) is amended by inserting ''or 877A(e)(2)(B)'' after ''877(e)(1)''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

''Sec. 877A. Tax responsibilities of expatriation.''.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after January 1, 2004.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after January 1, 2004, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

''CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS

''Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

''SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the inversion date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting 'July 10, 2002' for 'March 20, 2002') with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

''(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

''(e) DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

''(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

''(2) INVERTED CORPORATION; INVERSION DATE.—

''(A) INVERTED CORPORATION.—The term 'inverted corporation' means any corporation to which subsection (a) or (b) of section 7874 applies determined—

''(i) by substituting 'July 10, 2002' for 'March 20, 2002' in section 7874(a)(2)(A), and

''(ii) without regard to subsection (b)(1)(A). Such term includes any predecessor or successor of such a corporation.

''(B) INVERSION DATE.—The term 'inversion date' means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''48,'' after ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group

(as defined in such section) which includes such corporation.''.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A''.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

''Chapter 48. Stock compensation of insiders in inverted corporations.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

''(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

''(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

''(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

''(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return,

''(2) the information required to be shown on such return with respect to such shareholder, and

''(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (AA) as subparagraphs (G) through (BB), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

''Sec. 6043A. Returns relating to taxable mergers and acquisitions.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

Subtitle E—International Tax

SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

''(A) obligations of the United States, money, or deposits with—

''(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

''(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

''(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

''(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

''(A) subsection (a) and section 331 shall not apply to such distribution, and

''(B) such distribution shall be treated as a distribution to which section 301 applies.

''(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable holding company' means any domestic corporation—

''(i) which is a common parent of an affiliated group,

''(ii) stock of which is directly owned by the distributee foreign corporation,

''(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

''(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

''(B) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

''(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

''(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

SEC. 453. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is included during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.''.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking ''The Secretary'' and inserting:

''(A) IN GENERAL.—The Secretary'', and

(2) by adding at the end the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any amount payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent such amount is included during such prior taxable year in the gross income of a United States person who owns (within the

meaning of section 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

''Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.''.

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

SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amending by adding at the end the following new subparagraph:

''(D) APPLICATION TO DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS.—In the case of any disposition by a taxpayer of any share of stock in a controlled foreign corporation (as defined in section 957), this paragraph shall apply to such disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

''(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

''(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

''(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

''(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

''(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term 'qualified tax' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

''(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

''(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

''(C) DEALER.—For purposes of subparagraph (A), the term 'dealer' means—

''(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

''(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

''(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

''(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

''(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.''.

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting ''ON DIVIDENDS'' after ''TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

Subtitle F—Other Revenue Provisions

PART I—FINANCIAL INSTRUMENTS

SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''.

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

''(7) CROSS REFERENCE.—

''For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

''(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

''(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

''(i) the corporation's allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

''(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation's allocable share of such interest expense.''.

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

SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

''(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

''(A) a debtor corporation transfers stock, or

''(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 464. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

''(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.''.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

''(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', and

(B) by adding at the end the following new flush sentence:

''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.''.

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

''(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'personal property' includes—

''(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

''(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

''(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.''.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

''(I) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking ''is issued by a corporation or a government or political subdivision thereof and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART II—CORPORATIONS AND PARTNERSHIPS

SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 467. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking ''possessing—'' and all that follows through ''(B)'' and inserting ''possessing''.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

''(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

''(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

'(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

'(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

'(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

''(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).''.

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

SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking '', with respect to which the election provided in section 754 is in effect,'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking ''(as adjusted by section 732(d))'' both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking ''optional'' in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking ''with respect to which the election provided in section 754 is in effect'' in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

''(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.'', and

(4) by striking ''optional'' in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking ''section 734(b) (relating to the optional adjustment'' and inserting ''section 734(a) (relating to the adjustment'', and

(B) by striking ''section 743(b) (relating to the optional adjustment'' and inserting ''section 743(a) (relating to the adjustment''.

(3) Section 755(c), as added by this Act, is amended by striking ''section 734(b)'' and inserting ''section 734(a)''.

(4) Section 761(e)(2) is amended by striking ''optional''.

(5) Section 774(a) is amended by striking ''743(b)'' both places it appears and inserting ''743(a)''.

(6) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(7) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking ''Optional''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

PART III—DEPRECIATION AND AMORTIZATION

SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) initial clearing and grading land improvements with respect to gas utility property.''.

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.''.

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting ''or (E)(iv)'' after ''(E)(iii)'', and

(2) by adding at the end the following new item:

''(F) ..... 25''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

''(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

''(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

''(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'sport utility vehicle' means any 4-wheeled vehicle which—

''(I) is manufactured primarily for use on public streets, roads, and highways,

''(II) is not subject to section 280F, and

''(III) is rated at not more than 14,000 pounds gross vehicle weight.

''(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

''(I) does not have the primary load carrying device or container attached,

''(II) has a seating capacity of more than 12 individuals,

''(III) is designed for more than 9 individuals in seating rearward of the driver's seat,

''(IV) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least 72.0 inches in interior length, or

''(V) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

''(i) the amount of start-up expenditures with respect to the active trade or business, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

''(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking ''AMORTIZE'' and inserting ''DEDUCT'' in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

''(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

''(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

''(A) the amount of organizational expenditures with respect to the taxpayer, or

''(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

''(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.''.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

''(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

''(i) the amount of organizational expenses with respect to the partnership, or

''(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

''(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

''(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.''.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ''AMORTIZATION'' and inserting ''DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPERATIONS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting ''(notwithstanding any other subparagraph of this paragraph)'' after ''shall''.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

''(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).''

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

''(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

''(II) which is with respect to the property subject to the lease or substantially similar property, and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after December 31, 2003.

SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

''SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT USE PROPERTY.

''(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

''(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

''(c) DEFINITIONS.—For purposes of this section—

''(1) TAX-EXEMPT USE LOSS.—The term 'tax-exempt use loss' means, with respect to any taxable year, the amount (if any) by which—

''(A) the sum of—

''(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

''(ii) the aggregate deductions for interest properly allocable to such property, exceed

''(B) the aggregate income from such property.

''(2) TAX-EXEMPT USE PROPERTY.—The term 'tax-exempt use property' has the meaning given to such term by section 168(h) (without regard to paragraph (1)(C) or (3)(C) thereof and determined as if property described in section 167(f)(1)(B) were tangible property).

''(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

''(1) PROPERTY NOT FINANCED WITH TAX-EXEMPT BONDS.—A lease of property meets the requirements of this paragraph if no part of the property was financed (directly or indirectly) from the proceeds of an obligation the interest on which is exempt from tax under section 103(a) and which (or any refunding bond of which) is outstanding when the lease is entered into. The Secretary may by regulations provide for a de minimis exception from this paragraph.

''(2) AVAILABILITY OF FUNDS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

''(i) subject to any arrangement referred to in subparagraph (B), or

''(ii) otherwise reasonably expected to remain available,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease.

''(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph are—

''(i) a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, a lease prepayment, a sinking fund arrangement, or any similar arrangement (whether or not such arrangement provides credit support), and

''(ii) any other arrangement identified by the Secretary in regulations.

''(C) ALLOWABLE AMOUNT.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'allowable amount' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

''(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

''(iii) OPTION TO PURCHASE.—If under the lease the lessee has the option to purchase the property for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

''(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—A lease of property meets the requirements of this paragraph if—

''(A) the lessor—

''(i) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

''(ii) maintains such investment throughout the term of the lease, and

''(B) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

''(4) LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if there is no arrangement under which more than a minimal risk of loss (as determined under regulations) in the value of the property is borne by the lessee.

''(B) CERTAIN ARRANGEMENTS FAIL REQUIREMENT.—In no event will the requirements of this paragraph be met if there is any arrangement under which the lessee bears—

''(i) any portion of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were 25 percent less than its projected fair market value at the end of the lease term, or

''(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

''(5) REGULATORY REQUIREMENTS.—A lease of property meets the requirements of this paragraph if such lease of property meets such requirements as the Secretary may prescribe by regulations.

''(e) SPECIAL RULES.—

''(1) TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.—

''(A) IN GENERAL.—In the case of any former tax-exempt use property—

''(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

''(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as allowable under subsection (b) with respect to such property in the next taxable year.

''(B) FORMER TAX-EXEMPT USE PROPERTY.—For purposes of this subsection, the term 'former tax-exempt use property' means any property which—

''(i) is not tax-exempt use property for the taxable year, but

''(ii) was tax-exempt use property for any prior taxable year.

''(2) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

''(3) COORDINATION WITH SECTION 469.—This section shall be applied before the application of section 469.

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) RELATED PARTIES.—The terms 'lessor', 'lessee', and 'lender' include any related party (within the meaning of section 197(f)(9)(C)(i)).

''(2) LEASE TERM.—The term 'lease term' has the meaning given to such term by section 168(i)(3).

''(3) LENDER.—The term 'lender' means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

''(4) LOAN.—The term 'loan' includes any similar arrangement.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section, including regulation which—

''(1) allow in appropriate cases the aggregation of property subject to the same lease, and

''(2) provide for the determination of the allocation of interest expense for purposes of this section.''

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

''Sec. 470. Limitations on losses from tax-exempt use property.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after December 31, 2003.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 482. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''September 30, 2013''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer's underreporting of United States income tax

liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term ''Voluntary Offshore Compliance Initiative'' means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''March 31, 2004'' and inserting ''September 30, 2013''.

SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

''SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

''(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

''(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

''(d) PAYMENT OF INTEREST.—

''(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

''(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

''(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

''(i) has a reasonable basis for its treatment of such item, and

''(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

''(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

''(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

''(e) USE OF DEPOSITS.—

''(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

''(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(c) EFFECTIVE DATE.—

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

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

''SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

''(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term 'qualified tax collection contract' means any contract which—

''(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

''(A) to locate and contact any taxpayer specified by the Secretary,

''(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 3 years, and

''(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

''(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

''(3) prohibits subcontractors from—

''(A) having contacts with taxpayers,

''(B) providing quality assurance services, and

''(C) composing debt collection notices, and

''(4) permits subcontractors to perform other services only with the approval of the Secretary.

''(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

''(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

''(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

''(f) CROSS REFERENCES.—

''(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

''(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting ''6306,'' before ''7651''.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

''Sec. 6306. Qualified Tax Collection Contracts.''.

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

''SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

''(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

''(b) MODIFICATIONS.—For purposes of subsection (a)—

''(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

''(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

''(3) Such civil action shall not be an exclusive remedy with respect to such person.

''(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

''Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.''.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

''(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.''.

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

''(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.''.

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

PART V—MISCELLANEOUS PROVISIONS

SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking ''October 18, 2000'' and inserting ''May 8, 2003''.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 501(c)(15)(A) is amended to read as follows:

''(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

''(i) the gross receipts for the taxable year do not exceed $600,000, and

''(ii) more than 50 percent of such gross receipts consist of premiums.''.

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) is amended by inserting '', except that in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded'' before the period at the end.

(c) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) is amended by striking ''exceed $350,000 but''.

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

SEC. 494. DEFINITION OF INSURANCE COMPANY FOR SECTION 831.

(a) IN GENERAL.—Section 831 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) INSURANCE COMPANY DEFINED.—For purposes of this section, the term 'insurance company' has the meaning given to such term by section 816(a)).''.

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

SEC. 495. LIMITATIONS ON DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) DEDUCTION ALLOWED ONLY TO THE EXTENT OF BASIS.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software, or similar property, or applications or registrations of such property,''.

(b) TREATMENT OF CONTRIBUTIONS WHERE DONOR RECEIVES INTEREST.—Section 170(e) is amended by adding at the end the following new paragraph:

''(7) SPECIAL RULES FOR CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY WHERE DONOR RECEIVES INTEREST.—

''(A) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under this section with respect to a contribution of property described in paragraph (1)(B)(iii) if the taxpayer after the contribution has any interest in the property other than a qualified interest.

''(B) CONTRIBUTIONS WITH QUALIFIED INTEREST.—If a taxpayer after a contribution of property described in paragraph (1)(B)(iii) has a qualified interest in the property—

''(i) any payment pursuant to the qualified interest shall be treated as ordinary income and shall be includible in gross income of the taxpayer for the taxable year in which the payment is received by the taxpayer, and

''(ii) subsection (f)(3) and section 1011(b) shall not apply to the transfer of the property from the taxpayer to the donee.

''(C) QUALIFIED INTEREST.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified interest' means, with respect to any taxpayer, a right to receive from the donee a percentage (not greater than 50 percent) of any royalty payment received by the donee with respect to property described in paragraph (1)(B)(iii) (other than copyrights which are described in section 1221(a)(3) or 1231(b)(1)(C)) contributed by the taxpayer to the donee.

''(ii) SECRETARIAL AUTHORITY.—

''(I) IN GENERAL.—Except as provided in subclause (II), the Secretary may by regulation or other administrative guidance treat as a qualified interest the right to receive other payments from the donee, but only if the donee does not possess a right to receive any payment (whether royalties or otherwise) from a third party with respect to the contributed property.

''(II) EXCEPTIONS.—The Secretary may not treat as a qualified interest the right to receive any payment which provides a benefit to the donor which is greater than the benefit retained by the donee or the right to receive any portion of the proceeds from the sale of the property contributed.

''(iii) LIMITATION.—An interest shall be treated as a qualified interest under this subparagraph only if the taxpayer has no right to receive any payment described in clause (i) or (ii)(I) after the earlier of the date on which the legal life of the contributed property expires or the date which is 20 years after the date of the contribution.''.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L(a) (relating to returns regarding certain dispositions of donated property) is amended—

(A) by striking ''If'' and inserting:

''(1) DISPOSITIONS OF DONATED PROPERTY.—If'',

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and

(C) by adding at the end the following new paragraph:

''(2) PAYMENTS OF QUALIFIED INTERESTS.—Each donee of property described in section 170(e)(1)(B)(iii) which makes a payment to a donor pursuant to a qualified interest (as defined in section 170(e)(7)) during any calendar year shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

''(A) the name, address, and TIN of the payor and the payee with respect to such a payment,

''(B) a description, and date of contribution, of the property to which the qualified interest relates,

''(C) the dates and amounts of any royalty payments received by the donee with respect to such property,

''(D) the date and the amount of the payment pursuant to the qualified interest, and

''(E) a description of the terms of the qualified interest.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 6050L is amended by striking ''**certain dispositions of**''.

(B) The item relating to section 6050L in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking ''certain dispositions of''.

(d) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other administrative guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after October 1, 2003.

SEC. 496. REPEAL OF 10-PERCENT REHABILITATION TAX CREDIT.

Section 47 is amended by adding at the end the following new subsection:

''(e) TERMINATION.—This section shall not apply to expenditures described in subsection (a)(1) incurred in taxable years beginning after December 31, 2003.''.

SEC. 497. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking ''age 14'' and inserting ''age 18''.

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

SA 2895. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ___. INCREASE IN HISTORIC REHABILITATION CREDIT FOR CERTAIN LOW-INCOME HOUSING FOR THE ELDERLY.

(a) IN GENERAL.—Section 47 (relating to rehabilitation credit) is amended by adding at the end the following new subsection:

''(e) SPECIAL RULE REGARDING CERTAIN HISTORIC STRUCTURES.—In the case of any qualified rehabilitation expenditure with respect to any certified historic structure—

''(1) which is placed in service after the date of the enactment of this subsection,

''(2) which is part of a qualified low-income building with respect to which a credit under section 42 is allowed, and

''(3) substantially all of the residential rental units of which are used for tenants who have attained the age of 65,

subsection (a)(2) shall be applied by substituting '25 percent' for '20 percent'.''.

(b) APPLICATION OF MACRS.—The Internal Revenue Code of 1986 shall be applied and administered as if paragraph (4)(X) of section 251(d) of the Tax Reform Act of 1986 as applied to the amendments made by section 201 of such Act had not been enacted with respect to any property described in such paragraph and placed in service after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after the date of the enactment of this Act.

SA 2896. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, insert the following:

SEC. . NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by redesignating sections 45E and 45F as sections 45F and 45G, respectively, and by inserting after section 45E the following new section:

''SEC. 45D. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the Native American new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the reservation development entity for such investment at its original issue.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

''(A) 5 percent with respect to the first 3 credit allowance dates, and

''(B) 6 percent with respect to the remainder of the credit allowance dates.

''(3) CREDIT ALLOWANCE DATE.—For purposes of paragraph (1), the term 'credit allowance date' means, with respect to any qualified equity investment—

''(A) the date on which such investment is initially made, and

''(B) each of the 6 anniversary dates of such date thereafter.

''(b) QUALIFIED EQUITY INVESTMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified equity investment' means any equity investment in a reservation development entity if—

''(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

''(B) substantially all of such cash is used by the reservation development entity to make qualified low-income reservation investments, and

''(C) such investment is designated for purposes of this section by the reservation development entity.

Such term shall not include any equity investment issued by a reservation development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

''(2) LIMITATION.—The maximum amount of equity investments issued by a reservation development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

''(3) SAFE HARBOR FOR DETERMINING USE OF CASH.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the reservation development entity are invested in qualified low-income reservation investments.

''(4) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified equity investment' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

''(5) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

''(6) EQUITY INVESTMENT.—The term 'equity investment' means—

''(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

''(B) any capital interest in an entity which is a partnership.

''(c) RESERVATION DEVELOPMENT ENTITY.—For purposes of this section—

''(1) IN GENERAL.—The term 'reservation development entity' means any domestic corporation or partnership if—

''(A) the primary mission of the entity is serving, or providing investment capital for, low-income reservations,

''(B) the entity maintains accountability to residents of low-income reservations through their representation on any governing board of the entity or on any advisory board to the entity, and

''(C) the entity is certified by the Secretary for purposes of this section as being a reservation development entity.

''(2) EXCEPTION.—For purposes of subparagraph (C) of paragraph (1), the Secretary shall not certify an entity as a reservation development entity if such entity is also certified as a qualified community development entity under section 45D(c).

''(d) QUALIFIED LOW-INCOME RESERVATION INVESTMENTS.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified low-income reservation investment' means—

''(A) any capital or equity investment in, or loan to, any qualified active low-income reservation business,

''(B) the purchase from another reservation development entity of any loan made by such entity which is a qualified low-income reservation investment,

''(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income reservations, and

''(D) any equity investment in, or loan to, any reservation development entity.

''(2) QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualified active low-income reservation business' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

''(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income reservation,

''(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income reservation,

''(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income reservation,

''(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

''(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

''(B) PROPRIETORSHIP.—Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

''(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—The term 'qualified active low-income reservation business' includes any trades or businesses which would qualify as a qualified active low-income reservation business if such trades or businesses were separately incorporated.

''(3) QUALIFIED BUSINESS.—For purposes of this subsection, the term 'qualified business' has the meaning given to such term by section 45D(d)(3).

''(e) LOW-INCOME RESERVATION.—For purposes of this section, the term 'low-income reservation' means any Indian reservation (as defined in section 168(j)(6)) which has a poverty rate of at least 40 percent.

''(f) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

''(1) IN GENERAL.—There is a Native American new markets tax credit limitation of $50,000,000 for each of calendar years 2004 through 2007.

''(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among reservation development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

''(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

''(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income reservation investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

''(3) CARRYOVER OF UNUSED LIMITATION.—If the Native American new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2014.

''(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

''(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a reservation development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

''(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

''(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

''(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

''(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a reservation development entity if—

''(A) such entity ceases to be a reservation development entity,

''(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

''(C) such investment is redeemed by such entity.

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

''(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

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

''(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

''(2) which prevent the abuse of the purposes of this section,

''(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

''(4) which impose appropriate reporting requirements, and

''(5) which apply the provisions of this section to newly formed entities.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 is amended by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively, and by inserting after paragraph (13) the following new paragraph:

''(14) the Native American new markets tax credit determined under section 45E(a),''.

(2) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

''(10) NO CARRYBACK OF NATIVE AMERICAN NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2004.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45E may be carried back to a taxable year ending before January 1, 2004.''.

(c) DEDUCTION FOR UNUSED CREDIT.—Subsection (c) of section 196 is amended by redesignating paragraph (10) as paragraph (11), by striking ''and'' at the end of paragraph (9), and by inserting after paragraph (9) the following new paragraph:

''(10) the Native American new markets tax credit determined under section 45E(a), and''.

(d) CONFORMING AMENDMENTS.—

(1) Section 38(b)(15), as redesignated by subsection (b)(1), is amended—

(A) by striking ''45E(c)'' and inserting ''45F(c)'', and

(B) by striking ''45E(a)'' and inserting ''45F(a)''.

(2) Section 38(b)(16), as redesignated by subsection (b)(1), is amended by striking ''45F(a)'' and inserting ''45G(a)''.

(3) Section 39(d)(11), as redesignated by subsection (b)(2), is amended by striking ''section 45E'' and inserting ''section 45F''.

(4) Section 196(c)(11), as redesignated by subsection (c), is amended by striking ''45E(a)'' and inserting ''45F(a)''.

(5) Section 1016(a)(28) is amended—

(A) by striking ''under section 45F'' and inserting ''under section 45G'', and

(B) by striking ''section 45F(f)(1)'' and inserting ''section 45G(f)(1)''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by striking the items relating to sections 45E and 45F and inserting the following:

''Sec. 45E. Native American new markets tax credit.

''Sec. 45F. Small employer pension plan startup costs.

''Sec. 45G. Employer-provided child care credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to investments made after December 31, 2003.

(f) GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

(1) how entities shall apply for an allocation under section 45E(f)(2) of the Internal Revenue Code of 1986, as added by this section;

(2) the competitive procedure through which such allocations are made; and

(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.

(g) AUDIT AND REPORT.—Not later than January 31 of 2007 and 2010, the Comptroller General of the United States shall, pursuant to an audit of the Native American new markets tax credit program established under section 45E of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all reservation development entities that receive an allocation under the Native American new markets credit under such section.

(f) GRANTS IN COORDINATION WITH CREDIT.—

(1) IN GENERAL.—The Secretary of the Treasury is authorized to award a grant of not more than $1,000,000 to the First Nations Oweesta Corporation.

(2) USE OF FUNDS.—The grant awarded under paragraph (1) may be used—

(A) to enhance the capacity of people living on low-income reservations (within the meaning of section 45E(e) of the Internal Revenue Code of 1986, as added by this section) to access, apply, control, create, leverage, utilize, and retain the financial benefits to such low-income reservations which are attributable to qualified low-income reservation investments (within the meaning of section 45E(d) of such Code), and

(B) to provide access to appropriate financial capital for the development of such low-income reservations.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for fiscal years 2004 through 2014 to carry out the provisions of this subsection.

SA 2897. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TRANSMISSION OF PERSONALLY IDENTIFIABLE INFORMATION TO FOREIGN AFFILIATES OR SUBCONTRACTORS.

(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) BUSINESS ENTERPRISE.—The term ''business enterprise'' means any organization, association, or venture established to make a profit.

(2) COUNTRY WITH ADEQUATE PRIVACY PROTECTION.—The term ''country with adequate privacy protection'' means a country that has been certified by the Federal Trade Commission as having a legal system that provides adequate privacy protection for such information.

(3) HEALTH CARE BUSINESS.—The term ''health care business'' means any business enterprise that collects or retains personally identifiable information about consumers in relation to medical care, including—

(A) hospitals;

(B) health maintenance organizations;

(C) medical partnerships;

(D) emergency medical transportation companies;

(E) medical transcription companies; and

(F) subcontractors, or potential subcontractors, of the entities described in subparagraphs (A) through (E).

(4) PERSONALLY IDENTIFIABLE INFORMATION.—The term ''personally identifiable information'' includes—

(A) name;

(B) bank account information;

(C) social security number;

(D) address;

(E) telephone number;

(F) passwords;

(G) mother's maiden name; and

(H) age.

(b) TRANSMISSION OF INFORMATION.—

(1) IN GENERAL.—A business enterprise may transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is a country with adequate privacy protection.

(2) CONSENT REQUIRED.—A business enterprise may not transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is not a country with adequate privacy protection, unless—

(A) the business enterprise obtains consent from the citizen, before a consumer relationship is established or before the effective date of this section, to transmit such information to such foreign affiliate or subcontractor; and

(B) the consent referred to in subparagraph (A) is renewed by the citizen within 1 year before such information is transmitted.

(3) LIABILITY.—A business enterprise shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(4) RULEMAKING.—The Chairman of the Federal Trade Commission shall promulgate regulations through which the Chairman may enforce the provisions of this subsection and impose a fine for a violation of this subsection.

(c) HEALTH CARE INFORMATION.—

(1) IN GENERAL.—A health care business shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(2) NO OPT OUT PROVISION.—A health care business may not terminate an existing relationship with a consumer of health care services to avoid the consent requirement under subsection (b)(2).

(3) RULEMAKING.—The Secretary of Health and Human Services shall promulgate regulations through which the Secretary may enforce the provisions of this subsection and impose a fine for the violation of this subsection.

(d) EFFECTIVE DATE.—This section shall take effect on the date which is 90 days after the date of enactment of this Act.

SA 2898. Mr. GRASSLEY proposed an amendment to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; as follows:

At the end of the instructions (Amdt. No. 2886) insert the following:

Sec. . This act shall become effective one day following enactment of the legislation.

SA 2899. Mr. GRASSLEY proposed an amendment to amendment SA 2898 proposed by Mr. GRASSLEY to the amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; as follows:

in the pending amendment strike ''one'' and insert ''two''.

SA 2900. Mr. THOMAS (for himself and Mr. DASCHLE) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ___. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.—Subsection (f) of section 1033 (relating to involuntary conversions) is amended—

(1) by inserting ''drought, flood, or other weather-related conditions, or'' after ''because of'',

(2) by inserting ''in the case of soil contamination or other environmental contamination'' after ''including real property'', and

(3) by striking ''WHERE THERE HAS BEEN ENVIRONMENTAL CONTAMINATION'' in the heading and inserting ''IN CERTAIN CASES''.

(b) EXTENSION OF REPLACEMENT PERIOD OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking ''CONDITIONS.—For purposes'' and inserting ''CONDITIONS.—

''(1) IN GENERAL.—For purposes'', and

(2) by adding at the end the following new paragraph:

''(2) EXTENSION OF REPLACEMENT PERIOD.—

''(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

''(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.''.

(c) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

''(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.''.

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

SA 2901. Mr. MILLER (for himself, Mr. ALLARD, Mrs. CLINTON, Mr. SCHUMER, and Mr. CHAMBLISS) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 179, after line 25, add the following:

SEC. ___. BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking ''or'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting '', or'', and by inserting at the end the following new paragraph:

''(14) qualified green building and sustainable design projects.''.

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

''(l) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

''(1) IN GENERAL.—For purposes of subsection (a)(14), the term 'qualified green building and sustainable design project' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

''(2) DESIGNATIONS.—

''(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

''(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

''(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

''(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

''(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

''(iv) use at least 25 megawatts of fuel cell energy generation.

''(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

''(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

''(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

''(4) APPLICATION.—

''(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

''(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification.

''(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

''(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term 'resources' includes tax abatement benefits and contributions in kind.

''(iv) SIZE.—The project includes at least one of the following:

''(I) At least 1,000,000 square feet of building.

''(II) At least 20 acres.

''(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

''(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

''(II) Compliance with LEED certification standards.

''(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

''(vi) PROHIBITED FACILITIES.—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

''(vii) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

''(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

''(i) the amount of electric consumption reduced as compared to conventional construction,

''(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

''(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

''(iv) the amount, in megawatts, of the project's fuel cell energy generation.

''(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) RURAL STATE.—The term 'rural State' means any State which has—

''(i) a population of less than 4,500,000 according to the 2000 census,

''(ii) a population density of less than 150 people per square mile according to the 2000 census, and

''(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

''(B) LOCAL GOVERNMENT.—The term 'local government' has the meaning given such term by section 1393(a)(5).

''(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term 'net benefit of tax-exempt financing' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

''(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

''(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

''(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

''(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

''(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).''.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking ''or (13)'' and inserting ''(13), or (14)'', and

(2) by striking ''and qualified public educational facilities'' and inserting ''qualified public educational facilities, and qualified green building and sustainable design projects''.

(d) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued

under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SA 2902. Mr. BOND submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 218, of Senate amendment no. 2886, strike lines 13 through 19, and insert the following:

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after December 31, 2003.

(2) LIQUIDATIONS.—The amendment made by subsection (b)(1)(B) shall apply to liquidations after December 31, 2003.

SA 2903. Mr. BOND (for himself and Mr. TALENT) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

SEC. ___. EXTENSION OF THE ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR DISPLACED AIRLINE RELATED WORKERS.

(a) IN GENERAL.—Section 4002(c)(2) of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 26 U.S.C. 3304 note), in the deemed matter, is amended—

(1) by striking ''December 29, 2003'' and inserting ''May 17, 2004''; and

(2) by striking ''December 28, 2003'' and inserting ''May 16, 2004''.

EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 26 U.S.C. 3304 note).

SA 2904. Mr. BOND submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 64, of Senate amendment no. 2645, as agreed to, strike lines 23 through 25, and insert the following:

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after December 31, 2003.

(2) LIQUIDATIONS.—The amendment made by subsection (b)(1)(B) shall apply to liquidations after December 31, 2003.

SA 2905. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ___. RECOVERY PERIOD FOR CERTAIN WIRELESS TELECOMMUNICATIONS EQUIPMENT.

(a) IN GENERAL.—Subparagraph (A) of section 168(i)(2) (defining qualified technological equipment) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by inserting after clause (iii) the following new clause:

''(iv) any wireless telecommunications equipment.''.

(b) WIRELESS TELECOMMUNICATIONS EQUIPMENT.—Section 168(i)(2) is amended by inserting after subparagraph (C) the following new subparagraph:

''(D) WIRELESS TELECOMMUNICATIONS EQUIPMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'wireless telecommunications equipment' means equipment which is used in the transmission, reception, coordination, or switching of wireless telecommunications service.

''(ii) EXCEPTION.—Such term does not include towers, buildings, T–1 lines, or other cabling which connects cell sites to mobile switching centers.

''(iii) WIRELESS TELECOMMUNICATIONS SERVICE.—For purposes of clause (i), the term 'wireless telecommunications service' includes any commercial mobile radio service as defined in title 47 of the Code of Federal Regulations.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, and before January 1, 2008.

SA 2906. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC.

(a) IN GENERAL.—Paragraph (1) of section 648 Public Law 98–369 (the Deficit Reduction Act of 1984) is amended to read as follows:

''(1) such securities obligations are held in a fund—

''(A) which, except to the extent of the investment earnings on such securities or obligations, cannot be used, under State constitutional or statutory restrictions continuously in effect since October 9, 1969, through the date of issue of the bond issue, to pay debt service on the bond issue or to finance the facilities that are to be financed with the proceeds of the bonds, or

''(B) the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue,''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of such section is amended by striking ''the investment earnings of'' and inserting ''distributions from.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2000.

SA 2907. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

TITLE V—EXTENSION OF NORMAL TRADE RELATIONS TO ARMENIA

SEC. 501. FINDINGS.

Congress makes the following findings:

(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Armenia acceded to the World Trade Organization on February 5, 2003.

(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms within a stable democratic framework.

(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

(5) United States-Armenia bilateral trade for 2002 totaled more than $134,200,000.

SEC. 502. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Armenia; and

(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Armenia, title IV of the Trade Act of 1974 shall cease to apply to that country.

SA 2908. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 68, strike lines 17 through 20, and insert:

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

SA 2909. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—MISCELLANEOUS PROVISIONS.

SEC. 501. TEMPORARY WORKER PROVISIONS.

(a) ATTESTATION REQUIREMENTS FOR H–1B WORKERS.—Section 212(n)(1)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking ''October 1, 2003,'' and inserting ''October 1, 2005,''.

(b) H–1B EMPLOYER PETITIONS.—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

(1) in subparagraph (A), by striking ''October 1, 2003'' and inserting ''October 1, 2005,''; and

(2) by striking subparagraphs (B) and (C) and inserting the following:

''(B) The amount of the fee shall be $2,000 for each such petition, of which—

''(i) $1,000 shall be deposited in the H–1B Nonimmigrant Petitioner Account in accordance with paragraphs (1) through (5) of section 286(s); and

''(ii) $1,000 shall be deposited in the H–1B Nonimmigrant Petitioner Account in accordance with paragraph (6) of section 286(s).''.

(c) H–1B NONIMMIGRANT PETITIONER ACCOUNT.—Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended by adding at the end the following:

''(6) TRADE ADJUSTMENT ASSISTANCE.—One hundred percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account in accordance with sections 214(c)(9)(B)(ii) and 214(c)(2)(F) shall remain available to the Secretary of Labor until expended for trade adjustment assistance programs under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.). Such amounts shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide trade adjustment assistance for workers.''.

(d) L VISA BLANKET PETITIONS.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

''(F) The Secretary of Homeland Security shall impose a fee on any employer that files a blanket petition to import aliens as nonimmigrants described in section 101(a)(15)(L) in an amount equal to $1,500 for each blanket petition filed by such employer. The fee shall be deposited in the H–1B Nonimmigrant Petitioner Account in accordance with paragraph (6) of section 286(s).''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended in paragraphs (2) through (5) by inserting ''in accordance with section 214(c)(9)(B)(i)'' after ''H–1B Nonimmigrant Petitioner Account'' each place that term appears.

SA 2910. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. TEMPORARY DUTY REDUCTIONS FOR CERTAIN COTTON SHIRTING FABRIC.

(a) CERTAIN COTTON SHIRTING FABRICS.—

(1) IN GENERAL.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

''	9902.52.08	Woven fabrics of cotton, all the foregoing certified by the importer as suitable for use in making men's and boys' shirts and as imported by or for the benefit of a manufacturer of men's and boys' shirts, subject to the quantity limitations contained in general note 18 of this subchapter (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203))	Free	No change	No change	On or before 12/31/2005	
	9902.52.09	Woven fabrics of cotton, all the foregoing certified by the importer as containing 100 percent pima cotton grown in the United States, as suitable for use in making men's and boys' shirts, and as imported by or for the benefit of a manufacturer of men's and boys' shirts (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203))	Free	No change	No change	On or before 12/31/2005	''.

(2) DEFINITIONS AND LIMITATION ON QUANTITY OF IMPORTS.—The U.S. Notes to chapter 99 are amended by adding at the end the following:

''17. For purposes of subheadings 9902.52.08 and 9902.52.09, the term 'making' means cutting and sewing in the United States, and the term 'manufacturer' means a person or entity that cuts and sews in the United States.

''18. The aggregate quantity of cotton fabrics entered under subheading 9902.52.08 from January 1 to December 31 of each year, inclusive, by or on behalf of each manufacturer of men's and boys' shirts shall be limited to 85 percent of the total square meter equivalents of all imported cotton woven fabric used by such manufacturer in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.''.

(b) DETERMINATION OF TARIFF-RATE QUOTAS.—

(1) AUTHORITY TO ISSUE LICENSES AND LICENSE USE.—To implement the limitation on the quantity of imports of cotton woven fabrics under subheading 9902.52.08 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 18 to subchapter II of chapter 99 of such Schedule, for the entry, or withdrawal from warehouse for consumption, the Secretary of Commerce shall issue licenses designating eligible manufacturers and the annual quantity restrictions under each such license. A licensee may assign the authority (in whole or in part) to import fabric under subheading 9902.52.08 of such Schedule.

(2) LICENSES UNDER U.S. NOTE 18.—For purposes of U.S. Note 18 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States, as added by subsection (a)(2), a license shall be issued within 60 days of an application containing a notarized affidavit from an officer of the manufacturer that the manufacturer is eligible to receive a license and stating the quantity of imported cotton woven fabric purchased during calendar year 2000 for use in the cutting and sewing men's and boys' shirts in the United States.

(3) AFFIDAVITS.—For purposes of an affidavit described in this subsection, the date of purchase shall be—

(A) the invoice date if the manufacturer is not the importer of record; and

(B) the date of entry if the manufacturer is the importer of record.

SEC. 502. COTTON TRUST FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the ''Pima Cotton Trust Fund'', consisting of $32,000,000 transferred to

the Pima Cotton Trust Fund from funds in the general fund of the Treasury.

(b) GRANTS.—

(1) GENERAL PURPOSE.—From amounts in the Pima Cotton Trust Fund, the Secretary of Commerce is authorized to provide grants to spinners of United States grown pima cotton, manufacturers of men's and boys' cotton shirting, and a nationally recognized association that promotes the use of pima cotton grown in the United States, to assist such spinners and manufacturers in maximizing United States employment in the production of textile or apparel products and to increase the promotion of the use of United States grown pima cotton respectively.

(2) TIMING FOR GRANT AWARDS.—The Secretary of the Treasury shall, not later than 90 days after the date of enactment of this section, establish guidelines for the application and awarding of the grants described in paragraph (1), and shall award such grants to qualified applicants not later than 180 days after the date of enactment of this section. Each grant awarded under this section shall be distributed to the qualified applicant in 2 equal annual installments.

(3) DISTRIBUTION OF FUNDS.—Of the amounts in the Pima Cotton Trust Fund—

(A) $8,000,000 shall be made available to a nationally recognized association established for the promotion of pima cotton grown in the United States for the use in textile and apparel goods;

(B) $8,000,000 shall be made available to yarn spinners of pima cotton grown in the United States, and shall be allocated to each spinner based on the percentage of the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), from pima cotton grown in the United States in single and plied form during calendar year 2002 (as evidenced by an affidavit provided by the spinner), compared to the production of such yarns for all spinners who qualify under this subparagraph; and

(C) $16,000,000 shall be made available to manufacturers who cut and sew cotton shirts in the United States and that certify that they used imported cotton fabric during the period January 1, 1998, through July 1, 2003, and shall be allocated to each manufacturer on the bases of the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2002 (as evidenced by an affidavit from the manufacturer) used in the manufacturing of men's and boys' cotton shirts, compared to the dollar value (excluding duty, shipping, and related costs) of such fabric for all manufacturers who qualify under this subparagraph.

(4) AFFIDAVIT OF SHIRTING MANUFACTURERS.—For purposes of paragraph (3)(D), an officer of the manufacturer of men's and boys' shirts shall provide a notarized affidavit affirming—

(A) that the manufacturer used imported cotton fabric during the period January 1, 1998, through July 1, 2003, to cut and sew men's and boys' woven cotton shirts in the United States;

(B) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased during calendar year 2002;

(C) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(D) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(5) DATE OF PURCHASE.—For purposes of the affidavit required by paragraph (4), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(6) AFFIDAVIT OF YARN SPINNERS.—For purposes of paragraph (3)(B), an officer of a company that produces ringspun yarns shall provide a notarized affidavit affirming—

(A) that the manufacturer used pima cotton grown in the United States during the period January 1, 2002, through December 31, 2002, to produce ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during 2002;

(B) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002; and

(C) that the manufacturer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002.

(7) NO APPEAL.—Any grant awarded by the Secretary under this section shall be final and not subject to appeal or protest.

(c) AUTHORIZATION.—There are authorized to be appropriated, and are appropriated out of the amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the provisions of this section, including funds necessary for the administration and oversight of the grants provided for in this section.

SA 2911. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. TEMPORARY DUTY REDUCTIONS FOR CERTAIN COTTON SHIRTING FABRIC.

(a) CERTAIN COTTON SHIRTING FABRICS.—

(1) IN GENERAL.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

''	9902.52.08	Woven fabrics of cotton, all the foregoing certified by the importer as suitable for use in making men's and boys' shirts and as imported by or for the benefit of a manufacturer of men's and boys' shirts, subject to the quantity limitations contained in general note 18 of this subchapter (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203))	Free	No change	No change	On or before 12/31/2005	
	9902.52.09	Woven fabrics of cotton, all the foregoing certified by the importer as containing 100 percent pima cotton grown in the United States, as suitable for use in making men's and boys' shirts, and as imported by or for the benefit of a manufacturer of men's and boys' shirts (provided for in section 204(b)(3)(B)(i)(III) of the Andean Trade Preference Act (19 U.S.C. 3203))	Free	No change	No change	On or before 12/31/2005	''

(2) DEFINITIONS AND LIMITATION ON QUANTITY OF IMPORTS.—The U.S. Notes to chapter 99 are amended by adding at the end the following:

''17. For purposes of subheadings 9902.52.08 and 9902.52.09, the term 'making' means cutting and sewing in the United States, and the term 'manufacturer' means a person or entity that cuts and sews in the United States.

''18. The aggregate quantity of cotton fabrics entered under subheading 9902.52.08 from January 1 to December 31 of each year, inclusive, by or on behalf of each manufacturer of men's and boys' shirts shall be limited to 85 percent of the total square meter equivalents of all imported cotton woven fabric used by such manufacturer in cutting and sewing men's and boys' cotton shirts in the United States and purchased by such manufacturer during calendar year 2000.''.

(b) DETERMINATION OF TARIFF-RATE QUOTAS.—

(1) AUTHORITY TO ISSUE LICENSES AND LICENSE USE.—To implement the limitation on the quantity of imports of cotton woven fabrics under subheading 9902.52.08 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 18 to subchapter II of chapter 99 of such Schedule, for the entry, or withdrawal from warehouse for consumption, the Secretary of Commerce shall issue licenses designating eligible manufacturers and the annual quantity restrictions under each such license. A licensee may assign the authority (in whole or in part) to import fabric under subheading 9902.52.08 of such Schedule.

(2) LICENSES UNDER U.S. NOTE 18.—For purposes of U.S. Note 18 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States, as added by subsection (a)(2), a license shall be issued within 60 days of an application containing a notarized affidavit from an officer of the manufacturer that the manufacturer is eligible to receive a license and stating the quantity of imported cotton woven fabric purchased during calendar year 2000 for use in the cutting and sewing men's and boys' shirts in the United States.

(3) AFFIDAVITS.—For purposes of an affidavit described in this subsection, the date of purchase shall be—

(A) the invoice date if the manufacturer is not the importer of record; and

(B) the date of entry if the manufacturer is the importer of record.

SEC. 502. COTTON TRUST FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a trust

fund to be known as the ''Pima Cotton Trust Fund'', consisting of $32,000,000 transferred to the Pima Cotton Trust Fund from funds in the general fund of the Treasury.

(b) GRANTS.—

(1) GENERAL PURPOSE.—From amounts in the Pima Cotton Trust Fund, the Secretary of Commerce is authorized to provide grants to spinners of United States grown pima cotton, manufacturers of men's and boys' cotton shirting, and a nationally recognized association that promotes the use of pima cotton grown in the United States, to assist such spinners and manufacturers in maximizing United States employment in the production of textile or apparel products and to increase the promotion of the use of United States grown pima cotton respectively.

(2) TIMING FOR GRANT AWARDS.—The Secretary of the Treasury shall, not later than 90 days after the date of enactment of this section, establish guidelines for the application and awarding of the grants described in paragraph (1), and shall award such grants to qualified applicants not later than 180 days after the date of enactment of this section. Each grant awarded under this section shall be distributed to the qualified applicant in 2 equal annual installments.

(3) DISTRIBUTION OF FUNDS.—Of the amounts in the Pima Cotton Trust Fund—

(A) $8,000,000 shall be made available to a nationally recognized association established for the promotion of pima cotton grown in the United States for the use in textile and apparel goods;

(B) $8,000,000 shall be made available to yarn spinners of pima cotton grown in the United States, and shall be allocated to each spinner based on the percentage of the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), from pima cotton grown in the United States in single and plied form during calendar year 2002 (as evidenced by an affidavit provided by the spinner), compared to the production of such yarns for all spinners who qualify under this subparagraph; and

(C) $16,000,000 shall be made available to manufacturers who cut and sew cotton shirts in the United States and that certify that they used imported cotton fabric during the period January 1, 1998, through July 1, 2003, and shall be allocated to each manufacturer on the bases of the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2002 (as evidenced by an affidavit from the manufacturer) used in the manufacturing of men's and boys' cotton shirts, compared to the dollar value (excluding duty, shipping, and related costs) of such fabric for all manufacturers who qualify under this subparagraph.

(4) AFFIDAVIT OF SHIRTING MANUFACTURERS.—For purposes of paragraph (3)(D), an officer of the manufacturer of men's and boys' shirts shall provide a notarized affidavit affirming—

(A) that the manufacturer used imported cotton fabric during the period January 1, 1998, through July 1, 2003, to cut and sew men's and boys' woven cotton shirts in the United States;

(B) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased during calendar year 2002;

(C) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(D) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(5) DATE OF PURCHASE.—For purposes of the affidavit required by paragraph (4), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(6) AFFIDAVIT OF YARN SPINNERS.—For purposes of paragraph (3)(B), an officer of a company that produces ringspun yarns shall provide a notarized affidavit affirming—

(A) that the manufacturer used pima cotton grown in the United States during the period January 1, 2002, through December 31, 2002, to produce ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during 2002;

(B) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002; and

(C) that the manufacturer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002.

(7) NO APPEAL.—Any grant awarded by the Secretary under this section shall be final and not subject to appeal or protest.

(c) AUTHORIZATION.—There are authorized to be appropriated, and are appropriated out of the amounts in the general fund of the Treasury not otherwise appropriated, such sums as are necessary to carry out the provisions of this section, including funds necessary for the administration and oversight of the grants provided for in this section.

SA 2912. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 22, strike lines 3 through 14 and insert the following:

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

''(1) IN GENERAL.—

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

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

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

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

''(B) RECEIPTS FROM CERTAIN SERVICES.—Such term also includes the gross receipts of the taxpayer which are derived from any construction, engineering, or architectural services performed in the United States for construction projects in the United States.

SA 2913. Mr. NICKLES (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title III of the instructions, add the following:

SEC. ___. RECOVERY PERIOD FOR CERTAIN WIRELESS TELECOMMUNICATIONS EQUIPMENT.

(a) IN GENERAL.—Subparagraph (A) of section 168(i)(2) (defining qualified technological equipment) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by inserting after clause (iii) the following new clause:

''(iv) any wireless telecommunications equipment.''.

(b) WIRELESS TELECOMMUNICATIONS EQUIPMENT.—Section 168(i)(2) is amended by inserting after subparagraph (C) the following new subparagraph:

''(D) WIRELESS TELECOMMUNICATIONS EQUIPMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'wireless telecommunications equipment' means equipment which is used in the transmission, reception, coordination, or switching of wireless telecommunications service.

''(ii) EXCEPTION.—Such term does not include towers, buildings, T–1 lines, or other cabling which connects cell sites to mobile switching centers.

''(iii) WIRELESS TELECOMMUNICATIONS SERVICE.—For purposes of clause (i), the term 'wireless telecommunications service' includes any commercial mobile radio service as defined in title 47 of the Code of Federal Regulations.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004, and before January 1, 2008.

SA 2914. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2886 submitted by Mr. MCCONNELL (for Mr. FRIST) to the bill S. 1637, to amend the Internal Revenue Code of 1968 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the instructions, add the following:

TITLE V—NON-REVENUE PROVISIONS

SEC. 501. CUSTOMS SERVICES.

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended—

(1) by striking ''(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)),'' and inserting:

''(1) IN GENERAL.—

''(A) SCHEDULED FLIGHTS.—Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)),''; and

(2) by adding at the end the following:

''(B) CHARTER FLIGHTS.—If an air carrier (as defined in section 40102(2) of title 49, United States Code) specifically requests that customs border patrol services for passengers and their baggage be provided for a charter flight arriving after normal operating hours at a customs border patrol serviced airport and overtime funds for those services are not available, the appropriate customs border patrol officer may assign sufficient customs employees (if available) to perform any such services, which could lawfully be performed during regular hours of operation, and any overtime fees incurred in connection with such service shall be paid by the air carrier.''.

SA 2915. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1968 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—NON-REVENUE PROVISIONS

SEC. 501. CUSTOMS SERVICES.

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended—

(1) by striking ''(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)),'' and inserting:

''(1) IN GENERAL.—

''(A) SCHEDULED FLIGHTS.—Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)),''; and

(2) by adding at the end the following:

''(B) CHARTER FLIGHTS.—If an air carrier (as defined in section 40102(2) of title 49, United States Code) specifically requests that customs border patrol services for passengers and their baggage be provided for a charter flight arriving after normal operating hours at a customs border patrol serviced airport and overtime funds for those services are not available, the appropriate customs border patrol officer may assign sufficient customs employees (if available) to perform any such services, which could lawfully be performed during regular hours of operation, and any overtime fees incurred in connection with such service shall be paid by the air carrier.''.

SA 2916. Mr. WYDEN (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—TRADE ADJUSTMENT ASSISTANCE

Subtitle A—Service Workers

SEC. 511. SHORT TITLE.

This subtitle may be cited as the ''Trade Adjustment Assistance Equity For Service Workers Act of 2004''.

SEC. 512. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICES SECTOR.

(a) ADJUSTMENT ASSISTANCE FOR WORKERS.—Section 221(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2271(a)(1)(A)) is amended by striking ''firm)'' and inserting ''firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)''.

(b) GROUP ELIGIBILITY REQUIREMENTS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)'';

(B) in paragraph (1), by inserting ''or public agency'' after ''of the firm''; and

(C) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking ''like or directly competitive with articles produced'' and inserting ''or services like or directly competitive with articles produced or services provided''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B)(i) there has been a shift, by such workers' firm, subdivision, or public agency to a foreign country, of production of articles, or in provision of services, like or directly competitive with articles which are produced, or services which are provided, by such firm, subdivision, or public agency; or

''(ii) such workers' firm, subdivision, or public agency has obtained or is likely to obtain such services from a foreign country.'';

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)'';

(B) in paragraph (2), by inserting ''or service'' after ''related to the article''; and

(C) in paragraph (3)(A), by inserting ''or services'' after ''component parts'';

(3) in subsection (c)—

(A) in paragraph (2), by adding at the end the following:

''(C) Taconite pellets produced in the United States shall be considered to be an article that is like or directly competitive with imports of semifinished steel slab.''.

(B) in paragraph (3)—

(i) by inserting ''or services'' after ''value-added production processes'';

(ii) by striking ''or finishing'' and inserting '', finishing, or testing'';

(iii) by inserting ''or services'' after ''for articles''; and

(iv) by inserting ''(or subdivision)'' after ''such other firm''; and

(C) in paragraph (4)—

(i) by striking ''for articles'' and inserting '', or services, used in the production of articles or in the provision of services''; and

(ii) by inserting ''(or subdivision)'' after ''such other firm''; and

(4) by adding at the end the following new subsection:

''(d) BASIS FOR SECRETARY'S DETERMINATIONS.—

''(1) INCREASED IMPORTS.—For purposes of subsection (a)(2)(A)(ii), the Secretary may determine that increased imports of like or directly competitive articles or services exist if the workers' firm or subdivision or customers of the workers' firm or subdivision accounting for not less than 20 percent of the sales of the workers' firm or subdivision certify to the Secretary that they are obtaining such articles or services from a foreign country.

''(2) OBTAINING SERVICES ABROAD.—For purposes of subsection (a)(2)(B)(ii), the Secretary may determine that the workers' firm, subdivision, or public agency has obtained or is likely to obtain like or directly competitive services from a firm in a foreign country based on a certification thereof from the workers' firm, subdivision, or public agency.

''(3) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraphs (1) and (2) through questionnaires or in such other manner as the Secretary determines is appropriate.''.

(c) TRAINING.—Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by striking ''$220,000,000'' and inserting ''$440,000,000''.

(d) DEFINITIONS.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended—

(1) in paragraph (1)—

(A) by inserting ''or public agency'' after ''of a firm''; and

(B) by inserting ''or public agency'' after ''or subdivision'';

(2) in paragraph (2)(B), by inserting ''or public agency'' after ''the firm'';

(3) by redesignating paragraphs (8) through (17) as paragraphs (9) through (18), respectively; and

(4) by inserting after paragraph (6) the following:

''(7) The term 'public agency' means a department or agency of a State or local government or of the Federal Government.

''(8) The term 'service sector firm' means an entity engaged in the business of providing services.''.

(e) TECHNICAL AMENDMENT.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking '', other than subchapter D''.

SEC. 513. TRADE ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES.

(a) FIRMS.—

(1) ASSISTANCE.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2341) is amended—

(A) in subsection (a), by inserting ''or service sector firm'' after ''(including any agricultural firm'';

(B) in subsection (c)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''or service sector firm'' after ''any agricultural firm'';

(ii) in subparagraph (B)(ii), by inserting ''or service'' after ''of an article''; and

(iii) in subparagraph (C), by striking ''articles like or directly competitive with articles which are produced'' and inserting ''articles or services like or directly competitive with articles or services which are produced or provided''; and

(C) by adding at the end the following:

''(e) BASIS FOR SECRETARY DETERMINATION.—

''(1) INCREASED IMPORTS.—For purposes of subsection (c)(1)(C), the Secretary may determine that increases of imports of like or directly competitive articles or services exist if customers accounting for not less than 20 percent of the sales of the workers' firm certify to the Secretary that they are obtaining such articles or services from a foreign country.

''(2) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraph (1) through questionnaires or in such other manner as the Secretary determines is appropriate. The Secretary may exercise the authority under section 249 in carrying out this subsection.''.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 256(b) of the Trade Act of 1974 (19

U.S.C. 2346(b)) is amended by striking ''$16,000,000'' and inserting ''$32,000,000''.

(3) DEFINITION.—Section 261 of the Trade Act of 1974 (19 U.S.C. 2351) is amended—

(A) by striking ''For purposes of'' and inserting ''(a) FIRM.—For purposes of''; and

(B) by adding at the end the following:

''(b) SERVICE SECTOR FIRM.—For purposes of this chapter, the term 'service sector firm' means a firm engaged in the business of providing services.''.

(b) INDUSTRIES.—Section 265(a) of the Trade Act of 1974 (19 U.S.C. 2355(a)) is amended by inserting ''or service'' after ''new product''.

SEC. 514. MONITORING AND REPORTING.

Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended—

(1) in the first sentence—

(A) by striking ''The Secretary'' and inserting ''(a) MONITORING PROGRAMS.—The Secretary'';

(B) by inserting ''and services'' after ''imports of articles'';

(C) by inserting ''and domestic provision of services'' after ''domestic production'';

(D) by inserting ''or providing services'' after ''producing articles''; and

(E) by inserting '', or provision of services,'' after ''changes in production''; and

(2) by adding at the end the following:

''(b) COLLECTION OF DATA AND REPORTS ON SERVICES SECTOR.—

''(1) SECRETARY OF LABOR.—Not later than 3 months after the date of the enactment of the Trade Adjustment Assistance Equity For Service Workers Act of 2004, the Secretary of Labor shall implement a system to collect data on adversely affected service workers that includes the number of workers by State, industry, and cause of dislocation of each worker.

''(2) SECRETARY OF COMMERCE.—Not later than 6 months after such date of enactment, the Secretary of Commerce shall, in consultation with the Secretary of Labor, conduct a study and report to the Congress on ways to improve the timeliness and coverage of data on trade in services, including methods to identify increased imports due to the relocation of United States firms to foreign countries, and increased imports due to United States firms obtaining services from firms in foreign countries.''.

SEC. 515. ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE.

IN GENERAL.—Section 246(a)(3) of the Trade Act of 1974 (19 U.S.C. 2318(a)(3)) is amended to read as follows:

''(3) ELIGIBILITY.—A worker in the group that the Secretary has certified as eligible for the alternative trade adjustment assistance program may elect to receive benefits under the alternative trade adjustment assistance program if the worker—

''(A) is covered by a certification under subchapter A of this chapter;

''(B) obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment;

''(C) is at least 40 years of age;

''(D) earns not more than $50,000 a year in wages from reemployment;

''(E) is employed on a full-time basis as defined by State law in the State in which the worker is employed; and

''(F) does not return to the employment from which the worker was separated.''.

(b) CONFORMING AMENDMENTS.—(1) Subparagraphs (A) and (B) of section 246(a)(2) of the Trade Act of 1974 (19 U.S.C. 2318(a)(2) (A) and (B)) are amended by striking ''paragraph (3)(B)'' and inserting ''paragraph (3)'' each place it appears.

(2) Section 246(b)(2) of such Act is amended by striking ''subsection (a)(3)(B)'' and inserting ''subsection (a)(3)''.

SEC. 516. CLARIFICATION OF MARKETING YEAR.

Section 291(5) of the Trade Act of 1974 (19 U.S.C. 2401(5)) is amended by inserting before the end period the following: '', or in the case of an agricultural commodity that has no marketing year, in a 12-month period for which the petitioner provides written justification''.

SEC. 517. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this subtitle shall take effect on October 1, 2004.

(b) SPECIAL RULE FOR CERTAIN SERVICE WORKERS.—A group of workers in a service sector firm, or subdivision of a service sector firm, or public agency (as defined in section 247 (7) and (8) of the Trade Act of 1974, as added by section 512(d) of this Act) who—

(1) would have been certified eligible to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if the amendments made by this Act had been in effect on November 4, 2002, and

(2) file a petition pursuant to section 221 of such Act within 6 months after the date of enactment of this Act,

shall be eligible for certification under section 223 of the Trade Act of 1974 if the workers' last total or partial separation from the firm or subdivision of the firm or public agency occurred on or after November 4, 2002 and before October 1, 2004.

(c) SPECIAL RULE FOR TACONITE.—A group of workers in a firm, or subdivision of a firm, engaged in the production of taconite pellets who—

(1) would have been certified eligible to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if the amendments made by this Act had been in effect on November 4, 2002, and

(2) file a petition pursuant to section 221 of such Act within 6 months after the date of enactment of this Act,

shall be eligible for certification under section 223 of the Trade Act of 1974 if the workers' last total or partial separation from the firm or subdivision of the firm occurred on or after November 4, 2002 and before October 1, 2004.

Subtitle B—Data Collection

SEC. 521. SHORT TITLE.

This subtitle may be cited as the ''Trade Adjustment Assistance Accountability Act''.

SEC. 522. DATA COLLECTION; STUDY; INFORMATION TO WORKERS.

(a) DATA COLLECTION; EVALUATIONS.—Subchapter C of chapter 2 of title II of the Trade Act of 1974 is amended by inserting after section 249, the following new section:

''SEC. 250. DATA COLLECTION; EVALUATIONS; REPORTS.

''(a) DATA COLLECTION.—The Secretary shall, pursuant to regulations prescribed by the Secretary, collect any data necessary to meet the requirements of this chapter.

''(b) PERFORMANCE EVALUATIONS.—The Secretary shall establish an effective performance measuring system to evaluate the following:

''(1) PROGRAM PERFORMANCE.—A comparison of the trade adjustment assistance program before and after the effective date of the Trade Adjustment Assistance Reform Act of 2002 with respect to—

''(A) the number of workers certified and the number of workers actually participating in the trade adjustment assistance program;

''(B) the time for processing petitions;

''(C) the number of training waivers granted;

''(D) the coordination of programs under this chapter with programs under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

''(E) the effectiveness of individual training providers in providing appropriate information and training;

''(F) the extent to which States have designed and implemented health care coverage options under title II of the Trade Act of 2002, including any difficulties States have encountered in carrying out the provisions of title II;

''(G) how Federal, State, and local officials are implementing the trade adjustment assistance program to ensure that all eligible individuals receive benefits, including providing outreach, rapid response, and other activities; and

''(H) any other data necessary to evaluate how individual States are implementing the requirements of this chapter.

''(2) PROGRAM PARTICIPATION .—The effectiveness of the program relating to—

''(A) the number of workers receiving benefits and the type of benefits being received both before and after the effective date of the Trade Adjustment Assistance Reform Act of 2002;

''(B) the number of workers enrolled in, and the duration of, training by major types of training both before and after the effective date of the Trade Adjustment Assistance Reform Act of 2002;

''(C) earnings history of workers that reflects wages before separation and wages in any job obtained after receiving benefits under this Act;

''(D) reemployment rates and sectors in which dislocated workers have been employed;

''(E) the cause of dislocation identified in each petition that resulted in a certification under this chapter; and

''(F) the number of petitions filed and workers certified in each congressional district of the United States.

''(c) STATE PARTICIPATION.—The Secretary shall ensure, to the extent practicable, through oversight and effective internal control measures the following:

''(1) STATE PARTICIPATION.—Participation by each State in the performance measurement system established under subsection (b).

''(2) MONITORING.—Monitoring by each State of internal control measures with respect to performance measurement data collected by each State.

''(3) RESPONSE.—The quality and speed of the rapid response provided by each State under section 134(a)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(a)(2)(A)).

''(d) REPORTS.—

''(1) REPORTS BY THE SECRETARY.—

''(A) INITIAL REPORT.—Not later than 6 months after the date of enactment of the Trade Adjustment Assistance Accountability Act, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that—

''(i) describes the performance measurement system established under subsection (b);

''(ii) includes analysis of data collected through the system established under subsection (b); and

''(iii) provides recommendations for program improvements.

''(B) ANNUAL REPORT.—Not later than 1 year after the date the report is submitted under subparagraph (A), and annually thereafter, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that includes the information collected under clause (ii) of subparagraph (A).

''(2) STATE REPORTS.—Pursuant to regulations prescribed by the Secretary, each State

shall submit to the Secretary a report that details its participation in the programs established under this chapter, and that contains the data necessary to allow the Secretary to submit the report required under paragraph (1).

''(3) PUBLICATION.—The Secretary shall make available to each State, and other public and private organizations as determined by the Secretary, the data gathered and evaluated through the performance measurement system established under subsection (b).''.

(b) CONFORMING AMENDMENTS.—

(1) COORDINATION.—Section 281 of the Trade Act of 1974 (19 U.S.C. 2392) is amended by striking ''Departments of Labor and Commerce'' and inserting ''Departments of Labor, Commerce, and Agriculture''.

(2) TRADE MONITORING SYSTEM.—Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended by striking ''The Secretary of Commerce and the Secretary of Labor'' and inserting ''The Secretaries of Commerce, Labor, and Agriculture''.

(3) TABLE OF CONTENTS.—The table of contents for title II of the Trade Act of 1974 is amended by inserting after the item relating to section 249, the following new item:

''Sec. 250. Data collection; evaluations; reports.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

Subtitle C—Trade Adjustment Assistance for Communities

SEC. 531. SHORT TITLE.

This subtitle may be cited as the ''Trade Adjustment Assistance for Communities Act of 2004''.

SEC. 532. PURPOSE.

The purpose of this subtitle is to assist communities negatively impacted by trade with economic adjustment through the integration of political and economic organizations, the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the provision of economic transition assistance.

SEC. 533. TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES.

Chapter 4 of title II of the Trade Act of 1974 (19 U.S.C. 2371 et seq.) is amended to read as follows:

''CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

''SEC. 271. DEFINITIONS.

''In this chapter:

''(1) AFFECTED DOMESTIC PRODUCER.—The term 'affected domestic producer' means any manufacturer, producer, service provider, farmer, rancher, fisherman or worker representative (including associations of such persons) that was affected by a finding under the Antidumping Act of 1921, or by an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

''(2) AGRICULTURAL COMMODITY PRODUCER.—The term 'agricultural commodity producer' has the same meaning as the term 'person' as prescribed by regulations promulgated under section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)).

''(3) COMMUNITY.—The term 'community' means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State that the Secretary certifies as being negatively impacted by trade.

''(4) COMMUNITY NEGATIVELY IMPACTED BY TRADE.—A community negatively impacted by trade means a community with respect to which a determination has been made under section 273.

''(5) ELIGIBLE COMMUNITY.—The term 'eligible community' means a community certified under section 273 for assistance under this chapter.

''(6) FISHERMAN.—

''(A) IN GENERAL.—The term 'fisherman' means any person who—

''(i) is engaged in commercial fishing; or

''(ii) is a United States fish processor.

''(B) COMMERCIAL FISHING, FISH, FISHERY, FISHING, FISHING VESSEL, PERSON, AND UNITED STATES FISH PROCESSOR.—The terms 'commercial fishing', 'fish', 'fishery', 'fishing', 'fishing vessel', 'person', and 'United States fish processor' have the same meanings as such terms have in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

''(7) JOB LOSS.—The term 'job loss' means the total or partial separation of an individual, as those terms are defined in section 247.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

''SEC. 272. COMMUNITY TRADE ADJUSTMENT ASSISTANCE PROGRAM.

''(a) ESTABLISHMENT.—Within 6 months after the date of enactment of the Trade Adjustment Assistance for Communities Act of 2004, the Secretary shall establish a Trade Adjustment Assistance for Communities Program at the Department of Commerce.

''(b) PERSONNEL.—The Secretary shall designate such staff as may be necessary to carry out the responsibilities described in this chapter.

''(c) COORDINATION OF FEDERAL RESPONSE.—The Secretary shall—

''(1) provide leadership, support, and coordination for a comprehensive management program to address economic dislocation in eligible communities;

''(2) coordinate the Federal response to an eligible community—

''(A) by identifying all Federal, State, and local resources that are available to assist the eligible community in recovering from economic distress;

''(B) by ensuring that all Federal agencies offering assistance to an eligible community do so in a targeted, integrated manner that ensures that an eligible community has access to all available Federal assistance;

''(C) by assuring timely consultation and cooperation between Federal, State, and regional officials concerning economic adjustment for an eligible community; and

''(D) by identifying and strengthening existing agency mechanisms designed to assist eligible communities in their efforts to achieve economic adjustment and workforce reemployment;

''(3) provide comprehensive technical assistance to any eligible community in the efforts of that community to—

''(A) identify serious economic problems in the community that are the result of negative impacts from trade;

''(B) integrate the major groups and organizations significantly affected by the economic adjustment;

''(C) access Federal, State, and local resources designed to assist in economic development and trade adjustment assistance;

''(D) diversify and strengthen the community economy; and

''(E) develop a community-based strategic plan to address economic development and workforce dislocation, including unemployment among agricultural commodity producers, and fishermen;

''(4) establish specific criteria for submission and evaluation of a strategic plan submitted under section 274(d);

''(5) establish specific criteria for submitting and evaluating applications for grants under section 275;

''(6) administer the grant programs established under sections 274 and 275; and

''(7) establish an interagency Trade Adjustment Assistance for Communities Working Group, consisting of the representatives of any Federal department or agency with responsibility for economic adjustment assistance, including the Department of Agriculture, the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Health and Human Services, the Small Business Administration, the Department of the Treasury, the Department of Commerce, and any other Federal, State, or regional department or agency the Secretary determines necessary or appropriate.

''SEC. 273. CERTIFICATION AND NOTIFICATION.

''(a) CERTIFICATION.—Not later than 45 days after an event described in subsection (c)(1), the Secretary of Commerce shall determine if a community described in subsection (b)(1) is negatively impacted by trade, and if a positive determination is made, shall certify the community for assistance under this chapter.

''(b) DETERMINATION THAT COMMUNITY IS ELIGIBLE.—

''(1) COMMUNITY DESCRIBED.—A community described in this paragraph means a community with respect to which on or after October 1, 2004—

''(A) the Secretary of Labor certifies a group of workers (or their authorized representative) in the community as eligible for assistance pursuant to section 223;

''(B) the Secretary of Commerce certifies a firm located in the community as eligible for adjustment assistance under section 251;

''(C) the Secretary of Agriculture certifies a group of agricultural commodity producers (or their authorized representative) in the community as eligible for adjustment assistance under section 293;

''(D) an affected domestic producer is located in the community; or

''(E) the Secretary determines that a significant number of fishermen in the community is negatively impacted by trade.

''(2) NEGATIVELY IMPACTED BY TRADE.—The Secretary shall determine that a community is negatively impacted by trade, after taking into consideration—

''(A) the number of jobs affected compared to the size of workforce in the community;

''(B) the severity of the rates of unemployment in the community and the duration of the unemployment in the community;

''(C) the income levels and the extent of underemployment in the community;

''(D) the outmigration of population from the community and the extent to which the outmigration is causing economic injury in the community; and

''(E) the unique problems and needs of the community.

''(c) DEFINITION AND SPECIAL RULES.—

''(1) EVENT DESCRIBED.—An event described in this paragraph means one of the following:

''(A) A notification described in paragraph (2).

''(B) A certification of a firm under section 251.

''(C) A finding under the Antidumping Act of 1921, or an antidumping or countervailing duty order issued under title VII of the Tariff Act of 1930.

''(D) A determination by the Secretary that a significant number of fishermen in a community have been negatively impacted by trade.

''(2) NOTIFICATION.—The Secretary of Labor, immediately upon making a determination that a group of workers is eligible for trade adjustment assistance under section 223, (or the Secretary of Agriculture, immediately upon making a determination that a group of agricultural commodity producers is eligible for adjustment assistance

under section 293, as the case may be) shall notify the Secretary of Commerce of the determination.

''(d) NOTIFICATION TO ELIGIBLE COMMUNITIES.—Immediately upon certification by the Secretary of Commerce that a community is eligible for assistance under subsection (b), the Secretary shall notify the community—

''(1) of the determination under subsection (b);

''(2) of the provisions of this chapter;

''(3) how to access the clearinghouse established by the Department of Commerce regarding available economic assistance;

''(4) how to obtain technical assistance provided under section 272(c)(3); and

''(5) how to obtain grants, tax credits, low income loans, and other appropriate economic assistance.

''SEC. 274. STRATEGIC PLANS.

''(a) IN GENERAL.—An eligible community may develop a strategic plan for community economic adjustment and diversification.

''(b) REQUIREMENTS FOR STRATEGIC PLAN.—A strategic plan shall contain, at a minimum, the following:

''(1) A description and justification of the capacity for economic adjustment, including the method of financing to be used.

''(2) A description of the commitment of the community to the strategic plan over the long term and the participation and input of groups affected by economic dislocation.

''(3) A description of the projects to be undertaken by the eligible community.

''(4) A description of how the plan and the projects to be undertaken by the eligible community will lead to job creation and job retention in the community.

''(5) A description of how the plan will achieve economic adjustment and diversification.

''(6) A description of how the plan and the projects will contribute to establishing or maintaining a level of public services necessary to attract and retain economic investment.

''(7) A description and justification for the cost and timing of proposed basic and advanced infrastructure improvements in the eligible community.

''(8) A description of how the plan will address the occupational and workforce conditions in the eligible community.

''(9) A description of the educational programs available for workforce training and future employment needs.

''(10) A description of how the plan will adapt to changing markets and business cycles.

''(11) A description and justification for the cost and timing of the total funds required by the community for economic assistance.

''(12) A graduation strategy through which the eligible community demonstrates that the community will terminate the need for Federal assistance.

''(c) GRANTS TO DEVELOP STRATEGIC PLANS.—The Secretary, upon receipt of an application from an eligible community, may award a grant to that community to be used to develop the strategic plan.

''(d) SUBMISSION OF PLAN.—A strategic plan developed under subsection (a) shall be submitted to the Secretary for evaluation and approval.

''SEC. 275. GRANTS FOR ECONOMIC DEVELOPMENT.

''(a) IN GENERAL.—The Secretary, upon approval of a strategic plan from an eligible community, may award a grant to that community to carry out any project or program that is certified by the Secretary to be included in the strategic plan approved under section 274(d), or consistent with that plan.

''(b) ADDITIONAL GRANTS.—

''(1) IN GENERAL.—Subject to paragraph (2), in order to assist eligible communities to obtain funds under Federal grant programs, other than the grants provided for in section 274(c) or subsection (a), the Secretary may, on the application of an eligible community, make a supplemental grant to the community if—

''(A) the purpose of the grant program from which the grant is made is to provide technical or other assistance for planning, constructing, or equipping public works facilities or to provide assistance for public service projects; and

''(B) the grant is 1 for which the community is eligible except for the community's inability to meet the non-Federal share requirements of the grant program.

''(2) USE AS NON-FEDERAL SHARE.—A supplemental grant made under this subsection may be used to provide the non-Federal share of a project, unless the total Federal contribution to the project for which the grant is being made exceeds 80 percent and that excess is not permitted by law.

''(c) RURAL COMMUNITY PREFERENCE.—The Secretary shall develop guidelines to ensure that rural communities receive preference in the allocation of resources.

''SEC. 276. GENERAL PROVISIONS.

''(a) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this chapter. Before implementing any regulation or guideline proposed by the Secretary with respect to this chapter, the Secretary shall submit the regulation or guideline to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives for approval.

''(b) SUPPLEMENT NOT SUPPLANT.—Funds appropriated under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for communities.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2005 through 2008, to carry out this chapter. Amounts appropriated pursuant to this subsection shall remain available until expended.''.

SEC. 534. CONFORMING AMENDMENTS.

(a) TERMINATION.—Section 285(b) of the Trade Act of 1974 (19 U.S.C. 2271 note) is amended by adding at the end the following new paragraph:

''(3) ASSISTANCE FOR COMMUNITIES.—Technical assistance and other payments may not be provided under chapter 4 after September 30, 2008.''.

(b) TABLE OF CONTENTS.—The table of contents for title II of the Trade Act of 1974 is amended by striking the items relating to chapter 4 of title II and inserting after the items relating to chapter 3 the following new items:

''CHAPTER 4—TRADE ADJUSTMENT ASSISTANCE FOR COMMUNITIES

''Sec. 271. Definitions.
''Sec. 272. Community Trade Adjustment Assistance Program.
''Sec. 273. Certification and notification.
''Sec. 274. Strategic plans.
''Sec. 275. Grants for economic development.
''Sec. 276. General provisions.''.

(c) JUDICIAL REVIEW.—Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended by striking ''section 271'' and inserting ''section 273''.

SEC. 535. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on October 1, 2004.

Subtitle D—Office of Trade Adjustment Assistance

SEC. 541. SHORT TITLE.

This subtitle may be cited as the ''Trade Adjustment Assistance for Firms Reorganization Act''.

SEC. 542. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

''SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Trade Adjustment Assistance for Firms Reorganization Act, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

''(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

''(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.''.

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

''Sec. 255A. Office of Trade Adjustment Assistance.''.

SEC. 543. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on the earlier of—

(1) the date of the enactment of this Act; or

(2) October 1, 2004.

TITLE VI—IMPROVEMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

SEC. 601. CLARIFICATION OF 3-MONTH REQUIREMENT OF EXISTING COVERAGE.

(a) IN GENERAL.—Clause (i) of section 35(e)(2)(B) of the Internal Revenue Code of 1986 (defining qualifying individual) is amended by inserting ''(prior to the employment separation necessary to attain the status of an eligible individual)'' after ''9801(c)''.

(b) CONFORMING AMENDMENT.—Section 173(f)(2)(B)(ii)(I) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(B)(ii)(I)) is amended by inserting ''(prior to the employment separation necessary to attain the status of an eligible individual)'' after ''1986''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act.

SEC. 602. DISREGARD OF TAA PRE-CERTIFICATION PERIOD FOR PURPOSES OF DETERMINING WHETHER THERE IS A 63-DAY LAPSE IN CREDITABLE COVERAGE.

(a) ERISA AMENDMENT.—Section 701(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(c)(2)) is amended by adding at the end the following:

''(C) TAA-ELIGIBLE INDIVIDUALS.—

''(i) DISREGARD OF PRE-CERTIFICATION PERIOD.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date the individual is certified by the Secretary (or by any person or entity designated by the Secretary) as being eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

''(ii) DEFINITIONS.—The terms 'TAA-eligible individual', and 'TAA-related loss of coverage' have the meanings given such terms in section 605(b)(4)(C).''.

(b) PHSA AMENDMENT.—Section 2701(c)(2) of the Public Health Service Act (42 U.S.C. 300gg(c)(2)) is amended by adding at the end the following:

''(C) TAA-ELIGIBLE INDIVIDUALS.—

''(i) DISREGARD OF PRE-CERTIFICATION PERIOD.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date the individual is certified by the Secretary (or by any person or entity designated by the Secretary) as being eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

''(ii) DEFINITIONS.—The terms 'TAA-eligible individual', and 'TAA-related loss of coverage' have the meanings given such terms in section 2205(b)(4)(C).''.

(c) IRC AMENDMENT.—Section 9801(c)(2) of the Internal Revenue Code of 1986 (relating to not counting periods before significant breaks in creditable coverage) is amended by adding at the end the following:

''(D) TAA-ELIGIBLE INDIVIDUALS.—

''(i) DISREGARD OF PRE-CERTIFICATION PERIOD.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date the individual is certified by the Secretary of Labor (or by any person or entity designated by the Secretary of Labor) as being eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 shall not be taken into account in determining the continuous period under subparagraph (A).

''(ii) DEFINITIONS.—The terms 'TAA-eligible individual', and 'TAA-related loss of coverage' have the meanings given such terms in section 4980B(f)(5)(C)(iv).''.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act.

SEC. 603. IMPROVEMENT OF THE AFFORDABILITY OF THE CREDIT.

(a) IN GENERAL.—Section 35(a) of the Internal Revenue Code of 1986 (relating to credit for health insurance costs of eligible individuals) is amended by striking ''65'' and inserting ''75''.

(b) CONFORMING AMENDMENT.—Section 7527(b) of such Code (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by striking ''65'' and inserting ''75''.

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

SEC. 604. EXPEDITED REFUND OF CREDIT FOR PRORATED FIRST MONTHLY PREMIUM.

(a) IN GENERAL.—Section 7527 of the Internal Revenue Code of 1986 (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by adding at the end the following:

''(e) EXPEDITED PAYMENT OF PRORATED FIRST MONTHLY PREMIUM.—The program established under subsection (a) shall provide for payment to a certified individual of an amount equal to the applicable percentage (as defined in section 35(a)(2)) of the prorated first monthly premium for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months upon receipt by the Secretary of evidence of payment of such premium by the certified individual.''.

(b) EFFECTIVE DATE.—The amendment made by this section takes effect on the date of enactment of this Act.

SA 2917. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE V—BUY AMERICAN ACT IMPROVEMENTS

SEC. 501. SHORT TITLE.

This title may be cited as the ''Buy American Improvement Act of 2004''.

SEC. 502. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

''(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

''(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

''(A) that company's offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

''(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

''(3) USE OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

''(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

''(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

''(A) domestic production cannot be initiated to meet the procurement needs; and

''(B) a comparable article, material, or supply is not available from a company in the United States.

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended by striking subsection (c) and inserting the following:

''(c) FEDERAL AGENCY.—The term 'Federal agency' means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking ''department or independent establishment'' in subsection (a), and inserting ''Federal agency''; and

(B) by striking ''department, bureau, agency, or independent establishment'' in subsection (b) and inserting ''Federal agency''.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

SEC. 503. GAO REPORT AND RECOMMENDATIONS.

(a) REQUIREMENT FOR REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(A) unreasonable cost; and

(B) inconsistent with the public interest.

(2) REPORT TO INCLUDE RECOMMENDED DEFINITIONS.—The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 504. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 502)) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign

entity plans, manuals, or other information that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

SA 2918. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TRANSMISSION OF PERSONALLY IDENTIFIABLE INFORMATION TO FOREIGN AFFILIATES OR SUBCONTRACTORS.

(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) BUSINESS ENTERPRISE.—The term ''business enterprise'' means any organization, association, or venture established to make a profit.

(2) COUNTRY WITH ADEQUATE PRIVACY PROTECTION.—The term ''country with adequate privacy protection'' means a country that has been certified by the Federal Trade Commission as having a legal system that provides adequate privacy protection for personally identifiable information.

(3) HEALTH CARE BUSINESS.—The term ''health care business'' means any business enterprise or private, nonprofit organization that collects or retains personally identifiable information about consumers in relation to medical care, including—

(A) hospitals;

(B) health maintenance organizations;

(C) medical partnerships;

(D) emergency medical transportation companies;

(E) medical transcription companies; and

(F) subcontractors, or potential subcontractors, of the entities described in subparagraphs (A) through (E).

(4) PERSONALLY IDENTIFIABLE INFORMATION.—The term ''personally identifiable information'' includes—

(A) name;

(B) bank account information;

(C) social security number;

(D) address;

(E) telephone number;

(F) passwords;

(G) mother's maiden name; and

(H) age.

(b) TRANSMISSION OF INFORMATION.—

(1) IN GENERAL.—A business enterprise may transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is a country with adequate privacy protection.

(2) CONSENT REQUIRED.—A business enterprise may not transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located outside of the United States unless—

(A) the business enterprise discloses to the citizen whether the country to which the information will be transmitted has been certified under subsection (d);

(B) the business enterprise obtains consent from the citizen, before a consumer relationship is established or before the effective date of this section, to transmit such information to such foreign affiliate or subcontractor; and

(C) the consent referred to in subparagraph (B) is renewed by the citizen within 1 year before such information is transmitted.

(3) LIABILITY.—A business enterprise shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(4) RULEMAKING.—The Chairman of the Federal Trade Commission shall promulgate regulations through which the Chairman may enforce the provisions of this subsection and impose a fine for a violation of this subsection.

(c) HEALTH CARE INFORMATION.—

(1) IN GENERAL.—A health care business shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(2) NO OPT OUT PROVISION.—A health care business may not terminate an existing relationship with a consumer of health care services to avoid the consent requirement under subsection (b)(2).

(3) RULEMAKING.—The Secretary of Health and Human Services shall promulgate regulations through which the Secretary may enforce the provisions of this subsection and impose a fine for the violation of this subsection.

(d) CERTIFICATION.—Not later than 6 months after the date of enactment of this Act, the Federal Trade Commission shall—

(1) certify those countries that have legal systems that provide adequate privacy protection for personally identifiable information; and

(2) make the list of countries certified under paragraph (1) available to the general public.

(e) EFFECTIVE DATE.—This section shall take effect on the date which is 90 days after the date of enactment of this Act.

SA 2919. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

SEC. ___. REFUNDABLE CREDIT FOR ACTIVATED MILITARY RESERVISTS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

''SEC. 36. WAGE DIFFERENTIAL FOR ACTIVATED RESERVISTS.

''(a) IN GENERAL.—In the case of a qualified reservist, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to the qualified active duty wage differential of such qualified reservist for the taxable year.

''(b) QUALIFIED ACTIVE DUTY WAGE DIFFERENTIAL.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified active duty wage differential' means the daily wage differential of the qualified active duty reservist multiplied by the number of days such qualified reservist participates in qualified reserve component duty during the taxable year, including time spent in a travel status.

''(2) DAILY WAGE DIFFERENTIAL.—The daily wage differential is an amount equal to the lesser of—

''(A) the excess of—

''(i) the qualified reservist's average daily qualified compensation, over

''(ii) the qualified reservist's average daily military pay while participating in qualified reserve component duty to the exclusion of the qualified reservist's normal employment duties, or

''(B) $54.80.

''(3) AVERAGE DAILY QUALIFIED COMPENSATION.—

''(A) IN GENERAL.—The term 'average daily qualified compensation' means—

''(i) the qualified compensation of the qualified reservist for the one-year period ending on the day before the date the qualified reservist begins qualified reserve component duty, divided by

''(ii) 365.

''(B) QUALIFIED COMPENSATION.—The term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified reservist's presence for work and which would be includible in gross income, and

''(ii) compensation which is not characterized by the qualified reservist's employer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence.

''(4) AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—

''(A) IN GENERAL.—The term 'average daily military pay and allowances' means—

''(i) the amount paid to the qualified reservist during the taxable year as military pay and allowances on account of the qualified reservist's participation in qualified reserve component duty, determined as of the date the qualified reservists begins qualified reserve component duty, divided by

''(ii) the total number of days the qualified reservist participates in qualified reserve component duty during the taxable year, including time spent in travel status.

''(B) MILITARY PAY AND ALLOWANCES.—The term 'military pay' means pay as that term is defined in section 101(21) of title 37, United States Code, and the term 'allowances' means the allowances payable to a member of the Armed Forces of the United States under chapter 7 of that title.

''(5) QUALIFIED RESERVE COMPONENT DUTY.—The term 'qualified reserve component duty' means—

''(A) active duty performed, as designated in the reservist's military orders, in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code, or

''(B) full-time National Guard duty (as defined in section 101(19) of title 32, United States Code) which is ordered pursuant to a request by the President,

for a period under 1 or more orders described in subparagraph (A) or (B) of more than 90 consecutive days.

''(c) QUALIFIED RESERVIST.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified reservist' means an individual who is engaged in normal employment and is a member of—

''(A) the National Guard (as defined by section 101(c)(1) of title 10, United States Code), or

''(B) the Ready Reserve (as defined by section 10142 of title 10, United States Code).

''(2) NORMAL EMPLOYMENT.—The term 'normal employment duties' includes self-employment.

''(d) DISALLOWANCE WITH RESPECT TO PERSONS ORDERED TO ACTIVE DUTY FOR TRAINING.—No credit shall be allowed under subsection (a) to a qualified reservist who is called or ordered to active duty for any of the following types of duty:

''(1) Active duty for training under any provision of title 10, United States Code.

''(2) Training at encampments, maneuvers, outdoor target practice, or other exercises under chapter 5 of title 32, United States Code.

''(3) Full-time National Guard duty, as defined in section 101(d)(5) of title 10, United States Code.

''(e) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed the taxpayer under this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(2) The table of sections for subpart C of part IV of chapter 1 is amended by striking the last item and inserting the following new items:

''Sec. 36. Wage differential for activated reservists.

''Sec. 37. Overpayments of tax.''.

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

SA 2920. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

SEC. ___. ADDITIONAL 2-YEAR EXTENSION OF WIND ENERGY PRODUCITON CREDIT.

(a) IN GENERAL.—Section 45(c)(3)(a) (relating to wind facility), as amended by this Act, is amended by striking ''January 1, 2005'' and inserting ''January 1, 2007''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after December 31, 2003, in taxable years ending after such date.

SA 2921. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ___. MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.

(a) IN GENERAL.—Section 45D(e) (relating to low-income community) is amended by adding at the end the following new paragraph:

''(4) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

''(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting '85 percent' for '80 percent'.

''(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term 'high migration rural county' means any county which, during the 20-year period ending on December 31, 2000, has a net out-migration of inhabitants from the county of at least 10-percent of the population of the county at the beginning of such period.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

SA 2922. Mr. DORGAN (for himself, Ms. MIKULSKI, Mr. KOHL, Mr. KENNEDY, Mr. EDWARDS, Mr. FEINGOLD, and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 330, between lines 6 and 7, insert the following:

SEC. ___. TAXATION OF INCOME OF CONTROLLED FOREIGN CORPORATIONS ATTRIBUTABLE TO IMPORTED PROPERTY.

(a) GENERAL RULE.—Subsection (a) of section 954 (defining foreign base company income) is amended by striking ''and'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', and'', and by adding at the end the following new paragraph:

''(6) imported property income for the taxable year (determined under subsection (j) and reduced as provided in subsection (b)(5)).''

(b) DEFINITION OF IMPORTED PROPERTY INCOME.—Section 954 is amended by adding at the end the following new subsection:

''(j) IMPORTED PROPERTY INCOME.—

''(1) IN GENERAL.—For purposes of subsection (a)(6), the term 'imported property income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

''(A) manufacturing, producing, growing, or extracting imported property,

''(B) the sale, exchange, or other disposition of imported property, or

''(C) the lease, rental, or licensing of imported property.

Such term shall not include any foreign oil and gas extraction income (within the meaning of section 907(c)) or any foreign oil related income (within the meaning of section 907(c)).

''(2) IMPORTED PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'imported property' means property which is imported into the United States by the controlled foreign corporation or a related person.

''(B) IMPORTED PROPERTY INCLUDES CERTAIN PROPERTY IMPORTED BY UNRELATED PERSONS.—The term 'imported property' includes any property imported into the United States by an unrelated person if, when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

''(i) such property would be imported into the United States, or

''(ii) such property would be used as a component in other property which would be imported into the United States.

''(C) EXCEPTION FOR PROPERTY SUBSEQUENTLY EXPORTED.—The term 'imported property' does not include any property which is imported into the United States and which—

''(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States, or

''(ii) is used by the controlled foreign corporation or a related person as a component in other property which is so sold, leased, or rented.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) IMPORT.—For purposes of this subsection, the term 'import' means entering, or withdrawal from warehouse, for consumption or use. Such term includes any grant of the right to use intangible property (as defined in section 936(h)(3)(B)) in the United States.

''(B) UNRELATED PERSON.—For purposes of this subsection, the term 'unrelated person' means any person who is not a related person with respect to the controlled foreign corporation.

''(C) COORDINATION WITH FOREIGN BASE COMPANY SALES INCOME.—For purposes of this section, the term 'foreign base company sales income' shall not include any imported property income.''

(c) SEPARATE APPLICATION OF LIMITATIONS ON FOREIGN TAX CREDIT FOR IMPORTED PROPERTY INCOME.—

(1) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended by striking ''and'' at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

''(I) imported property income, and''.

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

''(H) IMPORTED PROPERTY INCOME.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).''

(3) LOOK-THRU RULES TO APPLY.—Subparagraph (F) of section 904(d)(3) is amended by striking ''or (E)'' and inserting ''(E), or (I)''.

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) (relating to certain prior year deficits may be taken into account) is amended—

(A) by redesignating subclauses (III), (IV), (V), and (VI) as subclauses (IV), (V), (VI), and (VII), and

(B) by inserting after subclause (II) the following new subclause:

''(III) imported property income,''.

(2) Paragraph (5) of section 954(b) (relating to deductions to be taken into account) is amended by striking ''and the foreign base company oil related income'' and inserting ''the foreign base company oil related income, and the imported property income''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after the date of

the enactment of this Act, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxable years beginning after such date of enactment.

(f) SENSE OF THE SENATE.—It is the sense of the Senate that any increase in revenues in the Treasury resulting from the amendments made by this section should be applied to reduce the phasein of the deduction relating to income attributable to domestic production activities under section 199 of the Internal Revenue Code of 1986 (as added by section 102 of this Act).

SA 2923. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 179, after line 25, add the following:

SEC. ___. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Subsection (d) of section 408 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

''(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

''(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

''(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term 'qualified charitable distribution' means any distribution from an individual retirement account—

''(i) which is made directly by the trustee—

''(I) to an organization described in section 170(c), or

''(II) to a split-interest entity, and

''(ii) which is made on or after—

''(I) in the case of any distribution described in clause (i)(I), the date that the individual for whose benefit the account is maintained has attained age 70½, and

''(II) in the case of any distribution described in clause (i)(II), the the date that such individual has attained age 59½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such account is maintained, the spouse of such individual, or any organization described in section 170(c).

''(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

''(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

''(ii) SPLIT-INTEREST GIFTS.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

''(D) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts were distributed from all individual retirement accounts treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion on such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

''(E) SPECIAL RULES FOR SPLIT-INTEREST ENTITIES.—

''(i) CHARITABLE REMAINDER TRUSTS.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

''(ii) POOLED INCOME FUNDS.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

''(iii) CHARITABLE GIFT ANNUITIES.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.

''(F) DENIAL OF DEDUCTION.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

''(G) SPLIT-INTEREST ENTITY DEFINED.—For purposes of this paragraph, the term 'split-interest entity' means—

''(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

''(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

''(iii) a charitable gift annuity (as defined in section 501(m)(5)).''.

(b) MODIFICATIONS RELATING TO INFORMATION RETURNS BY CERTAIN TRUSTS.—

(1) RETURNS.—Section 6034 (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:

''SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

''(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

''(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION UNDER SECTION 642(c).—

''(1) IN GENERAL.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

''(A) the amount of the deduction taken under section 642(c) within such year,

''(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

''(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,

''(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

''(E) the total income of the trust within such year and the expenses attributable thereto, and

''(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

''(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

''(B) the trust is described in section 4947(a)(1).''.

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

''(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

''(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

''(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting '$100' for '$20', and the second sentence thereof shall be applied by substituting '$50,000' for '$10,000', and

''(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.''.

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: ''In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to distributions—

(A) described in section 408(d)(8)(B)(i)(I) of the Internal Revenue Code of 1986, as added by this section, made after the date of the enactment of this Act, and

(B) described in section 408(d)(8)(B)(i)(II) of such Code, as so added, made after December 31, 2003.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2003.

SA 2924. Mr. DORGAN (for himself, Mr. COLEMAN, Ms. CANTWELL, Mrs. MURRAY, Mr. BINGAMAN, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him

to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

SEC. ___. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

''(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified energy resources' means—

''(A) wind,

''(B) closed-loop biomass,

''(C) open-loop biomass,

''(D) geothermal energy,

''(E) solar energy,

''(F) small irrigation power, and

''(G) municipal solid waste.

''(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

''(3) OPEN-LOOP BIOMASS.—

''(A) IN GENERAL.—The term 'open-loop biomass' means—

''(i) any agricultural livestock waste nutrients, or

''(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

''(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

''(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

''(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass.

''(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

''(i) IN GENERAL.—The term 'agricultural livestock waste nutrients' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

''(ii) AGRICULTURAL LIVESTOCK.—The term 'agricultural livestock' includes bovine, swine, poultry, and sheep.

''(4) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

''(5) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

''(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

''(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

''(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).''.

(b) EXTENSION AND EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) QUALIFIED FACILITIES.—For purposes of this section—

''(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2007.

''(2) CLOSED-LOOP BIOMASS FACILITY.—

''(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

''(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2007, or

''(ii) owned by the taxpayer which before January 1, 2007, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

''(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

''(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than January 1, 2004,

''(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

''(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(3) OPEN-LOOP BIOMASS FACILITIES.—

''(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which—

''(i) in the case of a facility using agricultural livestock waste nutrients—

''(I) is originally placed in service after December 31, 2003, and before January 1, 2007, and

''(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

''(ii) in the case of any other facility, is originally placed in service before January 1, 2007.

''(B) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

''(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

''(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007.

''(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007.

''(7) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term 'qualified facility' means any facility or unit owned by the taxpayer which is originally placed in service after December 31, 2003, and before January 1, 2007.''.

(2) CONFORMING AMENDMENT.—Section 45(e) of such Code, as so redesignated, is amended by striking ''subsection (c)(3)(A)'' in paragraph (7)(A)(i) and inserting ''subsection (d)(1)''.

(c) SPECIAL CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD AFTER ENACTMENT DATE.—Section 45(b) is amended by adding at the end the following new paragraph:

''(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

''(A) CREDIT RATE.—In the case of electricity produced and sold after the date of the enactment of this paragraph at any qualified facility described in paragraph (3), (5), (6), or (7) of subsection (d), the amount in effect under subsection (a)(1) for any calendar year beginning with the calendar year in which such date occurs (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-third.

''(B) CREDIT PERIOD.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(ii) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before January 1, 2004, the 5-year period beginning on January 1, 2004, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).''.

(d) COORDINATION WITH SECTION 48.—Section 48(a)(3) (relating to defining energy property) is amended by adding at the end the following new sentence: ''Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.''.

(e) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SECTION 45 CREDIT.—

''(A) IN GENERAL.—In the case of any section 45 credit—

''(i) this section and section 39 shall be applied separately with respect to such credit, and

''(ii) in applying paragraph (1) to such credit—

''(I) the tentative minimum tax shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for

the taxable year (other than the section 45 credit).

''(B) SECTION 45 CREDIT.—For purposes of this subsection, the term 'section 45 credit' means the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

''(i) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

''(ii) during the 4-year period beginning on the date that such facility was originally placed in service.''.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (2)(A)(ii)(II) of section 38(c) of such Code is amended by striking ''or'' and inserting a comma and by inserting '', and the section 45 credit'' after ''employee credit''.

(B) Paragraph (3)(A)(ii)(II) of section 38(c) of such Code is amended by inserting ''and the section 45 credit'' after ''employee credit''.

(f) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003)'' after ''project'' in clause (ii) (as so redesignated),

(4) by adding at the end the following new sentence: ''This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).'', and

(5) by striking ''TAX-EXEMPT BONDS,'' in the heading and inserting ''CERTAIN''.

(g) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—Section 45(e) (relating to definitions and special rules), as redesignated by subsection (b)(1), is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

''(A) ALLOWANCE OF CREDIT.—

''(i) IN GENERAL.—Except as otherwise provided in this subsection—

''(I) any credit allowable under subsection (a) with respect to a qualified facility owned by a person described in clause (ii) may be transferred or used as provided in this paragraph, and

''(II) the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(ii) PERSONS DESCRIBED.—A person is described in this clause if the person is—

''(I) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(II) an organization described in section 1381(a)(2)(C),

''(III) a public utility (as defined in section 136(c)(2)(B)), which is exempt from income tax under this subtitle,

''(IV) any State or political subdivision thereof, the District of Columbia, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

''(V) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof.

''(B) TRANSFER OF CREDIT.—

''(i) IN GENERAL.—A person described in subparagraph (A)(ii) may transfer any credit to which subparagraph (A)(i) applies through an assignment to any other person not described in subparagraph (A)(ii). Such transfer may be revoked only with the consent of the Secretary.

''(ii) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in clause (i) is assigned once and not reassigned by such other person.

''(iii) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in subclause (III), (IV), or (V) of subparagraph (A)(ii) from the transfer of any credit under clause (i) shall be treated as arising from the exercise of an essential government function.

''(C) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in subclause (I), (II), or (V) of subparagraph (A)(ii), any credit to which subparagraph (A)(i) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act.

''(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

''(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales of electricity among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.''.

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before January 1, 2004, the amendments made by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2004.

(5) CREDIT ALLOWED AGAINST REGULAR AND MINIMUM TAX.—The amendments made by subsection (e) shall apply to taxable years ending after the date of the enactment of this Act.

(i) GAO STUDY.—The Comptroller General of the United States shall conduct a study on the market viability of producing electricity from resources with respect to which credit is allowed under section 45 of the Internal Revenue Code of 1986 but without such credit. In the case of open-loop biomass and municipal solid waste resources, the study should take into account savings associated with not having to dispose of such resources. In conducting such study, the Comptroller shall estimate the dollar value of the environmental impact of producing electricity from such resources relative to producing electricity from fossil fuels using the latest generation of technology. Not later than June 30, 2006, the Comptroller shall report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 23, 2004, at 9:30 a.m., in open session to receive testimony on the Atomic Energy Defense activities of the Department of Energy, in review of the Defense authorization request for fiscal year 2005.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. 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, March 23, 2004, at 10:00 a.m. to conduct a hearing on ''Review of Current Investigations and Regulatory Actions Regarding the Mutual Fund Industry.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, March 23, 2004, at 10 a.m., on Passenger and Freight Rail Safety.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, March 23rd at 2:00 p.m. to conduct an oversight hearing to examine the ''United Nations Convention on the Law of the Sea''.

The meeting will be held in SD 406.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 23, 2004 at 9:30 a.m. to hold a hearing on U.S. & Mexico: Immigration Policy and the Bilateral Relationship.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, March 23, 2004, at 2:30 p.m. for a joint hearing with the House Committee on Government Reform, titled ''The Postal Service in Crisis: A Joint Senate-House

Hearing on Principles for Meaningful Reform.''

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

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, March 23, 2004, at 10 a.m. on ''A Proposed Constitutional Amendment to Preserve Traditional Marriage'' in the Russell Senate Office Building Room 325.

Panel I: The Honorable WAYNE ALLARD, U.S. Senator, R–CO, The Honorable BARNEY FRANK, U.S. Representative, D–MA, The Honorable JOHN LEWIS, U.S. Representative, D–GA.

Panel II: Ms. Phyllis G. Bossin, Phyllis G. Bossin Co., L.P.A., Chair, American Bar Association, Family Law Section, Cincinnati, OH, Professor Teresa Stanton Collett, Professor of Law, St. Thomas University School of Law, Minneapolis, MN, Reverent Richard Richardson, Assistant Pastor, St. Paul African Methodist Episcopal (AME) Church, Director of Political Affairs, The Black Ministerial Alliance of Greater Boston, President/CEO, Children's Services of Roxbury, Boston, MA, Professor Katherine S. Spaht, Jules F. and Frances L. Landry Professor, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, LA, Professor Cass R. Sunstein, Karl N. Llewellyn Distinguished Service Professor of Jurisprudence, University of Chicago Law School, Chicago, IL.

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

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, March 23, 2004, at 2:30 p.m. on ''Counterfeiting and Theft of Tangible Intellectual Property: Challenges and Solutions'' in the Dirksen Senate Office Building Room 226.

Panel I: The Honorable Jon W. Dudas, Acting Under Secretary of Commerce for Intellectual Property and Director of the Patent and Trademark Office, Washington, DC, The Honorable Christopher Wray, Assistant Attorney General, Criminal Division, United States Department of Justice, Washington, DC, Mr. James Mendenhall, Assistant United States Trade Representative for Intellectual Property, Office of the United States Trade Representative, Washington, DC, The Honorable Earl Anthony Wayne, Assistant Secretary of State for Economic and Business Affairs, United States Department of State, Washington, DC.

Panel II: Mr. Thomas J. Donohue, President and CEO, United States Chamber of Commerce, Mr. Richard K. Willard, Senior Vice President, Legal and General Counsel, The Gillette Company, Boston, MA, Mr. Brad Buckles, Executive Vice President for Anti-Piracy, Recording Industry Association of America, Washington, DC, Ms. Vanessa Price, Intellectual Property Specialist, Burton Snowboards, Burlington, VT.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 23, 2004 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SPECIAL COMMITTEE ON AGING

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Tuesday, March 23, 2004 from 10:30 a.m.–12:00 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON COMMUNICATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Communications be authorized to Meet Tuesday, March 23, 2004, at 2:30 p.m., on Spyware.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support of the Committee on Armed Services be authorized to meet during the session of the Senate on March 23, 2004, at 2:30 p.m., in open session to receive testimony on Department of Defense financial management in review of the defense authorization request for fiscal year 2005.

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

PRIVILEGE OF THE FLOOR

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

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the provisions of S. Con. Res. 94, 108th Congress, appoints the following Senators to the Joint Congressional Committee on Inaugural Ceremonies: the Senator from Tennessee, Mr. FRIST; the Senator from Mississippi, Mr. LOTT; and the Senator from Connecticut, Mr. DODD.

The Chair, on behalf of the majority leader, pursuant to Public Law 108–136, Title XV, Section 1501(b)(1)(C), appoints the following individual to serve on the Veteran's Disability Benefits Commission: Mr. Charles Joeckel of Washington, DC.

AUTHORIZING SENATE LEGAL REPRESENTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 323, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 323) to authorize legal representation in United States of America v. Elena Ruth Sassower.

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

Mr. FRIST. Mr. President, this resolution concerns representation by the Senate legal counsel of five Members and four of their employees who have been subpoenaed to provide testimony and documents in a criminal trial by a defendant charged with disrupting proceedings at a hearing of the Senate Committee on the Judiciary in May 2003. These subpoenas are not well taken. As the testimony and documents sought by these subpoenas are either irrelevant or cumulative of the testimony and evidence that will be offered at trial from other sources, evidence from these Senators and Senate employees is unnecessary. Moreover, under controlling precedent, the testimony and documents sought by the subpoenas are privileged under the Speech or Debate Clause of the Constitution.

This resolution would authorize the Senate legal counsel to represent the Senators and staff who have been subpoenaed by the defendant, as well as any other Members, officers, or employees who may be subpoenaed, in order to quash the subpoenas and protect the privileges of the Senate.

Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 323) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 323

Whereas, in the case of United States of America v. Elena Ruth Sassower, Crim. No. M–4113–3, pending in the Superior Court of the District of Columbia, the defendant has served subpoenas for testimony and documents upon Senators ORRIN HATCH, PATRICK LEAHY, SAXBY CHAMBLISS, HILLARY RODHAM CLINTON, and CHARLES SCHUMER, and on Senate employees Tamera Luzzatto, Chief of Staff to Senator Clinton, Leecia Eve, Counsel to Senator Clinton, Joshua Albert, Legislative Correspondent to Senator Clinton, and Michael Tobman, Director of Intergovernmental Affairs for Senator Schumer; and,

Whereas, pursuant to sections 703(a) and 288c(a)(2) of the Ethias in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members, officers, and employees of the Senate with respect to any subpoena, order, or

request for testimony or documents relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the above-listed Senators and Senate employees who are the subject of subpoenas and any other Member, officer, or employee who may be subpoenaed in this case.

ORDERS FOR WEDNESDAY, MARCH 24, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., on Wednesday, March 24. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 10:30 a.m., with the Democratic leader or his designee in control of the first half of the time and the majority leader or his designee in control of the remaining time; provided that at 10:30 a.m., the Senate resume consideration of S. 1637, the JOBS bill, and the time until 11:30 a.m. be equally divided between the two leaders or their designees; provided further that at 11:30 a.m. the Senate proceed to the cloture vote on the motion to recommit the bill.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the JOBS bill. That is S. 1637. At 11:30 in the morning, the Senate will vote on the motion to invoke cloture on the motion to recommit. This is the second week of floor consideration of the JOBS bill. It is my hope that cloture would be invoked and we could finish the bill this week. We have been prepared to consider amendments relating to the underlying bill, but, unfortunately, extraneous amendments have been offered. Chairman GRASSLEY has been prepared to work through the amendments that Members have mentioned and that are relevant to the issue.

Rollcall votes will occur during tomorrow's session. The first rollcall vote will occur at 11:30 a.m., and that vote will be on the motion to invoke cloture on the motion to recommit the bill.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, 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 7:33 p.m., adjourned until Wednesday, March 24, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 23, 2004:

CONSUMER PRODUCT SAFETY COMMISSION

THOMAS HILL MOORE, OF FLORIDA, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR A TERM OF SEVEN YEARS FROM OCTOBER 27, 2003. (REAPPOINTMENT)

DEPARTMENT OF STATE

JAMES FRANCIS MORIARTY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF NEPAL.

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPTAIN GERALD R. BEAMAN, 0000
CAPTAIN MARK S. BOENSEL, 0000
CAPTAIN JOHN H. BOWLING III, 0000
CAPTAIN MARK H. BUZBY, 0000
CAPTAIN DAN W. DAVENPORT, 0000
CAPTAIN WILLIAM E. GORTNEY, 0000
CAPTAIN MICHAEL R. GROOTHOUSEN, 0000
CAPTAIN VICTOR GUILLORY, 0000
CAPTAIN CECIL E. HANEY, 0000
CAPTAIN HARRY B. HARRIS JR., 0000
CAPTAIN JAMES M. HART, 0000
CAPTAIN RONALD H. HENDERSON JR., 0000
CAPTAIN JOSEPH D. KERNAN, 0000
CAPTAIN RAYMOND M. KLEIN, 0000
CAPTAIN CHARLES J. LEIDIG JR., 0000
CAPTAIN ARCHER M. MACY JR., 0000
CAPTAIN MICHAEL K. MAHON, 0000
CAPTAIN CHARLES W. MARTOGLIO, 0000
CAPTAIN WALTER M. SKINNER, 0000
CAPTAIN SCOTT R. VANBUSKIRK, 0000
CAPTAIN MICHAEL C. VITALE, 0000
CAPTAIN RICHARD B. WREN, 0000

WITHDRAWAL

Executive message transmitted by the President to the Senate on March 23, 2004, withdrawing from further Senate consideration the following nomination:

THOMAS HILL MOORE, OF FLORIDA, TO BE A COMMISSIONER OF THE CONSUMER PRODUCT SAFETY COMMISSION FOR A TERM OF SEVEN YEARS FROM OCTOBER 27, 2002, WHICH WAS SENT TO THE SENATE ON MARCH 11, 2004.