SENATE—*Wednesday, July 30, 2003*

(Legislative day of Monday, July 21, 2003)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

Almighty God, You give strength to the weak and hope to the weary. You provide us with songs in the night. Great is Your faithfulness. We thank You for daily blessings, for the many moments that are touched by Your providence. We thank You for restoring us every time we fail. Make our faith more sure and help us to be faithful stewards of Your gifts. Give us ears to hear Your voice and hearts to obey You. Guide our Senators today. Teach them Your paths. We pray in Your strong name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 30, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of S. 14, the Energy bill. Under the order, the Cantwell second-degree amendment to the electricity amendment will be debated for 2½ hours. Following the disposition of that amendment, we will have 60 minutes prior to the cloture vote on the Estrada nomination. This will be the seventh cloture vote on his nomination.

Following the cloture vote, we will resume the electricity amendment and, hopefully, we will reach an agreement for the consideration of the two Bingaman second-degree amendments on electricity. The chairman has stated it is his desire for the Senate to work its will on those second degrees and then vote on the underlying electricity amendment. We hope to reach an agreement to allow for that to occur at a reasonable time this afternoon. In addition, there have been discussions about debating and voting in relation to several climate-related amendments during today's session. I certainly hope we can reach reasonable time limits on the amendments as we go forward, so we can have a productive day on the Energy bill. Senators should be prepared to work into the evening with votes as we move through the remaining amendments.

RECOGNITION OF THE ACTING MINORITY LEADER

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

Mr. REID. Mr. President, while the majority leader is on the floor, we have had a number of conversations privately and publicly with the distinguished Senator from New Mexico on this electricity title. As I indicated last night, we have Senators FEINSTEIN, FEINGOLD, BOXER, DAYTON, and CANTWELL who have amendments to offer. All of them but Senator CANTWELL have single amendments. Senator CANTWELL may have two or three others. We will work with Senator DOMENICI to have time agreements on these. I am confident and hopeful that the Senators offering the amendments will agree to time agreements.

I also note—and I say this as respectfully as I can to the distinguished majority leader, who I know has such a difficult job—the electricity title is very complicated. I think we are approaching this in the right way, to move through it as quickly as possible. We are cooperating in that regard. It makes it really difficult, as somebody trying to help move this along and help the two managers, to have these stops and starts. We just get going on something and then we have votes on judges.

I want everybody to understand I know how important Senator HATCH and others believe it is about these judges. For example, on Estrada, this will be the seventh vote. The votes are not going to change. We will take an hour of debate on that and get off the Energy bill, and then we will go back on it. It makes it extremely difficult. Senator DOMENICI told all his committee members during the committee markup that we know the bill isn't perfect, but we will have an opportunity on the floor to amend that. The leader has stuck by that. I think that is important.

Just as an effort to help, because you have to move this bill along, for example, the two Bingaman amendments—Senator DAYTON cannot offer his amendments until those are disposed of. That is another procedural matter we have to deal with here.

We recognize we have a lot of work to do. We squeezed in yesterday an hour on trade while everybody was at the White House. I know the leader wants these two bills done, and the White House talked about how important they are. I think it is good we have time down as low as we do on a bill people feel so strongly about. From what I know, it should pass fairly easily—both of those trade agreements.

In short, I want the Senator from Tennessee, who, I repeat, has a tremendously difficult job, to understand we are doing everything we can to cooperate. I stated yesterday twice, and I will start the day off today saying, I don't know of a single Senate Democrat who doesn't want an Energy bill. The time line you have given us makes it really tough. We will cooperate in any way we can to move the schedule along despite the difficulties I see.

Mr. FRIST. Mr. President, first of all, I appreciate the assistance of the distinguished assistant leader on the other side of the aisle in moving the Energy bill forward. We had the opportunity yesterday to have a bipartisan meeting with the President of the United States, who once again called for this body to address energy as expeditiously as possible, allowing appropriate time for debate and amendment.

The President set out his energy policy 2 years and 2 or 3 months ago and has called upon this body to work its will. The House has done that and passed a bill. We have not done that and the American people deserve it. That is why we brought this bill to the floor on May 6. That is why we have spent 17 days on the bill. That is why we are working as hard as we can to complete this bill in the next 3 days. I think we are working well together. It is a complex bill. We debated days and days last year. It has been taken through committee this year and marked up and brought to the floor appropriately. We are making real progress there.

The issue of judges, though, bothers me. It has been brought up every time I say we have to keep moving forward and that we owe it to the American people on this Energy bill, and then we have a few votes on judges. That is brought up as if that is slowing down progress on the Energy bill. It disturbs me.

First of all, all we are saying is let's give Miguel Estrada an up-or-down vote. That is all we want. If you don't like him and you want to vote against him, do it. We think that when judicial nominees come from the White House to us under advice and consent, we deserve the opportunity to express that advice and consent, and the only way we can do that is by voting. Each seat here has one vote. Let people express their will and, if the nominees are successful, fine. If not, we will move on. That is what we are saying.

I also want to make it clear on what we are having to do this week. Clotures filed on our side of the aisle don't require any debate. They require a vote and that is all we ask. Again, we want to keep things moving. We have been willing, as I said time and time again, to stack the votes among the other energy amendment votes. We don't require the debate or time. It is the other side that is requiring the time.

Another issue we have not really talked about, at least on the floor, is these votes on district judges, which is essentially unprecedented, which is being required of us today, if we look to the past, if we compare it to the past. The whole issue on both sides of the aisle is that many, if not most, of these could be approved by unanimous consent. Many, if not all, confirmations have to be by rollcall votes. Because there is this call from the other side of the aisle for rollcall votes, which traditionally in this body have been handled, for the most part, through voice votes, we are having to factor those rollcall votes, which take time, into the Senate schedule if we are going to demand justice around the country. If we do not get these judges confirmed, justice is, in effect, delayed. So they put a huge demand on us—really me as majority leader—demanding what has not been done in the past, rollcall votes, which take time and we have to factor them into the schedule, which does delay our schedule unnecessarily, and it means later hours at night and starting 30 minutes earlier in the day to accommodate the demands they are putting on us.

That, to me, is challenging. It is challenging that we work on this important Energy bill and, for the most part, these rollcall votes on the district judges are challenging.

To make that point, if we go back to the 105th Congress, there were 100 judges—20 circuit and 80 district judges. In that Congress, there were 25 rollcall votes—7 circuit, 18 district. So on about 25 percent of the 100 judges, rollcall votes were required.

If we move to the 106th Congress, there were 72 judges confirmed, and 18 of those were rollcall votes.

If we go to the 107th Congress, there were 100 confirmed and 59 rollcall votes.

And if we go to the 108th Congress, the present Congress, 37 judges have been confirmed. We have had to have 28 rollcall votes.

What is interesting is that of those 28 rollcall votes, 23 were unanimous. So we had rollcall votes, and all 100 Senators, or everybody present and voting, voted to confirm. Eighty-two percent of them were unanimous.

We can see this trend going back to the 104th Congress when there were 73 judges confirmed, and there were zero rollcall votes. What has happened in this Congress, because of the request from the other side of the aisle, is this demand that all of these judges, not just the circuit judges, but the district judges, have rollcall votes. Therefore, it has made it very difficult.

When it is brought up that our voting on judicial nominees is slowing the work of the Senate down, I ask the other side to at least consider what happened in the 103rd, 104th, and 105th Congresses in terms of the number of rollcall votes required.

ANNIVERSARY OF THE MEDICARE ACT

Mr. FRIST. Mr. President, I am going to come back later today and comment on the fact that today is the anniversary of Medicare. I know we want to move on to the pending bill. It was a historic day in 1965. On this day, President Johnson took the historic and bold action of signing Medicare into law.

Since that time, Medicare has helped millions of seniors cover their health care needs, but Medicare, in 1965, was designed to treat episodic illness and did not include the most powerful tool in medicine today—prescription drugs.

I mention this only because we have an opportunity before us, this body already having spoken its will in passing a comprehensive Medicare reform bill that strengthens and improves Medicare and includes prescription drugs. The House has done likewise. We are currently in conference. By working in conference, we will greatly strengthen and improve Medicare. Over the course of the day, I know there will be other statements, but there will also be a service and a statement about Medicare at the White House later today.

We have a great opportunity before us. I wish to share with my colleagues that the conference is going well and sometime after we come back from the recess, we will have a bill to bring back to this body.

Mr. REID. Will the Senator yield?

Mr. FRIST. Yes.

Mr. REID. Mr. President, I say not only did President Johnson sign that extraordinary bill—38 years ago?

Mr. FRIST. Yes, 1965; 38 years ago.

Mr. REID. As soon as he signed the bill, Congress went out of session. That was a good example.

Mr. FRIST. Well said.

RESERVATION OF LEADER TIME

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

ENERGY POLICY ACT OF 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 14, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Campbell amendment No. 886, to replace ''tribal consortia'' with ''tribal energy resource development organizations''.

Durbin modified amendment No. 1385, to amend the Internal Revenue Code of 1986 to provide additional tax incentives for enhancing motor vehicle fuel efficiency.

Domenici amendment No. 1412, to reform certain electricity laws.

Bingaman amendment No. 1413 (to amendment No. 1412), to strengthen the Federal Energy Regulatory Commission's authority to review public utility mergers.

Bingaman amendment No. 1418 (to amendment No. 1412), to preserve the Federal Energy Regulatory Commission's authority to protect the public interest prior to July 1, 2005.

The ACTING PRESIDENT pro tempore. Under the previous order, there shall be up to 2½ hours of debate on the amendment to be offered by the Senator from Washington, Ms. CANTWELL, with 30 minutes under the control of the chairman, and 2 hours under the control of the Senator from Washington. The Senator from Washington.

AMENDMENT NO. 1419 TO AMENDMENT NO. 1412

(Purpose: To prohibit market manipulation)

Ms. CANTWELL. Mr. President, I call up amendment No. 1419.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. WYDEN, Mrs. BOXER, and Mrs. MURRAY, proposes an amendment numbered 1419 to amendment No. 1412:

Strike section 1172 and insert the following:

SEC. 1172. MARKET MANIPULATION.

(a) PROHIBITION.—Part II of the Federal Power Act (as amended by section 1171) is amended by adding at the end the following:

''SEC. 219. PROHIBITION ON MARKET MANIPULATION.

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219''.

(c) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219, the Commission shall, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates.''.

Ms. CANTWELL. Mr. President, I thank the clerk for reading this amendment, particularly at such an early hour of the morning. The reading of the amendment by the clerk shows exactly what we are up to this morning; that this is a simple amendment and a simple action we are asking the Senate to take. We are simply saying market manipulation under the Federal Power Act cannot be just and reasonable, and market manipulation should be found, under the Federal Power Act, by the Federal Energy Regulatory Commission, to be a wrongful act.

It did not take long to read that amendment but, as I said to this body last night, the fact that such law is not currently on the books has caused the ratepayers in my State great harm. It has caused ratepayers in Snohomish County, where I happen to live, a 54-percent rate increase. It has caused ratepayers in King County a 61-percent rate increase. It has caused ratepayers in Vancouver, WA, and businesses in Vancouver, WA, that can easily move to other parts of the country, an 88-percent increase. In eastern Washington, the part of the State hardest hit economically, where jobs are few and farmers struggle, it has caused ratepayers a 71-percent rate increase.

We are not talking about a rate increase that is just for 1 year. We are talking about long-term Enron contracts that were manipulated—knowingly manipulated—and my ratepayers are stuck paying those contracts for the next 5, 6, and 7 years without relief.

We are here today to say one thing and be clear about it: This kind of manipulation that gouges ratepayers should be prohibited. This body should be clear. We should be unequivocal. We should say, as other entities have said, that this kind of manipulation is wrong and needs to be corrected.

I have a lot to say on this amendment this morning, but I know I am going to be joined by many of my colleagues from the West who have had their economies wrecked by gouging and illegal practices. I want to give them an opportunity to say something, too, because I think the face of the west coast economy and what it has meant for ratepayers needs to be clear.

We are trying to say with the Cantwell-Bingaman amendment that we do not want to see this kind of action happen on natural gas prices in other parts of the country. We do not want to see this take place 4 months from now, or 2 years from now.

Let's be really clear. These kinds of practices that were deployed by Enron, the various schemes of Fat Boy, Ricochet, Megawatt Laundering, and Load Shift are illegal.

I will yield 10 minutes to my colleague from Washington State, Mrs. MURRAY, who knows all too well that this crisis has caused real hardship in our State. She has been outspoken on this issue as well and sent many letters to various entities, including the Federal Regulatory Energy Commission, talking about how we need to make changes.

I yield her 10 minutes this morning to talk about some of the impacts she has seen firsthand.

The ACTING PRESIDENT pro tempore. The Senator from Washington, Mrs. MURRAY.

Mrs. MURRAY. Mr. President, I rise today to support the amendment that has been offered by my colleague from Washington State, Ms. CANTWELL, that will help protect our consumers from this electricity market manipulation.

I begin by thanking Senator CANTWELL for her tremendous work on the energy commitment and her long-time work on trying to make sure consumers in my home State of Washington finally receive the attention and the help they need from us at the Federal level because of the gouging that has gone on in this market manipulation. We have seen the dramatic impacts that she has so eloquently talked about.

I thank her for speaking out on behalf of our Pacific Northwest consumers who are hurting. We have had the first, second, or the third highest unemployment rate for almost 2½ years, much of that precipitated by the fact of the energy spike costs that have hit the west coast, causing many of our cold storage companies, the aluminum industry, to shut down. They are laying people off. The effects of that reverberated throughout our economy, as other industries were hurt. Even our schools were hurt as they had to lay off teachers in order to pay energy bills.

It has had a tremendous impact on our economy and continues to do so. Bringing this amendment to the Senate floor today is absolutely critical. If we are going to have an electricity title, and if we do not deal with what happened in market manipulation, we are only going to see this continue.

We have a responsibility at the Federal level to protect our consumers at home. In fact, that is the responsibility of the Federal Regulatory Energy Commission. This amendment is so critical to making sure that we can go home and tell our consumers we are doing the right job of protecting them and the market manipulations that have occurred in the past will not occur again. Without this amendment, we will not have the ability to say that.

As Senator CANTWELL stated, all of us on the west coast remember the energy crisis of 2001. Our consumers and our businesses were hit with massive increases in the cost of energy. In California, they saw shortages and brownouts that were incredible. In Washington State we have felt the impact in every sector of our economy and in every home in our State. In fact, as I will talk about in a moment, we in Washington State are continuing to be penalized for the failures in the energy market and failures by our Federal energy regulators.

There were certainly many causes for the energy crisis that hit us, but the most disturbing is the fact that energy companies manipulated the marketplace specifically to take advantage of the customers. As we saw throughout that crisis, the Federal Regulatory Energy Commission did not take aggressive action to protect consumers from market manipulation. The amendment that has been offered by my colleague, Senator CANTWELL, will direct FERC, the Federal Energy Regulatory Commission, to revoke those market-based rate authority companies that have been found to knowingly engage in electricity market manipulation.

Our experience on the west coast shows why this amendment is so important and why FERC needs to be better policed in the energy market. For more than 2 years, many of us in the northwest delegation have been urging FERC to better protect our consumers. In fact, way back in March and April of

2001 and again in May of 2002, I sent letters to FERC calling for relief from this energy crisis. I asked for Federal price caps to stabilize the market. I asked for Washington State utilities to receive refunds, as California utilities received, and I urged FERC to report criminal activity to the Department of Justice.

Finally, on March 26 of 2003, FERC found that market manipulation occurred during the 2001 west coast energy crisis. Unfortunately, FERC indicated it was highly unlikely that Washington State ratepayers would be reimbursed for the harm that was caused by that market manipulation. That is really unfair when we look at what happened throughout that crisis.

At the height of the 2001 energy crisis, when Enron and others were manipulating the system, FERC was urging companies to enter into long-term contracts. Many of our utilities in the Pacific Northwest followed their request and entered into long-term contracts at highly inflated rates.

According to the Seattle Times, during the energy crisis the Northwest wholesale market averaged $276 per megawatt hour. That is 16 percent higher than the average prices in northern California, and 28 percent higher than in southern California. So it was really disturbing to all of us to see FERC agree that there was manipulation but then leave Washington State ratepayers holding the bag with no relief for the harm they experienced and continue to experience because of these contracts.

Clearly, FERC needs to be more aggressive in protecting our consumers. It needs to uncover and it needs to report market manipulation much earlier. It needs to have the authority to take action against companies that defraud the public and defraud the people in our States by manipulating the electricity market. The amendment that Senator CANTWELL has offered will direct FERC to take aggressive action against predatory energy companies that manipulate the market, and I strongly urge my colleagues to support this amendment.

This amendment will improve the underlying bill. It is extremely important. We need to have this kind of confidence if we want to see our ratepayers able to survive in the coming years.

I do have a lot of other concerns about the Energy bill and about an effort by Federal energy regulators. As my colleagues know, FERC is now pushing what they call a standard market design which would set uniform national standards for operating regional transmission grids, transmission grids that allow energy to be passed back and forth between communities that are in each region and their wholesale energy markets. Unfortunately, what FERC does not understand, what the bill does not understand, is that a one-size-fits-all solution is not going to fit the unique needs of the Pacific Northwest.

In New England, if they want to increase or decrease energy production, they burn more gas or more coal. They can regulate that industry. But in the Northwest, we cannot make it rain more or less based on some kind of profit schedule. Standard market design does not work in the Pacific Northwest. We cannot run our system that way because it is not designed to meet all of the needs we have. It means more opportunities for market manipulation and price gouging by big out-of-State energy companies.

As we have already talked about, we know FERC has already failed to protect Washington ratepayers from market manipulation. Given that, I think it is particularly unwise to allow FERC to take authority away from our State regulators through this standard market design and other proposals that are floating around through Congress and in this bill.

I am also very concerned that the Energy bill repeals the Public Utility Holding Company Act of 1935 which restricts utility ownership.

Although Senator DOMENICI's substitute electricity amendment—which we have just gotten, we are reviewing, and is now in this bill—does include some remedies to protect consumers, it does not go far enough. Just look at the devastating effects of the 2001 energy crisis to see we have to do more to protect our consumers. It is our utmost responsibility. I am concerned the electricity title in this bill fails to do that.

It is clear this Energy bill we are debating does not do enough to protect consumers against market manipulation and could actually facilitate more opportunities for manipulation. As currently written, it does not provide enough remedies to help our consumers who have been victimized by market manipulation.

That is why I am in the Senate today to support my colleague from Washington State, Senator CANTWELL, and the amendment she has offered. We have the utmost responsibility to assure market manipulation is not going to continue again. We know the effects in the Pacific Northwest. Senator CANTWELL has outlined the average rate increases that have hit our State because of market manipulation. Energy price increases affect every sector of our economy. They affect every person in our State. They affect everything from how we can operate our schools, how many teachers we can have versus how many energy bills our schools have to pay, to whether potential new homeowners can afford a home. A 51 percent rate increase means we have more families in the State of Washington who cannot afford to buy new cars, new refrigerators. That affects our economy in the Pacific Northwest and has a rippling effect to our businesses, which have laid off thousands of employees because they cannot afford to pay their increased electricity costs.

The market manipulation amendment of Senator CANTWELL is an absolutely critical amendment to assure we can protect our consumers in the future. Failing to pass it is a failure of the responsibility we have as Senators. I urge its passage.

I thank my colleague for yielding on this critical matter.

Ms. CANTWELL. I thank Senator MURRAY for her articulate capsulization of what this Energy bill and the Domenici title means to the Northwest.

The Senator has hit it right on the head, in that market manipulation has not been adequately dealt with in this legislation. Not only has there been no strong stand against market manipulation, there are further attempts toward deregulation with standard market design and regional transmission organizations that we in the Northwest find ludicrous.

I ask unanimous consent to have printed in the RECORD a Seattle Post Intelligence editorial from this morning's newspaper saying that the dubious Energy bill might be better shelved.

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

[From the Seattle Post-Intelligencer, July 30, 2003]

DUBIOUS ENERGY BILL BETTER SHELVED

Republicans hope to drive the Senate toward a new energy bill this week. We all know what happens when you drive too fast; caution is lost in the rush to judgment.

For both the Northwest and the nation, the bill contains at least a trio of contenders for worst idea of the year—more deregulation of electricity, nuclear power subsidies and a new look at offshore oil drilling.

The West Coast is still trying to recover from cost increases created by deregulation schemes and market manipulation. Loan guarantees for nuclear reactors and a permanent cap on liability from accidents could increase radioactive waste—as if Hanford didn't have enough now. And, the idea of putting oil drilling platforms on more of the nation's coast was rejected decades ago.

The plan would also tilt relicensing of hydroelectric dams in favor of industry-designed environmental provisions. Don't expect that to help salmon runs.

Senators have a host of ideas for improving the bill: better vehicle mileage rules, new global warming standards and more incentives for renewable energy sources. The White House has intervened to try to move the bill forward, but senators must recognize they are starting from a tough spot. The existing bill is tainted because its roots are in closed-door meetings between Vice President Dick Cheney and his energy industry pals.

That kind of abuse during the Clinton administration killed health care reform. If senators hope to rescue the energy plan from its dubious origins, they had better plan on months of work.

Ms. CANTWELL. I thank my colleague for her diligence in expressing her opinion on this issue.

The RTO and standard market design issues she mentioned this morning show how unsound this idea is, not only in not protecting us from market manipulation but saying in a conceptual scheme, let's have a nationwide regional energy grid and let the people who will pay the most; that is, the power source that is willing to pay the most to get on to the grid, let them decide how power will be distributed.

For people in the Northwest, if we had power produced at cost-based rates; that is, cost plus what it takes to deliver to consumers—but all of a sudden FERC is pushing a concept of standard market design and saying, Enron or Reliance has more expensive power, we will shove it on to your grid and you pay that higher rate. As Senator MURRAY adequately pointed out, this is not a plan we endorse.

Some of my colleagues from the South also have concerns. Not only does this bill not do enough in protecting manipulation, it creates the possibility for more loopholes, more havoc, more chaos. Frankly, this is exactly how California got in trouble. Regarding a lot of market-based deregulation of the industry, everyone thought it would be competitive practices by which the cost of electricity would be driven down. This is not like something one can afford to have the price go up.

One county, Snohomish County, had a 54 percent rate increase. We had printed in the RECORD yesterday an article from the New York Times that Snohomish County has a 44 percent increase. Consumers got disconnected from their electricity because they could not afford to pay. This is not one of these schemes when the ''free market'' does not drive down the price of a utility and ratepayers have something to do. They cannot go over to Nordstrom's and buy a cheap electricity contract and get electricity. They cannot go over to Wal-Mart and buy affordable electricity. They are stuck with these rates. They are stuck with the 54 percent increase and they will be stuck for years ahead. We had a 44 percent disconnect rate in that county.

Mrs. BOXER. Will the Senator yield?

Ms. CANTWELL. I yield.

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

Mrs. BOXER. I thank the Senator for her leadership on this amendment. I know there are several other amendments she will be offering.

The Senator has explained very clearly what has happened to real people who are trying to pay their bills on something that is absolutely necessary for life itself.

I ask my colleague a question on this point. In California, where we had this all begin, there was some ill-advised legislation signed into law by then-Governor Pete Wilson which brought this deregulation to my State. Is my colleague aware that the rates started to double, triple, and more, in our State, that our State government under Governor Gray Davis said, the people cannot afford this. He went out and said that he would, in fact, take care of this crisis.

As a result, our State is in deep debt. About a third of our debt can be related directly to what the electricity companies did with their schemes that you are going to be explaining and I will be talking about later.

Is my colleague aware that a third of the problem in California is directly related to the energy scam?

Ms. CANTWELL. I thank the Senator from California for asking that question and for being a cosponsor. The Senator understands all very well how painful this has been to the California economy.

I was not aware that a third of the problem could be directly attributable to the crisis in California. I know businesses have closed in Washington State. I know people have moved to other regions and made other investments because the rate is high in our State. I know the amount of money paid by higher utility costs for our west coast region is $6 billion. Ratepayers in the West paid a $6 billion increase in their electricity bills because of the market manipulation.

When I think about the little time we have, maybe 6 hours total to debate this amendment, we gouged the ratepayers $1 billion and we are going to talk $1 billion an hour here. That is hardly the remedy for which I think people are looking. What they are looking for is some immediate action, saying these kinds of activities will not take place again, in the future.

So the Senator from California, Mrs. BOXER, is correct. The impact has been devastating. It has been devastating to California's economy, and obviously we would like to see some relief. For the moment, what we are trying to say in the Cantwell-Bingaman-Feinstein-Boxer-Hollings-Wyden amendment is that this kind of market manipulation ought to be outlawed specifically in the Power Act today so this does not happen again.

As we are looking at natural gas price increases and people are getting anxious, why would we have an electricity title that is unclear as to what the penalties are? Actually, under the Oxley legislation of Senator SARBANES and Congressman OXLEY, on the SEC side, on the auditor's side, it said: We are going to get tough. These are new requirements. We are going to put this in the statute. Yet on the electricity title, we are repealing PUHCA, as my colleague from Washington State said, the one consumer protection law that has been on the books since 1935.

Why would you change a law that has been on the books since 1935 when you just had the biggest pyramid scheme ever to defraud consumers, knowingly admitted by Enron, knowingly admitted by FERC, knowingly admitted by the Department of Justice, knowingly printed by every newspaper in the country that manipulation was going on? Why would you repeal the consumer protection laws on the books? You would actually try to enforce them.

That is what the Cantwell amendment does today, as the clerk read this morning. It simply says the manipulation of those contracts cannot be just and reasonable and put that in the Power Act, plain and simple. Plain and simple, not the 43 pages we have in the title addressing this issue, which I am sure tries to address the issue, but it falls far short.

Mrs. BOXER. Will the Senator yield for just a moment on this point? I am going to go into a markup and then return.

Ms. CANTWELL. Yes.

Mrs. BOXER. My colleague points out that what she is attempting to do in this amendment, of which I am so proud to be a cosponsor, is to make sure what happened to Washington and Oregon and California is not going to happen to any other State, be it Kansas, be it Illinois, be it anywhere else.

For the life of me, I guess I need to say to my friend, does she understand why anyone in this Chamber, knowing what happened to our States, knowing what happened to our businesses, knowing what happened to our consumers, knowing what happened, in the case of California, to our State budget because our Governor protected the consumers from these rates—can my friend understand why there would be one vote against her amendment, given what we know happened to us?

Ms. CANTWELL. My colleague from California has asked a question that is very important. No, I cannot imagine why any of my colleagues would want to vote against this amendment that prohibits market manipulation and puts that in the Power Act in a very simple way.

She mentioned something very interesting. A lot of people talk about this as the California energy crisis—the California energy crisis. Her economy has been devastated, but California actually had a retail cap, which meant even though those prices were being charged, and it left the California economy in disarray and a bill at the State legislative level that is exorbitant, what happened in Washington State, because we didn't have retail caps, is that the ratepayers actually saw the increase in their day-to-day electricity bills. They saw it to the tune of 88 percent increases, 61 percent increases, 54 percent increases. Those disconnect notices are real. The companies that have

left or are leaving the State are real. The long-term impacts on our economy are real.

No, I cannot imagine, if this had happened to any of my other colleagues from other States, that they would not be in the same position I am in today, or Senator MURRAY, saying, at a minimum, outlaw this market manipulation.

So I appreciate the question the Senator from California has asked. I appreciate her keen attention to this issue. I know she has spoken many times on the floor about what has happened to our colleagues from the West and particularly how devastating it has been to her State. I appreciate that.

Mr. DORGAN. Will the Senator from the State of Washington yield for a question?

Ms. CANTWELL. Yes.

Mr. DORGAN. Mr. President, I know she has limited time. I will be very brief, but I did want to ask the question.

It seems to me this electricity title is critically important. I heard my colleague from California ask some questions. I chaired the hearings that dealt with the Enron abuses and other abuses in California and the west coast when I was chairing a subcommittee of the Commerce Committee. What happened there was egregious. It was wholesale stealing, and I use the word ''stealing'' in a very direct way. There are massive criminal investigations underway.

We have heard the terms Get Shorty, Fat Boy, Death Star—the schemes we unearthed. The people, in memoranda inside the company, were saying: Here is the way we are going to cheat consumers. They created congestion, and they then got paid for removing the congestion that they created. They actually deliberately cheated consumers, not to the tune of a couple of loaves of bread but to the tune of billions and billions of dollars.

It seems to me, as this energy title is written, there is not one person in the Senate—not one—who would stand up and say: It is fine for consumers to be confronted with that sort of manipulation and cheating or criminal behavior. Not one would say we support that kind of behavior.

If that is the case, if no one is going to support that, and they would not, then should we not write an electricity title that represents the best ideas of both sides of the political aisle here; that says we are going to stop criminal behavior; we are going to stop the kind of activities that attempt to steal from consumers?

I ask the Senator from Washington, have you had an opportunity, or perhaps has the ranking member of the committee had an opportunity, to sit down with those who wrote the electricity title, which we received last Friday, and talk to them about perhaps writing it together so we all accomplish that which we say we intend to accomplish—stopping this kind of manipulation and cheating? Because it did exist and it will again if we do not plug the hole.

Ms. CANTWELL. I thank the Senator from North Dakota for his question. I know he has been diligent, being at the committee hearings during the time period in which the West tried to convince the Federal Energy Regulatory Commission—the policeman on the watch, if you will, when this mugging of ratepayers was happening—we tried to convince the Federal Energy Regulatory Commission that prices were too high, that we were getting gouged. The Senator was very articulate at that time and subsequently, on the Commerce Committee, holding hearings, investigating the activities of Enron.

At that time, we were all speculating that manipulation happened. What has since come out is that the manipulation has been admitted to. It has been admitted to in the memos by the company in those various schemes you have talked about, and we have charts showing the names, of Death Star and Fat Boy and various other schemes. We have had the Federal Energy Regulatory Commission own up: Yes, this is market manipulation.

I have a report here, that is almost too heavy to handle, that basically documents all the manipulation that has happened. We have a Department of Justice investigating and saying yes, manipulation has happened. Yet this electricity title is very scant on putting those things in place.

The Senator is right. This new electricity title appeared last Friday night. I don't know what time it was, but well beyond the time, I am sure, that I was home in Washington State. We started in on it on Monday. But the bottom line is this underlying Domenici title has some language about: Let's make sure there is no false reporting.

That is in the current statute. It didn't save us. It didn't have anybody stop this or basically put everybody in jail.

Frankly, every time I get home, I hear from a constituent who is paying this high energy cost, paying this 61 percent or 88 percent rate increase, saying: Why isn't Ken Lay in jail? Why is it I am paying this rate increase and I am going to be paying it for 5 or 6 years and Ken Lay isn't in jail?

The transparency clause here is already on the books, making sure people do not report false information to the organization known as the Federal Energy Regulatory Commission. That is already on the books. The round trip trading, yes, is eliminated. But we have other schemes in this bill that are not included in the electricity title and are not outlawed. I think it should be simple.

The Power Act was created to protect consumers. We decided in interstate commerce; that is, the selling of power between States, that the Federal Government should play a role in protecting consumers on wholesale power rates.

We gave to the States the ability through their utility commissions the responsibility to protect consumers' electricity that is sold within each State. But we said as a Federal Government we want to make sure consumers have oversight of electricity. We said in the Federal Power Act we are going to make sure that rates are ''just and reasonable.'' That is our job—''just and reasonable.'' We set up a commission to do it. Yet now we have seen that market abuse is continuing. And we have colleagues on the other side of the aisle who are proposing we repeal the only consumer protection law which has been on the books since 1935—the Public Utility Holding Company Act—and in its place put some language that basically smacks the hand of Ken Lay but doesn't have any teeth in it—teeth that will really bring to justice people who have manipulated this market.

We may have another day when we can discuss what kind of relief might be given to California or Oregon or Washington. But this amendment today is geared toward protecting people from future abuse by simply saying in the Power Act that manipulated schemes are not just and reasonable; that they ought to be banned in the Power Act. I don't know what is wrong with saying that. I would like to go over the specific details so my colleagues understand exactly what we are trying to say and why the current underlying title comes up short in the sense of not doing enough to protect consumers.

As I said, first of all, the Power Act put in place a broad prohibition on the manipulation of electricity prices. We want to continue that. We want to make sure that in this language we say manipulated electricity prices are wrong. In the Domenici substitute, we are going to say that round-trip trading; that is, buying and selling of electricity at inflated rates and inflated volumes, is illegal. That is a good thing to do. But that is particularly focused on the shareholder.

We are saying let us protect the shareholder to make sure these guys who are in this manipulative practice of buying and selling on the same day and inflating the price and inflating the volume is wrong and illegal. That is good in protecting shareholders. But how are ratepayers protected? I want to see protection for ratepayers.

In particular, my amendment would add a new paragraph to the act which is based on language the Federal energy commission has had in its power since 1934. This language would make it illegal for any company to use or apply any manipulative or deceptive

device to circumvent the Federal Energy Regulatory Commission rules and regulations on market manipulation.

It is simple. Let's just say it. What is wrong with saying what Enron has admitted they have done? What is wrong with saying what the Federal Energy Regulatory Commission has put in the report? What is wrong about saying what DOJ has said about manipulation? Why not be really clear and specific? Any company that uses or applies any manipulative or deceptive device to circumvent Federal Energy Regulatory Commission rules and regulations on market manipulation should be punished.

Second, we want to say specifically that electricity rates resulting from manipulative practices are not just and reasonable under the Federal Power Act.

As we talked about last night and as some of my colleagues have said, we have the establishment of the Power Act and the protections of ''just and reasonable,'' and it is our responsibility as a Federal Government to regulate wholesale energy prices between States. Why? Because in the 1930s, guess what happened. A bunch of companies had too much power and jacked up the price on consumers. They held them hostage. Electricity is something no one should be held hostage for, and certainly no one should lose their home because of a manipulated contract by a company that put a scheme in place.

We had a hearing before the Energy Committee in which I asked the Federal Energy Regulatory Commission chairman, ''Do you think if you find market manipulation that it is ever going to be 'just and reasonable,' or ever in the public interest?'' Chairman Wood told me, ''I can't think of an instance when it would be.''

We have the chairman of the Federal Energy Regulatory Commission saying I can't think this would ever be in the public interest or ever be just and reasonable. So why not put it in the Power Act? Guess what. Chairman Wood doesn't write legislation. We write legislation. We are the body that needs to take the responsibility. We are the body that needs to say to the American people we got the message that market manipulation has occurred.

My amendment would clear up any confusion and specifically declare in the Power Act that market manipulation is unjust and unreasonable.

Lastly, this amendment would amend the section 206 of the Federal Power Act requiring the Federal Energy Regulatory Commission to revoke the company's authority to sell at market-based rates whenever the commission finds it ''knowingly'' employs a strategy to manipulate the electricity market. It says when the Federal Energy Regulatory Commission finds people have manipulated a market that they revoke their market-based rates. Market-based rates is when the company decides what the rates are.

As I said, we in the Northwest have been traditionally comfortable with cost-based pricing that the public Power Act provided. Why? Because consumers get the power at the cost it takes to produce it. As a former business executive, I am all for marketplace competition. But marketplace competition has to have some regulation or some people basically end up controlling the market and consumers get whacked whatever they want. In this case, we know manipulation happened.

Why is this issue so important that we have to actually say to the Federal Energy Regulatory Commission make sure when these contracts have been manipulated that you revoke the market-based rate authority? Believe it or not, even though Enron, months and months ago, admitted in various memos that they manipulated the market, it wasn't until about 2 weeks ago that the Federal Energy Regulatory Commission actually revoked their market-based rate authority. Maybe it was 17 days ago. Sometime in the last 2½ weeks, the Federal Energy Regulatory Commission finally took the action they should have taken over a year and a half ago. We have a Federal agency that has been laggard at addressing this issue.

While we will have other amendments to address the Federal Energy Regulatory Commission and address the fact they have not stepped up to their appropriate role in being the policeman on the books as this mugging of ratepayers happens, because clearly they haven't—it took us, the Members of the Senate and House of Representatives pounding on them for months about the high cost of electricity in our region to finally get a mitigation plan. Over a year later it finally took the hearings of Senator DORGAN and many others and an investigation that we finally got the truth on the table that contracts were actually manipulated. Now it is going to take the effort and focus of this body to say, Let's make it simple. Let us make it really clear: Manipulation of contracts is unjust and unreasonable. Any company that employs such tactics should not have free rein of the market by having market-based rates allowed under the Federal Power Act and the Federal Energy Regulatory Commission. It is simple.

I want to point out to my colleagues the fact that there are other entities that are way ahead of the game; that is, they are way ahead of us. They are way ahead of this body in saying that Enron manipulated contracts and something ought to be done about it. And that is bothersome. I think we are the protectors of the consumers in the oversight of how well an agency is doing its job and to which we have delegated the responsibility.

I am sure there are people in this body who probably never heard of the Federal Energy Regulatory Commission until this crisis happened. I am not sure the agency has had the bright light of day shined on it too often in its Congressional history.

In fact, the Government oversight committee, then chaired by Senator LIEBERMAN during this energy crisis, had some hearings on whether the Federal Energy Regulatory Commission was doing its job. I thought that was very appropriate. It is very bothersome to me there are many newspaper articles and accountants of Ken Lay actually lobbying members of the Federal Energy Regulatory Commission on whether they should have a cap or a plan in trying to control or mitigate prices in the western energy market. He lobbied for Commissioners he thought would not put a cap in place. He lobbied for people he thought would continue the trend toward deregulation of the market.

I do not know why we should listen to Ken Lay's energy plan and who he thinks should be the nominees in these instances. We even have one newspaper article that suggested he was for the renomination of the current Chairman of the FERC but only if he would continue to have a free market strategy and make sure these prices that basically had been charged were kept in place. I think that is unconscionable. We need to do something to make sure this agency has our trust in the Senate and the trust of the American people. I think that is critically important.

Even though my colleagues have been hearing about this crisis for a couple years and some may think it is over, it is not over for the ratepayers of Washington State. It is not over for the California economy. We are stuck with this bill. We are stuck with the impact of these manipulated prices.

But I want to be clear, there are people who knew this was going on. And they have admitted it—Enron itself. Enron knew we were going to get access to this information eventually, so basically they produced the smoking gun memos where the company said it engaged in practices to manipulate the western power market. And they knew it was wrong.

In fact, even when these memos were starting to be uncovered, people realized these tactics had these exaggerated names that were not going to sound too positive, so they ended up saying: Well, let's change the names. I am not sure if it was Fat Boy—oh, yes, Death Star. Death Star was the name of a tactic used to manipulate the market, and they said: Well, if that comes out maybe that won't sound like such a good name. Let's change that to Cuddly Bear.

So somehow we were not going to find out there was market manipulation in place because Death Star all of

a sudden became Cuddly Bear. It does not matter whether you change the code name, the impact on my State is the same. It is wrong, and this body ought to outlaw it.

So when FERC finally began to investigate, they realized this problem, as their report concludes, was significant and ''epidemic,'' and the epidemic market manipulation took place in the West. Their own report says there is overwhelming evidence that suggests ''Enron and its affiliates intentionally engaged in a variety of market manipulation schemes that had profound adverse impacts on the market outcomes.''

In fact, the report goes on to say:

Enron's corporate culture fostered a disregard for the American energy customer. The success of the company's trading strategies, while temporary, demonstrates the need for explicit prohibition on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.

That is what the Federal Energy Regulatory Commission is saying has transpired and what we need. It ''demonstrates the need for explicit prohibition on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.''

It is not FERC's job to write the law. It is FERC's job to enforce it and interpret it. Our job is to act. They are telling us they need to have this market behavior monitored and enforced, and that this problem demonstrates the need for an explicit prohibition. Let's give them that explicit prohibition. Let's put into the Federal Power Act that the manipulation of prices cannot be just and reasonable and companies that participate in that practice do not deserve to have market-based rates.

As I mentioned, FERC just came to this conclusion recently, so it is a little troubling that it took them so long, after so much damage has been done—$3-plus billion to the California economy, over $1 billion to the Washington economy, and billions more to Oregon and, I am sure, other parts of the West. So we don't want them to be confused or slow to pick up the regulatory framework and to use it as a hammer against these kinds of manipulations. So let's make it really clear.

DOJ thinks this manipulation is wrong. The U.S. Department of Justice believes what Enron did was, as they said, wrong and fraudulent. The Department of Justice continues to conduct investigations into Enron's activities. It has filed criminal charges levied against 16 different employees, most recently resulting in one of those 16 arrested, a trading desk manager. Already, two Enron traders have pleaded guilty on charges of conspiracy to commit wire fraud. And charges are pending against another.

So DOJ knows it is wrong. Yet in the electricity title we have not put in strict enough language to prevent it from happening again.

One of the most recent criminal complaints filed against an Enron trader by the U.S. Attorney's Office says: Based on the facts, there is probable cause to conclude that between approximately June 1999 and January 2001 the Enron trader unlawfully conspired to commit and did commit acts in violation of the Federal law. There is probable cause to conclude that the trader committed the offense of wire fraud in violation to title 18, United States Code, and conspired to commit the offense of wire fraud in the northern districts of California and elsewhere.

The Department of Justice knows these acts are manipulative and illegal. The fact that they only have two people indicted so far—and we still don't have justice as it relates to Ken Lay; and it was the diligence of those on the west coast and Members here saying manipulation went on—bothers me; it has taken so long. So I certainly want to make sure there is no question that we think these activities are wrong and that something should be done about it. That is why we need tough language.

Now, this body did its job as it relates to the auditing of regulators and reform after Enron. This CRS report for Congress—basically that is part of the report about the Sarbanes-Oxley act—talked about how we stepped up and did our job as it related to the auditing and accounting practices of these organizations.

Now, why was that important? It was important because not only did ratepayers get gouged, but people counted on those companies and their truthful reporting in their businesses. And the investors investing in those businesses counted on that truthful reporting. We uncovered that there was a lot of manipulation going on there as well. There was a lot of misinformation about what really was the cash and capital of these companies and whether the investments by investors really should have been made, given that the long-term outlook of the companies was not based on real numbers but on these manipulated schemes.

So what did we do? We didn't repeal accounting laws that were on the books to protect consumers. We stepped up and said: Let's make this stronger. Let's get the Sarbanes-Oxley act in place. In fact, the act creates a new oversight board for auditors. It prohibits auditing firms from providing certain consulting work for auditing clients so there is no conflict of interest in who they work for. It requires the rotation of all the partners. It imposes new regulations on corporate boards and executives. It increases government oversight and criminal penalties. We took tough action as it related to the auditors. We protected the shareholders moving forward from having this kind of scheme from an auditing perspective happen again.

If we were so ready to jump on this issue as it related to the auditing practices and the accounting practices of these companies, and we protected the shareholders and the individuals who may have had pension plans or investments in these companies, why aren't we now going to protect the ratepayers who actually got gouged with the high cost of these contracts? Why aren't we going to say this is so egregious that we should never allow it to happen again; that we, the Congress, believe that we are no apologists for Enron? We are not going to condone market manipulation. We are going to say, just as we did with accounting rules and auditing rules, we are going to have in the Power Act the same message; that manipulating contracts is unjust and unreasonable and anybody who participates in market manipulation does not get to have free market power under the Power Act. It is simple.

Let me talk about what is in here because I believe Chairman DOMENICI and his staff probably did try to say that some manipulations happen and we ought to do something about it. But I don't think we have covered the full gamut of issues that need to be covered. The Domenici amendment refers to round-trip trading. Round-trip trading is simultaneously buying and selling electricity to stimulate both the amount of electricity trading that was going on and to stimulate and increase the price. So the Domenici amendment says round-trip trading is wrong. And that is good. It is good that we took one of these schemes and shot a hole into it and said this is wrong.

But there are many other schemes that are not covered under the Domenici title: Fat Boy, also known as Icing Load, to create real-time power markets. According to Enron's own memos dated December 6 and December 8, 2000, Fat Boy was ''one of the most fundamental strategies used by the traders.'' According to one, ''the oldest trick in the book'' and ''is now being used by other market participants.''

What Fat Boy did, when you boil it down, is Enron submitted false power supply schedules to the California ISO—the California organization in which power was bought and sold—and other market participants for the purpose of receiving payments when it didn't actually need the extra generation. So in essence Enron received untold millions of dollars for pretending to keep the lights on in the West when it really didn't need to. There is nothing in this current Domenici title that prohibits Fat Boy from happening. Yes, you say, you can't lie to FERC. There is nothing in the act that says you can't lie to the California ISO, which is exactly what Enron did under the Fat Boy scheme.

That was the whole point of California deregulation. That is what people went to the legislature and sold

them, just as they are trying to sell us. Hey, guess what, California. If you deregulate, market competition is going to drive down the price. And we will create this mechanism, the California ISO, which stands for the independent system operator. We are going to make this scheme where an independent system operator is going to get you cheap electricity. And all those people in the marketplace who want to sell power and sell it at a cheap price, we are going to drive down the price.

That is not what happened. The price went up. It escalated. So they defrauded the California ISO. There is nothing in this underlying bill that protects the ratepayers from having Fat Boy happen again because it does nothing to prohibit lying under these kinds of schemes to the California ISO or any other organization like that.

Richochet was also known as Ping Pong. The sole purpose of this scheme was to evade California's attempts to put price controls in place. Knowing that FERC wasn't really paying attention, they were given market-based rates. They said: Go out and see if you can drive down the price of electricity. And under this scheme, basically to get out of the price controls that California was trying to put in place and control, the traders, instead of trading within the State of California, would ship their power outside of the State and then ship it back in. Yes, that is right, just like the ping pong ball, back and forth on a ping pong table, pushing power to one side and pushing it back—Ricochet.

If we push it out of California, then we are not subject to those State regulations, and guess what. When we ship the power back in, we can ship it in at the price we want. That way we avoid the caps of the California ISO and the power exchange that is trying to enforce them.

So the prohibition on round-tripping in the Domenici bill does nothing to prohibit Ricochet or Ping Pong from happening again. This kind of practice of shipping out of State and shipping back in is not illegal under the Domenici title. But it will be under the Cantwell-Bingaman amendment if this body will adopt it.

Let me talk about Death Star for a second. That is the one, yes, renamed Cuddly Bear. I don't care what you call it, there is no way the American public, the public in Washington State, doesn't know that this wasn't a cuddly bear. This was an unbelievable scheme that has ruined our economy. The essential strategy of Death Star was for Enron to earn money by lying about its transmission needs, scheduling transmission in the opposite direction of the congestion. No energy, however, is actually put on the grid or taken off, according to the company's own memos.

So wait a minute. We were saying to people this is what is going to be on the grid, but then we don't really put it on the grid.

The U.S. Attorney's Office described in a June court paper that Enron submitted schedules to the ISO that pretended to move the electrons owned by Enron, but in reality it didn't. Because of this, it appeared to relieve congestion. So the ISO awarded Enron congestion relief payments. Basically by pretending it was putting power out there to relieve congestion, which it really didn't, the ISO gave them relief payments. The ISO was deceived because part of the looping scheme was outside of California and, therefore, it couldn't be detected, thereby costing more money.

According to the Department of Justice, senior Enron traders denied they were doing this practice or violating any market rules. So basically what we are saying is that there were people at Enron who told other fine people who probably worked at Enron and who were trying to do their jobs, there is nothing wrong with this. This is totally OK to do.

One of the trading managers was smart enough and said: We are worried that the details of the strategy would be leaked to the ISO and other power companies or the public. One of the consequences of his concern was that he was instructed to refrain from calling this Death Star. That is when they said: Gee, employees are getting nervous about this scheme; they don't think it is right. Let's change the name to Cuddly Bear and maybe everybody will be OK with it. Well, we are not OK with it.

The underlying Domenici electricity title does not prohibit Death Star from happening again. Only the Cantwell-Bingaman amendment will do that.

Load shifting was another ploy. To employ this tactic, Enron would distort its transmission schedule to create the appearance of congestion, or knowingly increase the congestion cost to all market participants. Again, more misinformation. The underlying Domenici title says nothing of falsified information provided to the FERC. Well, FERC already has language in there about reporting. It didn't get them to stop Enron from following these practices. It doesn't require or make illegal any of these practices of providing misinformation to the California ISO.

Remember, the California ISO was an organization that basically was created after deregulation. After deregulation, people went to the California Legislature and said: We will create a mechanism where the marketplace buys and sells power at a cheap rate. We will let the market do it.

Under the California ISO, the independent system operators basically were supposed to help control price. That is where the misinformation was, where the lying and fabrication of information took place. This underlying bill does nothing to protect or say that those kinds of activities to the California ISO, an independent system operator, are illegal. It has no teeth as it relates to that. So nothing in this underlying Domenici electricity title will protect us from load shifting. The Cantwell-Bingaman amendment will.

Get Shorty. Like many Americans, I thought this was a title of a movie. I thought it was supposed to be a joke. But in my State it was not a joke to the ratepayers who actually had a premium price increase. Basically, what they did was they gambled that it would be able to find service at a cheaper price the next day. Enron's own memos admitted that ''this was obviously a sensitive issue because of reliability concerns.'' Indeed, the company stated that it would be ''difficult to justify our position if the lights go out because these services were not available, and the reason was because we were selling them without actually having them in the first place.''

They basically were saying: We are going to have a scheme where we are going to say there is power available when there is not. And then when the lights went out, they knew they were going to have concerns. They knew. How they could think the west coast economy would not be reached by this havoc being laid upon them. I cannot understand. I cannot understand the corporate greed that goes into this kind of thinking—that somehow this kind of marketing strategy would be good for California, good for Washington, good for America, good for corporate business, good for our confidence as a country—confidence that we as a government are going to say this kind of manipulation is wrong. It has created a huge deal of unrest in the West. Nothing in the Domenici electricity title prevents Get Shorty from happening.

Wheel Out. I am not sure what marketer came up with this one. Enron would submit schedules for a transmission on a line they knew was out of service. In doing so, the company would earn extra payments for their trouble. It is not even available. It is sort of like a cab driver heading straight for a traffic jam in order to keep the meter running on an unsuspecting tourist, basically saying: I am going to get you into congestion and it is going to cost you a lot. The poor passenger in the car doesn't know there is a quicker route, a cheaper way, a more expedient way to control the cost. But unlike a cab ride, the costs of this are not in the tens of dollars but in the millions of dollars, and the cost to our economy has been in the billions of dollars. There is nothing in the Domenici underlying amendment that would prohibit the Wheel Out strategy from happening again.

The Cantwell-Bingaman amendment says that the Wheel Out strategy is

manipulation of the market—it is manipulation. Under the Federal Power Act, it cannot be just and reasonable that companies that deploy these kinds of practices should not have market-based rates.

I hope there are not any more schemes. I hope I don't have any more charts because this is enough. This is enough of the tactics that were deployed by a company that basically thought that making a few more dollars through manipulative practices was somehow OK to do.

I read some of those quotes from employees at Enron who said: I don't think this is right; I think this is a concern. Yet they continued.

So the Cantwell-Bingaman amendment, which is supported by Senators HOLLINGS, MURRAY, BOXER, FEINSTEIN, and others, simply says let's put into the Power Act that manipulation is not just and reasonable.

We have had lots of support: The Northwest Public Power Association, Northwest Energy Coalition, AARP, Consumers Union, International Brotherhood of Electrical Workers, Consumers for Fair Competition, National Association of State Utility Consumer Advocates, Union of Concerned Scientists, U.S. Public Interest Research Group, and many other organizations, such as members of the AFL–CIO, and many people who are concerned about the economic impact of manipulation happening prospectively on natural gas.

Why won't somebody just take this experiment that happened in California and the West and say, OK, we will—with the current Domenici language, Congress barely smacks the hands of those Enron traders. Gee, only one of them went to jail. I guess you have to be smart enough not to be the one who gets caught with a memo on an electronic file on your computer, and, guess what? You will get out of this. So let's take this same kind of scheme and deploy it for natural gas.

That is what this amendment is about. This amendment is about saying that natural gas in the future will have better protections of consumers in mind regarding potential rate increases. So, if we have an increase in natural gas prices, maybe because of shortage of supply, guess what, we will really know that it is about shortage of supply. We will really know. We will be able to tell consumers in America that we really know it was about not having enough supply; it was not because some natural gas producer had tons of supply but manipulated the market through a variety of schemes and somehow gouged consumers, and that is why your rates are higher. Can we not give the American consumer that kind of confidence about our energy? I sure hope we can.

This issue has a real impact on people, and I know my colleagues are in the Chamber, and they want to speak, but I wish to share one letter from an 11-year-old girl whom I met almost a year and a half ago. I did not know at the time she had sent this letter, but she lives in a region of the State where they have had a 71 percent rate increase—a huge increase.

This 11-year-old girl sent an emotional letter about how the crisis was affecting her family, that her mom was living paycheck to paycheck. That actually the job her mom had was dependent upon affordable electricity. She wrote:

> This is the first time I've lived in a house. This is the most important thing in my life, that we get to live in a house. Please listen to what might happen to hundreds of kids, including myself, when my mom might lose her job and we might have to move out of our house.

The impact is being felt by young children, not just by the parents who might lose their job. Not just by the Snohomish County ratepayers who had 44 percent disconnect notices, but by young children who are fearful that their families are not going to make it because these schemes caused these rate increases that we are stuck with for years and years.

There is somebody sitting in their office somewhere in America saying: Gee, why don't you just sue those Enron people? Why don't you just sue them and tell them that under the Federal law, they cannot manipulate these contracts? I think people in America would be surprised to know that Enron is suing these utilities. Enron is turning around and suing these utilities and forcing them to pay these rate increases. They are suing the Snohomish County public utility district, saying: That contract—that has been manipulated—that you signed for 5 years of power, even though it is manipulated and you are paying a 54-percent increase, we are not letting you out of that contract; we are suing you.

This is the only body that can protect people in the future. It is only the Senate and the Congress that can say: This manipulation is wrong. This manipulation, moving forward, is wrong. Then ratepayers in my State in the future, if this happens, might have a chance.

We have had letters from senior citizens who are trying to live on a fixed income. This burden has made them make decisions about how they are going to live in the future. One woman from Okanogan County said: My friends, myself, and my neighbors cannot afford the higher rates:

> I am in a total panic because I am disabled and barely can pay for heat now. With these rates going up as much, it will make it a life-threatening situation. This will become a public health disaster. To make matters worse, many businesses are planning on shutting down here due to the terrible economy and the power costs. This is putting the last nail in our coffin in a dire economic situation in Omak, WA.

That is what the ratepayers in my State think. Not just: Oh, please, Senator CANTWELL, Senator MURRAY, please, Members of Congress, smack the little hand of the Enron people and tell them that was a no-no. They are saying these are dire circumstances, these are life-threatening situations, these are public health risks. We ought to stand up today and say this kind of market manipulation is not just, it is not reasonable, it is not in the public interest, and these variety of schemes from Ricochet to Fat Boy to Death Star are not legal, they are examples of manipulation, and companies that practice such manipulation should not be given market-based rates.

I could go on about this issue and talk about how our Northwest economy has been impacted by the number of jobs lost. I know several of my colleagues wish to speak on this issue, and I am going to give them the opportunity because I know they have been engaged in such dialog and speaking out on this issue. I want to give them a chance to continue to express their opinion on this issue as well.

I do not know if the Senator from Iowa wants to have a few minutes now, but I am happy to yield to him—for how much time?

Mr. HARKIN. For 10 minutes.

Ms. CANTWELL. For 10 minutes of the time I have remaining, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Senator from Washington for yielding to me. I want to help her on this amendment. I ask unanimous consent to be added as a cosponsor to the Cantwell amendment.

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

Mr. HARKIN. Mr. President, after listening to Senator CANTWELL's exposition of the crimes, manipulations, and the fraud perpetrated on the American people by the Enron Corporation, it is, again, amazing to this Senator that we have not done something about this situation before now. I am amazed this is not taken care of in the underlying bill.

We know that what Enron did can happen again if we do not address it. If we do not ban it, as Senator CANTWELL does in her amendment, it will keep happening over and over.

In the 1930s, at the height of the Great Depression, Congress realized one of the most important factors was the collapse of the electric utility industry. It turned out this basic industry had been built on fraud after fraud, shell game upon shell game, and when economic troubles hit, it collapsed like a house of cards.

Congress's attempt to prevent this from happening again was the Public Utility Holding Company Act of 1935, otherwise referred to around here as

PUHCA. That was our attempt in the 1930s to prevent what was happening then from happening again, with all the frauds and the collapse of the house of cards of the electric utility companies.

Then we go forward 60 years to about the midnineties, and we were told that the restructured electric utility industry would be built upon markets and trading, that the markets would ensure the soundness of the industry, that the PUHCA now was just a hindrance to cheaper power, more available power, for all of our consumers; that PUHCA was not only irrelevant but probably even a hindrance.

Enron was both the leading participant in and the leading advocate of this new scheme of electricity markets. They were not the only one, but they were the leading one. They were the ones that had the closest ties to people in Congress and to the Bush administration.

It turned out that Enron, like the electric companies of the 1910s and 1920s, was also built upon frauds, shell games, and out-and-out criminal activity. When troubles hit, Enron, too, collapsed like a house of cards. Again, this is what we saw in the 1930s.

As Senator CANTWELL has brought out, we had a whole new set of terms of art that entered our vocabulary: Fat Boy, Get Shorty, Death Star, and many more. Enron had legions of employees who were paid to dream up ways to defraud the public and manipulate prices of electricity and transmission capacity. They ranged from affiliate structures, creative loans, trading strategies.

We have heard about Wheel Out, about how they tried to sell electricity through nonexistent lines. Again, Enron was not the only one. FERC has found dozens of companies were involved in fraud, that market manipulation was epidemic.

The whole energy industry still has not recovered. In fact, the whole economy is hurt by investors who have lost their trust in American corporate management.

Now we see that PUHCA, the Public Utilities Holding Company Act, was, in fact, irrelevant to Enron schemes. Why? Because FERC had determined that Enron was exempt from the law. Even that was not enough for Enron's chairman Ken Lay, who later threatened to remove the FERC chairman if he did not back his beloved markets and schemes more strongly.

Where is Ken Lay today? Is he in prison? Is he behind bars? Well, of course not. I understand he had to sell a couple of his big houses, one in Colorado and one someplace else, but he is out free. He may be on the French Riviera for all I know. I do not know where he is. He made a lot of money. He sacked it away and he is living a grand life.

Now I guess a couple of his underlings went to jail because they got caught, but Ken Lay, the brains behind the whole scheme, the person who threatened to remove the FERC chairman, is scot-free. So much for justice in this regard.

At this point I doubt this Justice Department is going to do anything to really go after Ken Lay because of his closeness to the Bush administration. But Enron showed more clearly than any episode since the Great Depression that strong Federal oversight is needed in the electric industry; that fraud hurts consumers, investors, and our whole economy.

The Domenici substitute bans one particular trading scheme, round-trip trading, but it leaves all the other schemes with these names we have heard of from Star Wars. It would still leave them there, and Senator CANTWELL just laid all of those out for us. So it would leave all of those untouched.

Why just ban one and leave all the other ones there? Well, as one step to restoring confidence in the energy industry and thus getting the economy moving again, we need to ban all such market manipulation. That is what the Cantwell amendment does and that is why I support it.

The Presiding Officer is from the State of Missouri, the home State of one of my political heroes, Harry Truman, a great Democrat. Harry Truman once said when he was campaigning in 1948 in the Midwest and talking to a bunch of farmers who had lost a lot in the Depression and he was telling them that his opponent, Mr. Dewey, was going to turn the clock back and they were going to get rid of all of the support they had had for agriculture. Truman uttered one of his great lines. He said: How many times do you have to get hit on the head before you figure out what is hitting you on the head?

Well, I would like to take Harry Truman's line and apply it to us and the electricity industry. How many times do we have to get burned by fraudulent schemes in this industry before we figure out what we ought to do about it and ban all of these activities? How many times do we have to get hit on the head before we figure out there are deep problems in the electricity industry and they have to be solved? Because if they do not, it is going to continue to hurt our economy.

Our economy right now is in terrible shape. I will divert just a little bit from this bill for a few minutes if the Senator does not mind.

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

Mr. HARKIN. I ask for an additional 5 minutes.

Ms. CANTWELL. How much time is remaining?

The PRESIDING OFFICER. The Senator from Washington has 32 minutes remaining.

Ms. CANTWELL. Five minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. HARKIN. Mr. President, in March of 2001, President Bush visited Western Michigan University to stump for his tax cuts. He said:

> . . . we can proceed with tax relief without fear of budget deficits, even if the economy softens.

Of course, today we know that what the President said that day was not true, and I think it is time now that the White House comes clean on this issue. We do not know whether the President was aware at the time he made this statement that it probably was not true, but somebody should have known.

Surely, someone in this administration knew that trillions of dollars of tax breaks, combined with a downturn in the economy, would lead to massive budget deficits.

Following that speech, this administration gave trillions in tax breaks to the wealthy, the economy softened, and we have gone straight from record projected surpluses to record projected deficits and debt. In fact, just 2 years later, the United States now faces massive, prolonged, record-setting projected deficits—over $450 billion this year, $475 billion next year, and trillions of dollars of deficits over the coming years.

So, what the President said that day in 2001 was in fact woefully false.

Now, I know the other side is going to accuse me of making a mountain out of a molehill on this issue. They will say I am just taking 16 words from one speech and blowing them out of proportion in order to challenge the President's credibility. They will ask: How can 16 words in one speech be the test of a President's credibility?

Yes, I can hear the President's defenders already. They will say: This speech was cleared by the Council of Economic Advisors. It is not the President's fault. He relies on the technical advice of experts on these matters.

Maybe that is the case. Maybe the President thought he was telling the truth when he said we could reduce Government revenues by huge amounts without causing deficits. But somebody should have known it was not true.

If not one in this administration knew that passing enormous tax breaks for the wealthy, combined with an economic downturn, might lead to exploding deficits, that does not exactly inspire a lot of confidence, either.

The President's defenders on this issue may also say:

> Well, actually, the statement is technically accurate, and did not mislead anyone. After all, it says we can proceed without fear of budget deficits. It does not say we will not actually experience massive budget deficits. It just says we do not need to fear them.

Unfortunately, that explanation will not work, either. As Alan Greenspan

has reminded us repeatedly, large deficits do matter, and they are something to be concerned about.

In truth, it is pretty obvious that the White House intended to communicate that the President's massive tax cuts would not create corresponding massive deficits. It is now apparent that someone misled the public in that speech by the President.

''Well, but even if what the President said was not true,'' I can hear his defenders say, ''it does not matter. What matters is that we did what we really set out to do. We provided the most affluent Americans with large tax breaks. We rewarded our largest campaign contributors with millions.''

Now, I hope that is not the real explanation. But that is what actually happened.

These days the administration does not want us to pay too close attention to what the President actually says. In fact, sometimes they would rather we disregard it altogether, especially when it is only 16 words. They say it does not really matter.

In this case, as in others, what the President of the United States says does matter. The President needs to come clean about these remarks. He needs to admit his mistakes. Otherwise we are left with the distinct impression the President, his advisers, or both, purposefully misled the American people about the economy in order to get tax breaks for the wealthy.

If they were a mistake, these 16 words, then the President ought to admit it. The resulting policy is driving our economy into the ground. If they would acknowledge the statement was wrong, hopefully we could all come together to remedy the President's economic malpractice and get the economy moving again.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. CANTWELL. Mr. President, I yield 5 minutes to the ranking member, Senator BINGAMAN, who is a cosponsor of my amendment. He has worked hard in bringing attention to everyone about this issue of market manipulation.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank Senator CANTWELL for yielding time on this amendment. I am a cosponsor of the amendment. I commend her for offering the amendment and focusing the attention of the Senate on this important set of issues.

The electricity title is perhaps the most complex part of this entire Energy bill. We recognize and understand there is a lot of complexity in writing a provision or a title that governs the regulation of electricity.

However, the issue that the Cantwell amendment deals with is not complicated. It is extremely straightforward. Frankly, I am at a loss to understand why we cannot get agreement between Democrats and Republicans in the Senate to go ahead and close this loophole which has become so clear to everyone in the country who has paid any attention to energy prices and energy markets in recent years.

Just a year ago, newspaper stories had almost daily headlines about power marketers manipulating the market in California and in the Northwest States, Washington and Oregon, in particular. Unfortunately, it seems something has been forgotten since those stories were written a year ago.

Senator CANTWELL has outlined very dramatically and effectively the parade of these schemes devised to defraud utilities—and ultimately to defraud consumers—that have resulted in consumers paying substantially more every month when they pay their utility bills. They have very exotic names. But the truth is, her amendment is extremely straightforward.

Let me read the operative part of this amendment and ask how this can be objectionable to anyone.

It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may promulgate as appropriate in the public interest for the protection of electric ratepayers.

What is wrong with saying it is illegal to engage in manipulative and deceptive practices? I cannot understand why we are spending so much time debating an issue that seems so straightforward to me.

The Domenici substitute does prohibit round-trip trades. And they should be prohibited. Unfortunately, it does not go the next step and do exactly what I just read, which the Cantwell amendment would do. We need to add this provision. We need to be sure the tools are there in the Federal Regulatory Commission to do this job in the future.

I sympathize with the statements the Senator from Washington has made about the inaction of the Federal Regulatory Commission in the early months of the Bush administration. There was a period when prices were going through the ceiling, particularly on the west coast, and we were not seeing action out of the Federal Regulatory Commission as we should have. That was corrected, in my view at least. It was corrected after the new chairman came in, Chairman Wood, and began to assert the authority the Federal Regulatory Commission had and should have been asserting all along to go ahead and step in.

This is an additional tool. We should give FERC this tool and make it clear in the law that all of these deceptive and manipulative practices are illegal. Once we make that clear, we are in a position to hold the Federal Regulatory Commission accountable if, in fact, manipulative or deceptive practices occur in the future.

This is not an academic inquiry. These practices resulted in increased utility bills for many Americans. The Senator from Washington should be commended for stepping in to ensure that does not recur in the future.

I yield the floor.

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

The Senator from Idaho is recognized.

Mr. CRAIG. I yield myself 5 minutes of our time.

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

Mr. CRAIG. I come to the floor this morning frustrated in part by some of the debate that has occurred on the floor. The Senator from Washington and I agree the ratepayers of the Pacific Northwest have been injured by a dysfunctional California market that was badly designed and badly conceived from the beginning. In fact, it got so bad and it has been so dramatically treated in the wrong political way that we have a gubernatorial recall going on in the State of California right now.

Finally, the ratepayers of California got it figured out. The politics of California destroyed the market and the ratepayers of Washington, Oregon, and Idaho had to help pay for it.

To come to the floor this morning and say nothing is going on and nobody is being prosecuted is, in fact, wrong. It is not telling the whole truth. The title we have in front of us, the electrical title, still allows thorough and aggressive prosecution of those who violate the law.

Where is the regulatory gap that is being talked about this morning that the Senator from the State of Washington, by her amendment, might change? Here are the agencies involved at this moment: The President's Corporate Fraud Task Force, the Federal Bureau of Investigation, the Federal Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the United States Postal Service, and numerous U.S. Attorney's Offices. Their cooperative enforcement activities have focused on investigations of possible round-trip trading, false reporting, fraud, manipulation of energy companies and their affiliates, employees, and their agents.

There is a list of some of the actions taken on various Federal agencies. Let me run through them:

Starting on July 16, 2003, the FERC administrative law judge recommended Enron be required to refund $32.5 million for violating section 205(c) of the Federal Power Act.

June 25, 2003, FERC revoked the market-based rate authority of the Enron power marketing entity.

June 3, 2003, John M. Forney, manager of the Enron real-time trading desk during 1999 and 2000, was arrested and charged with wire fraud and conspiracy.

May 1, 2003, new criminal charges were filed against former Enron chief financial officer, Andrew Fastow, including charges of security fraud, insider trading, falsification of Enron accounting records, tax fraud, and self-dealing.

I could go on, and I have numerous lists. But that is Enron.

Let me go to Reliant Resources: May 12, 2003, Securities and Exchange Commission issued a cease and desist order against Reliant Resources and Reliant Energy arising from Reliant's admission in May of 2002 that it conducted round-trip trading for the purpose of artificially increasing trading volume.

Dynegy, another energy company, June 12, 2003; the U.S. Attorney's Office for the South District of Texas charged three former Dynegy employees with conspiracy, securities fraud, mail fraud, and wire fraud in connection with round-trip energy trades, and the Securities and Exchange Commission also filed civil securities fraud charges against the former employees.

How about El Paso Corporation? May 9, 2003—in May of 2003 FERC deferred action in a pending proceeding stemming from allegations of affiliate abuse and anticompetitive impacts on the delivered price of gas and the wholesale electric market in California.

It goes on and on. I have four more pages of about seven items per page of actions that have already been taken against these companies.

The question is, Does the electrical title that we have before the Senate today create a regulatory gap? The answer is quite obviously no.

Does it change the problem in the State of Washington? Washington got stiffed by the old law and the old process. Idaho's ratepayers got stiffed by the old law and the old process. And the citizens of California have finally said: We have a Governor who will not do anything about it. He put us in a huge deficit problem, and we are going to throw him out of office. And that is what that recall is about. It all stems from a phenomenally dysfunctional electric market that the people of California created, and they created it by deregulating wholesale and regulating retail and in came the scammers and the scammers are now being prosecuted as they should be.

I do not believe the amendment is necessary. I believe the title in this bill on electricity appropriately addresses this. There is transparency. There is no regulatory gap.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Washington.

Ms. CANTWELL. Mr. President, I know my colleagues from the other side of the aisle want a chance to use up some of their time. I do not know whether the chairman wanted to speak now. The Senator from Louisiana was going to be yielded a few minutes, also. I do not know if the chairman wanted to use time.

Mr. DOMENICI. Mr. President, how much time does Senator CANTWELL have left?

The PRESIDING OFFICER. The Senator from Washington has 21 minutes remaining.

Mr. DOMENICI. The Senator from New Mexico has a half hour less than the Senator——

The PRESIDING OFFICER. The Senator from New Mexico has 24 minutes remaining.

Mr. DOMENICI. I inquire if the Senator from Louisiana desires to speak?

Ms. LANDRIEU. Yes, Mr. President, I desire to speak both in support of the chairman——

Several Senators addressed the Chair.

Ms. CANTWELL. I yield to the Senator from Louisiana 5 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will yield and speak after Senator LANDRIEU.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 5 minutes.

Ms. LANDRIEU. Mr. President, I would like to ask, since it seems there is enough time, if I could have 10 minutes. I ask unanimous consent for that.

Ms. CANTWELL. The Senator is yielded 10 minutes.

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

Ms. LANDRIEU. Mr. President, I rise in strong support of the Domenici substitute electricity amendment. There have been few other parts of the Energy bill that have been more controversial or that have been the subject of more debate than the electricity provisions. The Domenici amendment is a well-crafted compromise that represents some of the best thinking on electricity deregulation. It is worthy of the support of all Senators because it addresses those issues that need to be addressed and does so in a fair and balanced way.

The Domenici amendment deserves the bipartisan support of the Senate because it provides Federal agencies such as the Commodity Futures Trading Commission and Federal Energy Regulatory Commission with new tools to prevent and penalize anti-consumer and manipulative behavior, including false price reporting and simultaneous trading of the same volumes of electricity between two entities, known as round-trip trading. It encourages distributed and renewable generation through a nationwide net metering program; in other words, it allows entities that use solar power or small gas generators to put excess electricity back into the grid.

It moves the FERC's refund authority back to the filing of a complaint. Currently there is a 60-day grace period before refunds can be issued—the proposed language removes the 60 days. It expands FERC's merger review authority by increasing the number of transactions that will be subject to FERC review and approval; in addition to utilities FERC now will be able to review mergers of transmission assets. This prohibits so-called ''slamming'' and ''cramming.'' This concept comes from the telecom industry. Slamming is when retail customers have their service switched unknowingly, for example, AT&T to Sprint. Cramming is when retail customers have items added on to their bills unknowingly, for example, call waiting.

It requires the FTC to issue rules protecting the privacy of electric consumers; and the customers information cannot be shared without their consent. It requires FERC to issue a new policy establishing conditions under which public utilities may charge market-based rates. This policy is to consider consumer protection, market power and other factors deemed necessary by FERC to ensure that market based rates are just and reasonable. FERC cannot switch to market base rates if a monopoly exist or else will have to employ cost based rates.

Let me talk a few moments about the consumer protection provisions of this amendment. This is an area where some of my colleagues say the Domenici amendment does not go far enough. I believe that the provisions of the Domenici amendment are a significant first step in the right direction. Let me tell you why. First, the Domenici amendment would require FERC for the first time to issue rules to establish an electronic information system to provide information about the price and availability of wholesale electric energy and transmission capacity. Transparency is key to well functioning and fair electricity markets and this amendment will significantly improve transparency. The amendment further seeks to ensure market transparency and integrity by prohibiting the filing of false information regarding the price of wholesale electricity and availability of transmission capacity.

Second, the amendment would prohibit specific manipulative conduct and practices, including simultaneous trading of the same volumes of electricity between two entities—round-trip trading.

Third, the Commodity Futures Trading Commission is given important new authority that will improve market transparency and further strengthen

anti-manipulation powers. These new powers include a strengthening of the CFTC's authority to investigate and punish fraud and manipulation in the reporting of electric and natural gas prices and an expansion of the CFTC's general anti-fraud authority to cover certain on-line trading platforms, like those run by Enron.

Fourth, the amendment substantially increases criminal penalties for violations of the Federal Power Act to $1,000,000 per violation and civil penalties are substantially increased as well.

Finally, the refund effective date for violation of the ''just and reasonable'' pricing standard under the Federal Power Act is moved back to the date of the filing of a complaint, thus giving consumers a greater likelihood of receiving refunds where prices are found not to be ''just and reasonable.''

In short, this is a good consumer protection package and it is one that is worthy of our support. The Domenici amendment also makes certain long-overdue reforms to our Nation's outdated electricity laws. For example, the amendment would carefully extend open access requirements to transmission systems owned by all large transmission-owning utilities so that larger, more seamless regional wholesale electricity markets can be created. It would establish new transmission pricing policies to help ensure that those benefitting most from new transmission investments are obligated to pay for them. It reforms PURPA while protecting existing investments, contracts, and expectations. Lastly, it repeals PUHCA, while ensuring that State and Federal regulators have access to the books, records and information needed to ensure informed regulatory action.

Mr. President, this is a good amendment. I urge all my colleagues to support it.

However, there are some improvements that should be incorporated. One such example would be Senator CANTWELL's amendment that places a broad prohibition on all manipulative practices in electricity markets.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. CANTWELL. The Senator from Oregon would like a few minutes. I am happy to yield to the Senator from Oregon 5 minutes.

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

Mr. WYDEN. Mr. President, I thank the Senator from Washington, and I also thank the Senator from New Mexico for his courtesy.

I rise in strong support of the Cantwell amendment. What we have seen in the Pacific Northwest with respect to the manipulation of our energy markets is that the position of the Federal Energy Regulatory Commission has simply been see no evil, hear no evil, and ignore evil.

The reason I have come to that conclusion is that when the Federal Energy Regulatory Commission Commissioners came to the Energy Committee in March to discuss with us the question of manipulation of the Pacific Northwest market, I read excerpts point by point from the Reliant Energy trading transcript to the Commissioners. I read to them pretty much like a bedtime story. Here is the portion of the transcript that I read to the Commissioners. It involves the Reliant manager.

He says:

How did it work today?

Reliant Trader: 129. We're talking about the power exchange.

Reliant Manager: Yeah. I saw that.

Reliant Trader: Then we trade up to 1.31 for the third quarter next year.

Reliant Manager: Sweet.

Reliant Trader. We even had a senior manager down here.

Listen, if you would, Mr. President, and colleagues to this.

The reliant trader said:

He just wanted us to know that everybody thought it was really exciting that we're gonna play some market power.

After reading this transcript, I asked the Commissioners, How can you reach the conclusion after what I have read to you that overpriced contracts based on manipulation toward market prices should not be avoided or at least reformed? I pointed out it was clear just on the basis of that short excerpt that the traders were manipulating long-term prices when they were talking about the third quarter next year.

What is more, the Federal Energy Regulatory Commission staff's investigative report issued earlier this year found that there was a particularly significant correlation between spot prices and shorter 1- to 2-year contracts. Despite being caught in the act with a smoking transcript, despite having it read to them like a bedtime story, despite the Federal Energy Regulatory Commission's staff findings, the majority of the Federal Energy Regulatory Commission—specifically Commissioners Wood and Brownell—still cannot see the connection between these caught-in-the-act, smoking gun memos and transcripts and the higher energy prices my constituents are now paying because of the market manipulation detailed in these transcripts.

I am pleased to be able to have just a couple of moments here. But it seems to me if the Federal Energy Regulatory Commission is unwilling or unable to police long-term energy markets in cases like this where people in the Pacific Northwest are being ripped off in broad daylight, it is time for the Congress to step in. That is why the Cantwell amendment is so important.

I urge my colleagues to back the Cantwell amendment and outlaw the kind of manipulation that I have read to the Senate today and that I read to the Energy Committee. Unfortunately, the Federal Energy Regulatory Commission is unwilling or unable to address it.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. Mr. President, we will soon have a unanimous consent request that will set up another amendment of the same class to follow this afternoon immediately after the vote on the judge.

In the meantime, I have around 20 minutes to speak. I would like very much to be as short as I can. But first, let me say to fellow Senators that I am very proud of the electricity amendment, with 13 bipartisan cosponsors, which is pending. Does anybody think we would have worked on that for days on end and not have provisions in it that take care of the problems that Senator CANTWELL is talking about? Is it conceivable that I would come to the Senate floor with what we perceive to be a great American reform of an electricity system from top to bottom and leave out protection for the kind of people she is speaking of? I will answer my own question by saying that is impossible. It is impossible because we wouldn't let it happen. Second, it is impossible because it didn't happen.

Having said that, I understand full well—and I have explained privately to the very distinguished Senator, Ms. CANTWELL. As I talked with her, I could just see how her very being was upset with what has happened to her constituents because of the pricing that went wild in the State of California for which she got the aftermath in her State. But it is not only her State and her constituents, it is a whole section of the country which, in a sense, got it in the neck because of California.

While I am at it—I intended to do this later in my remarks, but let me do it right now—there was a lot of talk about what happened to bring those prices to that outrageously wild system that ended up falling over on to her constituents. And the word ''manipulation'' was used and that even FERC said, in a report, manipulation caused it.

Let me suggest, the Senator from New Mexico has done everything he could to try to find out what the real experts say caused it, and none of them say it was manipulation that was at the heart of the problem of prices going outlandishly high on the west coast. As a matter of fact, whether you ask the Federal Reserve Board or whether you look at the FERC report, the root cause is found not to be—not to be—manipulation. The meltdown was a significant supply shortage and fatally flawed design statutes.

Let me repeat, the general consensus of those who have looked at it carefully say significant supply shortfall

added to a fatally flawed design market and that blew up the California market and, thus, its surrounding States.

On March 26, 2003, FERC issued its ''Final Report on Price Manipulation in Western Markets.'' Senator CANTWELL believes the report proves there was manipulation. However, not everyone shares that view.

As a matter of fact, the Cambridge Energy Research Associates, CERA, is considered one of the top, if not the top, energy market analysts in the world. Daniel Yergin, the chairman of CERA, is the most respected expert in energy policy and the author of the ''Prize,'' the Pulitzer Award-winning book on the global oil market.

CERA noted that FERC ignored the natural gas and electricity supply shortages and assumed scarcity was attributed to manipulation. It was scarcity first, and then it was flawed design statutes which permitted the scarcity to go berserk.

Now, that is aside from the question.

Let's get back to the issue of the bill and whether we would bring before the body a bill that we would ask the entire Senate to support—that I am very hopeful, by the time we are finished, will get in excess of 65, 70 votes—that does not protect the citizens from what happened on the west coast.

Now, this amendment addresses the Federal Power Act and the Natural Gas Act in the following ways:

No. 1, it establishes an electronic information system at FERC to enhance market transparency.

No. 2, it increases criminal and civil penalties under the Federal Power Act and the Natural Gas Act.

No. 3, it enhances FERC's refund authority.

No. 4, it requires FERC to issue regulations establishing conditions under which utilities can charge market-based rates.

No. 5, it prohibits the filing of false information.

And, last, it prohibits round-trip trading.

Further, the so-called Domenici amendment—that is the master amendment we are operating under that I have asked parenthetically of myself: Would I bring it here without protecting for the future events that are being alluded to by the distinguished Senator who is worried about her State—that Domenici amendment enhances the role of the Commodity Futures Trading Commission to provide oversight over electricity and natural gas.

The Senate, in my humble opinion, should reject amendments—all of them—to the electricity title of the bill that would affect FERC's and the CFTC's flexibility to react and deal with bad actors and upset further the already beleaguered utility industry's ability to respond to a changing market.

Now, I do not want to take a lot of time because, frankly, I am not sure, when we go on forever, that anybody listens. But I want to tell you that even without the so-called Domenici Modernization Act, the markets are being forced to respond, because FERC is taking action in the form of initiatives to protect electricity consumers, increase market transparency, and strengthen the regulation of electricity markets at the wholesale level.

They have proposed to identify more clearly transactions and practices that would be prohibited under electricity sellers' market-based rate tariffs and gas sellers' blanket certificate authority. These new market behavior rules would prohibit market manipulation or attempts to manipulate the market through activities such as creating and relieving artificial congestion.

They have proposed to require electricity sellers to operate and schedule generating facilities in compliance with the rules and regulations of the relevant power market.

They have proposed to require sellers to provide complete, accurate, and factual information in all communications with FERC, RTOs, ISOs, market monitors, and other similar entities. They have proposed measures to assure the accuracy of electricity and natural gas price reporting.

They have established a new Office of Market Oversight and Investigations as part of a stepped-up enforcement and audit program.

And I could go on.

Clearly, they are enforcing the law. They are taking out after those who are causing this market to react other than in a normal market way. And we will add to that authority in the bill that is before us which does not have to be amended.

The Commodity Futures Trading Commission has aggressively prosecuted fraud and manipulation in energy markets. They have committed 25 percent of their enforcement staff to conduct investigations into misconduct in energy markets.

CFTC's existing authority empowers it to prosecute fraud and manipulation. Under the authority of the Commodity Futures Trading Commission, they have filed civil action against Enron and a former Enron vice president for manipulation of prices in natural gas markets. They have filed civil action against Enron for operating an illegal futures exchange. They have filed civil action against El Paso Merchant for false reporting and have a $20 million settlement. And they have filed civil action against Dynegy Marketing for false reporting and have a $5 million settlement. They have filed civil action against Encana Trading for false reporting and Williams Trading for false reporting, both with a $20 million settlement.

Criminal actions have been filed, and I have a complete list of those. Enron's former head of CA trading pled guilty to conspiracy.

We don't need further amendments beyond the Domenici amendment that is pending to be sure the constituents of the distinguished Senator from the State of Washington are protected. They are protected. All we do by adding more is making the market more difficult. We would accomplish little but perhaps to say to ourselves we have done much.

The Natural Gas Supply Association, the Interstate Natural Gas Association, and the American Gas Association have all endorsed the market manipulation provisions in this amendment we call the Domenici amendment. I believe it is right as it is. It need not be changed.

Mr. President, let me just generally talk about where we want to go. Soon we will have the unanimous consent request in writing.

I say to the Senator, maybe we can just recite it here since you and I know it.

The ACTING PRESIDENT pro tempore. The assistant majority leader.

Mr. REID. Will the Senator yield?

Mr. DOMENICI. Surely.

Mr. REID. Mr. President, the next amendment we will offer is an amendment of the Senator from Wisconsin dealing with the electricity section. He has agreed his time on it will take approximately a half hour. Senator FEINGOLD is usually quite concise. The problem is that if we lock in this time agreement, people coming and wishing to speak on other subjects would not be able to do so. We have no reason to think anybody is going to or not going to. We don't want to have those time constraints. We are going to offer the next amendment. It would be the Feingold amendment.

Mr. DOMENICI. People might want to speak to which amendment? To the amendment you were referring to?

Mr. REID. Well, to be very direct to the Senator from New Mexico, as I want to be, the majority leader has told us we are going to vote on cloture tomorrow on the attorney general of Alabama, Mr. Pryor. We have had no opportunity to debate this. We will have a half hour tomorrow under the rules. We are going to have members of the Judiciary Committee come this afternoon and speak to the competency and the professionalism of the attorney general of Alabama to be a United States Federal judge. People are going to take some time doing that. When they will come, I don't know. But we wouldn't want them to be prevented from doing that because we are in a time agreement on the Feingold amendment.

Mr. DOMENICI. Could we agree where we are going? There is an amendment up shortly, is there not?

Mrs. FEINSTEIN. Reserving the right to object.

The ACTING PRESIDENT pro tempore. No unanimous consent has been propounded. The Senator from New Mexico controls the time.

Mr. DOMENICI. Mr. President, I have not propounded a unanimous consent request. I just wanted to know how much time is left to Senator CANTWELL.

The ACTING PRESIDENT pro tempore. The Senator from Washington controls 7 minutes and 20 seconds. The Senator from New Mexico controls 9½ minutes.

Mr. REID. If the Senator will yield for a question.

Mr. DOMENICI. Yes.

Mr. REID. The Senator from California is here. The Senator from Washington has 7 minutes left. She wants to close. We have no more time than 7 minutes. The Senator from California wishes to speak on this amendment. She can only do that if unanimous consent is given to allow her to speak for up to 15 minutes. Otherwise, she will not be able to speak on the amendment. She wants to. Is that a fair description?

Mrs. FEINSTEIN. It is a fair description. I have great respect for the chairman of our committee. However, he did not correctly present the California situation. I would like an opportunity to set the record straight.

Mr. REID. I ask unanimous consent that on the Cantwell amendment, the Senator from California be allowed to speak for 15 additional minutes and that, of course, the majority, if in fact they want 15 minutes, would have equal time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DOMENICI. Yes, there is objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DOMENICI. Mr. President, I don't want to object to the Senator from California speaking. I just want to remind the Senator and the Senate, this amendment has been on the floor 3 hours—not 3 minutes, not 30 minutes, 3 hours. We are supposed to vote, generally, when 3 hours is up. Three hours will be up in a few minutes. I would like to proceed and vote. I have a few minutes. I don't know that I need it. But I really don't think I am being unfair in suggesting to the Senator that perhaps, so we can vote on an amendment that has been pending for 3 hours, if you could take half the time you requested so we can proceed to vote, I would have no objection.

Mrs. FEINSTEIN. If I may respond, this is an amendment on market manipulation. You, Mr. Chairman, have just said there wasn't market manipulation.

Mr. DOMENICI. I have not.

Mrs. FEINSTEIN. I would like to present evidence specifically. I have 18 to 20 disks involving 3,000 pieces of paper which is evidence presented to FERC of market manipulation in the California market. This Senator has done a great service because those of us out west know what happened. What happened is so egregious as to give the senior Senator from California an opportunity to support the amendment of her colleague.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico has the floor.

Mr. DOMENICI. I don't think it is fair for the Senator—I am going to give her time, but I don't think it is fair for her to give a speech this way. She knows she is going to get time, and she can just be patient like every other Senator, if you don't mind.

Mrs. FEINSTEIN. I have been patient.

Mr. DOMENICI. I thank you.

Might I say to the Senate, the Senator from New Mexico has responded to an amendment. Never once did I say there was no market manipulation. I don't intend that every time any of us gives a speech, that somebody come to the floor when there are time agreements and decide they would like to give a speech on something they heard.

I said there are studies that say market manipulation was not the principal reason for what happened. If the Senator would like to speak, I would ask her if she would speak for a little less time so we can proceed, since the time is up. I can object, and we will vote. And then you can speak after the vote.

Mr. CRAIG. Will the chairman yield?

Mr. DOMENICI. I am pleased to.

Mr. CRAIG. So you can sustain the goodwill of the rest of the colleagues because you are managing the bill, you should.

The ACTING PRESIDENT pro tempore. If the Senator will suspend. The Senators are reminded to address one another in the third person or through the Chair.

Mr. CRAIG. I simply say to the Senator that to sustain the goodwill that he needs to, he will work the bill, but when there are time agreements of 3 hours, this Senator will object to adding more time.

Mr. DOMENICI. I wanted to ask the Senator if he wanted to object at this point. He is not going to object.

How much time did the Senator ask for?

Mrs. FEINSTEIN. I asked for 15 minutes.

Mr. DOMENICI. I wonder if you would take 10 minutes.

Mrs. FEINSTEIN. I will do my level best.

Mr. DOMENICI. All right, 10 minutes, so long as we understand. I ask unanimous consent that she have 10 minutes, after which time we will finish the time allowed and then we will vote on the pending amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from California is recognized for 10 minutes.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the committee.

I wanted to say a few words in support of what Senator CANTWELL is trying to do. Perhaps those of us in the West are more disconnected from the Beltway than I ever believed, but let me give you a startling fact which will demonstrate market manipulation. The total cost of electricity in California in 1999 was $7 billion. It increased 400 percent in one year to $27 billion the next year. There is no way supply and demand can be responsible for a 400 percent increase.

What we now know is that power generators, traders, and marketers manipulated the western energy markets, and the market abuse wasn't simply limited to Enron. Look at these schemes. There are more than we ever knew: Ricochet, Death Star, Get Shorty, Fat Boy, Nonfirm Export, Load Shift, Wheel Out, Black Widow, Red Congo, Cuddly Bear. This was not limited to Enron. It was a widespread series of schemes perpetuated by many companies that supplied and traded in the West. I deeply believe this.

The State of California, the California Attorney General's office, and the State's largest utilities compiled the 3,000-page report detailing the pervasiveness of fraud and manipulation in the western energy market in 2000. Then they couldn't present it to FERC. They had to go to a Ninth Circuit Court of Appeals to get the ability to conduct discovery and evidentiary hearings to be able to bring the allegations of fraud and manipulation to FERC. So the whole Federal system is stacked against allowing a State to make a presentation of fraud and manipulation.

This report concluded that energy companies intentionally withheld power from the western market, driving prices up and creating false shortages. For example, from August 30 to December 3, 2000, Dynegy shut down one of its units for repairs, yet repairs had already been done prior to August 30.

The report's conclusion: The plant was shut down to intentionally drive up prices.

Another example. Following an external tube leak, Merit held one of its plants offline for 2 extra days, from October 20 until October 22, 2000, denying the western energy market much needed power and driving prices up. The report also submitted evidence that suppliers bid higher after the California independent systems operator declared emergencies, knowing full well the State would need power and would be willing to pay any price to get it.

Further, we learned that suppliers submitted false load schedules to increase prices. One example of this bogus load is demonstrated in an internal PowerX memo, which documents

that PowerX entered into a contract with the explicit purpose of overscheduling and underscheduling and for congestion manipulation.

Other games were played in the western energy market, including collusion among sellers, sharing of nonpublic generation outage information, and the manipulation of the nitrogen oxide emission market. Just look at one fact. One company, CMS Energy Corporation, has admitted conducting wash energy trades that artificially inflated its revenue by more than $4.4 billion. These round trips accounted for 80 percent of that company's trading that year, in 2001. So 80 percent of the trading of a large company was bogus in that year. The market was rife with fraud and manipulation.

Senator CANTWELL's amendment attempts to strengthen the Federal Power Act, so that the fraudulent and manipulative behavior we witnessed in the western energy crisis does not go unpunished.

The problem is that FERC could not go back. FERC would not accept findings from California to document the fraud and manipulation. California, to this day, has not received $1 of refund, despite settlements. So that is what is really going on out there, and that is a huge problem.

To have an Energy bill that doesn't adequately deal with fraud and manipulation is something none of us should vote for. I will tell you why. Under the present regulations, it can and will happen again. These companies will try to do it if they possibly can. Consumers should be protected from fraud and manipulation perpetrated by people who are only motivated by profit, which we know dominated the trading scenario in the western energy market. I can tell you terrible things traders said about shutting off power for the purpose of inflating the bottom line of their company. That is wrong and it should be dealt with.

The fact is that FERC has not dealt with it up to this point. So I very strongly support what Senator CANTWELL is trying to do. I hope the Senate will accept it because I think the energy title is weak. I hope at a later time to add natural gas to some of the provisions that this bill achieves in terms of increasing penalties in the electricity market. Unfortunately, the bill does not harmonize penalties for the natural gas market, and there is ample evidence of fraud and manipulation as well in the national gas market, specifically with El Paso Natural Gas, and I hope to indicate that in an amendment I will do at a later time.

I have tried to truncate my remarks to cooperate with the chairman. I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. Mr. President, I thank the Senator for getting her remarks down to 10 minutes. How much time does Senator CANTWELL have?

The ACTING PRESIDENT pro tempore. She has 7 minutes 20 seconds.

Mr. DOMENICI. Does she want to deliver her remarks?

I yield the floor.

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

Ms. CANTWELL. Mr. President, how much time is available?

The ACTING PRESIDENT pro tempore. There are 7 minutes 20 seconds remaining. The Senator from New Mexico has 5 minutes.

Ms. CANTWELL. Does the Senator from New Mexico wish to complete his comments?

Mr. DOMENICI. I will wait for a while.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. CANTWELL. Mr. President, I appreciate the chairman of the committee giving time to the Senator from California so she could explain and respond to her views on this issue. I appreciate my colleagues from the West engaging in this debate. I appreciate the Senator from Idaho coming to the floor and reiterating to this body, yes, how ratepayers in Washington, Oregon, and Idaho got stiffed. That is the right word. We got stiffed. We got stiffed with paying a bill more exorbitant than ratepayers should have to pay.

The debate that has ensued in the last few minutes is whether the Domenici underlying amendment has enough protections in it to protect consumers or whether we need the Cantwell amendment. It is a clear and simple and plain statement that market manipulation should be outlawed in the Federal Power Act as not being just and reasonable.

I thank the Senator from Louisiana for her comments. She supports the underlying Domenici title, but she supports my amendment as well because she knows that kind of language can be helpful and can be specific.

Let me be clear. If anybody thinks that the Enron manipulation didn't have a profound and adverse impact on the marketplace and that this is all about poor management in California, I can assure you that is not the case. This is about whether this body is going to adopt tough standards against market manipulation so there is no question by the public. So the public doesn't debate, if there was a shortage of supply or manipulation going on?

We know there was manipulation going on. We have proof of it. The FERC itself said:

> Enron and its affiliates intentionally engaged in a variety of market manipulation schemes that had profound, adverse impact on market outcome.

There it is. The FERC said itself that market manipulation had profound, adverse impact on the market. So we know for a fact that market manipulation had an impact in California, it had an impact in Washington, it had an impact in Oregon, and it had an impact in Idaho. The question is whether this body is going to do enough to protect consumers in the future.

So the chairman of the committee—I appreciate his earnest time on the electricity title, and I appreciate the fact that he wants to have some protection in this legislation. But these protections don't go far enough.

Let me explain why. There is transparency language in the underlying Domenici title. Some of those powers are already in place with FERC. They are not doing us any good because reporting to FERC is one thing; reporting to the California ISO, the independent systems operator, who basically was the cog by which all the manipulations took place, you are not under any kind of threat or penalty for reporting falsified information to them. That is where the manipulation took place, so the Domenici title does not cover that situation.

There is a lot of talk in the bill about the Commodity Futures Trading Commission, and there is a section in the bill that tries to beef up that language. That is a noble attempt. I much prefer the Feinstein amendment which has very specific language about closing a loophole.

I have a letter from the National American Securities Administrators Association. They basically say the Domenici language is flawed. These are Federal regulators who are supposed to regulate this policy. They say the Domenici language is flawed because it will prohibit any Federal or State agency from obtaining information directly from a board of trade or exchange or market involving commodities, and that State and Federal agencies will be impeded from investigating violations of these wide range of commodities.

I ask unanimous consent that this letter from the National American Securities Administrators Association, about how the Domenici language is trying to correct some of the problems is actually causing a new problem and is not going to protect people, be printed in the RECORD.

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

NORTH AMERICAN SECURITIES ADMINISTRATION ASSOCIATION, INC.,
Washington, DC, July 29, 2003.

Hon PETE V. DOMENICI,
Chairman, Committee on Energy & Natural Resources, Washington, DC.

Hon. JEFF BINGAMAN,
Ranking Minority Member, Committee on Energy & Natural Resources, Washington, DC.

Re: S. 14, the Energy Policy Act of 2003.

DEAR CHAIRMAN DOMENICI AND RANKING MEMBER BINGAMAN: The North American Securities Administrators Association (NASAA) is writing to express its concern

over proposed language in the Domenici substitute to Title XI, (the electricity title) of S. 14, the Energy Policy Act of 2003.

Proposed Sections 1171 and 1173 would require that ''any request by any Federal, State or foreign government, department, agency or political subdivision'' to a ''board to trade, exchange, or market'' involving transactions in commodities ''within the exclusive jurisdiction'' of the Commodity Futures Trading Commission (CFTC) ''shall be directed'' to the CFTC.

This prohibition on federal and state information gathering directly from a board of trade, exchange or market would place unnecessary burdens on state securities regulators when they investigate violations of laws regulating foreign exchange products, energy products and financial instruments. Over the years, state securities regulators have handled many of the foreign exchange cases under authority contained in the Model Code and state securities laws.

This language would prohibit state securities regulators from directly seeking information from a CFTC regulated entity. State securities regulators do not have regulatory jurisdiction over a CFTC regulated entity, but we must retain our authority to subpoena documents from all relevant sources as part of our enforcement cases. For example, a registered representative of a securities firm could illegally take investor funds and trade in commodities, and our members might have to subpoena a futures exchange for trading records or other information.

The CFTC and the states have a history of coordinating efforts and working successfully toward our mutual goal of protecting investors by recognizing potentially fraudulent activity and bringing it to the attention of the public. However, mandating that regulators go through the CFTC for information could be burdensome, time-consuming and inhibit our ability to investigate wrongdoing in a timely and efficient manner. It may also place the CFTC in a difficult position of deciding whether to send a state's subpoena to one of the exchanges it regulates.

With the fallout from Enron and a variety of financial scandals still in the news, now is the time to strengthen, not weaken, our complementary system of state and federal securities regulation. There seems to be no justification for limiting the ability of state securities regulators to gather information directly from a futures exchange.

We urge you to strike Sections 1171 and 1173 from the Domenici substitute. Please do not hesitate to contact me if I may be of further assistance to you.

Sincerely,

CHRISTINE A. BRUENN,
NASAA President,
Maine Securities Administrator.

Ms. CANTWELL. Mr. President, the bottom line is, in this amendment, while round-trip trading is covered and some, I am sure, well-intentioned language on reporting and falsifying information to FERC, it does not cover a myriad of other manipulative schemes that have been deployed and used by Enron.

Fat Boy is not outlined under the Domenici language. Ricochet is not outlined under the Domenici language. Death Star is not outlined under the Domenici language. Load Shift, Get Shorty, and Wheel Out are not outlined under the Domenici language.

I understand the chairman wants to see that the manipulation stops. In this Senator's opinion, that manipulation will stop when this body stands up and says to the American people with simple language in the Power Act: Manipulated prices are not just, they are not reasonable, and anyone who deploys them are not doing so in the public interest, and we cannot give them market-based rates.

If this body will say this, then any future debate about natural gas prices will not be about whether some company manipulated them, it will be about the real issues of the supply and demand.

Let's give the consumers confidence that market manipulation is prohibited in Federal law and that this body does not condone Enron's activities but is going to be aggressive in outlawing them.

Mr. President, how much time do I have?

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

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the bill before us does away with the Enron loophole, there is no question about it. If I came from California or Washington, I would come to the floor of the Senate and offer an amendment that was very precise and specific and talked about the problems of the people of the west coast. That is what the Senator is doing. But merely talking about them does not mean that the bill before us does not protect her people. The truth is, it does.

The Domenici amendment protects consumers in the States of Washington, California, and others who were victimized by the Enron scandal, and many others, and market regulations in California that were doomed from the outset to cause the failures that occurred. To regulate at one level and deregulate at the other level is clearly to invite exactly what happened, and then the spillover falls onto the adjoining States, including that of the distinguished Senator from Washington, Ms. CANTWELL.

I commend the Senator from Washington for her genuine and abiding concern for her people. I commend the Senator from California for her studious and lengthy involvement in attempting to ascertain and articulate the problems. But neither of those qualities require serious amendment to this bill. They require just what is happening: that the Senators representing those problems speak to the issues. And speak they have—3 hours and 15 or 20 or 30 minutes on this subject—and, I assume, before we are finished on collateral issues even more.

I could take out my preparatory books, where I spent hours talking to everyone of every ilk in every type of industrial input and involvement as we put this bill together, and read the language showing that what happened before will not happen again.

I could tell my colleagues what has happened is being broken up by those in the criminal justice structure of our Government, and those involved with the civil part are filing their lawsuits. Neither of the States involved are having the same problem because there are protections being carried out, and there will be more when this bill is adopted, without adding any more burdens, additions, or specificity to the bill.

It is with great regret that I suggest we keep—since it was worked out so delicately with so many different units, institutions, and groups—that we preserve the delicacy of this bill. The Senator who proposed this knows that the cooperatives that are very worried have spoken to the fact that they do not need any more protection. They have told her that. They have told her office that. And there are more associations beyond them that say their fears are alleviated by this bill.

I yield the floor, and we will proceed.

The ACTING PRESIDENT pro tempore. All time has expired.

The question is on agreeing to the amendment.

Ms. CANTWELL. Mr. President, I ask unanimous consent that Senator HARKIN and Senator ROCKEFELLER be added as cosponsors to the amendment.

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

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

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—48

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Byrd	Gregg	Pryor
Cantwell	Harkin	Reed
Carper	Hollings	Reid
Clinton	Inouye	Rockefeller
Collins	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kohl	Smith
Daschle	Landrieu	Specter
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden

NAYS—50

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Nickles
Breaux	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Hagel	Snowe
Chafee	Hatch	Stevens
Chambliss	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Kyl	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	

NOT VOTING—2

Kennedy	Kerry

The amendment (No. 1419) was rejected.

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

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to 60 minutes of debate with 30 minutes under the control of the Senator from Vermont, Mr. LEAHY, and 30 minutes under the control of the Senator from Kentucky, Mr. MCCONNELL.

The assistant minority leader.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the time under my control be as in morning business.

Mr. REID. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. It is my understanding the Senator from Kentucky is going to use the half hour under the rule now available before the Senate on the Estrada cloture. He is going to use his time as in morning business; is that correct?

The ACTING PRESIDENT pro tempore. That is the request. The Senator from Kentucky.

Mr. MCCONNELL. I did not hear the assistant Democratic leader.

Mr. REID. I just said the half hour that you are entitled to under the Estrada time for cloture, you are going to use that as in morning business?

Mr. MCCONNELL. I would say, Mr. President, that is correct.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Kentucky controls the time.

MEASURE READ THE FIRST TIME—S. 1490

Mr. MCCONNELL. Mr. President, I send a bill to the desk and ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title.

The legislative clerk read as follows:

A bill (S. 1490) to eliminate price support programs for tobacco and provide assistance to quota holders and tobacco producers and tobacco-dependent communities, and for other purposes.

Mr. MCCONNELL. I now ask for its second reading and object to further proceedings on the matter.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will receive its second reading on the next legislative day.

TOBACCO MARKET ADJUSTMENT ACT OF 2003

Mr. MCCONNELL. Mr. President, I rise today to introduce the Tobacco Market Adjustment Act of 2003. This is truly a key moment in the history of tobacco as each of the Senators from the leading tobacco-producing States stands united in support of changing the Government's involvement with tobacco.

This legislation enjoys the support of farm bureaus from Kentucky, North Carolina, Virginia, Tennessee, South Carolina, Georgia, Florida, as well as the support of the Burley Co-op, Burley Stabilization, and the Council for Burley Tobacco.

I ask unanimous consent to have letters indicating their support printed in the RECORD.

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

JULY 16, 2003.

TOBACCO STATE SENATORS: For many tobacco dependent states in the Southeastern United States, tobacco buyout legislation, possibly coupled with FDA regulation of tobacco products, is the most important potential federal legislative initiative for 2003. The undersigned Presidents of State Farm Bureaus believe this is the year to accomplish a tobacco buyout. For that reason, we urge you to endorse the legislative language developed by many meetings of Senate staff and eventually pledge your willingness to cosponsor the legislation as it is introduced.

We continue to believe there are some details yet to be ironed out in the legislation and we look forward to working through those as we continue the process, but we believe that to move forward, it is imperative that all tobacco state Senators support one bill and we believe the legislative language developed by the Senate staff gives all of us the best shot at accomplishing a buyout this year.

We appreciate all the work you have done up to this point in ensuring that tobacco farm families have a vibrant future, and we look forward to continuing to work through this process in the weeks ahead.

Sincerely,

SAM MOORE,
President, Kentucky Farm Bureau.
FLAVIUS BARKER,
President, Tennessee Farm Bureau.
BRUCE HIATT,
President, Virginia Farm Bureau.
CARL LOOP,
President, Florida Farm Bureau.
LARRY WOOTEN,
President, North Carolina Farm Bureau.
DAVID WINKLES,
President, South Carolina Farm Bureau.
WAYNE DOLLAR,
President, Georgia Farm Bureau.

THE COUNCIL FOR BURLEY TOBACCO,
Lexington, KY, July 25, 2003.

Hon. MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: The Council for Burley Tobacco, Inc. believes that during the 2003 Legislative Session is the best and maybe the only time to pass a Tobacco Buyout Bill. We are concerned about the lateness of the legislative session.

We appreciate very much your leadership in developing a consensus buyout bill with the Senate Tobacco Group and we fully support your effort to introduce and move forward in the Senate the consensus bill.

Please let us know how we can help you with this process and again we thank you for your leadership and support.

Sincerely,

JOHNNY BULLOCK,
President.
DEAN M. WALLACE,
Executive Director.

JULY 29, 2003.

Hon. MITCH MCCONNELL
U.S. Senate,
Washington, DC

DEAR SENATOR MCCONNELL: We are writing to thank you for your ongoing effort to help tobacco farmers and our communities and to offer our support to secure Senate passage of your newly-drafted tobacco buyout legislation.

Our organizations and the farmers we represent firmly believe that the Congress has a unique opportunity to establish a new visionary tobacco policy in this country—one that will allow tobacco-producing communities to adjust to the realities of the permanently altered marketplace while simultaneously protecting public health. We are united in our view that the Senate consensus bill is a major step toward achieving that objective.

While we look forward to continued discussion on a few key provisions in the Senate bill, we intend to work vigorously to secure Senate passage of this legislation.

Again, thank you for your leadership and commitment to tobacco farm communities. We stand ready to work with you side-by-side to pass historic tobacco legislation in 2003.

Sincerely,

HENRY S. WEST,
President, Burley Tobacco Growers Cooperative Association.
GEORGE MARKS,
President, Burley Stabilization Corporation.

Mr. MCCONNELL. Mr. President, tobacco was in the United States before Europeans arrived here. It is depicted in various places here in the Capitol. George Washington and other Founders

of our country grew tobacco. It has been an integral part of our history.

It is also no secret that the use of tobacco is dangerous to the health of Americans. Increasingly that view is held by a large number of Americans. The unfortunate side effect of that from an economic point of view in a State such as mine, which still has 44,000 tobacco growers, is that their income continues to plummet.

Back in 1998, I first suggested a buyout might be an appropriate direction in which to go. Ironically, at that time, that was roundly criticized by all the farm organizations in my own State and across the burley belt and flue-curing areas, the argument being that it would lead to the end of tobacco production.

It is interesting, as I go across my State, that I am treated now as a visionary because it is now virtually the unanimous view of our growers and certainly the unanimous view of our farm organizations that a buyout is the only appropriate measure to take at this particular juncture in our history.

The reason for that is the quota established under the tobacco program back in the 1930s, which has been adjusted year to year all of these years, has declined dramatically—up to 40 percent in the last 3 or 4 years alone. Our growers realize they are sitting on a declining asset that lowers the value of their property and their farm values and it is time to act and to move in a different direction.

Simply putting together a buyout proposal everyone could agree to—that is the various farm organizations as well as Senators from tobacco States—has not been easy. In fact, we have been working on this for 6 months to get to the point of actually introducing a bill, which as we all know around here is just the beginning. When you introduce a bill, it is not easy. It has not been easy to get to this point, which many people would argue is just the start. We have, however, almost total consensus. We have 100 percent consensus among tobacco State Senators and almost total consensus among those involved in the production of tobacco. We feel that is a significant accomplishment although it certainly doesn't guarantee the result we all would like to see, which is a law.

We understand this issue is likely to go forward in the Senate in conjunction with an FDA tobacco regulation bill which is being worked on in the Labor Committee under the leadership of Senators GREGG, DEWINE, and KENNEDY. It is our hope at some point after the recess to link those two measures together with what we hope will be a formidable coalition here in the Senate across an ideological divide to move us in the direction of achieving both of these goals.

Frankly, accepting an FDA bill is a bitter pill for this Senator to swallow, and I think some other Senators from the burley belt and flue-cured tobacco areas. But that simply is the reality which we confront today. These measures are likely to move in transition.

I also want to commend my colleague from Kentucky, Senator BUNNING, who I know is here on the floor. He has been an integral part of the development of this bill, as well as our new colleague from North Carolina, Senator DOLE, who is also here, both of whom will be speaking momentarily. They have been completely involved in the formulation of this product from the very beginning. As I said, it has not been easy to get to this point. We all understand it is going to be difficult to move the ball even further down the playing field. But today we begin with unity. We begin with an aggressive effort to achieve this buyout for our farmers.

America's history is closely linked to tobacco. It provided the early settlers with a key crop for trade and barter, and it provided gentleman farmers throughout the colonies with livelihoods that sparked the first inklings of the dream of an independent country. Throughout this beautiful Capitol there are depictions of tobacco leaves signifying this crop's importance to the founding of this country. George Washington, Thomas Jefferson, and James Madison all raised tobacco. Almost no crop in the history of agriculture has provided so many with a living off of so little land.

In agriculture, it is popular to speak about the importance of supporting the small farmer. In reality, the number of small farms has declined as competitive forces have forced most farms to consolidate and diversify to compete. Many farmers now must work second jobs in addition to farming just to get by. However, over centuries, small farmers with limited land have been able to carve out a living farming tobacco. The average acreage per tobacco farm is 6.7 acres—for my friends from the South and the Great Plains, you know that these are some small farms.

In my home of Kentucky, tobacco production is intimately connected to the history and the culture of the State. In fact, the basis of agriculture in the State of Kentucky has been inextricably tied to this crop. Home mortgages have been based on crops, loans for small businesses, and even children's educations have been funded through the performance of an individual's tobacco crop. It has been said that ''A good crop is a good Christmas.''

At harvest time, families gather: sisters, brothers, aunts, uncles, cousins and children all set about the hard work of bring in a tobacco crop. In the late fall, when the markets open for crop, entire communities hold celebrations and ceremonies. The marketing process along with the auctions have a particular significance as the livelihood of an entire family is dependent on a good crop.

Throughout Kentucky, tobacco has helped small communities construct schools and convention centers, it has supported local governments, and most importantly, it has supported the small family farmer. In Kentucky, tobacco is considered the 13 month crop, since there is virtually no time during the year that difficult and labor intensive work is not required. Despite the difficult labor required, it has provided generation after generation with the opportunity to make a living.

However, the very qualities that have allowed tobacco production to continue through the years have also led to the dependence of a culture, and a region, on this crop. There is no simple solution to the problems facing tobacco farmers, but there are clear steps that we can and should take to help these individuals transition into a new era.

Most of the key tenets of the tobacco program were established by the Agriculture Adjustment Act of 1938. The program implemented a system of supply restrictions and price guarantees aimed at stabilizing tobacco prices and income. Under this program, farmers agreed to restrict supply via acreage/marketing allotments—or quotas—in exchange for minimum price guarantees. The levels of production were set each year to best ensure that the prices received for tobacco would meet or exceed the guaranteed price.

These marketing quotas were originally divided among active growers, but this production right was then handed down to heirs or sold to others as an asset. As a result, much of the quota is now controlled by non-producers who rely on proceeds from renting or leasing this production right to growers. It is regarded as an inheritance and has been relied upon to support many seniors' retirements.

In 1982, the first major modifications to the tobacco program were made, requiring the program to operate at no-net-cost to taxpayers. Since then, Federal funds have been prohibited from being used for export promotion of American tobacco or research relating to tobacco production, marketing, or processing. As a result of many international and economic factors, the price supports have been reduced several times since the 1980's as well.

Under the current program, levels of production are cut in an effort to ensure a stable price. With lower consumption and increased foreign competition, the levels of quota have been cut significantly and farmers are paying much higher quota rents to continue producing.

In 1998, I proposed a buyout of the tobacco program, but this measure failed due to a lack of support from grower groups and a lack of consensus among elected representatives from tobacco producing States. Since my effort in

1998, the programmatic decline of production has imposed severe economic hardships on tobacco producing communities. During a time when most agriculture production in this country has had to consolidate into larger operations to remain competitive due to economies of scale and foreign competition, tobacco farmers, faced with the same challenges, have actually been forced through this program to simply cut production. While manufacturing needs have only declined slightly, production quotas have been reduced by more than 60 percent. Such production cuts have forced domestic producers to vacate ever larger amounts of market share to foreign producers. As a result, domestic production levels have not been this low since 1908.

Despite financial help in the form of tobacco loss assistance payments, the crisis imposed by the program is plunging rural farm families in Kentucky and throughout the tobacco belt into poverty, bankruptcy, or simply eliminating the ability of entire communities to remain engaged in agriculture.

In less than a decade the number of tobacco farms in the United States has declined from 123,000 individual farms to right around 90,000, with 44,000 of those in Kentucky. At the same time the annual value of domestic tobacco farm production has fallen from an average of $2.8 billion per year during the 1990's to $1.7 billion in 2002. In Kentucky, tobacco represented 24 percent of total cash receipts for agriculture products during the 1990s. By 2001, cash receipts for tobacco dropped to 16 percent, and further quota cuts have continued to reduce the amount of tobacco that can be sold by producers.

Imports have also had a significant impact as the quality of foreign leaf has improved, domestic production has been restricted, and the price of U.S. tobacco has been kept artificially high by quota rent costs. These factors have led to dramatic increases in the amount of imported tobacco, with imports increasing by 25 percent between 2001 and 2002 alone.

Simply put, 165,000 of my constituents and 44,000 rural family farms in Kentucky are facing financial ruin due to the continuation of a program that we in the Congress have the power to change. In 1998, growers were divided on the issue and no consensus could be reached. Today, the introduction of this bill signifies the unified support of tobacco state Senators and growers to achieve the reforms.

The Tobacco Market Transition Act represents months of hard work and negotiation. Such an undertakiing has required input, debate and compromise over every element of the legislation ranging from the funding mechanism to the health consequence of the changes that we are proposing. It provides tobacco growers with a fair level of support for transition and tobacco quota owners with a fair level of compensation for their asset. We also worked to ensure that these payments are fully decoupled from current production, to avoid any possibility of trade implications.

The changes we propose represent a radical shift in the way that tobacco production will occur in this country. The current tobacco program has outlived its usefulness, and now represents a hurdle and a threat to the economic health of communities in tobacco producing states. Therefore, it is important to end the quota system and do away with the strict production control price support system to usher in the necessary reforms.

This legislation will provide $8/lb on 2002 basic quota for quota owners and $4/lb on effective quota for 2002 for growers over 6 years. The funds required will be obtained from manufacturers and importers of all tobacco products sold in the United States and shall total no greater than $13 billion. Many quota owners and growers would like to be compensated at higher levels, while many companies claim that the levels are too high. This bill represents our extensive efforts to take both the needs of the growers and the concerns of the companies into consideration.

No longer will quota owners have control over the right to grow tobacco, a right that has been handed down from generation to generation regardless of their actual involvement with production. In doing so, this bill eliminates the increasing expense of quota rent, which has artificially increased leaf prices without any benefit to actual growers or manufacturers. This requires that these assets, assets that were created and given value to through government policies, be compensated. The impacts on the growers will be immediate and the reduced costs of tobacco produced in the U.S. will reduce leaf prices for manufacturers who utilize domestic tobacco.

However, in our consideration of the problems facing the farmers and the manufacturers of tobacco products, it was essential to consider the adamant opposition of health groups to the unrestrained growth of tobacco throughout the United States. For years, tobacco production has been limited in both the area it could be grown and the amount that could be produced. Our proposal addresses these concerns by limiting tobacco production to traditional tobacco producing regions and providing a mechanism for producers to limit the amount of acreage grown for each kind tobacco to historically established levels.

The key difference between the programs of yesteryear and the reforms we are proposing today is the removal of the price guarantee for every pound of tobacco grown. Under this new system, production will reflect the market realities of the tobacco industry. This system provides key elements for tobacco dependent communities to transition out of tobacco production, while affording those who accept the risk, the opportunity to continue and compete in a shrinking and every more competitive market. Should these individuals choose to continue, we have created in this bill the opportunity for growers to insure themselves—at no expense to the U.S. taxpayer—against disastrous market conditions that might emerge.

In addition to the buyout of quota, transition payments to growers, and the new regulations governing tobacco production, this bill provides significant support to assist small tobacco dependent communities as they attempt to adjust to diminishing tobacco production.

This legislation will not solve all the problems that face small tobacco farms, but it does set in motion a system of reform and transition that will allow these individuals and these communities a chance to continue or move into new industries. Such continuation or transition will not be possible without this legislation. These communities are suffering due to problems with a government program that we have the power to change. As elected representatives, we have a responsibility to fix these problems, improve the lives of thousands of small farmers and greatly impact the future of an entire region.

I salute my colleagues from tobacco producing states for their hard work and willingness to compromise to reach this consensus legislation. It has been a long and difficult process, but this is only the first step in addressing this issue. For this exercise to have any meaning whatsoever, we need to enact this legislation and make these reforms as soon as possible.

The worst thing that can happen is nothing. So, I ask my colleagues from all 50 States for their support of the Tobacco Market Transition Act of 2003.

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

Mr. BUNNING. Mr. President, I rise today in support of S. 1490, the Tobacco Market Adjustment Act. Since Daniel Boone first came through the Cumberland Gap in 1775, farming has provided the economic and cultural backbone of Kentucky.

The family farm is the foundation for who we are as a commonwealth. And for over a century, the family farm in Kentucky has centered around one crop—tobacco.

Tobacco barns and small plots of tobacco dot the Kentucky landscape. We are proud of our heritage and proud of the role that tobacco plays in our history. Recently, we have recognized

that we cannot rely upon tobacco forever. We have seen the handwriting on the wall. In fact, in 1998 the Senate had a long debate about the future of tobacco. Nothing passed then. But ever since we have known that sooner or later the subject was going to return to the Senate floor.

Back in Kentucky, we have over the past few decades begun to diversify and to prepare for the future.

We have tried to broaden our agricultural base. And we have had some success with vegetables, beef cattle, raising catfish and expanding into other areas like ethanol production.

But, at the end of the day, nothing brings as much of a return to the small farmer and tobacco quota holder in Kentucky as tobacco.

Whatever the opponents of tobacco say, there is no denying that the future for thousands of family farms and small communities across the south is tied directly to tobacco.

This is a complicated issue. Many tobacco quota holders are not even full-time farmers and hold off-farm jobs.

And even full-time farmers usually do not raise only tobacco but grow it as only part of their total crop. But it is a crucial part, and for many families it is absolutely irreplaceable, because the money they get from tobacco pays their mortgage, puts their kids through school or allows them to keep farming.

Outside of the western part of our State, Kentucky does not have tens of thousands of acres of flat land. We need a crop that grows on rolling hills, that thrives in our climate and can be profitably raised on small plots that cannot accommodate other crops. Tobacco does that, and economically it is the only crop that can.

Farmers get a yield of over $4,000 per acre of tobacco. They get less than $300 per acre for corn, soybeans and hay. That is how big the difference is. This is what has made tobacco the economic linchpin for rural Kentucky. It is profitable and farmers rely on it. That might not be popular today but it's an economic reality we have to face.

This Senate cannot—and if those of us from tobacco States have any say about it, it will not—work on tobacco legislation without taking care of tobacco farm families. Time have been getting tougher and tougher for small farms and rural communities in Kentucky. Plus, as I am sure most of my colleagues know, there is no tobacco subsidy.

We do have a price support system and production control program. But even the quotas have lost 60 percent of their value since 1998. No business would be around if it lost 60 percent of its income in 5 years, and we have lost a lot of growers.

Many farmers are barely holding on. They need help.

We believe that the time has come to assist them and to get the Government out of the tobacco business at the same time.

Our bill, which has the full support of the grower community, will buy out the tobacco program. We will give our growers relief and end the Federal price support program.

We will let many growers, whose average age is 62, retire with dignity.

Dr. Will Snell, the highly regarded agricultural economist at the University of Kentucky, estimates 70 to 75 percent of tobacco growers will get out of the business with a buyout.

In recent years tobacco has come under fire from all sides. And while the antitobacco forces might not have intended it, their attacks are hurting tobacco farm families and rural America.

In Kentucky, we have counties that depend on tobacco for as much as 85 percent of their revenue.

Without a tobacco base, land values will collapse and rural communities could fall into an economic death spiral.

Falling land values mean lower property tax revenues and eventually severe cuts in services such as police, fire, and emergency services, schools, sewers, and roads.

For decades farms and small communities have been built around the cultivation of a legal crop. To change that now without accounting for the consequences would be devastating.

Our bill recognizes this reality and would offer some degree of economic certainty for tobacco farm families that toil at the mercy of forces more powerful than themselves.

Mr. President, I am a realist. I know that passing any sort of tobacco legislation in Congress is a difficult, uphill fight. And I do not know if we are going to be successful with this bill. But I do know that if any tobacco legislation passes, it must include help for tobacco farm families. It is the least we can do for them.

I urge my colleagues in this Senate to understand this problem we are having in these six tobacco States.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mrs. DOLE. Mr. President, tobacco farmers across the Southeast have been anxiously waiting for this day—the day when they can see hope for the future. During the past 6 months, Senator MCCONNELL, Senator BUNNING, and I have been working with all of the other Senators from major tobacco States to craft legislation that will enable tobacco-dependent communities to survive.

The Tobacco Market Transition Act, which we are introducing today, will mark a major change from the current tobacco program, and it will bring a major sigh of relief to countless farm families across the Southeast.

For years, the Federal tobacco program created economic opportunity for farm families in North Carolina and other tobacco-producing States. It allowed towns to prosper that would have been hard pressed to make it otherwise. It provided stability when other commodities suffered low prices. It was the standard bearer of all farm programs. Buyers of tobacco would come from all over the world to purchase America's leaf. America's tobacco farmers held the world standard for quality, and they still do today. But the environment in which they find themselves is much different. And it is not of their own making.

The current tobacco program was never designed to accommodate the significant changes that have engulfed this industry during the past decade. Extensive litigation has forced the companies to cut costs and thereby purchase increasing amounts of cheap foreign tobacco. The increasing cost of U.S. leaf as a result of the current tobacco program has caused more and more foreign buyers to look elsewhere for their supply. The numbers do not lie: The United States now accounts for only 7 percent of all flue-cured tobacco production in the world.

We must not forget that behind every economic statistic is a human element. The tobacco farmer bears the brunt of these changing forces with nowhere to turn. Unlike the companies that can, and most often do, pass their extra costs on to the consumer, the tobacco farmer must absorb any extra cost and hope for better days ahead.

During the past 6 years, the amount of tobacco allowed to be grown—also known as quota—has been cut more than 50 percent. In fact, not since 1874 has so little been grown.

Let me explain what that really means. The tobacco farmer's paycheck has been cut in half. They only get that if they can produce a good crop. The weather, disease, and insect infestation make it all the more challenging. Costs continue to rise. And making this even more unbearable is the increasing cost of leasing quota.

In North Carolina, more than 60 percent of quota is leased—a major factor in the increasing cost of production. As quota has continued to decline, farmers have sought to rent more quota in order to maintain the economic viability of their operations. The quota owners, trying to maintain their income stream with less, demand a higher price for the use of their quota. It is simple supply and demand, with an aim at meeting a bottom line. But you can only go on like this for so long—until you reach the breaking point.

This is where the growers are today. Many have hung on and have continued to produce in hopes that things will get better, knowing that if they got out they would have to sell their farm and liquidate other assets to settle up their debt. Even then, many would still be short.

Every week my office receives calls from farmers in desperation. They have worked hard all their lives, sent their children to college, contributed to their community, but now—now—all of that is passing before their eyes. There is a deep feeling of helplessness.

It is estimated that more than 60 percent of the tobacco farmers today will exit the business entirely if a tobacco buyout is achieved. Most are at retirement age, just hanging on a little while longer in the hopes of being able to pay off their debt. Those who would like to continue to produce know their market is shrinking, not because of a lack of demand in the world for tobacco but because the price of U.S. tobacco is too high as a result of the current tobacco program. All they can do is watch as Brazil and other countries take their market share.

Many say: Well, why don't they just produce another crop? The truth is, they are. North Carolina ranks third in agricultural diversification, behind only California and Florida. Our farmers are very diversified but, as other Members from farm States will attest, prices have been at historical lows for every commodity over the past 5 to 6 years—further exacerbating the problem for tobacco farmers in the Southeast.

Tobacco farmers are at a crossroads but, unlike most people who reach a point of decision in their lives, these salt-of-the-Earth folks have no options because the current tobacco program does not accommodate the changes needed for them to have an opportunity to survive in this new marketplace. To them it is like standing on the tracks while watching a train speed closer and closer and yet they can't move. They strain and try but they are shackled with nowhere to go.

This is why a tobacco buyout is so sorely needed. It will allow those who want to retire the opportunity to do so with dignity, the opportunity to know that all they have worked for has not been in vain. It will allow the widow whose sole source of retirement income is from quota rent and Social Security the opportunity to get a fair return in exchange for the taking of her quota. It will allow young farmers who want to continue to produce the opportunity to compete in the world market—and compete very well because of their skills.

Let me bring a little more perspective to the buyout of quota. This program was created in the 1930s. Right or wrong, the Federal Government has allowed quota to be bought and sold. Rather than investing in stocks and mutual funds, as many Americans have, tobacco farmers and their spouses have invested in quota over the years to prepare for their retirement. But they never predicted this massive change in the environment for tobacco that has led to such a steep slash in quotas. And how could they? Unlike a stockholder whose shares lose value if the market tanks, the quota holder has lost not only the value from this steep decline in quotas but the quota itself—for good. Unlike the stock market where time is a prudent investor's best friend, those who have invested in quota will never get that investment back.

In the legislation we are introducing today, the Federal tobacco program is eliminated. Quota owners are compensated for their investments—for the taking of their asset—just as the owners of the peanut quota were compensated with the peanut quota buyout in the 2002 farm bill.

Traditional producers are provided direct payments over a 6-year period in order to allow them to better transition into this new marketing environment—again, mirroring what Congress provided for all program crops under the 2002 farm bill.

There is no recreation of price supports or a new quota program. Rather, this legislation keeps tobacco production in traditional areas and on a traditional level of acreage while allowing private industry to develop insurance products so farmers will be better able to manage their price risk in the free market.

Perhaps the most important point for my colleagues in the Senate: Every penny that this buyout will require is paid for in full by all manufacturers and importers that sell tobacco products in this country.

Status quo is simply not an option. If nothing happens this year, many of these farmers will be forced to give up all they have. After 6 years of loaning on collateral, there is nothing left for the banks to do except foreclose. There will be no holding out for just a little while longer. This may sound like rhetoric to some but it is the precise truth for countless numbers of farm families. The lenders who call my office confirm it. Status quo is simply not an option.

I thank Senator MCCONNELL and his staff for working so diligently to address this issue. It is vitally important that this legislation is achieved this year.

I am grateful, indeed, for Senator MCCONNELL's commitment and Senator BUNNING's commitment to making this a reality. I look forward to my continued work with them and all the other tobacco State Senators on this important legislation. It is either now or never. Many livelihoods hang in the balance, and with it the future of rural communities in North Carolina and other tobacco-producing States. These rural citizens, the very ones who have helped make this country great, have been caught in a battle between corporate interests, some greedy trial lawyers, and those whose true desire is to ban tobacco from the face of the Earth. Let us allow these farm families who have been trapped in this battle to move on with their lives. They deserve it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from North Carolina and the Senator from Kentucky for their important contributions to the development of this legislation. I also want to make clear to our colleagues this is a bipartisan bill. Senator EDWARDS of North Carolina, Senator HOLLINGS of South Carolina, Senator MILLER of Georgia, and Senator BAYH of Indiana are also cosponsors. In fact, there are 13 cosponsors of this important legislation. This is critical to our section of the country. We are going to work as intensely as we can to achieve the result for which our farm families are hoping.

With that, how much time remains on this side?

The ACTING PRESIDENT pro tempore. The Senator from Kentucky has 7½ minutes remaining.

Mr. MCCONNELL. I will reserve that time. I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time? Who yields to the Senator from Pennsylvania?

Mr. MCCONNELL. I will be happy to yield such time to the Senator from Pennsylvania as he desires.

SPEECH BY PETER R. ROSENBLATT

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Kentucky.

I have sought recognition to comment about a very profound speech which was made by former Ambassador Peter R. Rosenblatt to the American Jewish Committee in Detroit, a speech which has a unique historical perspective, makes an analysis of the new-fashioned war, the asymmetrical war of terror, comments about the trio of terrorists, those who harbor terrorists, and the possession of weapons of mass destruction, and has a perceptive analysis of the complex role of the United States on working through the complex relationships with so many countries and the United Nations as we assert our role as the world's sole superpower.

This is a speech worth reading very broadly. I ask unanimous consent that it be printed in the RECORD.

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

THEN, NOW AND TOMORROW: AMERICA'S ROLE IN A CHANGING WORLD

Throughout recorded history the relationship amongst states has been determined primarily by the largest and most powerful among them and by their efforts to protect their interests within a stable state system. That may seem a statement of the obvious

but it has become an issue now, as never before. In order to understand how, why and to what extent such a basic condition of human history may now be in question we must reach back to the political roots of the modern world.

It all goes back almost two centuries ago to the Congress of Vienna in the immediate aftermath of the French Revolution and the Napoleonic Wars. The victors of those wars, Britain, Prussia, Austria and Russia, joined with the restored royalist regime of defeated France to establish a new European order which, to all intents and purposes, meant a new world order. It endured, with modifications, for nearly a century.

Towards the middle of the century a number of major events threatened to unravel the stable Great Power relationships that had prevented major wars. The popular revolutions of 1848 undermined or overthrew traditional regimes, Italy was reunified in 1856 and, most importantly, the reunification of Germany was completed in 1871.

In 1862 King William I of Prussia had appointed Otto von Bismarck as his Chancellor. In three brief military campaigns in seven years against Denmark, Austria and France, respectively, Bismarck expelled the three states with opposing interests in Germany and in 1871 the new German Empire was proclaimed by King William, now Emperor William I.

The German Empire emerged from this series of events as the leading military power of Europe and Bismarck set to work to secure the new state against the pressures that he knew would inevitably build up against the leading power. Chief among the sources of this pressure was defeated France, now in her Second Republic and deeply embittered by her humiliation on the battlefield and the loss of two border provinces. Bismarck realized that French hostility to Germany had become a fixture of European diplomacy and that France would ally itself with any of the other three Great Powers which might, at one time or another, wish to align itself Germany. Bismarck saw Germany as what he called a ''satisfied'' power which, after its unification, wanted nothing further from the other powers and was therefore primarily interested in a restoration of the stability that had prevailed since the Congress of Vienna. Understanding that in a constellation of five greats powers Germany must be, as he put it, on the side of the three, he saw that it would be necessary for Germany to ally itself with Austria-Hungary and Russia. Of the other two Great Powers, France was in permanent opposition and Britain, an active colonial rival of France, adhered to a policy of ''magnificent isolation'' and therefore wished to become no one's ally—and least of all France's.

When Bismarck's chancellorship ended in 1890, his brilliant diplomacy had secured Germany as the linchpin of Europe, the leading power in an alliance structure of three, on good terms with England and absolutely unassailable militarily. He had created a state system so stable that even the unrelenting hostility of France threatened neither the security of Germany nor the peace of Europe.

The old Emperor's grandson and successor, the arrogant and foolish young William II, failed to understand Bismarck's statecraft and in short order terminated the alliance with Russia, throwing that country into the arms of France and dividing the continent into two increasingly unstable alliance blocs, which left Britain holding precarious balance. William then alienated Britain by a vast naval building program designed to match Britain's navy. Thus in a few years time William II reversed Bismarck's diplomatic accomplishments, ending a century-long period of stability which had seemed to make a major war unthinkable. In its place the statesmen of the time substituted uncertainty, rivalry between two alliance blocs and fear, always the enemies of peace. With the destruction of Bismarck's state system the world lost a stability which we have not succeeded in regaining in 113 years. The outcome was World War I, in some ways the major tragedy of the 20th Century, which destroyed the optimistic and predictable post-Napoleonic world of our ancestors.

Out of that war there emerged an entirely new and different state system of five powers, an exhausted and depleted Britain and France, revolutionary Soviet Russia and the newest entrants into the field, Japan and the United States. After fifteen years of turmoil and economic depression the five were joined by a resurgent Germany under Nazi rule. Unlike the stable state system of the 19th Century the inter-war state system was highly volatile and ultimately collapsed due to the weakness and passivity of England and France, the isolation of the United States and the aggressive expansionism of the other three.

World War II produced an entirely new state system of two great powers with a global reach engaged in a titanic struggle for dominance and survival. The cold war was a zero sum game in which the advantage of one became a loss to the other. The defeat of the Soviet Union in this massive half century long struggle produced a result unprecedented in world history; a single global power militarily, politically and economically vastly more powerful than all of its actual or potential rivals.

It would be a mistake, however, to think that because this is so there is no longer anything resembling a ''state system'' in the world today. There are now five other powers each one of which could, under appropriate circumstance, present a challenge to the United States over time and with which we must learn to live on a basis of mutual accommodation. These are Russia, Japan, China, India and Europe, when Europe becomes significantly unified to act with one voice. Each of these is currently unable to present a significant challenge to the United States because of severe internal problems which inhibit the full realization of its potential power.

Russia has not recovered from the wars, misrule, economic mismanagement and intellectual distortions of the 20th century.

Japan, having prospered under the U.S. defense umbrella through the mobilization of its ancient social and cultural system, now suffers the downside of the very same system.

China will eventually become a great military power through the diversion of resources which are needed to bring its entire population into the modern world and to overcome vast internal demographic, social, economic and even hydrological problems, any one of which would alone take a generation to cope with.

Much the same could be said of India whose agenda, in addition, is still dominated by the unresolved consequences of the subcontinent's messy partition in 1947.

Western Europe, though prosperous, is disunited and disarmed. It is as unprepared to assume the responsibilities of a great global power as England and France were in 1939.

The wonderful professors who taught me my freshman European history course at Yale were fond of saying that ''history does not repeat itself, only historians do.'' But certainly this maxim does not preclude even the devoted student of Professors Foord and Mendenhall from attempting the occasional historical analogy. We have arrived at this new phase of history very much more powerful in relation to the other major powers than was Germany after 1871. But like Germany then we are a ''satisfied'' power which wants nothing from any other. Our diplomatic task, like Bismarck's, is therefore to crate and preserve global stability. But our efforts to do so will have to be focused on new and different issues in addition to those which preoccupied Bismarck; and they are just as subject to mismanagement, the consequences of which could be even more catastrophic.

Now, why do I recite all of this history for you if the facts of today's world are so very different? Well, it is because the power politics of the 19th and 20th Centuries persist even as we cope with an entirely new class of threats arising from a totally different source. It's a bit like the science fiction movies in which a world preoccupied with its normal conflicts and rivalries is suddenly confronted with a unifying threat from outer space. But unlike the movies, there is little present evidence of a global appreciation of the magnitude of the threat.

The old world has not been abolished. International relations are still largely determined by the most powerful states—disproportionately our own. Just as in Bismarck's day, armies, economic power and cultural influence still determine the pecking order among states. Nor is there the slightest reason to expect that the major states will cease competing with each other.

But since September 11, 2001 Americans and a few others have become conscious of a new and terribly destabilizing overlay on the traditional state system which we are just in the earliest stages of understanding. I refer not just to terrorism, but more broadly to the ever increasing capacity of small, poor, weak states, terrorist groups, criminal organizations or even individuals to gain access to the most terrible weapons of mass destruction (WMDs) and to use them against the most powerful states or to hold them to ransom by threatening their use. The fact that increasingly powerful weapons are becoming ever easier and cheaper to buy or produce places them within the reach of the familiar rogue's gallery of terrorist sponsoring or harboring states and to irresponsible non-state actors. It is not terrorists or terrorist harboring states or WMDs alone that are so terribly menacing and destabilizing in today's world, but the conjunction of all three.

The use of these terrible WMDs has been largely avoided up until now through the doctrine of deterrence—the threat of retribution as terrible or more so than the initial assault. That doctrine has depended for its viability on an assumption that the nation to be deterred is managed by at least minimally responsible leaders with enough judgment not to attack when the cost of so doing would be unacceptable. But how does one deter a WMD assault by a fanatic or psychotic adherent of some doctrine who has no regard for his own or any one else's life? And how does one deter a group if one cannot find it or if it is only one of many capable of mounting a devastating attack without leaving a fingerprint? And even if one were able to identify and find such a group, and if one were willing and able to buy it off, how much security would that bring and for how long?

This new global configuration has come to be known as asymmetrical warfare, in which the weak attack the strong without hope of victory in the conventional sense. The attackers have only the power to destroy. When Prussia defeated France in the Franco-Prussian War of 1870 Germany replaced France as Europe's strongest power. When the U.S. won the cold war it became the sole superpower. If Al Qaeda or some successor were, God forbid, to deliver a WMD to New York, Washington or Chicago in a shipping container or suitcase and detonate it, it could kill many Americans and do grievous damage to the U.S. economy, but it could neither conquer the U.S. nor replace it. The purpose of terrorist organizations which pursue this form of warfare is, rather, the survival of enough of them to attack again and again. Chaos, not direct conquest, is the objective. The theory of asymmetrical warfare conducted through terrorism is to disrupt the stronger power's enconmy, social cohesion and morale though massive human and material casualties so as to ease the path for the terrorists' political or other objectives.

The administration has reasonably concluded that a successful defense against asymmetrical warfare requires us to seize and hold the initiative. We simply cannot wait until the fatal conjunction between terrorists and WMDs occurs, most likely in the relative security of a terrorist-harboring rogue state, and we are confronted either with a WMD attack or with blackmail threats of such an attack.

We are therefore required to embark on a non-traditional policy of searching out, seizing or neutralizing through diplomatic, covert or, if necessary, military means any rogue states, terrorists, fanatics, criminals and psychotics who we believe are actively attempting to acquire and use, or threaten to use WMDs, or to harbor, support, supply or passively tolerate those who would do so. The administration has called this a policy of pre-emption and has explained that the threat is too urgent and the costs of failure too grave to allow us to respond solely through the usual diplomatic requests for investigative assistance, extraditions and trials by jury. In other words, we are engaged in war—a type of war for which there is only one historical precedent—but a war nonetheless, and not a criminal prosecution.

The precedent is, of course, Israel, which has been made a testing ground for the strategy of asymmetrical warfare. All the ingredients are there, even if they have not worked as the attackers have planned. Terrorists are the delivery vehicles. The West Bank and Gaza were designed to be the harboring states after the Palestinian Authority was placed in charge of the so-called Area A under Oslo and after Israel's withdrawal from southern Lebanon. And WMDs? Well, fortunately none have yet been used, but not for lack of will. The Israeli authorities stopped an attempt to destroy Tel-Aviv's largest office building, the Azrieli Tower, and a fuel storage area north of Tel-Aviv. If either of these efforts had succeeded the casualties might well have matched those of 9/11.

The asymmetrical war of terror hasn't worked against Israel. The impact has been opposite that which the attackers expected. Israeli morale remains high, divisive internal disputes have been largely laid aside, and Israel has struck back with tremendous force and effect. Later, if not sooner, the impact intended for Israel may, in fact, be visited upon the attacker's own society.

Just as the war of terrorism being waged against Israel was a harbinger of the war now being waged against us and the rest of the civilized world, so Israel's reaction forecast ours. Israel long since identified this assault as a war rather than a criminal problem. Israel determined that it could not afford to wait until terrorist attacks occurred to take action against its sponsors. And it determined that preemptive action, in order to be effective, required military intervention in the harboring areas and elimination of those who plan, lead and execute the assaults.

The administration has made quite clear, through its actions more than its words, that it has gotten the message. It now rarely criticizes Israel for pursuing policies locally which it, itself, is pursuing globally.

Like Israel we are engaged in a twilight war in which we can be certain of the full support of only a few nations. Unlike Israel we do have some support from many others, but only we, Britain, Australia, Poland and a few others are willing to take the initiative in prosecuting the war with full vigor, and only our government does so with substantial popular support.

This circumstance requires that we maintain an international diplomatic posture and military force directed simultaneously at maintaining our political primacy and military superiority vis-à-vis other major powers, while waging active diplomatic and military warfare against terrorists, those who harbor or tolerate them and the proliferation of WMDs.

That is going to be expensive. We have seen that it took most of our West European allies only a decade of inattention and deeply slashed defense budgets to become nearly irrelevant to the global strategic equation. Far from cutting down on major weapons systems we are going to have to keep on developing new generations of them while we reconfigure a portion of our military to enable it to intervene anywhere in the world on very short notice to carry on the new war and, if necessary, to conduct what President Bush used to call ''nation building.''

We will also have to figure out how we are going to pay for all of this without killing the goose that has been laying all those golden eggs—by saddling ourselves with unacceptably high taxes or huge, escalating deficits.

It will also take active and imaginative diplomacy for us to avoid the fate of William II by alienating the rest of the world. We can afford to ignore or exclude a France which seeks actively to undermine our national interests. But only if we can ensure that it is France and not we that becomes isolated in consequence. We cannot win this war without the active support of most, at least, of the world's major powers who see themselves to some extent as our rivals. And we will require at least the acquiescence of much of the rest of the world, including the Islamic world, whose governments are the terrorists' primary targets but many of whose ordinary people feel at least some sympathy for the terrorists' proclaimed objectives.

Well, that brings us back to our starting point this evening; our relationship with the world's other major powers. Anti-proliferation efforts and the war against terrorism cannot be conducted successfully by the U.S. alone. Therefore, it is necessary for us simultaneously to conduct our relationships and to contain our rivalries with these powers—perhaps it would be more accurate to say their rivalries with us—in the traditional manner on one level, even as we seek to lead them in a priority joint campaign against a global threat which some of them do not regard as seriously as we, but which has or soon will target all of them.

To some extent, this is happening even now. France, with which we have serious and perhaps enduring differences of a geopolitical nature, is cooperating with us in intelligence sharing in relation to the war on terrorism. China, which views us as a rival for influence in East Asia, is beginning to cooperate with us in dealing with the nuclear threat posed by its North Korean ally. And China and our old adversary, Russia, identify their campaigns against separatism amongst their Moslem minorities with our war on terrorism—a very uncomfortable fit for us.

The United Nations Security Council, seen after 9/11 as the logical instrument for organizing the world consensus against terrorism, proved incapable in the face of discord over Iraq among its permanent members. It was therefore bypassed, for much the same reason that it was bypassed during most of the cold war. Its structure no longer reflects the realities of the current global state system—if it ever did—and it is unlikely to realize its full potential until it, along with the entire United Nations system, is restructured. The UN today is a shambles, and not merely because Nauru with 6,000 citizens has the same General Assembly vote as China's 1.2 billion, nor because Libya is elected to chair the UN Human Rights Commission, or Iraq the Disarmament Commission or Syria becomes a non-permanent member of the Security Council, or that the UN and its agencies spend vast amounts of their time, effort and resources debating and implementing annual resolutions directed exclusively against Israel. No, the UN is a shambles because so much of what it does is irrelevant to the world's major issues that it lacks credibility even among those of its members who are chiefly responsible for its distortions.

But before we dismiss the UN as entirely irrelevant let us recall a few salient truths:

Metternich could conduct the Congress of Vienna, Bismarck the Congress of Berlin and Wilson the Versailles peace conference with four other principles and reshape the world. We are relatively far more powerful than any of those principals were, but we cannot be as effective as they were then in our war against terrorism, even with the co-operation of the 15 members of the Security Council.

The world has become so small and dangerous a place that we cannot even consider trying to stabilize it without the active participation of much of the rest of the world.

Therefore, if the UN did not already exist it would have to be invented. Only we, with our enormous power and influence, can make it work to focus the world's attention upon the current version of the threat from outer space.

So here we are, the most powerful nation the world has ever known; and what is our number one global problem? A collection of small to medium third world countries none of which has ever won a war against anyone, with economies a tiny fraction of ours, most of whose people are still living in the Middle Ages, and rag-tag gangs of fanatics and criminals which, if they should ever acquire the world's most powerful weapons, may be undeterrable and unappeasable and may use these weapons rather than submit.

The real authority in our world may be distributed—albeit unevenly—among six major powers. But neither we, as the first among them, nor a majority of them as in Bismark's alliance system nor all of them acting together, as in Vienna, Berlin,

Versailles or last year in Security Council Resolution 1441, can absolutely ensure our safety. But we have no alternative but to try to create sufficient harmony among the world's principal powers to turn back the dark forces that threaten civilization.

TRIBUTE TO ASSISTANT U.S. ATTORNEY THOMAS P. SWANTON

Mr. SPECTER. Mr. President, I pay tribute to a very distinguished lawyer, Thomas P. Swanton, who has been in my office for more than 2 years on assignment from the Department of Justice, and I thank the Attorney General and the Department of Justice for this program which enables Senators to have excellent legal service and gives a different perspective to those who are assigned to a Senate office.

Tom Swanton is an extraordinary lawyer. He has come to my office with extensive trial skills and has done extraordinary work on counseling in my office, on post-9/11 legislation, on working on nominations, on legislative packages involving the death penalty, and the war on terrorism.

He has worked hard on these issues—each time jumping in feet first, soaking up knowledge, and moving legislation forward in this often complicated process. From his first assignment, he earned the respect of my staff, as well as mine.

Tom's primary duty consisted of working as my legal counsel for Judiciary matters where he handled a wide variety of issues. He also proved to be of invaluable assistance in crafting several pieces of post-September 11 legislation, all the while leading an investigation on terrorism financing. His skills and judgment in this arena are exceptional. My staff and I were constantly impressed with the wealth of knowledge he demonstrated.

Tom also provided a tremendous service to the people of Pennsylvania in working on issues such as class action reform and the Patents Bill of Rights. He demonstrated a remarkable amount of enthusiasm and initiative throughout his entire fellowship.

His dedication to each project was remarkable, and the assistance he provided to my office will not be easily matched. However, for Tom this level of dedication is par for the course. Since his graduation from West Point in 1983, he has consistently served our country. Prior to his service with the U.S. Attorney's office, Tom served in the United States Army and is currently a LTC in the Army Reserve.

Tom's personal record is equally distinguished. Those who know him well consistently praise his qualities as a devoted husband and father of four beautiful children.

I urge my colleagues to join me today in commending Tom Swanton for his service as a legal fellow and for his devotion and leadership to our country.

TERRORIST PROSECUTION ACT

Mr. SPECTER. Mr. President, this morning a group of Senators met with Israeli Prime Minister Ariel Sharon in a very informative session as part of Prime Minister Sharon's visit to the United States where yesterday he met with President Bush.

An item which has been worked on for many years has been the effort to try in the U.S. courts Palestinian terrorists who murder U.S. citizens abroad. The Terrorist Prosecution Act, which I wrote back in 1986, provides for exterritorial jurisdiction where U.S. courts have jurisdiction to try a Palestinian terrorist who murders an American citizen.

There are two prominent cases which could lend themselves to this approach. One case involves a Palestinian terrorist who is in the United States, where we have jurisdiction over him, where we need the cooperation of Israel in providing the witnesses. It was a matter which I discussed this morning with the Prime Minister, and we are working to see if we can secure that kind of cooperation. It was pointed out that sort of cooperation has been present in the past, and we are seeking to bring that about here.

Another possible prosecution would involve a Palestinian terrorist who confessed on television, so there is no issue about the voluntariness of his confession. There is a potential problem in that Israel opposes the death penalty and characteristically will extradite only where there is assurance from the country receiving the individual that the death penalty will not be sought. I believe there are exceptions under Israeli law where Israeli national security is involved. I believe the threat of the war on terrorism would qualify under that section.

There is a second aspect, and that is the vindication of U.S. rights where American citizens are murdered by Palestinian terrorists in Israel. I think there is a very real issue about vindicating U.S. interests. We are going to continue to pursue that line.

One other observation in the brief amount of time remaining. The meeting between President Bush and Prime Minister Ariel Sharon was a very warm and a very good meeting. One of the items which I think bears a little focus is the unusual rapport between these two men, where President Bush referred to Prime Minister Sharon by his first name ''Ariel,'' and Prime Minister Sharon reciprocated by referring to President Bush as ''George.'' I think that signifies an unusually warm relationship.

It brings to mind comments by Prime Minister Begin who visited the United States back in June of 1982 and met with a group of Senators, and at that time made a comment that President Reagan had asked Prime Minister Begin to call President Reagan ''Ron.'' Prime Minister Begin said that he deferred, which led President Reagan to say to Prime Minister Begin: Well, Menachem, if you don't call me Ron, I won't call you Menachem.

Prime Minister Begin went through that circle but refused to call the President by his first name, referring to the President as a Head of State.

I think it is a very encouraging sign when the President of the United States and the Prime Minister of Israel are on a first name basis. That bodes very well for the relationship.

I note the time of 1 o'clock has arrived.

The ACTING PRESIDENT pro tempore. The time controlled by the Senator from Kentucky has expired.

Mr. SPECTER. Mr. President, I yield the floor in any event.

EXECUTIVE SESSION NOMINATION OF MIGUEL A. ESTRADA TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I believe the regular order is for the minority to be given a half hour on the proposal to proceed with the Estrada nomination; is that correct?

The PRESIDING OFFICER (Mr. HAGEL). The Senator from New York has one-half hour under his control.

Mr. SCHUMER. Mr. President, we are back to voting on whether to proceed with the Estrada nomination. Before I get into the merits of Mr. Estrada, I want the record to show that we have now confirmed 140 of the President's nominees. By the end of the week, it could be over 150. By the end of the week, we may be blocking as many as 4. So right now it is 140 to 4 and could be at the end of the week 150 to 4. That is a record that even Yankee fans would be jealous of.

We have this view of some, including the White House, that we are obstructionist because we have tried to block 4 out of 140 nominees. My guess is if James Madison or George Washington or Benjamin Franklin or any of the Founding Fathers were looking down on this Chamber, they would say: Why are they blocking so few? We wanted the President and the Senate to come together on judicial nominees.

It outlines in the Federalist Papers that the Founding Fathers didn't want the President to have sole power to choose judges, nor did they want the Senate to be a rubber stamp. In fact, one of the first nominees, John Rutledge from South Carolina, was rejected by the Senate, which contained a goodly number of the Founding Fathers themselves because they were appointed to the Senate in those days right from the Constitutional Convention. Rutledge was rejected because of his views on the Jay Treaty.

So this idea that unless we find the candidate to have some kind of criminal record or has done something unethical, we should not be examining that record or speaking to that record makes a good deal of sense. President Bush is a classic case of what the Founding Fathers were worried about in the way he has chosen his nominees because the Founding Fathers, I believe, wanted nominees to be from the American mainstream. They wanted them to interpret the law, not to make law.

There have been times when judges have leaned to the far left—the 1960s and 1970s—and they now lean to the far right. The bench becomes infused with ideologues and ideologies, and those judges want to make law, not interpret law—very much against what our Founding Fathers wanted. That has been the case of President Bush. I don't think it is disputed that he has nominated judges through an ideological prism more than any President in our history. You don't have a sprinkling of Democrats or liberals or even moderates—you have a few moderates, but the overwhelming majority of the President's judges have been hard core, hard right. A few of them have been so far over that they don't deserve nomination. They include Miguel Estrada and Priscilla Owen, and they include, in my opinion, two nominees we may vote on later this week: Carolyn Kuhl, and the attorney general of Alabama, Pryor.

If you look at the records of these judges and you put scales, left to right, 10 being the most liberal and 1 being the most conservative, these judges are ones, to be charitable. When Bill Clinton nominated judges, he nominated mainly sixes and sevens, people who tended to be a little more liberal, but were moderate and mainstream—very few legal aid lawyers or ACLU charter members, much more prosecutors and partners in law firms.

This President, for whatever reason, has chosen to nominate judges way over to the far right side.

I am proud of what we have done in this Chamber. I am proud that we are bringing some moderation to the bench. I am proud that we are following the wishes of the Founding Fathers and not just being a rubber stamp. For those who try to beat us with a two-by-four, by calling names, by saying we are anti-Black, anti-Hispanic, anti-Catholic, anti-women, when we oppose a judge who happens to be of that description, we are not going to win. We believe in what we are doing. We believe it is mandated by the Constitution. We believe we are following the will of the American people who don't want judges either too far left or too far right.

I assure you, Mr. President, and I assure President Bush, and I assure my colleagues in the Senate that we will continue to do this. You can prolong this and put up all the visuals and nasty ads you want, like the one just run by one of the President's associates in Maine, accusing those who will vote against Mr. Pryor of being anti-Catholic, including good Catholics in this Chamber. That is wrong. In fact, I think it is reprehensible. But I tell the other side, not only will it not work, if anything it strengthens our desire to do the right thing.

Let's talk about Miguel Estrada. This nominee was unusual in this sense: He had no real record because he had not been a judge previously, nor written law articles. By many reports, his views were very extreme. But when I approached the hearings for his nomination, and when many colleagues did, we were willing to see what he thought. The bottom line is that he didn't tell us what he thought. The bottom line is that when he was asked very simple questions on issues that he had an obligation to expound upon, such as: What is your view of the first amendment; how broad or narrow should it be; what is your view of the commerce clause; what is your view of the relationship between the States and the Federal Government; he kept hiding behind this idea that canon 5 of lawyers ethics says you should not comment on a pending case if you are nominated to be a judge, so that he could not comment on anything. If Mr. Estrada were asked how should Enron be treated, he would rightfully say: I cannot answer that because I might judge Enron on the bench. But if he is asked what his views on corporate ethics are, of course, he has an obligation to answer that question. He did not. And doing so was an affront, not to any one individual, but to our Constitution.

If Mr. Estrada were correct, then probably most of the judges we have nominated in the last two decades should be cited for violation of canon 5. They all answered these questions. Judges nominated by President Bush before and after Estrada have answered these questions. So why would Mr. Estrada not come clean and tell people what he thought? Why would he not do what every American has to do?

When every American applies for a job, the employer says: Please fill out this questionnaire. Can you imagine someone saying I refuse to fill out the questionnaire in getting the job? It would be rare to do that. That is what he did. He is applying for a job—not just any job, but one of the most important jobs this Government has—a Federal judge, with awesome power. He kept refusing to fill in the job application form by answering the questions we had asked.

We then came to the question: How could we tell what his views were? We did not stop. We asked him, and we asked the Justice Department to give us some documents about issues on which he had worked when he was in the Solicitor General's Office. There were some in that office who reported, again, that his views were way over, that they were extreme, and we were refused our request.

I will tell you this, Mr. President, and I will tell every Member of this Chamber, as long as Mr. Estrada refuses to answer questions about issues over which he is going to have virtual life and death power in terms of governing the American people and we do not know how he feels, we are going to continue to block him. We are proud of that fact.

At first when it started, most people said: Don't do it; politically they will attack you—and this and that. I told my colleagues I thought we ought to do it because it is the right action to take, regardless of politics.

A funny thing has happened. Politics seems to be rolling in our direction. People are beginning to understand that this President is not nominating mainstream, moderate judges. People are beginning to understand that there is a desire to pack the courts and turn the clock back.

Congress will not turn the clock back. The President himself will not turn the clock back. We are elected. But if you put judges in, they can turn the clock back for a whole generation. There is a view out there that this is happening.

What started out as something done out of a deep conviction remains a deep conviction, and our view about the direction of this country, our view about the appropriate role of the Senate in the nomination process of judges is not ending up to be the political loser that some prognosticated.

We will continue to block this nomination. If nominees stubbornly and arrogantly refuse to answer legitimate questions of members of the committee, we will not allow them to become judges. That is not our doing in an ultimate sense; it is their own doing. If nominees are so far out of the mainstream that it is quite clear they will make law, not interpret the laws that others have made, we will oppose them as well.

We will vote on the nomination of Mr. Estrada for the seventh time. I make the point that my good friend from New Mexico was saying we have to move the Energy bill forward. Our majority leader is saying we have to move the Energy bill forward, but we are taking out time to vote on this nomination again. The purpose I do not know, a purpose grander than I can think of. But we are here and we are doing it.

No one has changed his or her minds. Mr. Estrada has not answered the questions, and as long as he continues not to answer these important vital questions, he will not be approved.

Mr. President, I reserve the remainder of my time 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. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DASCHLE. Mr. President, I will use some of the allocated time on the nomination to make a comment. We have been debating the Energy bill for the last couple of days and, of course, for good reason; the distinguished majority leader has said he wants to move this legislation forward and that we ought to do all we can to find a way to resolve the many issues that are still pending on energy prior to the end of the week.

I cannot think of a more counterproductive effort, a more counterproductive device, than to bring back a nomination that has already been before the Chamber six times. I certainly am not questioning the majority's motives. I do not question their desire to finish the Energy bill, but I do question the management of our time when I think with every bit of sincerity our Republican friends tell us they want to finish this bill.

We are now in a quorum call in the middle of the day on a nomination that has already been before the Senate six separate times this year. Six times we have debated whether Miguel Estrada ought to be required to do what every nominee is required to do, which is answer the questions and fill out the job application. Six times, without equivocation, Senators said you do that and we will take another look at your nomination.

Here we are now for the seventh time, in the middle of an energy debate that we are told by the majority must be done, debating once more this very issue.

That is not all. Yesterday we debated Priscilla Owen, and I think that was for the third time. Tomorrow we may debate another nominee, William Pryor, for the first time. Who knows what could come on Friday.

The majority needs to show us they are truly intent on working with us through these many important issues before they can convince us that they want to finish the job on energy.

It is 1:25 and for the life of me I cannot understand why we are in the middle of a quorum call on a judicial nomination that has come before us on six other occasions. That is not good time management. It is not a good practice. It obviously has not generated much interest, and I think it is a huge waste of time.

I only come again to express my disappointment and my puzzlement, my lack of ability to answer the question why is this happening now, when we have so much work to be done.

I will make another prediction. This vote will not change. If we do it 18 more times, it will not change. So we can continue to waste our time or we can continue to find ways to work together to use our time a lot more effectively than we are using it now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the minority leader for his comments on this Miguel Estrada nomination.

As a member of the Senate Judiciary Committee, I can say we have been very cooperative with the Bush administration. Of the 146 judges, if I am not mistaken—the minority leader can correct me but I think it is in the range of 140, and then there are five or six judges in another lifetime category that some add in, but whatever the number, 140, 146, it is significant—only two nominees to date have been held.

We have a responsibility under the Constitution, as Members of the Senate, to advise and consent to the President's nominees, and that means more than a rubberstamp. In the Miguel Estrada case, he is a person with extraordinary academic credentials and an extraordinary legal background who has refused to provide the Senate and members of the Judiciary Committee important writings he generated which would reflect on his view of the law. He has said we cannot see them.

A few months ago, when we first considered this nomination, the Republican Senator from Utah came to the floor—not Senator HATCH but his colleague Senator BENNETT—and suggested maybe the answer to this impasse is for the White House to release these documents for us to review, and once having reviewed them we can decide whether to move forward with this nomination.

I was here and I said I applaud that; I think that is a reasonable standard of conduct. Within hours, the White House came out and said publicly, we will not release them. We do not believe we have to, and we are not going to generate this kind of paperwork that may make Estrada's nomination more controversial. That was the end of the story. That has been the end of his nomination. So it was a conscious decision by the White House not to release documents which may give us an insight into Miguel Estrada and his lifetime appointment to one of the highest Federal courts in the land.

In the Priscilla Owen situation, she is a classic judicial activist. We have nominated and approved scores of conservative judges for the Bush administration. She reached a new level, a level of judicial activism which has put her in a special category with Miguel Estrada.

Now because of those two nominees being held up, we see practices in the Senate Judiciary Committee that are unprecedented. Rule 4, which is this obscure rule of the committee, was put in place by Senator Strom Thurmond years ago to protect the minority. It is now being ignored on a regular basis, twice in the last few months by Senator HATCH. This rule basically says if the majority wants to, they are going to move a nominee regardless of whether there is minority opposition. That was never the practice of the committee. It is now. It is an effort by the Bush administration and their supporters and the Senate Judiciary Committee to basically ignore the precedent.

In the next couple of days, we are going to consider two other nominees, and they are fraught with controversy. William Pryor of Alabama has become a lightning rod on Capitol Hill. If one looks at his background, what he has done as attorney general in the State of Alabama, they can understand why. This is a man who goes far beyond conservatism. His positions on issues far and wide are so controversial. I said during the course of the committee, when one looks at the controversial positions that have been taken by William Pryor, the Attorney General of Alabama, it is like an all-you-can-eat buffet. You do not want to fill up your plate early on with his controversial statements, discriminating against women, because you have to save room for his controversial statements when it comes to the environment and to civil rights.

When it is all over, you are going to need more than one plate to get through the William Pryor all-you-can-eat buffet of controversial positions.

This man is headed for the floor. How did he get here? He got here by circumventing an ethics investigation which was not completed. A decision was made by the Republicans in the Senate Judiciary Committee that we do not need to finish that investigation; we are just going to send him to the floor. Then they went through that shameful display on the issue of his religion, which I hope never again is brought up in the Senate Judiciary Committee but was brought up for William Pryor. Finally, they jammed it through, strong-armed his nomination to the floor, under rule 4.

So here we sit in the minority and what are we supposed to do? Are we supposed to ignore these tactics, this departure from the precedent of the Senate Judiciary Committee? Are we supposed to ignore the fact that at least two, maybe four or five, of these nominees clearly would never have passed through the Senate Judiciary Committee under any other circumstances but for these tactics? I think if we did that, we would be ignoring our constitutional responsibility.

Whether the nominee is William Pryor, Miguel Estrada, or Priscilla Owen, time and again we have to stand and accept our constitutional responsibility to really stand in judgment as to whether these individuals deserve a lifetime appointment to the Federal court. Miguel Estrada, until he is ready to come clean with his writings so we understand who he is and what he believes, I am afraid is going to face the same fate over and over again.

The Republicans can call this to a vote as often as they want.

Our Senate Democratic leader, Senator DASCHLE, is right: The Democrats will hold fast to the position. Until he is forthcoming and honest and open as to who he is and what he believes, he does not deserve this high appointment to a Federal circuit court. That spells out why we are here.

I also add, I listened for days last week and this week as the Republicans complained we were not spending enough time on the Energy bill; we were finding all sorts of excuses not to get down to the work of the Energy bill. We are certainly not on the Energy bill right now. We were not yesterday when we voted on Priscilla Owen, nor will we be later in the week when other judicial nominations come to the Senate. Any excuse will do to get off that bill, it seems. I had hoped we would stay on it and do our work. I offered my amendment early. Others have done the same. We will continue to make the symbolic votes.

If we are going to have true comity in this institution, if we are going to have a cooperative relationship, it will require us to deal with this on a bipartisan basis. I urge my colleagues to continue to oppose the nomination of Miguel Estrada.

Mr. LEAHY. Mr. President, yesterday the assistant minority leader made some cogent observations about how the Senate is being required to expend hours on matters that are leading nowhere and take away from debate on the Energy bill. If the Republicans were truly serious about finishing the Energy bill this week, they would not be scheduling hours of debate on contentious judicial nominations. Nor for that matter would they break for several hours yesterday to have a pep rally at the White House. From the Senate schedule, an objective observer would have to think it is more driven by partisanship and trying to score political points than a desire to make progress on the business of the Senate and on the issues that are the most important to the American people.

This week we have not proceeded to the foreign operations appropriations bill, which contains a number of matters of overriding importance to the country and the world, although Chairman MCCONNELL and I have been ready to proceed. We have not proceeded to the energy and water appropriations bill or the other appropriations matters that need to be concluded soon for the Government and Government programs to continue to operate in the fiscal year that will soon be upon us. Usually we devote July to appropriations matters but the Republican leadership has chosen to take this week off in that regard.

Today we must again return to the controversial nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. The last cloture vote on this nomination was scheduled on May 8. The only thing that has changed since that unsuccessful vote is that the administration and some Republicans in the Senate have ratcheted up their unprecedented partisanship and the use of judicial nominees for partisan political purposes.

I spoke yesterday about the new low to which some Republican partisans have stooped in political ads and charges that should offend all Americans. I again challenged Republicans and the administration to disavow those despicable efforts but, instead, they are choosing to continue to support the smear campaign of insult and division. Yesterday I inserted into the CONGRESSIONAL RECORD some of the articles and editorials that comment upon this most troubling development.

Yesterday I also had the opportunity to meet with representatives of the Interfaith Alliance. I thank them for condemning these unwarranted attacks and for standing up for the Constitution and the first amendment rights of all Americans. Reverend Gaddy, Father Drinan, Reverend Veazy, Right Reverend Dixon, and Rabbi Moline understand what is afoot and have spoken out in the best tradition of this country, and I thank each of them.

I do not expect the vote on this nomination to change today. Nothing has been done to accommodate Senators' concerns. No arrangements have been made to provide access to the documents requested in connection with this nomination that are available to the administration and that Mr. Estrada said he had no objection be provided. Thus circumstances have not changed since the first vote on this nomination or the most recent vote back in May.

There continues to be, in the phrase favored by the White House, ''revisionist history'' regarding the precedent of providing the Senate with legal memos to the Solicitor General and by the Solicitor General and similar documents in connection with nominations for both lifetime and short-term posts. Senator SCHUMER, Senator KENNEDY, and I have detailed those earlier precedent in earlier debate. It has not been refuted. It cannot be refuted. Facts are stubborn things. Nonetheless the administration and Republicans continue to ignore the facts seeking political gain and have chosen to use Mr. Estrada as a pawn in their efforts. That is unfortunate and regrettable.

We have worked hard to try to balance the need for judges with the imperative that they be fair judges for all people, poor or rich, Republican or Democrat, of any race or religion. This has been especially difficult because a number of this President's judicial nominees have records that do not demonstrate that they will be fair and impartial. In response, the White House and its allies have bombarded the airwaves with all manner of misleading information to try to bully the Senate into rolling over and rubberstamping every one of its these nominees.

The claims that we are anti-Hispanic or anti-Catholic or anti-woman or anti-Christian are part of Republican politics of attack and division as taught by Presidential advisor Karl Rove and as implemented by the administration's allies in the Senate and C. Boyden Gray and his so-called Committee for Justice, who paid for the most recent volley of ads. These dirty tricks are nothing new to this gang. Earlier this year, Mr. Gray and his group ran ads insinuating that Democrats oppose the nomination of Mr. Estrada because he is Hispanic, ads which were refuted by the courage of many Latino leaders and Latino civil rights groups which spoke out against confirming Mr. Estrada. Mr. Gray's group recently ran print and radio ads calling Democratic Senators anti-Catholic because they oppose President George W. Bush's most controversial and divisive appellate nominee, Alabama Attorney General Bill Pryor. These are despicable and false charges intended to distract the public from the serious evidence that Mr. Pryor was chosen because he would be an unfair, results-oriented judge. This type of demagoguery, in its shameful effort to mislead and inflame, should be disavowed.

The cynical political games are all the more disappointing from a President who campaigned claiming that he was going to be a uniter not a divider and set a new tone in Washington. The reality is that on nominations this administration goes out of its way to choose divisive nominees. The tone set by the White House has been unilateral and been marked by a refusal to consult with Senators in advance of nominations and to accommodate concerns raised.

Senate Democrats have more than demonstrated our good faith. We inherited 110 vacant seats in the Federal judiciary in July 2001, vacancies that were increased and perpetuated under Republican control of the Senate. In 17 months, Democrats worked hard to have the Senate confirm 100 of President Bush's judicial nominees.

Second, as of July 28, 2003, the Senate has confirmed 140 of President Bush's judicial nominees, including 27 circuit,

or appellate, nominees. This is more circuit court judges confirmed at this point in his Presidency than for his father, President Clinton, or President Reagan at the same point in their Presidencies. It is more judges than a Republican-controlled Senate allowed be confirmed in any 3-year period serving with President Clinton.

We are finally below the number of vacancies Republicans inherited in 1995, and earlier this year we reached the lowest number of vacancies in the Federal courts in 13 years. This from the 110 vacancies that Democrats inherited from Republican obstruction. Indeed, today there are more full-time Federal judges serving on the Federal courts than at any time in U.S. history.

These confrontations and problems with nominations are of the White House's own making. It is true that some of this President's judicial nominees with troubling records have not been confirmed. It is also true that Democrats have supported as many nominees as we could responsibly. Democrats have not been spoiling for a fight.

We did not seek out the nomination of Judge Pickering or Judge Owen. But we treated them fairly and much more fairly than Republicans had treated President Clinton's nominees to the Fifth Circuit by according them hearings, debate, and a committee vote. They were rejected. For the first time in history a President nonetheless renominated those rejected by the Senate Judiciary Committee. That it was unprecedented is part of the difficulty with these controversial and divisive nominees. Justice Owen is someone whom Republican judges on the Texas Supreme Court criticized as a judicial activist.

We did not seek out the nomination of Miguel Estrada, but we accorded him a hearing and sought to consider the nomination responsibly. We are being required to vote without all the information we need. The committee did vote, which was more than was accorded President Clinton's nominees to the DC Circuit. The Senate is resisting a vote without knowing more about Mr. Estrada's work and judgment. Democrats did proceed to vote on and confirm the nomination of another to the DC Circuit in spite of Republican obstruction of President Clinton's nominations to that important court.

We did not seek the controversial nominations of Jeffrey Sutton, Timothy Tymkovich, or Dennis Shedd, but we proceeded with them. They each received more negative votes than required to prevent cloture, but we proceeded. We proceeded on Deborah Owen, Michael McConnell, and a number of strongly conservative and controversial nominees.

We have not chosen these fights this week. They have been staged by the Republican leadership. We have fought them for the sake of the American people, the independence of the Federal courts, and to preserve the Senate as a check on this expansive court packing by the Executive.

Republican partisans have responded to the sincere concerns of numerous Senators about the records of controversial nominees by demanding that Senate rules be changed to force votes on the most extreme nominees. This effort is in the wake of repeated violations by Republicans of longstanding committee rules and agreements to allow sufficient time to review the FBI investigations and legal careers of the President's nominees for these powerful positions with lifetime tenure. With the Constitution's guarantee of lifetime jobs for judges, we cannot correct mistakes made in a slipshod confirmation process.

In their quest to limit public scrutiny, Republicans have invented interpretations of the Constitution without any basis in tradition or history. Although they now contend that the Constitution requires an up-or-down vote on every judicial nominee, the plain facts are that they blocked up-or-down votes on more than 60 of President Clinton's judicial nominees and more than 250 of his nominees to short-term positions in his administration.

Did they engage in wholesale constitutional violations during President Clinton's Presidency? I did think their one-person filibusters by anonymous, secret holds were unfair, and that is why I made blue slips public as chairman and have supported ending anonymous holds.

Our Democratic Senate leadership worked hard earlier this year to correct some of the problems that arose from some of the earlier hearings and actions of the Judiciary Committee in violation of rules that have served the committee and the Senate well for a quarter of a century. However, once again just last week, the Republican members of the Judiciary Committee decided to override the rights of the minority and violate longstanding committee precedent under rule IV in order to rush to judgment even more quickly for this President's most controversial nominees. That was another sad day in committee. And yet Republicans persist in their obstinate and single-minded crusade to pack the Federal bench with right-wing ideologues, regardless of what rules, longstanding practices, personal assurances, or relationships are broken or ruined in the process.

These rules and precedents are not just ''inside baseball.'' They are the core of the rule of law in our system of government. If those elected will not follow rules to confirm judges or create statutes, then we have little hope that the rule of law will prevail in our courts and in our country. Republicans in the Senate seem intent on sacrificing the role of the Senate as a check on the Executive for the short-term political gain of this White House.

The Framers expressly protected Members' freedom of debate in the Constitution. The Constitution also gives the Senate the power to devise its procedural rules. There is no requirement in the Constitution that matters be decided by simple majorities or that all bills or nominations be brought to a vote.

As the Supreme Court has recognized that ''Certainly any departure from strict majority rule gives disproportionate power to the minority. But there is nothing in the language of the Constitution, our history or our cases that requires a majority to always prevail on every issue.'' Gordon v. Lance, 403 U.S. 1 at 6, 1971, finding constitutional local voting rules requiring a majority of 60 percent to pass a measure. The notion that every nominee is entitled to a vote on the Senate floor is defied by decades of practice over the past two centuries.

Filibusters and other parliamentary tactics to delay matters were known to the Framers. There was even a filibuster in the first Congress over locating the Capitol.

More importantly, the Framers created the Senate to be unique from the House in the protections for the rights of each Senator and the stability and continuity in this body. Unlike the House, the Senate is not reborn every 2 years but two-thirds of its Members remain through every election. The Framers gave the Senate special powers, as a check on the executive branch, to confirm nominees or to decline to do so, affirmatively or by inaction.

History shows that since the early 19th century, nominees for the highest court and to the lowest short-term post have been defeated by delay, while others were voted down. Not even President Washington's nominees were all confirmed. One of President Washington's short-term nominees, Mr. Benjamin Fishbourn's nomination to the port of Savannah, was defeated on the floor of the Senate because of the opposition of both Georgia Senators. Many Supreme Court nominations were defeated through inaction or delay, rather than by failed confirmation vote.

For 160 years, until 1949, there was no way, other than through unanimous consent, to bring a judicial or executive nomination to a vote. For the past 86 years, the Senate has required a vote of two-thirds to end debate on changing any rule of procedure, made explicit in 1959. For the past 54 years, the Senate has required more than a simple majority, ranging from two-thirds to three-fifths, to bring a judicial nomination or legislation to a vote. For the past 25 years, the Senate has required three-fifths of the Members sworn to

vote to end debate on any matter, other than amending the rules, two-thirds.

The Senate and the Nation not only have survived all of these years while respecting freedom of debate but have thrived, strengthening our democracy by ensuring a forum that honors the passionate views and interests of a minority of its members while checking the caprice of temporary majorities, particularly regarding the lifetime appointments to our Federal courts.

As the late, eminent Professor Lindsay Rogers observed, ''the fact of the matter is . . . that, as the much vaunted separation of powers now exists, unrestricted debate in the Senate is the only check upon president and party autocracy.'' The American Senate 164, 1926. We would all do well to remember that, as the scholar Charles Black observed, ''If a President should desire, and if chance should give him the opportunity, to change entirely the character of the Supreme Court, shaping it after his own political image, nothing would stand in his way except the United States Senate.''

If we give up the genius of the checks and balances of the Constitution as embodied in the role of the Senate exercising its independent judgement to confirm or reject lifetime appointees, by vote or inaction, the American people will be the losers. Yet some Republicans seem intent on inflicting more damage, to the process, to the Senate, and to the independence of the Federal courts.

Republicans claim there has never been a filibuster of a circuit court judge. This is false. As recently as 2000, Senator FRIST and his Republican colleagues filibustered two of President Clinton's circuit court nominees. One of those nominees, Judge Richard Paez, a Mexican American nominated to the Ninth Circuit was subject to filibuster procedures and other blocking tactics that prevented him from being confirmed for more than 1,500 days. That was a circuit court filibuster, even though it was ultimately unsuccessful. At the same time, Republicans were simultaneously filibustering the nomination of Ninth Circuit nominee Marsha Berzon. This was in addition to nearly 2 dozen other circuit court nominees who were languishing or defeated in committee without a vote in committee or on the floor as well as dozens of other district court nominees.

Republicans who now claim that the Constitution requires a majority vote on every judicial nominee should explain how Republicans through secret objections, blocked votes on more than 60 of President Clinton's judicial nominees, including nearly 2 dozen circuit court nominees. For Republicans to claim that the process is now broken because a few of President Bush's circuit court nominees are being debated in the light of day, rather than defeated in the dark of night, is breathtaking in its hypocrisy.

Republicans also blocked more than 250 of President Clinton's nominees to short-term positions in his administration. For example, they successfully debated to death his nominations of an ambassador, Sam Brown, and of Dr. Henry Foster to be Surgeon General, in addition to the other more than 300 judicial or executive branch nominees blocked in the dark of night by one of more Republicans. I mention this because I just cannot imagine how they can get away with these false claims, which the most recent history of nominations clearly refutes. This data is publicly available.

The Senate, unlike the House, has never had a rule allowing a simple majority to force a vote on any matter. Only for the past 54 years have Senate rules allowed fewer than the agreement of all Senators to force a vote on a nomination, reducing the number needed to end debate from unanimous agreement to the current number, 60 votes. These rules help ensure that lifetime appointees have wide, rather than narrow, support because consensus nominees are more likely to be fair than extremely divisive ones.

The nomination we vote on today, that of Mr. Estrada, is another divisive nomination of this President. Despite the overtures that have been made to the White House to ask them to honor past precedent and provide Mr. Estrada's memos to the Senate, the White House has refused to budge. Instead of honoring that precedent, the White has sought to break other precedents and understandings in the quest to win confirmation at any cost.

Just last week, the White House signaled again its refusal to seek compromise or accommodation for the sake of the fairness of the courts. The President nominated two more controversial individuals to the DC Circuit. This is just one more sign in a long line that this White House is determined to continue to divide the American people with its nominations and to pack the courts in order to win judicial victories for its ideological agenda and its allies at the expense of fairness for all.

Since the administration has not provided the information requested more than a year ago with respect to Mr. Estrada, nothing has been done to alleviate concerns about this nomination.

Mr. HATCH. Mr. President, I rise today to speak on the nomination of Miguel Estrada for the United States Court of Appeals for the District of Columbia Circuit. It is truly a sad record that the Senate is now being obstructed by multiple filibusters on judicial nominees and that we are required to conduct an unprecedented seventh cloture vote on this particular extremely qualified nominee.

Let me state that a clear majority of this body supports this nomination, as has been demonstrated in the past six cloture votes. So it is regrettable that a minority number of Senators have followed their script of extraordinary obstructionism to prevent the Senate from concluding the debate on this nomination and proceeding to a final vote.

It has now been 6 months since Mr. Estrada's nomination was reported by the Judiciary Committee and placed on the Senate Executive Calendar. It has been nearly 8 months since he was renominated by President Bush. It has been more than 10 months since his hearing before the committee, and I has been more than 2 years since he was first nominated by President Bush on May 9, 2001.

In all of that time my Democratic colleagues have had unlimited opportunities to make their case. Some of them oppose him; others support him. But one thing has remained clear through this debate: There is no good reason to continue this route of obstruction by denying Mr. Estrada an up-or-down vote.

We are at a troubling point in Senate history. Over the past few months I have spoken frequently on the calculated effort to stall action on President Bush's judicial nominees. There have been efforts to bottle up nominees in committee, to inject ideology into the confirmation process, to delay by demanding production of all unpublished opinions of nominees who are sitting Federal judges and making demands for answers to questions that are unanswerable. And, in the case of Mr. Estrada, opponents have demanded he produce confidential internal memoranda that are not within his control. When these tactics have failed, opponents have turned to their ultimate weapon—the filibuster.

Filibusters of judicial nominees allow a vocal minority to prevent the majority of Senators from voting on the confirmation of a Federal judge, a prospective member of our third, coequal branch of Government. It is tyranny of the minority, and it is unfair to the nominee, to the judiciary, and to the majority of the Members of this body who stand prepared to fulfill their constitutional responsibility by voting on Mr. Estrada's nomination.

I am not alone in my disdain for delaying or defeating judicial nominees through a cloture vote. I think that it is appropriate at this point to note that many of my Democratic colleagues argued strenuously on the floor of the Senate for an up-or-down vote for President Clinton's judicial nominees.

The distinguished minority leader himself once said, ''As Chief Justice Rehnquist has recognized: 'The Senate is surely under no obligation to confirm any particular nominee, but after

the necessary time for inquiry it should vote him up or vote him down.' An up-or-down vote, that is all we ask. . . .''

The ranking member of the Judiciary Committee echoed these sentiments when he said, ''. . . I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.''

Another one of my Democratic colleagues, Senator KENNEDY, himself a former chairman of the Judiciary Committee, had this to say: ''Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that's obstruction of justice.''

The distinguished Senator from California, Senator FEINSTEIN, who also serves on the Judiciary Committee, likewise said in 1999, ''A nominee is entitled to a vote. Vote them up; vote them down.'' She continued, ''It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no.''

My other colleague from California, Senator BOXER, said in 1997, ''It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.''

My colleague from Delaware, Senator BIDEN, also said in 1997, ''I . . . respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.''

The qualifications of Miguel Estrada are well known to the Senate. However I would like to briefly remind my colleagues of his outstanding record of accomplishment. Miguel Estrada represents an American success story. Born in Honduras, he immigrated to the United States as a teenager to join his mother. Overcoming a language barrier and speech impediment, he graduated magna cum laude and Phi Beta Kappa in 1983 from Columbia College. At Harvard Law School he was an editor of the Harvard Law Review and graduated magna cum laude in 1986.

Mr. Estrada's professional career has been marked by one success after another. After graduation he clerked for Second Circuit Judge Amalya Kearse—a Carter appointee—then Supreme Court Justice Anthony Kennedy. He worked as an associate at the distinguished firm of Wachtell Lipton in New York. He then worked as a Federal prosecutor in Manhattan, rising to become deputy chief of the appellate division. In recognition of his appellate skills, he was hired by the Solicitor General's Office during the first Bush administration. He stayed with the SG's Office for most of the Clinton administration. When he left the SG's Office, he joined the D.C. office of Gibson, Dunn & Crutcher, where he has continued to excel as a partner and has risen to the top of the ranks of oral advocates nationwide, having argued fifteen cases before the Supreme Court.

The legal bar's wide regard for Mr. Estrada is reflected in his evaluation by the American Bar Association. The ABA evaluates judicial nominees based on their professional qualifications, their integrity, their professional competence, and their judicial temperament. Based on its assessment of these factors, the ABA has bestowed upon Mr. Estrada its highest rating of unanimously well qualified.

His supporters include a host of well-respected Clinton administration lawyers, including Ron Klain, former Vice President Gore's chief of staff; Robert Litt, head of the Criminal Division in the Reno Justice Department; Randolph Moss, former Assistant Attorney General; and Seth Waxman, former Solicitor General. I have, on previous occasions, placed letters of support in the record. I would refer my colleagues to previous statements regarding Mr. Estrada's qualifications and endorsements.

Yet, despite the superb record, qualifications, temperament and experience of Mr. Estrada, he continues to be blocked in his nomination. In support of their obstruction, our Democratic colleagues have repeatedly raised red-herring issues with two demands that Mr. Estrada answer their questions, and that the administration release confidential memoranda he authored at the Solicitor General's Office.

With regard to the first demand, the record is clear that Mr. Estrada spent hours during a day-long hearing answering my Democratic colleagues' questions. He answered written questions submitted after the hearing. He gave answers to questions that were substantially similar to answers given by Clinton nominees who were confirmed. Yet my Democratic colleagues still complain that he has not answered their questions. Really, their complaint is that, in answering their questions, Mr. Estrada did not say anything that gives them a reason to vote against him. Simply put, they are not interested in his answers to their questions—they are interested in defeating his nomination.

This is why every effort to make Mr. Estrada available to answer additional questions has gone virtually unacknowledged. He has been made available to answer written questions and to meet with individual senators. There has even been an offer to make Mr. Estrada available to answer questions in a second hearing. But only one Democratic Senator has met with Mr. Estrada since these offers were extended, and only one has submitted written questions since the floor debate began, to which Mr. Estrada has responded. We have met our Democratic colleagues more than halfway on this, but they insist on continuing down this path of obstructionism.

Their second demand, for the Solicitor General memoranda, has been fully debated. The short response is that never before has a Presidential administration released confidential appeal, certiorari, and amicus recommendations on the scale that my Democratic colleagues seek for Mr. Estrada. This is a full-scale fishing expedition, pure and simple, and the Justice Department is right to oppose it.

Despite these supposed reasons for denying an up-or-down vote on Mr. Estrada's nomination, I think there are other factors. Last fall a Democratic staffer on the Judiciary Committee was quoted in The Nation magazine as saying, ''Estrada is 40, and if he makes it to the circuit, then he will be Bush's first Supreme Court nominee. He could be on the Supreme Court for 30 years and do a lot of damage. We have to stop him now.''

So it appears that the real reason for this filibuster is the threat of a Justice Estrada on the Supreme Court. An editorial appearing in the Atlanta Journal-Constitution said it best: ''The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.''

There is an additional factor that is not based on any substantive objection to his nomination. I believe that some Senate Democrats do not want the current President, a Republican President, to appoint the first Hispanic as United States Circuit Judge for the District of Columbia Circuit.

Let me read from an editorial published by the Dallas Morning News addressing this point. On February 17, 2003, the News wrote, ''Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his reelection campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.''

Miguel Estrada will be an excellent Federal judge. Today, once again, we have a choice either to continue to block another highly qualified nominee for partisan reasons or to allow each Senator to decide the merits of the nomination for himself or herself. I choose to vote against obstructionist

tactics and permit an up-or-down vote on the nominee. I urge my colleagues to do likewise.

I ask unanimous consent the Atlanta Journal-Constitution editorial to be printed in the RECORD.

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

[From the Atlanta Journal-Constitution, May 4, 2003]

DEMOCRATS USE WRONG ROUTE TO WIN SOUTH

(By Jim Wooten)

U.S. Senator John Kerry (D-Mass.) brought his presidential aspirations to the South last week, promising in Alabama that he will make the national party competitive here once again.

Make competitive, he neglected to mention, a party that has positioned itself in opposition to the war in Iraq and anything other than token tax cuts, and as Democrats reminded the nation once again about the elevation of conservatives to the federal bench. While the White House may appeal to some as inside work with no heavy lifting, getting there through the South toting this party's agenda will be a task requiring Herculean labor.

Just this week, for example, Kerry's Democratic colleeagues—Georgia's Zell Miller excepted—began to filibuster the nomination of Texas Supreme Court Justice Priscilla Owen to the New Orleans-based 5th U.S. Circuit Court of Appeals.

Kerry and other Democrats are already filibustering the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals—the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a ''glass ceiling'' exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks ''diversity'' find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credential to serve on the U.S. Supreme Court.

Kerry, then, and the legions of presidential soundalikes who campaign with him, have to come to a region where conservatism is the mainstream to explain how reducing federal taxes is bad and cheating exemplary women and minorities of the fair hearing they have earned before the U.S. Senate because they might be conservative is good.

''I can help you wage a fight down here and rebuild this party for the long,'' Kerry said in Birmingham. Republicans have carried Alabama in all but three presidential elections in the past 50 years. Jimmy Carter in 1976 was the last Democrat to carry the state. George W. Bush carried every Southern state in 2000, including Tennessee, his Democratic opponent's home state. Al Gore Jr. thought so little of his Southern prospects that he actively campaigned in just three states—Tennessee, Florida and West Virginia.

Some Democrats, said Kerry, were ''surprised'' that he visited Alabama.

No surprise that he visited. The real surprise is the party baggage he hauled.

Opposition to tax cuts is comprehensible. Politicians loathe interruption in the flow of spendable revenues. Opposition to the war is, too. Too confrontational. Angers adversaries. Provokes understandable aggression, for which we bear unexpurgated sin.

While some positions are understandable, not so their party-line opposition to Owen and Estrada. Owen, the new filibusteree, drew the American Bar Association's highest rating. She is a cum laude graduate of the Baylor University Law School who scored the top grade in Texas on the bar exam. She practiced 17 years before becoming a judge and has been widely praised for her integrity and ability. Liberal groups say, unconvincingly except when they are talking to each other and Senate Democrats, that she is anti-abortion and pro-business.

Being a neighborly people, Southerners of course welcome Kerry to visit the region and to indulge himself in its hospitality. But the senator should not indulge himself into believing that a party that opposes tax cuts and filibusters nominees such as Owen and Estrada has the slightest chance of carrying this region.

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[From the Dallas Morning News, Feb. 17, 2003]

RUSH TO JUDGMENT: ESTRADA NOMINATION HAS BEEN BLOCKED TOO LONG

There is a time for talking and a time for voting. The time is past for the U.S. Senate to talk about Miguel Estrada's nomination to the federal Court of Appeals for the District of Columbia circuit. It's time to vote.

Having emigrated from Honduras as a teenager unable to speak much English, Mr. Estrada went on to graduate magna cum laude from Columbia University and Harvard Law School, to clerk for a Supreme Court justice, to serve two administrations in the U.S. solicitor general's office, to win more than a dozen cases in the Supreme Court. In short, the 42-year-old lawyer is talented. Who knew that talent would extend to tying the Senate in knots for days on end.

Democrats by now are in full filibuster. Senate proceedings, as carried on C-Span, resemble the firm Groundhog Day, where the main character has to relive the same day over and over again. Every day, it's the same thing. Democrats get up, march over to the podium, shuffle papers and recite their main complaint with Mr. Estrada—that he's conservative, unconventional and unapologetic. That when he had the chance to hand them the rope with which to hang him during his hearing before the Senate Judiciary Committee, he refused to hold up his end.

Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his re-election campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

And so they have talked and talked, in hopes that Republicans will back down. They won't. Nor should they.

Republicans certainly stalled their share of appointments during the Clinton administration. But Democrats are being shortsighted in seeking retaliation. It is precisely these sorts of narrowly motivated temper tantrums—from both sides of the political aisle—that turn off voters and make cynics of the American people. When that happens, it doesn't matter which nominees get confirmed or rejected. Everybody loses.

The PRESIDING OFFICER. The distinguished majority leader.

Mr. FRIST. All time has expired?

The PRESIDING OFFICER. That is correct.

Mr. FRIST. I will use a couple minutes prior to the vote in response to some of the comments that have been made, specifically in response to the Democratic leader's comments which I understand really are two.

Are we committed to addressing energy issues and completing this bill? We are. We will continue to work aggressively on this bill starting earlier than we normally would and continuing later tonight. Again, I ask for amendments to come forward. We are going to address them one by one in a systematic way with adequate time for debate and amendment.

Second, the question has been raised as to why we are considering these votes today, such as cloture on Miguel Estrada. The answer is, the American people deserve it. They understand we are not fulfilling our responsibility in this body without an up-or-down vote. That is our job. That is our responsibility. It is advice and consent of the judicial nominees sent by the President of the United States. That is being denied by the other side of the aisle. That is unacceptable to us. That is why that is being voted on today.

I made it very clear in my request both publicly and otherwise that we would like to stack these votes as we are voting on other energy amendments; it is not us who requested the time.

The complaint was made we were in a quorum call; why were we sitting in a quorum call in the middle of this bill? It should be made very clear that they requested that time and it was on their time that we were in a quorum call. I, once again, make this plea for a vote like today. When the initial request was made, it was that we have the vote and not spend a lot of time discussing the issue.

Second, let me reinforce a point I made this morning; that is, we are being required by the other side of the aisle to use a lot of our valuable time, time that is increasingly valuable as we get closer and closer to the recess, to rollcall votes on district judges. That has not been done in the past. Once again, I ask and, in fact, plead with the other side to change this request they have made that we spend so much time on rollcall votes which historically have been unnecessary.

On the issues of Chile and Singapore, I have made it very clear that we will move those to a time after energy unless we are not dealing with an issue on energy. I will talk to the other side of the aisle. If there is debate on Chile

and Singapore, we will probably do it after we have the final energy votes this week. Then we will take up Chile and Singapore trade issues at that point.

The same issue will come up tomorrow because we will be voting on Judge Pryor. I am sure the same issues will come up about spending time and people will come to the floor and spend time.

I make it clear, our request last night was to set aside time, some time in the future—not necessarily this week—to debate and discuss Pryor and have an up-or-down vote on Pryor. That was refused. Again, it would not have been this week—it could be sometime during September—but there was an objection to that unanimous consent request. Thus, we will proceed with a vote tomorrow.

Again, I make it clear my initial request is not to use a lot of time simply to be able to go to Pryor but that we proceed aggressively on energy. The American people deserve it. We will do it in an orderly way as we go forward today. I am confident we can complete this Energy bill if we stay focused, work together. The American people deserve it. I am confident we can do that.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Judd Gregg, Norm Coleman, John E. Sununu, John Cornyn, Larry E. Craig, Saxby Chambliss, Lisa Murkowski, Jim Talent, Olympia Snowe, Mike DeWine, Michael B. Enzi, Lindsey Graham of South Carolina, Jeff Sessions, Lincoln Chafee, Wayne Allard.

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

The question is, Is it the sense of the Senate that debate on the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

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

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER (Mrs. DOLE). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 55, nays 43, as follows:

[Rollcall Vote No. 312 Ex.]

YEAS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Breaux	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Lott	Thomas
Cornyn	Lugar	Voinovich
Craig	McCain	Warner
Crapo	McConnell	
DeWine	Miller	

NAYS—43

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Conrad	Johnson	Schumer
Corzine	Kohl	Stabenow
Daschle	Landrieu	Wyden
Dayton	Lautenberg	
Dodd	Leahy	

NOT VOTING—2

Kennedy	Kerry

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ENERGY POLICY ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. Does the Senator want to offer a second-degree amendment to the electricity amendment?

Mr. FEINGOLD. Yes.

Mr. DOMENICI. I did not know that. I did not understand that.

Mr. FEINGOLD. My attempt was to set aside what I thought was a pending amendment to your amendment and then to offer a different amendment to your amendment. And I make that request again.

Madam President, I ask that in the form of a unanimous consent request, that the pending amendment to the Domenici amendment be set aside.

Mr. DOMENICI. Well, they have all been currently set aside for amendments to the electricity amendment, Madam President. That is why I wondered, what is the need for the unanimous consent request?

The PRESIDING OFFICER. There are currently pending second-degree amendments which would have to be set aside.

Mr. DOMENICI. I have no objection to the request.

Mr. REID. Will the Senator from Wisconsin yield?

Mr. FEINGOLD. I yield to the Senator from Nevada.

Mr. REID. Madam President, I direct this question through you to the distinguished manager of the bill for the majority. I have had a number of inquiries during the vote as to whether or not, when the Secretary of Defense comes here at 4 o'clock this afternoon, we are going to take a recess. We have a number of Democrats who are going to attend. I assume there will be members of the majority attending that briefing also.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, if somebody is discussing an amendment, and there is business on the floor of the Senate, we will not recess; we will work.

The PRESIDING OFFICER. Without objection, the request of the Senator from Wisconsin is granted.

Mr. FEINGOLD. Thank you, Madam President.

AMENDMENT NO. 1416 TO AMENDMENT NO. 1412

Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself and Mr. BROWNBACK, proposes an amendment numbered 1416.

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

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

The amendment is as follows:

(Purpose: To protect the public and investors from abusive affiliate, associate company, and subsidiary company transactions)

Beginning on page 35, strike line 10 and all that follows through page 35, line 15, and insert the following:

SEC. 1156. AFFILIATE, ASSOCIATE COMPANY, AND SUBSIDIARY COMPANY TRANSACTIONS.

Section 204 of the Federal Power Act (16 U.S.C. 824c) is amended by adding at the end the following:

''(i) TRANSACTIONS WITH AFFILIATES AND ASSOCIATED COMPANIES.—

''(1) DEFINITIONS.—In this subsection, the terms 'affiliate', 'associate company', 'public utility', and 'subsidiary company' have the

meanings given the terms in section 1151 of the Energy Policy Act of 2003.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Commission shall promulgate regulations that shall apply in the case of a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility.

''(B) CONTENTS.—At a minimum, the regulations under subparagraph (A) shall require, with respect to a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility, that—

''(i) the affiliate, associate company, or subsidiary company shall be an independent, separate, and distinct entity from the public utility;

''(ii) the affiliate, associate company, or subsidiary company shall maintain separate books, accounts, memoranda, and other records and shall prepare separate financial statements;

''(iii)(I) the public utility shall conduct the transaction in a manner that is consistent with transactions among nonaffiliated and nonassociated companies; and

''(II) shall not use its status as a monopoly franchise to confer on the affiliate, associate company, or subsidiary company any unfair competitive advantage;

''(iv) the public utility shall not declare or pay any dividend on any security of the public utility in contravention of such rules as the Commission considers appropriate to protect the financial integrity of the public utility;

''(v) the public utility shall have at least 1 independent director on its board of directors;

''(vi) the affiliate, associate company, or subsidiary company shall not acquire any loan, loan guarantee, or other indebtedness, and shall not structure its governance, in a manner that would permit creditors to have recourse against the assets of the public utility; and

''(vii) the public utility shall not—

''(I) commingle any assets or liabilities of the public utility with any assets or liabilities of the affiliate, associate company, or subsidiary company; or

''(II) pledge or encumber any assets of the public utility on behalf of the affiliate, associate company, or subsidiary company;

''(viii)(I) the public utility shall not cross-subsidize or shift costs from the affiliate, associate company, or subsidiary company to the public utility; and

''(II) the public utility shall disclose and fully value, at the market value or other value specified by the Commission, any assets or services by the public utility that, directly or indirectly, are transferred to, or otherwise provided for the benefit of, the affiliate, associate company, or subsidiary company, in a manner that is consistent with transfers among nonaffiliated and nonassociated companies; and

''(ix) electricity and natural gas consumers and investors shall be protected against the financial risks of public utility diversification and transactions with and among affiliates and associate companies.

''(3) NO PREEMPTION.—This subsection does not preclude or deny the right of any State or political subdivision of a State to adopt and enforce standards for the corporate and financial separation of public utilities that are more stringent that those provided under the regulations under paragraph (2).

''(4) PROHIBITION.—It shall be unlawful for a public utility to enter into or take any step in the performance of any transaction with any affiliate, associate company, or subsidiary company in violation of the regulations under paragraph (2).''.

Mr. FEINGOLD. Madam President, I rise today to offer an amendment on behalf of myself and the Senator from Kansas, Mr. BROWNBACK. I am pleased that the Senator from Kansas is joining me in this effort, and he has done so because I know he shares my view that the repeal of the Public Utility Holding Company Act in the underlying bill creates a serious regulatory void and market flaw that Congress should correct.

I am so pleased this is a bipartisan effort. I believe we have broad support in this body and beyond for these amendments.

These amendments would improve on the bill by making clear the actions that the Federal Energy Regulatory Commission—or FERC—must take to ensure that deregulated holding companies do not outcompete our small businesses, damage their financial standing, and then pass the costs of bad investments to consumers.

Our amendment is supported by a wide and impressive coalition of business, labor, financial, and consumer groups which include: the Independent Electrical Contractors, Air Conditioning Contractors of America, Plumbing-Heating-Cooling Contractors, Associated Builders and Contractors, National Electrical Contractors Association, Mechanical Contractors, Sheet Metal Air Conditioning Contractors, the International Brotherhood of Electrical Workers, the National Alliance for Fair Competition, the Small Business Legislative Council, Consumers for Fair Competition, and the Association of Financial Guaranty Insurors.

The Senator from Kansas and I are concerned because electricity is not like other commodities. Electricity is essential to public well-being. When this bill is enacted and the Public Utility Holding Company Act is repealed, a strong incentive will exist for large utilities with the financial resources and the potential to exercise market power to get larger. Already, the electric utility industry is undergoing rapid consolidation. In the past 3 years alone, there have been more than 30 major utility mergers and acquisitions, creating large multistate holding companies, including several in my own home State and with utilities in Minnesota that serve Wisconsin. Many companies have seen their stock plunge and credit ratings downgraded, and these companies are now prime buy-out targets.

I acknowledge that deregulation is not inherently bad and should not always be prevented. It can produce efficiencies, economies of scale and cost savings for electrical consumers. However, it can also reduce competition, increase costs, and frustrate effective regulator oversight. This amendment protects consumers from assuming the costs and risks of utility diversification into non-utility businesses, prevents utilities from subsidizing affiliate ventures and competing unfairly with independent businesses, and protects utility investors. It does so by requiring FERC to issue regulations that require affiliate, associate, and subsidiary companies to be independent, separate, and distinct entities from public utilities; maintain separate books and records; structure their governance in a manner that would prevent creditors from having recourse against the assets of public utilities; and prohibit cross-subsidizing, or shifting costs from affiliate, associate, or subsidiary companies to the public utilities.

The Public Utility Holding Company Act was enacted in 1935 to rein in the pervasive economic and political sway that holding companies held over the Nation's public utilities at that time. Studies conducted by the Federal Trade Commission and the U.S. House of Representatives at the time demonstrated that the holding companies, which controlled approximately 80 percent of the Nation's gas and electric utilities, were exploiting both consumers and investors. At the time PUHCA was passed, 16 major holding companies and their utility subsidiaries produced more than three-quarters of the electric energy in this country.

Individual States and localities enacted their own laws, but were unable to control these multi-State holding companies—many of which also held investments in foreign countries—and their utility subsidiaries. Holding companies created organizational structures that extended across State lines, specifically to place the holding companies beyond the regulatory reach of the individual State commissions. In fact, registered holding companies were formed specifically for the purpose of avoiding regulation. Holding companies leveraged their utility assets to gain financing for risky investment ventures and engaged in anticompetitive behavior.

PUHCA requires that proposed investments benefit the utility system, and not harm ratepayers, shareholders or the public interest.

PUHCA requires that holding companies seeking to acquire utilities obtain preapproval from the Securities and Exchange Commission. In addition, a particular class of holding companies, known as ''registered holding companies,'' those holding companies with utility subsidiaries in more than one State, must obtain SEC approval also for acquisitions of nonutility businesses. The SEC has authority to oversee and provide advance approval for the complicated financial transactions of the registered holding companies,

including intrasystem transactions and diversification into unregulated businesses.

PUHCA does these things, but the bill before us repeals PUHCA. As a result, registered holding companies will be able to freely diversity into unregulated businesses, and to engage in interaffiliate transactions in which the holding company and nonutility businesses drain financial resources and key assets from the utility businesses.

In California, for example, holding company maneuvers have left California utilities in a weakened financial condition. Billions of dollars have been moved out of their utility companies into the holding company and then into their unregulated affiliates which are protected by laws that now put this cash beyond the reach of even the holding company. As a result, the utilities have had too little cash to carry out their utility obligations.

In addition, even with PUHCA, we are already experiencing concerns about utilities expanding into electricity-related services and outcompeting small businesses in my State. Small contractors can't compete against big utilities in areas like energy efficiency upgrades to private homes, when big utilities can use existing assets like personnel, equipment, and vehicles to perform those services. When PUCHA is repealed, utilities will be able to expand into other business areas, and we should make certain that we protect small businesses.

This amendment is good public policy, and it will strengthen the Senate's position in Conference with the House of Representatives. I urge my colleagues concerned about ensuring fairness in a deregulated system to support this amendment.

Let me say how delighted I am to be working with the Senator from Kansas who I know has a deep and abiding commitment to small businesses as well.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague from Wisconsin for offering this amendment. I join him on it.

The amendment my colleague from Wisconsin has described first came to my attention by a constituent and a friend of mine, D.L. Smith, Topeka, KS. D.L. is a great K-Stater, loves his country, has a medium size contracting business. He employs between 57 and 100 Kansans. Founded in 1972, the DL Smith companies provide commercial, institutional, and industrial electrical services and, in recent years, even a little bit of telecommunications. They have been expanding slightly. D.L.'s service trucks can be seen as far west as Salina and as far south as Pittsburg, KS.

DL's is a successful medium size business by Kansas standards. It might grow and could become more successful. But it might not be able to grow and could falter. The success or failure of this business will in great part be dependent upon the dispensation of this amendment.

This is what he brought to my attention. D.L. said: Look, what is taking place is we are having to compete with these large utility companies that he asserts are using their regulated business to subsidize the unregulated business and drive the small contractors out of business. That is my 15-minute speech, what he said and the examples he gave.

What he does now is help in the contracting of electrical services into homes. He is having to compete now with very large utility companies that are looking at other areas they can expand into to be able to do contracting work and, in the process, are driving these small to mid-size businesses out of business.

Such diversification on the part of the utility companies has been the cause of significant and continuing harm to many small private sector firms. Utility-owned subsidies and affiliates now operate in almost every imaginable type of business, from auto salvaging to resort management to real estate brokerage to, more frequently, electric and mechanical contracting. Utilities now routinely sell appliances, provide plumbing, heating and cooling, and service contracts, engage in insulation work, sell and install storm windows and doors, provide outdoor lighting and interior lighting fixtures.

Normally as a free market Republican, I wouldn't have much problem with that. This is a free country. People can compete the way they want to, the way they choose. The problem with this is, you have a regulated utility that has a clear income source that is dependent upon ratepayers that is set by the Government, and they have a flow of resources that is established by the public sector. And it is a rate of return based upon cost plus.

The challenge—and what the D.L. Smiths of the world are feeling—is the subsidization of that regulated business going into the unregulated field and driving small to mid-size contractors out of business. Too many companies are doing a very natural thing—trying to grow, get a little more business here and there for their shareholders to try to be able to hold down the cost of electrical rates to their customers. That is understandable. The problem is, you are using that regulated utility where they don't have competition coming in there to compete against an unregulated field and, in many cases, driving out small to mid-size contractors like the D.L. Smiths of Topeka, KS, and others.

Private sector businesses both small and large welcome competition. Unfortunately, there have been numerous instances where utilities have engaged, in some cases, in unfair and abusive competitive behavior which undermines true competition in these impacted markets.

The primary obstacle to free, fair, and open competition in these markets is the ability of a utility to provide its affiliates and subsidiaries with artificially lower costs of operation through cross-subsidization and the failure to properly recover the true costs of equipment and services provided by the utility to such unregulated operations. These advantages arise neither from size, nor efficiency, but rather from the corporate relationship such operations have with its related utility.

The utility companies are doing, by and large, a great job in serving the public, providing utility rates at as low a cost as possible. That is a good thing. They work conscientiously to do that. We have a number of very good utility companies in the State of Kansas. When they use the cross-subsidization, which is what we are trying to prevent in this bill, to run out small and midsize businesses, that is when we have a problem, particularly when denying access to newly emerging markets, a key to future expansion, job growth, and profitability for this country.

For those reasons, I support this amendment. I also recognize my colleagues who wrote the bill, the Senators from New Mexico, particularly Senator DOMENICI. They are trying to address this issue. We put forward an amendment that we hope will strengthen the bill, help it out, one that doesn't negatively impact the electrical utility businesses, other than to say here is the area in which you can operate. Outside of that, this should be left to other businesses, particularly small and midsize ones, to allow them to grow.

The amendment we put forward has broad support from the contracting community, electrical contractors, plumbing, heating, and mechanical contractors because they are feeling this onslaught. Most of my colleagues, I guess, have been contacted by the contractors, most of which are small to midsize businesses operating in communities throughout the country, that want this Feingold-Brownback amendment to be added to the Energy Policy Act of 2003.

I recognize the work that the chairman and ranking member have put on this particular topic. We hope this amendment can be accepted because we think it strengthens the bill.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Madam President, I thank the Senator from Kansas for his excellent work. It is an excellent example of why this is so important. I appreciate his support in working with me on it.

I ask unanimous consent that the Senator from Oregon, Mr. WYDEN, be added as a cosponsor of the amendment.

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

Mr. FEINGOLD. Madam President, I ask unanimous consent that a list of organizations in support of the amendment be printed in the RECORD at this time.

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

SUPPORT FOR FEINGOLD-BROWNBACK AMENDMENT ON AFFILIATE TRANSACTIONS

The following organizations support this amendment:

American Association of Retired People.

AFGI: Association of Financial Guaranty Insurors; ACE Guaranty Corp.; Ambac Assurance Corp.; CDC IXIS Financial Guaranty North America, Inc.; Financial Guaranty Insurance Company; Financial Security Assurance; MBIA Insurance Corp.; Radian Reinsurance Inc.; RAM Reinsurance Company; XL Capital Assurance.

American Iron and Steel Institute.

Consumers for Fair Competition.

Consumers Union.

Electricity Consumers Resource Council (ELCON): A.E. Staley Manufacturing Company; Air Liquide; Alcan Aluminum Corporation; Anheuser-Busch Companies, Inc.; BOC Gases; BP; Central Soya Company, Inc.; Chevron Texaco; Delphi Automotive Systems; Eastman Chemical Company; E.I. du Pont de Nemours & Co.; ExxonMobil; FMC Corporation; Ford Motor Company; General Motors Corporation; Honda; Intel Corporation; International Paper; Lafarge; MG Industries; Monsanto Company; Occidental Chemical Corporation; Praxair, Inc.; Rockwell Automation; Shell Oil Products; Smurfit-Stone Container Corporation; Solutia Inc.; Weyerhaeuser.

IBEW.

MBIA Insurance Corporation.

Municipal Electric Utilities of Wisconsin.

National Alliance for Fair Competition, which includes: Independent Electrical Contractors; Mechanical Contractors Association of America; National Electrical Contractors Association; Plumbing-Heating-Cooling Contractors-National Association; Sheet Metal and Air Conditioning Contractors' National Association; Air Conditioning Contractors of America; Associated Builders and Contractors.

National Association of State Consumer Advocates.

Public Citizen.

Small Business Legislative Council (90 small business trade associations).

U.S. Public Interest Research Group.

Wisconsin Public Power, Inc.

Sierra Club.

Mr. FEINGOLD. Madam President, I am pleased that the ranking member of the committee, Senator BINGAMAN, is indicating positive remarks about this amendment as well. I wonder if he may wish to make some remarks in support at this time.

Mr. BINGAMAN. Yes. Madam President, first, I ask unanimous consent that I be added as a cosponsor, if I am not already one, on the amendment.

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

Mr. BINGAMAN. Madam President, I compliment the Senator from Wisconsin and the Senator from Kansas for proposing this amendment. In my view, it is offered in the same spirit in which the earlier amendment I offered related to mergers was offered, and also the amendment by Senator CANTWELL related to market manipulation.

I think all three of those amendments have somewhat the same purpose, which is to strengthen this bill, to ensure there are necessary protections for consumers, ratepayers, and for others who, in the case of the Senator from Kansas, pointed out there are many contractors in the private sector who feel an amendment such as this is essential if they are going to be able to compete and not face some type of unfair competition from companies that are part of holding companies that are owned by utilities or that also own utilities.

Let me back up here and talk a little about the Public Holding Utility Company Act, because that is the basic issue that causes this amendment to come to the floor. As part of this bill, the proposal is that we repeal the Public Utility Holding Company Act. That was in the bill passed in the previous Congress—the repeal of that. I have supported that but I have only supported it if it were clear that we were replacing those authorities and those responsibilities for regulation and oversight at the Federal level with other effective authorities for oversight and regulation.

My conclusion is that the Domenici substitute, as it now stands, does not put in place effective regulatory tools to ensure that at the Federal level we can prevent the abuses that caused the Public Utility Holding Company Act to come into existence in the first place.

There is a very useful article that I commend to all of the Senate in today's business section of the Washington Post, written by Peter Behr. It is called ''Energy Monoliths Could Return; Law Limiting Companies' Reach Faces Repeal.''

Well, the law that limits a company's reach that this article is talking about is the Public Utility Holding Company Act. As I say, there is general agreement that the act has become an anachronism; it is way too complex; that we need to modernize the Federal regulatory scheme in regard to utilities. So the Public Utility Holding Company Act should be repealed but it needs to be replaced with something that also constitutes effective regulation. Let me refer to the chart. I don't know if anybody can see it.

This tries to rapidly describe what is involved with the Public Utility Holding Company Act, or PUHCA, jurisdiction. It basically says that for a company which owns, as the chart shows, other affiliates—a utility generating and marketing affiliate—there are real restrictions on what that holding company can do with regard to any other acquisitions of utilities. Essentially, you can acquire one more utility, or you can own one utility, and then if you own any more than that, you come under a very strict set of requirements that are presently in the Public Utility Holding Company Act. Those requirements should be repealed but we need something that is effective.

This amendment tries to do that and would do it in an effective way. It accomplishes the same goal that I was trying to accomplish as part of—or one of the two goals I was trying to accomplish in the merger amendment I offered earlier yesterday, by requiring FERC to establish real firewalls around the utility affiliate of a holding company to prevent the assets of the utility from being used to prop up risky diversification ventures. That is, you cannot use the assets of the utility to support a contracting company, as an example, which is the kind of thing that the Senator from Kansas was talking about having to compete with.

I think the language of the amendment is extremely clear. It makes it very clear that the Federal Energy Regulatory Commission shall promulgate regulations, shall apply in the case of a transaction between a public utility and an affiliate or associate company of the public utility—and that is what the chart shows—where you have a utility and another affiliate. It basically builds a firewall and gets at the issue I was talking about when I offered my amendment yesterday evening; that is, the public utility shall not cross-subsidize or shift costs from the affiliate or associate company to the public utility. It cannot encumber the assets of the public utility in order to prop up some other business. That is only fair as far as the ability of the other business to compete in the marketplace, but it is particularly important as security for the ratepayers of that public utility.

There are an enormous number of examples. I went through several of them yesterday. Let me refresh people's memories. There are many examples in the last year—in recent months, in fact—where utilities have been getting into other activities and have encumbered the assets of the utility, and the ratepayers of the utility have been adversely affected.

One example I mentioned yesterday, and I will mention it again because it does relate to Kansas, is West Star. It is the largest utility in the State of Kansas. It is owned by a holding company. West Star came under scrutiny last year because of problems that it encountered with nonutility affiliates.

West Star had invested in a number of unregulated ventures, including a home security company, and the home security company did not do well. So the holding company, which owned

both the utility and the security company, shifted $1.6 billion of debt from its unregulated companies to the utility. It loaded these debts onto the utility, and then you have essentially the ratepayers of that utility left having to pay $100 million per year because of the activities of unregulated affiliates that had nothing to do with the utility itself.

Some would say this is something the States should handle. The Kansas Corporation Commission began an investigation this last summer into this situation. The Justice Department began an investigation. The Federal investigation resulted in the indictment of the CEO of the company for bank fraud, and the investigation of the Kansas Corporation Commission, which is the State regulatory agency, resulted in a dramatic restructuring of the company to separate the utility from the unregulated companies of the holding company.

Some would say: They solved it at the State level. Why should we be having any authority at the Federal level? They solved it at the State level for the period going forward, but they did not solve it prior to this arrangement being put in place and, accordingly, the ratepayers are paying $100 million a year to repay the debt that the utility has acquired because of this activity.

One other example I mentioned yesterday that I will mention again is Portland General Electric. Portland General Electric was in the unfortunate position of having been acquired by Enron, and the Oregon Public Utility Commission required that a number of conditions be met before it approved that acquisition. That was helpful.

Frankly, they acted wisely in requiring those conditions. But even that was not adequate to fully insulate that utility from the collapse of Enron and from the collapse of the other many businesses in which Enron was engaged. The fate of the parent company has had a very adverse effect on the ability of Portland General to gain access to capital markets. As I say, that is just one of many other examples that can be cited.

This amendment Senator FEINGOLD and Senator BROWNBACK are offering is extremely meritorious. It is an essential part of what we ought to be doing if we are going to avoid getting back into a situation where cross-subsidy is permitted. We ought to have a bright line requirement that the Federal Energy Regulatory Commission ensure that cross-subsidy will not occur in these acquisitions and mergers. We owe that to ratepayers. We owe it to the public generally.

I hope very much we will adopt this amendment. I commend the authors of the amendment for their proposal today.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, before I start, I ask the distinguished sponsor of the amendment how much additional time does he think he needs on his amendment. I am not pressing the Senator.

Mr. FEINGOLD. Madam President, I do not expect a great deal of time at all. I would like the opportunity to respond to any comments the chairman of the committee might make.

Mr. DOMENICI. Since it looks as if we will not be very long, does the Senator from New Mexico know if there is another amendment ready on his side since we are close to completing the debate on this amendment?

Mr. BINGAMAN. Madam President, let me check with the Democratic floor leader. I will get an answer back on that question.

Mr. DOMENICI. I thank the Senator very much.

Madam President, I say to the author of the legislation, I very much appreciate the fact that during these difficult times when we are trying very hard to get so much done in a short period of time the Senator came to the floor, put an amendment down, and, in his typical manner, got to the point, and in short order is going to let the Senate vote.

Frankly, what he is asking us to do is exactly the wrong thing for the situation that exists today in the energy markets. There is an article that was quoted from which is on all our desks:

Energy Monoliths Could Return.

It was quoted from, excepting on the second page there is an absolutely succinct paragraph that this Senator believes is totally, unequivocally correct. I quote three-quarters of the way down the paragraph starting with the word ''repeal'':

Repeal could restore confidence in energy companies shunned by shareholders after the Enron scandal and encourage badly needed expansion of power transmission networks.

From the financial market standpoint, repeal—

And let me add ''of PUHCA,'' repeal of PUHCA—

would be the single most important part of the energy bill. It certainly is what investors are looking for.

The problem with the amendment is that it probably will take the intent in that paragraph, the indication of what most probably will happen when PUHCA is repealed, and it will probably destroy it, wilt it, make it very vulnerable, and we will not get the result. The result is the need for huge injections of capital into the energy companies because of what has happened to them in the past 18 months.

That is why it is good news that PUHCA is being repealed. That is why it is bad news when an amendment comes along and says: This is just a little 'ole amendment to make sure the electric companies keep their money where it ought to be, that they ought not invest it anyplace else, and that their boards of directors be governed by this statute, the kinds of issues that tie up the potential of a company that is involved in the utility business.

We have already given FERC in this carefully balanced bill the enforcement power to make sure that the companies are properly invested, to make sure they are taking care of their business and of the stockholders' money and of the electrical business.

We have actually said that is a power FERC has. This title already includes enhanced books and records authority for both State and Federal regulators to ensure that ratemaking bodies have all the information necessary they need for retail ratemaking, to ensure there is no cross-subsidization or improper commingling of utility and affiliate assets. That is what the authors of the amendment are worried about, that if PUHCA is not there—and remember, everybody has said so far, including my friend Senator BINGAMAN, we ought to get rid of PUHCA. It is an unfair holding down of these companies by an old law. Everyone wants to get rid of it except these two Senators want to say now if we do, let's go back and put some more handcuffs on these companies because we are scared, we are frightened, that they will do wrong.

We are saying, if that is done, the very pluses, the positives, that come from the repeal are going to be negated because what is being done is not needed, and investment is going to be scared off.

The Domenici underlying bill says that when we get rid of PUHCA we better put in something, although this job is principally the job of States. When Senator BINGAMAN read about the two cases, in both cases State commissions were involved in cleaning up the matter, but nonetheless, we have put in here the Federal Government, FERC, is given this authority in this particular area, because of PUHCA going away, to make sure there is no improper commingling of utility and affiliate assets.

There is more. In fact, the underlying amendment also says, with reference to merger, acquisitions and dispositions, leasing, or other transactions:

Will not impair the ability of the Commission or the ability of the State commission having jurisdiction . . . to protect the interests of consumers or the public.

And:

Will not impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction.

So it even says when PUHCA is gone, we have all of these entities that will be worried about mergers and the like, but we put new language in that I just read, which says, nonetheless, if we are talking about merger, acquisition, or disposition, there are these additional powers.

Frankly, I understand that an amendment which is, in fact, a bill—

that is the Domenici amendment—it is that big. I understand Senators and their staff could read it and they could say, well, yes, we get rid of PUHCA, and then somebody back home might tell them if you are getting rid of PUHCA you better be sure you do so and so, and this amendment could be given birth.

If one looks at this carefully, they will find it did not come to the floor without the staff which worked on it helping the Senator make sure we know, when we get rid of PUHCA, we have to do something to be sure we have taken care of some problem children that might arise along the way.

I want to repeat, this is not a little proposition. If it was, I would accept it because these are very good Senators. But I know if I took it, I would be sending the wrong signal to all of those companies across this land that have reviewed this bill very closely, some small, some large, some of them municipal, some of them co-ops. They have looked at it carefully and they know we are through with PUHCA. I do not want them to say, well, we got rid of one and they turn right around and make it difficult for us to do what we ought to do, what we can do, what we should do, to make sure we got all the assets invested in our companies in these faltering days in terms of resources.

So I say to the two Senators, I wish that were not the case so I could thank them and accept it, but I honestly do not believe those who analyzed it did a careful job. No aspersions.

A better way might be that we looked at it carefully, we watched out, and we were certain we protected the public and the consumers, those who will take electricity, and indeed the stockholders, so the kinds of things they are worried about will not happen.

I do not know what it means, but the horror cases they are speaking of occurred while PUHCA existed. That is interesting, just as an observation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. First, I thank the Senator for the kind remarks. I do not believe we disagree with the goals with regard to the underlying amendment. In fact, I regard this, and I think Senator BROWNBACK regards this, as a friendly amendment; that is, an attempt to make sure this dramatic change, the repeal of PUHCA, gets off the ground properly and does not, in effect, throw out the baby with the bathwater.

My amendment does not attempt to repeal the repeal. I think if one was listening to the remarks of the Senator from New Mexico they might have gotten the impression we were sort of pretending we were repealing PUHCA and then putting it back in effect. That is not in any way, shape, or form what we are trying to do.

We are trying to address a very specific problem the Senator from Kansas laid out very well, the cross-subsidization problem, when a utility holding company owns other affiliated entities and the problems that occur when those assets are moving back and forth in a way I and many people think threatens ratepayers as well as investors.

Specifically, the Senator from New Mexico talks about the fact that there are those who are poised and ready to invest in the utility industry if changes are made, presumably such as the repeal of PUHCA. It is my belief that is exactly what our amendment helps do. I think it helps create a scenario that will make investors more positive rather than less positive.

The Senator's argument about somehow our amendment will scare off investors is really a 5-year-old argument. PUHCA repeal, without the bottom-up regulation these ring-fencing provisions of this amendment provide, will continue to keep capital away. We do not have some kind of insurance for investors in utilities that the resources of those utilities will not be spirited away to these affiliates. Then they will not have the confidence in investing, and I want that investment to happen.

Regulatory insulation, and that is what the Feingold-Brownback amendment does, will help restore investor confidence. It will actually help achieve the chairman's goal. Our belief, and our hope, is our amendment will help bring order to what is a beleaguered sector, not that it will wreak havoc.

Utilities provide an essential public service. Our amendment insulates these utilities wherever they are in a corporate family. So what we are doing is providing a clear distinction of what entities are regulated or not.

Now, if we are looking at investments, that is what we want to see. We want to know exactly what we are getting into. We want to know what our dollars are going to be used for and it helps restore investor confidence and consumer confidence, not the reverse.

This is a good amendment. It has strong bipartisan support. There have not been a lot of Feingold-Brownback amendments over the years, even though I thoroughly enjoy working with the Senator. I think what it represents is a powerful commitment on the part of those of us who are working on this to protect small businesses in our State.

I will not read again the list of the contractors and small business organizations that support this effort, but it is the kind of mainstream people that made my State. It is the kind of mainstream people that made the Chair's State. It is the kind of mainstream people that made the Senator from Kansas's State. They do not want to be driven out of business by utilities able to somehow move these assets back and forth through affiliates that are not properly regulated. That is a reasonable request.

Even more importantly and in response to the Senator from New Mexico, we are trying to make sure investors feel comfortable so it will help the utility industry. The worst thing we can do is raise the specter of another Enron. The phrase ''cooking the books'' dominated our headlines a year ago, and our amendment is about making sure there will not be any accusations or reality of cooking the books when it comes to a utility and its affiliates, that they will have two separate sets of books.

Yes, the Senator's underlying amendment is good. It allows FERC to look at the books. If they look at the books and there are no standards or rules about keeping the entities separate, what is the good? There need to be some teeth in it. That is what our amendment does.

I suggest this is a reasonable, fairly modest amendment that will make the Domenici substitute even better. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I will speak briefly to the Feingold-Brownback amendment.

There is the illusion, or at least the concern, on the part of some of our colleagues that the title we have before the Senate in S. 14 somehow creates a type of regulatory gap that I don't believe exists. The chairman of the committee, in his thoughtful processes that brought us to this amendment and the time he has spent working on it with staff, would agree it does not exist.

Certainly Senator FEINGOLD and others have reason to be concerned, as do I. My constituency, my ratepayers of Idaho, for a period of time spent a good deal more than they should have on their electrical costs because of the dysfunctional markets in the State of California. Those dysfunctional markets occurred with all of these laws in place that we are talking about now changing. What is most important to recognize is, those who misused the market are now suffering. Those who misused the market are now being prosecuted. Those who misused the market to line their pockets, I trust, are having their pockets stripped of ill-gotten gold.

Why? Because our President has a Corporate Fraud Task Force, we have a little organization called the FBI, we have the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and, yes, even the U.S. Postal Service and the U.S. Attorney's Office that seek to look at and have found what they allegedly suggest is postal fraud.

Whether it is Enron, whether it is Dynegy, whether it is Reliant or whether it is El Paso Corporation, time and time again, and currently, many of the major operatives within those organizational structures are being brought before the Federal justice system and will be or are being prosecuted because of what they are now alleged to have done or are accused of having done as it relates to wire fraud, conspiracy, manipulation, round-trip trading, all of those things we suggest ought not happen.

What we have done in this title appropriately protects the consumers of this country, but, as important, we protect the capital that comes to this market to be invested, to create the generational capabilities, the transmission capabilities, the pipeline capabilities, all the things we need to interlock an energy system in our country and to continue to make it as reliable as it has been in the past and as reliable and abundant as it should be, hopefully at the least cost to the consumer.

Clearly, the consumer got gouged. My consumers got gouged. There was ill-gotten gold. We darned well ought to strip it from the pockets of those who were out to steal it from the consumer. Tragically enough, that stealing was going on long before this amendment, under the current laws that some argue we ought to keep in place, 1930 laws that have rendered themselves relatively obsolete in a modern-day energy system.

We are asking that we have the right enforcement in place. We have given FERC the authority it ought to have within the confines and the limitations in which we believe it ought to operate. There is no regulatory gap. Any reason to add to what we have done simply frustrates the multibillion-dollar market, the revenues that will come, the investment that will be created, toward once again creating the finest electrical and energy market in the history of the world. That is what we ought to have. That is what we need. Without that, our investors and our economies look elsewhere, beyond the bounds of our country where they can find stability of economy, stability of resource and, most importantly, an abundant supply of energy.

In the absence of energy, in the absence of an abundant, least cost supply of energy, our economy is in trouble. If our economy is in trouble, most assuredly our men and women who want to find work in that economy are oftentimes without work. We believe this is a full employment bill that will create literally hundreds of thousands of new jobs because of the stability it will bring.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I was informed a while ago by my good friend, the whip, Senator REID, that as soon as we finish this amendment—and I think we are finished; I am not quite sure whether the proponents have finished—Senator BYRD wanted to speak. I ask Senator BYRD, since he is here, if that is the case. And then I ask if I could speak following Senator BYRD, if he has no objection. I ask that after the distinguished Senator BYRD completes his remarks, the Senator from New Mexico be recognized.

Mr. REID. Reserving the right to object—and I shall not object—the Senator has that right. We are in the process of winding down debate on the Feingold amendment. After Senator BYRD and the Senator from New Mexico, the manager of the bill, we would be ready to vote on not only the Feingold amendment but the two amendments that have been offered by the Democratic manager of this bill.

I suggest, because these were debated yesterday, we should have 10 minutes equally divided prior to a vote on each of the Bingaman amendments. While Senator BYRD is speaking, maybe the staff could prepare a unanimous consent agreement to meet these steps that we need to take to complete votes on these three amendments. We would at that time be ready to offer another amendment.

Also, if Senator BYRD speaks for half an hour or 45 minutes, then we will have these votes occur at the same time as Mr. Rumsfeld is here. I don't know if that is what people want. At least half of the Senate will be going to the Rumsfeld meeting—maybe even more. It is up to the Republican leader, of course, what he wants to do with the Secretary of Defense. But whatever the wish of the leader is, we will certainly go along.

We are ready to vote on these three amendments.

Mr. DOMENICI. Madam President, if we could reduce the debate time before each amendment. We don't need 10 minutes; 5 minutes would do.

Mr. REID. I would be happy to do that, although I have conferred with Senator BINGAMAN. On one amendment he needs 5 minutes, and on the other amendment he could use 2½ minutes.

Mr. BINGAMAN. In response, I don't believe I will use 5 minutes; I will probably use closer to 3 minutes, but I would like to have the ability to go on if I get warmed up.

Mr. DOMENICI. Let's prepare the unanimous consent request on all three, with 5 minutes each, 10 minutes equally divided.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I want to bring this debate to a close, but I want to quickly respond to a couple of comments from the Senators from New Mexico and Idaho.

When the Senator from New Mexico was making his comments he talked about the fact the State commissions, public service commissions, and others would be able to sort of take care of these kinds of problems that would exist in a post-PUHCA repeal era. I don't think that is an adequate answer.

The fact is, as I mentioned in my opening remarks, in many cases these are interstate utility entities, and it is that very fact that has made it so difficult, prior to PUHCA, for there to be any appropriate regulation at all. So we do need some kind of appropriate law that homes in on this problem of utility holding companies and affiliates and the cross-subsidization problem that exists. That is the first point I want to make, that the State level is simply not going to do it.

The second point relates to the comments of the Senator from Idaho. The premise of the remarks of the Senator is that somehow my amendment undoes the repeal of PUHCA. It does not do that. Our amendment is necessary and helpful and good for investors and consumers and ratepayers and small business, whether PUHCA is repealed or not. The argument is a red herring. The argument has no relationship to the issue of whether these provisions are needed.

Maybe we could put it this way: The Senator from Idaho believes that a 1933 law known as PUHCA is no longer the right law for this time. We are proposing what we believe to be the appropriate, measured, consumer confidence and investor confidence provision for 2003, not 1935. So we are accepting in the amendment the repeal of PUHCA, but we are adding this provision that is necessary in 2003, not 1935.

The only other alternative, if we do not do at least our amendment, is we are going to be returning to the environment that we are just coming out of, the environment that everyone admits was a disaster for consumers and that it destroyed consumer confidence and investor confidence because of the recklessness and the cooking of the books that went on all over this country, particularly in the utility industry.

We have to make sure what we do here does not undercut the confidence we want to increase for consumers and for investors. That is the purpose of our amendment. We are not trying to undo the chairman's primary purpose of his amendment.

I yield the floor. Assuming that is the end of the debate, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator from New Mexico. I thank him for the knowledge he brings to the Senate on many matters. For these several years I have worked with him on the Appropriations Committee, he has shown himself to be one of the most knowledgeable persons on that committee

and, with respect to energy, he has shown time and again that he is well equipped to enter into debate and to help to form good legislation, better legislation, or the best legislation.

I have always found him to be one who is easy to work with. I enjoy working with him and I compliment him for the time he has put in on this matter that is before the Senate. He arrives at his conclusions after due and deliberate examination, and he is a first-class legislator.

Mr. DOMENICI. Madam President, I say thank you very much, Senator BYRD. I greatly appreciate your remarks. It is always my pleasure to be serving with you.

Mr. BYRD. I thank the distinguished Senator. He has distinguished himself in many fields.

Mr. DOMENICI. Thank you.

Mr. BYRD. Madam President, on pleasant summer days, such as these, I doubt that the average person worries too much about the intricacies of energy policy. However, energy is the life's blood of our economy. Obviously, a comprehensive energy policy is a critical underpinning for a viable, strong nation.

And, there are real and growing concerns about the Nation's energy security—about our teetering economy and about our growing dependence on foreign oil. Coupled with these is an increasing need to protect the environment and address global climate change. But instead of looking for balanced and comprehensive solutions to our critical energy problems, this administration drags its feet and deals with our energy challenges by meeting behind closed doors with select corporate contributors.

As is often the case, this White House offers shortsighted, silver bullet solutions. But, in fact, there are just no silver bullet solutions to a sound and comprehensive energy policy for the future. There is no Lone Ranger approach to energy. There is no John Wayne approach to energy. We have to consider the worldwide energy supply and demand. We must be ready to invest in a range of policies, technologies, resources, and institutional structures that can prepare us for the future.

During the 2000 election cycle, the Bush campaign claimed that the creation of a national energy strategy was one of its most important priorities. But what they meant by that may not be what many people thought they meant. Even as candidate Bush traveled the Presidential campaign trail, the issue of energy often shared the stage with George W. Bush and DICK CHENEY, in part because both candidates were formerly business executives with ties to the energy industry. My own home State of West Virginia, where energy issues are very important, played a critical role in pushing the Bush-Cheney team over the top in the electoral college and handing the current administration the White House.

But, after his election, the President seemed more interested in seeking the advice of his corporate friends than developing a balanced, comprehensive, far-reaching energy policy. It may be illustrative here to review the background of some Bush administration officials. Vice President CHENEY served as the CEO of Halliburton. Secretary Norton has lobbied for the oil, gas, and auto industries. The President's Chief of Staff has served as the president and CEO of the American Automobile Manufacturers Association. The U.S. Trade Representative, Robert Zoellick, has served on Enron's Advisory Council. Even National Security Adviser, Condoleezza Rice, was honored by Chevron with a supertanker named after her. With such close connections to big corporate donors, one has to wonder about who really influences the energy agenda of this administration.

Upon taking office, the Vice President led a task force that hammered out the new administration's energy strategy for the Nation. After months of work, the National Energy Policy Development Group issued its report in May 2001. It was praised in some camps, criticized in others. The criticism arose because executives from Enron and other big corporate contributors played a major role in the recommendations of that task force. To many, the task force recommendations for a national energy policy appeared to be little more than an industry wish list.

When the General Accounting Office and outside groups requested basic information about the Vice President's task force, the White House claimed executive privilege. Throughout the court battle which ensued, the Bush Administration repeatedly claimed that the separation of powers and executive privilege prevented them from releasing pertinent documents. As a result, the credibility of the White House energy strategy development is certainly strained, to say the least, especially with regard to the oil industry.

I have been particularly concerned about our continued reliance on foreign oil and our lack of commitment to developing domestic fuel diversity. Tackling that growing problem requires a serious and multi-faceted commitment, involving cooperation and coordination among many players. But what the President seems to be proposing can be pretty much boiled down to drilling for oil in the Arctic National Wildlife Refuge, and exploiting the oil reserves under the hot sands near the Tigris and Euphrates Rivers, in the Fertile Crescent—modern day Iraq.

U.S. domestic oil production peaked in the early 1970's, and, since that time, our oil demands have far outstripped our supplies. But instead of figuring out how to disentangle ourselves from foreign oil dependence, the Bush administration seems to be intent on sinking our energy fortunes deeper and deeper into the hot sands of old Mesopotania—the hot sands of the Middle East. What is this administration's total energy agenda? Is oil the only card in the energy deck which the administration will play?

It certainly appears so. And one has to wonder just how that card is being played. As the world witnessed in the war in Iraq, the administration was much more interested in protecting, defending, and developing Iraq's oil resources than it was in protecting Iraq's cultural or social resources. Early on in the war, coalition forces were ordered to make it a priority to protect the oil fields. Upon their entry into Baghdad U.S. troops were ordered to surround and protect Iraq's oil ministry. Despite clear warnings, coalition forces left Iraq's priceless museums and other government institutions defenseless. On top of that, U.S. forces failed to protect nuclear test facilities. This is especially puzzling in light of the administration's often stated concerns about dirty bombs and the pilfering of nuclear material by terrorists. So where are our priorities? What is the United States really up to in Iraq?

If the United States were really intent on developing a smart, commonsense oil policy, we would be taking additional measures to better balance our supplies from other nations; we would be carefully using our strategic reserves to hedge against future foreign manipulation; we would be promoting industrial energy efficiency, and we would be nurturing all forms of alternative sources for our energy and transportation needs, including coal, renewable, and biomass-based sources.

I have proposed my own commonsense proposal to help mitigate the growing global dependence on oil supplies from volatile regions. The United States encourage the transfer of our own clean energy technologies to other nations, especially developing countries who will increasingly be buying into the same finite oil markets that we are purchasing from. Such efforts are critical in order to satisfy our energy security needs as well as to address related economic, job creation, trade, and environmental objectives. The demand for oil from other countries will be increasingly fierce, and we have only a narrow window of opportunity ahead. Last year, the administration, at my urging, released a plan for just such an initiative intended to help open international markets and export U.S. clean energy technologies. However, little, if anything, has been done to implement it. Where have we seen this strategy before? The answer is, we have seen it virtually everywhere with this administration—from

homeland security to No Child Left Behind.

Furthermore, the administration's Fiscal Year 2004 budget confirms some of my worst fears. When it comes to domestic issues, the plan of administration officials these days is about outsourcing, downsizing, reorganizing, reducing, cutting, slashing, slicing, dicing, and carving up the Federal Government. It is a tailor-made infomercial for the benefit of all-too-receptive corporate donors.

The administration's energy budget is a sham, and its energy program requests are no different. The Department of Energy cut $20 million for the Clean Coal Power Initiative. The Department of Energy's oil and gas research program was cut by more than 50 percent. In order to squeeze enough dollars out of the budget for the President's new hydrogen initiative, other critical energy programs were severely cut. Yet the administration's hydrogen program is years away and cannot serve as a substitute for conservation, energy diversification, or other key energy programs. Moreover, a proliferation of ''new'' initiatives have been announced by this administration that are purported to solve our energy needs, especially for fossil fuels. We have the hydrogen initiative, a carbon sequester program, FutureGen, a national climate change technology initiative, and more. My question is: Can anyone explain how these ''new'' initiatives will work together? Where is the money to provide for all of this without compromising other important efforts? The fact remains that there is no major increase in real funding or commitment for energy programs, just a proliferation of empty words from this administration. I do not believe we can treat our energy illnesses with the administration's current budget prescription.

In the 107th Congress, both the House and Senate actually passed comprehensive energy policy bills. After lengthy debate in conference, important progress was made. A number of compromises were struck, but in the end the conferees could not reach a final agreement. This should come as no surprise.

In fact, this administration made no real effort to help get a comprehensive, national energy strategy passed. President Bush suggested that energy was a cornerstone of his administration's agenda, but what did he do during the energy conference in the 107th Congress? Nothing. Oh, his rhetoric may have sounded good on the campaign trail. He tried to talk a good game, but when it counted, the administration took a decidedly hands off approach.

This new Senate Energy bill, S. 14, the House Energy bill, H.R. 6, and the White House's interest overall are intended to cater to the administration's friends in industry. That is it. That is all. In its present form, these energy bills are no victory for our country. They are a victory for special interests and a text-book example of our inability to set a long-term energy policy course. Now, we are on the brink of another important opportunity squandered. While there are some solid trees planted in the bill, this legislation will not produce the diverse energy orchard we must have to meet our needs down the road. The President and the Republican-controlled Congress are simply not prepared to make the tough choices that the Nation needs for a viable, long-term energy policy. How long will we wait?

The President would love a one-day Rose Garden ceremony and a 2004 campaign press release. But, given this administration's track record, an energy bill would simply be another empty soapbox for this President to stand on, as he has already demonstrated with the education soapbox, the farm legislation soapbox, Afghanistan soapbox, and the Homeland Security soapbox, and other soapboxes. The Congress has passed bills and supported the administration's rhetoric, but then the necessary resources to carry them out never materialize. This is the same fate that awaits an energy bill this session.

It takes leadership and it takes hard work to move forward in a responsible, balanced, and intelligent way on energy policy. Yet this administration makes do with a cheap knockoff. It looks like the real thing, but it is a fraud and a fake. It is much like cotton candy. At first glance, it may look good, but there is just no nutrition. In reality, it is just puffed air.

In the last 5 years, I have worked hard to help develop a balanced and bipartisan package of provisions to advance our national energy policy goals—provisions that could go a long way toward addressing both the near- and long-term energy needs of our Nation, while also providing numerous benefits both at home and abroad. These provisions garnered bipartisan support in the Senate Energy bill in the 107th Congress, including clean coal, climate change, international technology transfer, and other important provisions. Together, these initiatives represent a bold new enterprise—stepping stones along a 21st century energy pathway.

Yet the administration seems intent on just blocking many of these bipartisan ideas. For example, in a May 8, 2003, statement on the Senate Energy bill, the White House stated, in part:

> The Administration is not convinced of the need for additional legislation that would attempt to limit or direct U.S. global climate change, and will oppose any climate change amendments that are inconsistent with the President's climate change strategy . . . we urge the Senate to allow . . . the President's strategy to go forward unimpeded.

Well, I continue to ask, just what is the President's strategy—cotton candy?

Last session I introduced legislation with Senator TED STEVENS of Alaska that would allow the United States to deal more easily with the complex issues involved in climate change. The amendment to be offered by Senator BINGAMAN is based on last year's Senate-passed provisions. It would create a comprehensive strategy based on credible science and economics to guide American efforts to address climate change issues in our own backyard and around the world. This amendment also would establish a major research effort to invent the advanced technologies that we will need to effectively reduce greenhouse gas emissions that contribute to global warming. We must develop a commonsense package of technology, science, policy and other market-based measures to address this growing global problem. And it is growing. The question is what are we waiting for?

Specifically, the Bingaman amendment includes provisions that would commit more than $4 billion during the next decade to vastly expand U.S. research into technology that could help to address the problem of global climate change. The amendment provides for the creation of a more focused administrative structure within the Federal Government, including an office in the White House to coordinate and implement a national climate change strategy. We cannot continue to just ignore this problem.

This amendment does not mandate a reduction of emissions by American companies. Instead, this package places the Nation on a commonsense glidepath that is both achievable and sustainable. It provides the framework to address the long-term goal of stabilizing atmospheric greenhouse gas concentrations by working with other nations, while leaving the actual technology and policy decisions to energy experts and the marketplace.

China, Brazil, and India, among other states, will soon surpass the industrialized world in emissions of greenhouse gases. It is important that we work in coordination with these nations to reduce their emissions at an early stage. American know-how, technology, and ideas can help to lead to the implementation of a range of marketable clean energy technologies, not just in the United States, but also around the world.

It is time for real action. A cherry-picked energy plan based on soliciting big industry campaign contributions is a bankrupt policy. It takes this Nation nowhere, and it puts our future at risk.

We cannot continue energy programs and budgets if we ever hope to meet our long-term needs. We cannot continue forestalling the development of a long-term energy strategy with a phantom plan. The Nation is at a turning point. Our energy policy needs must stop being dominated by a crisis management policy. We must work to

enact appropriate energy legislation so that we avoid the consequences of our long failure to respond. We cannot wait for the next energy crisis or the next spike in natural gas prices—or the next California electricity debacle. We cannot just go out and seize another oil rich country in order to solve our energy problems. We must enact bipartisan energy legislation that will deliver a thoughtful and reasoned energy package.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I hope we are moving toward the opportunity to vote shortly. But, in the meantime, I cannot resist making a few comments.

I don't see it at all the way the Senator from West Virginia has described it. Over the last couple of years, I have worked very hard to bring an Energy bill before the Senate. I believe we have an Energy bill before us that is very broad, that is very encompassing, and that is very balanced. That is what we have needed to do.

We have been working now for 2½ years, and we generally have not been able to get over the obstacles to be able to get it completed, and I think I understand why. But it is time for us to decide: How important is it for us to have an energy policy?

The first thing this administration came up with when it came into office was an energy policy with a direction, and we have been fooling around with it ever since.

Last year, we couldn't even get it through the committee. We had to go right to the floor. We went to the conference committee and worked very hard. We did not succeed.

But this is a balanced approach. We are talking about an opportunity to have conservation, which is one of the things we need to do in energy. We are talking about the opportunity to have alternative sources of energy, which we will come to over a period of time.

I remember very much a number of years ago somebody coming to Casper, WY, talking about energy, saying: We have never run out of energy because we have always found a new source. Well, we probably will, but we need to be doing that in research.

The bill involves research in a variety of different areas that relate to energy. What else could you do besides research? There is a very great emphasis on hydrogen in this administration and doing something that will move us to a different kind of energy opportunity. Coal might be the basis for that opportunity. It would be much more economical to move.

Lots can happen in the future. What we are faced with doing in this bill relates to the fact that the energy industry has moved faster than we have moved. This is not a matter entirely of setting a future; it is a matter of catching up with what has already been done. And much of that is evidenced in the electrical industry.

Years ago everything we did was designed to have an energy company and an electric company that had their own distribution. They did their own generating. It was all in one area. That is not the case anymore. Thirty percent of electrical energy is generated by merchant generators. That energy has to be moved from the generator to the market. It is quite a different situation. It is already there, yet we seem to resist talking about it. We seem to resist accepting it. We seem to resist making that an advantage for us rather than a problem, and we have an opportunity to do that.

One of the other issues that is emphasized is domestic production, of course. It has already been pointed out that some 60 percent of oil comes from overseas. We are talking about the possibility of shortages of natural gas. I can tell you something: We have a lot of natural gas right here in this country, much of it in the west where I am from. We could be producing a great deal more if we had the policy to go ahead and do that, if we had the opportunity to have multiple use of lands to protect the environment and produce at the same time, to be able to have the transportation to move it to the market. These are the things that are there and available. That is what this bill is about.

To suggest that this bill does not have any substance to it is simply not right. It is a good excuse if you don't want to vote for it. But the fact is, there is substance. The fact is, it does move us forward. The fact is, we need to move it on.

We are talking now about an electric title, which I think is crucial. We were just upstairs talking about what energy does for jobs. Remember the economy started to turn down in the year 2000. We have been working at all kinds of things ever since. Here is one that has probably more of an immediate impact to jobs than anything else we could do, not only in production but, of course, it has an impact on all business activities.

How important is electricity to us? Everything we do—travel, gasoline, natural gas, all these things. So I guess it is sort of frustrating to hear there is no basis to this, that we don't need to hurry doing this. Yet the fact is, it is probably one of the most needed things we have had for a number of years. And yet we continue to find excuses for not going forward.

I hope we can move. We can complete this bill this week. We have already discussed almost all these items for a long time. It is time to move, and I hope we do.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Madam President, I commend Senators CANTWELL and BINGAMAN for their amendments to the electricity title that will, in effect, ban all forms of market manipulation and add important merger provisions. I am terribly disappointed that the Cantwell amendment failed by a vote of 48 to 50. She did an extremely fine job of laying out this program. I am sorry it didn't pass. It should have. I think there will be some Senators who voted against her amendment who will regret having done so.

We know that the energy crisis in California in 2001 resulted from market manipulation and price fixing. People of the State of Nevada were severely hurt by this manipulated electricity market, as were consumers all over Western States.

The State of Nevada has just completed the most contentious legislative session in the history of the State. The Governor of the State, after the regular session ended, had to continually call special sessions. I don't really know how many he called—two, three, four, five—but they were there for a long time. Finally, because nothing could be completed, the Governor filed a legal action with the Nevada Supreme Court. After the Supreme Court acted, action was taken. The provision in question that went before the supreme court is whether the Nevada Legislature had to pass tax increases by a two-thirds vote. The Nevada Supreme Court said no and they said yes, but regardless of that, I spoke to the majority leader from Nevada, Bill Raggio, today. He said he made the determination that it was going to pass by two-thirds, and both the assembly and the house ultimately did that.

The reason I mention the difficulty they had is because of the tremendous burden the State of Nevada had in not having enough revenues to meet the projected deficit, $1 billion in the State of Nevada, much of which was caused by the problems that developed in California with manipulating the energy prices there.

The State of Nevada had other problems: unfunded mandates that we have passed on to them with homeland security and Leave No Child Behind, which has left a lot of kids behind. The fact is, the electricity rates had a lot to do with that very difficult legislative session. That session took a long, long time to complete. Since 1999, electricity rates in the Las Vegas area have increased by more than 60 percent. Over the same period, natural gas prices across Nevada have doubled. It is a sad state of affairs that some seniors, especially, and low-income families in Nevada are being forced to go without prescription drugs or cut back on food in order to pay their electricity rates. That is a fact.

The bills that come from these increased electricity rates are a real burden, as the Senator from Washington,

Ms. CANTWELL, mentioned today. She read specific letters from people in the State of Washington where these prices were preventing them from getting proper medical care and having the ability to pay their rent. The same applies, of course, in Nevada.

These wild price increases in electricity were painful to homeowners. They also made it hard for businesses to expand or make long-term plans. Nevada consumers were being asked to pay for the same very expensive long-term contracts negotiated by utilities in 2001 at the time of the California energy crisis. It cost Nevada ratepayers hundreds of millions of dollars.

Nevada Power, the power company that serves the Las Vegas area and southern Nevada, has flirted with bankruptcy. It is rated at junk bond status where in the past it was one of the strongest utilities in America. What does this junk bond status mean? It means the cost of money for the utility to purchase power for Nevada is very high.

The weakened financial condition of our utility is a burden to our ratepayers. I can remember during some of this time that I had to call the Governor of California to see if there could be some arrangement made so the power that the people of the State needed coming from California could be provided. I had to have a signoff from the Governor of California. This was difficult. They were in deep distress but their distress was passed on to Nevada.

The weakened financial condition of our utility is a burden to our ratepayers and the taxpayers of the State of Nevada. After Enron was exposed for its unfair and unethical practices, whether it was Fat Boy or Get Shorty, all these practices had an impact in Nevada. After these unfair practices were exposed, a subsidiary of Enron stopped delivering electricity to Nevada Power because of its weakened financial condition. Then adding insult to injury, this Enron subsidy sued Nevada Power for the losses it might incur if it couldn't sell the power at the contract price.

In a recent ruling, FERC upheld the contract the utility signed at these exorbitantly high prices. Again, our ratepayers were not protected from abuses during the California energy crisis. It is not consistent with rational thought that FERC could do this but they did it.

As the western energy crisis and Enron's collapse made clear, electricity markets are ripe for manipulation unless clear safeguards are put in place and companies are held accountable. The electricity title should ban all forms of market manipulation and contain concrete penalties for those that break the rules. The electricity title should strengthen FERC's authority to review public utility mergers for electric and gas—there will be an amendment that will focus just on gas in this regard—holding company mergers and generation assets, and ensure any consolidations are in the public interest.

I extend the appreciation of the entire Democratic caucus for the work done by the manager on our side, Senator BINGAMAN. Senator BINGAMAN is an intelligent Senator. He is experienced. He has done everything he can to help this bill be a bill that is a good bill which is indicated by the tremendous amendments he has filed that we will vote on in the next few hours.

Last year Democrats worked with Republicans to pass energy legislation by a vote of 88 to 11. This vote was to strengthen our national energy security, safeguard consumers and taxpayers, and protect the environment. The heavy vote is an indication that we were able to accomplish that.

That vote came after 24 hours of debate over the course of 8 weeks, and only after the Senate dispensed with 144 amendments.

Madam President, the distinguished Senator from Tennessee, the majority leader, has said we have been on this for 16 days. He has to say that with tongue in cheek. Many of those days have been Fridays and Mondays, when everyone knows when you turn to a bill for a day or two and it is a Friday or Monday, that is like turning to nothing. It is filler. Nothing happens. Most of those days the managers weren't even here. They said we are going to energy on short notice. The 16 days the distinguished Senator from Tennessee talked about really is more like 7 or 8 days.

As we know from past experience, the effort to craft comprehensive energy policy involves working through a series of complex issues. We are currently working through one of the most complex issues right now, electricity policy. These issues take time to debate, and we have a duty to the American consumer to ensure that we carefully consider what our energy policy will look like in the future. We have spent significantly less time debating the Energy bill this year. We have considered 42 amendments and held 15 rollcall votes. We have spent less than 7 days on this bill, considered 102 less amendments, and conducted 20 less rollcall votes than last year. There are a number of issues outstanding: Electricity; global warming; renewable portfolio standard; CAFE standards, on which we have debated two amendments but others need to be considered; hydroelectric dam relicensing; nuclear energy; natural gas; energy efficiency incentives; wind energy; carbon sequestration; exploration of the Outer Continental Shelf, and the energy tax package, just to name a few.

These amendments offered on this Energy bill dealing with electricity are not specious amendments, they are substantive amendments. The Cantwell amendment vote was 48 to 50. Without arm-twisting on the other side, Senator CANTWELL would have won. These are serious amendments people wish to offer. They are not single amendment issues. I expect there will be several amendments on each subject. We ended with a good product last year when we let the Senate work its will on the legislation. We need to spend adequate time this year to get a similar result.

I see the Senator from Florida on the floor. My understanding is that he wishes to speak.

Mr. THOMAS. I wonder if it would be possible to propound this unanimous consent request.

Mr. REID. Madam President, the Senator has been here all day. It is my understanding that the Senator wishes to speak; is that right?

Mr. NELSON of Florida. Yes, for perhaps only 3 or 4 minutes.

Mr. REID. I thought the Senator had longer to speak.

Mr. NELSON of Florida. I will accommodate the leadership. Whatever is the pleasure of the leadership.

Mr. DOMENICI. Madam President, the Senator has no right to decide who speaks. They have to seek recognition.

Mr. REID. Madam President, as I have said several times during the day, and yesterday and the day before, I have the greatest respect for the Senator from New Mexico. But the Senator from Florida, who is gracious and said he would take just a few minutes, has a right to speak as long as he wants to before we have votes on this.

Mr. THOMAS. The Senator from Wyoming was on the floor before he was, however.

Mr. REID. I have the floor.

Mr. DOMENICI. The Senator cannot dole out the time. He has no right to dole the time out to other Senators, Madam President.

Mr. REID. Madam President, I have the floor, and I have the right to speak about anything I want to speak about. The fact is, the Senator from Florida has been here several times today.

Mr. DOMENICI. Madam President——

Mr. REID. I have the floor, Madam President. I have the floor.

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. The Senator from Florida has been here several times during the day. He has a right, prior to our entering into this unanimous consent agreement, to speak for as long as he wants. He said he chooses not to do that, and that is in keeping with the courtesy that this junior Senator from Florida extends to everybody. I want to make sure he doesn't have hurt feelings and that he has the opportunity to speak. He knows the rules of the Senate and he has a right to speak if he wishes.

Having said that, I am willing now to have this unanimous consent agreement proffered.

Mr. THOMAS. Madam President, I ask unanimous consent that there now be the following debate in relation to the listed amendments: Bingaman No. 1413, 10 minutes equally divided in the usual form; Bingaman No. 1418, 10 minutes equally divided in the usual form. I further ask consent that following the debate, the Senate proceed to a vote in relation to amendment No. 1413, to be followed by a vote on amendment No. 1418, to be followed by a vote in relation to the Feingold-Brownback amendment No. 1416, provided there be 2 minutes of debate equally divided prior to each vote.

Mr. REID. Madam President, reserving the right to object, I ask if my friend, the distinguished Senator from Wyoming, would modify his unanimous consent request to allow the Senator from Florida, prior to this kicking in, to speak for up to 5 minutes.

Mr. THOMAS. I have no objection to that.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. Madam President, not wishing to object, I just indicate that I did not intend to ask for 10 minutes of debate on each of my two amendments, and then in addition ask for 2 minutes equally divided. I just intended to have some time to refresh people's memories of what the two amendments were, since they were proposed and debated yesterday.

As far as I am concerned, once I have had a chance to describe my amendment, and there has been any discussion in opposition, we can vote on the first of the Bingaman amendments.

Mr. REID. Madam President, I ask the Senator to further modify the request to eliminate the 2 minutes of debate prior to the vote.

Mr. THOMAS. That will be fine.

The PRESIDING OFFICER. Is there objection to the request as modified?

Without objection, it is so ordered.

The Senator from Florida is recognized.

(The statement of the Senator from Florida, Mr. NELSON, is printed in the RECORD under ''Morning Business.'')

AMENDMENT NO. 1413

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, as I understand it, I now have 5 minutes to describe the first of the two amendments I have offered to the electricity title of the bill.

Let me make the obvious point at the beginning of my description, and that is that the amendment tries to do two basic things. It proposes language which would ensure that someone at the Federal level—in this case, the Federal Energy Regulatory Commission—has jurisdiction to review purchase and sale of generation companies and generation assets, the companies that actually produce the electricity about which we are talking and which we have all come to expect to get when we turn on the switch and see the room light up.

We ought to have someone with authority over that because under the Domenici substitute as it now is, nobody has authority at the Federal level. It is not realistic to suggest the States can handle that problem. They cannot. There is no prohibition in law, and there will be none under this proposal, to one company acquiring all the generation in one particular region or one company acquiring all the generation in one part of the country. We should have someone reviewing the acquisitions of that generation capacity to be sure that ratepayers are looked out after. That is the first thing the amendment does.

The second thing the amendment does is to prohibit cross-subsidy between utility companies and affiliated companies that may be in the same general holding company. We are eliminating the Public Utility Holding Company Act, so there is going to be no restriction as provided under that act. We need to be sure that cross-subsidy does not occur.

I have an article dated December 26 of last year in the Wall Street Journal which does a very good job of pointing out the problem that needs to be fixed. It says:

> Energy companies burned by disastrous forays into commodities trading and other unregulated businesses are increasingly seeking to pass some of the financial burden on to their utility units. This could lead to higher electricity rates for consumers in coming years.

Then it goes on to say:

> Utilities are being nudged to buy assets from affiliates to make loans to down-at-the-heels siblings or pass more money to their parent companies.

The article goes through a series of examples of how this is happening.

One example I thought was particularly constructive was Duke Energy. In July of 2001, a Duke accountant contacted regulators complaining that expenses generated by unregulated parts of the company were being transferred to the books of Duke's utilities.

We need a capability at the Federal level to protect the ratepayers and to ensure that does not happen. We do not have that in the underlying Domenici substitute. The underlying substitute does say that the Commission shall look out to be sure the public interest is served, and that is useful. That, unfortunately, is very general.

What we need in the law, I firmly believe, is a bright line requirement that in order for these kinds of acquisitions and sales to occur and to be approved, the Federal Energy Regulatory Commission ought to determine that there is not going to be a cross-subsidy as a result, that utilities will not be loaded down with debt from nonutility companies held by the same company. We need to keep the protection in the bill.

Utilities are a different kind of business. It is important that the lights turn on when we flick a switch. It is important that other utilities function. In this case, in this electricity title, we need to be sure that ratepayers are adequately protected.

I am persuaded that this amendment will strengthen the bill. I hope very much my colleagues will support it. It is exactly the same language we had in the bill last year, and last year there was an effort to delete the language which I am offering as a second-degree amendment, and that effort lost in a vote of 67 to 29. So a majority of the Senate is on record supporting the language I have proposed as an amendment to the underlying Domenici substitute. I hope Members will support the amendment. It will strengthen the electricity title. I very much believe it is good public policy and will serve us well in the years ahead when some of these problems recur, as I fear they will.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, how much time do I have?

The PRESIDING OFFICER. Five minutes.

Mr. DOMENICI. Madam President, I wish to make a point in case there are people observing the Senate. Senator NELSON from Florida indicated he had been waiting a long time—maybe all day—to be heard. There are a lot of Senators all day long who would like to come to the floor and be heard. The Senate is not the place where we just come down to the floor and automatically, if we come here, we ought to be heard. We have business, and we have rules. I am glad the Senator found time and we allowed 5 minutes and we allowed Senator BYRD 30 minutes, but we are engaged in a bill we are trying to pass.

I had a lengthy discussion with my friend from Nevada, and I have no doubt he wants to get this bill finished. I thank him for his willingness to move along. We will have another amendment ready pretty soon.

My objection to the Bingaman amendment is very simple. He alludes to last year and what happened with amendments such as his last year. There was no alternative last year. There is an alternative this year. It is the underlying electricity bill, which clearly protects the citizens, the users, and all of those concerns about mergers.

The merger review in our section is supported by groups such as the National Rural Co-ops, the rural power people, and many others. If, in fact, we did not have protection in this area with reference to gobbling by merger, obviously they would not be for this underlying bill. So I oppose this amendment because we do not have to

expand FERC's merger authority. They have merger authority.

Under current law, electric merger departments are heavily regulated. FERC, the Department of Justice, and the Federal Trade Commission must review proposed mergers for their impact on competition. States also review proposed mergers. Expanding FERC's authority to cover the acquisition of generation facilities is unnecessary. We have plenty of merger authority if that is what we are worried about. We are getting rid of undue regulation. There is no need to impose more.

Further, changing FERC's review standards will impede efficient transactions, and we do not need that today, either.

So while I have great respect and admiration for my friend, I believe the electricity bill that is pending before us, which has been carefully put together, has broad support all based on the fact that it fits all the pieces together properly. It should be left alone. We do not have to add more merger review layers.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, my understanding is that at this point, under the unanimous consent agreement, I am allotted 5 minutes to talk about my second amendment. Is that accurate?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 1418

Mr. BINGAMAN. Madam President, I will describe this second Bingaman amendment which was offered last evening. It was offered at a time when very few Senators or their staffs were in their offices and were not following this issue, I am afraid. The amendment tries to clarify a point in the bill that I think is very important.

Senator DOMENICI's substitute contains a delay in the issuance of FERC's standard market design rulemaking and it delays it until July of 2005, and that is not of concern. I accept that. Many believe the rule goes too far, should be dramatically modified, changed or completely abrogated, but others think we should go ahead right away. He has decided to put it off until July of 2005. So I am not involved in that in my amendment.

My amendment leaves the delay of the standard market design rule in place so it will still be delayed until July of 2005. However, in an effort to prevent FERC from renaming its rule, I believe that was the purpose that Senator DOMENICI and his staff had in an effort to keep FERC from renaming its rule and issuing that same rule, or something very close to it, under a different title, the bill would prohibit any rule or order of general applicability on matters within the scope of the rule. I think the clear meaning of that language is that FERC could not issue a rule or order a general applicability on any issue that is dealt with in the proposed standard market design for 2 years from now.

Standard market design covers a world of issues. One example, FERC currently has a rule in process related to interconnections to the transmission grid. No matter what that rule said, FERC would be prohibited from issuing that rule, as I read this language. I do not think that was the intent of my colleague from New Mexico or others who worked on this bill.

There are even rules that the Commission is required to issue by provisions in the bill. We have various provisions in other parts of this bill that say the Federal Energy Regulatory Commission shall issue an order on this issue, the Federal Energy Regulatory Commission shall issue an order on this subject. The bill requires rules on mergers, on transmission access by public power entities, on participant funding, and on other matters.

We are in the ironic position of having this one provision which says an order cannot be issued, a general applicability, on any subject that is covered by standard marketing design and at the same time we are saying you have to go ahead and issue orders of general applicability in these other areas.

So I am trying to get that clarified. I do not believe we are in disagreement on the substance but I do think it is important that we provide clear language or else we will be shooting ourselves in the foot.

The amendment I am offering says we would not want FERC issuing any final rule or order of general applicability establishing a standard market design. I think that is what we are trying to do. That is all my amendment does is to clarify that is what we are trying to do. I hope everybody will support it. I think it will make very clear that FERC will be able to go ahead and do the work that it is required to do in the next couple of years, between now and July of 2005. If we have another crisis such as we have had out in California or out in the west coast, we are going to be expecting FERC to issue orders of general applicability. They should be doing that. They should not be issuing a standard market design, and I am not suggesting they should, but they should have the authority to issue orders of general applicability and that is exactly what my amendment would give them.

I hope very much my colleagues will support the amendment and we can improve the bill by doing so.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, one of the most difficult negotiations in this bill was getting the language that prohibited the finalization of SMDs until July 1, 2005. The occupant of the chair knows that. That is what we have been talking about. Other Senators wanted a longer time. Some wanted a shorter time. Well, Senator BINGAMAN changes the language surrounding that July 2005 agreement. Frankly, I would be letting down all of those different groups that worked together to negotiate the language that said the finalization of SMDs will be delayed until July 1, 2005; by changing the words around it, all kinds of groups will be saying we have let them down; we changed what we agreed to.

In other words, I regret to say that the exact words surrounding this 2005 letter expansion are binding. Senator BINGAMAN wants to clarify it one way. There will be a whole group of people who worked on it saying, well, I did not want it clarified that way. I wanted it clarified another way.

The point is, it will work like it is. It might work like he wants it to work but the problem is we agreed to these words. Believe me, I am not agreeing to words just for words. They will work. It is just that the distinguished Senator would like to be more precise, more specific, his way. In doing that, he puts this Senator, who has worked this out with all of these other people, in a bind that if I say, yes, let's change it, then we are going to have telephone calls besieging Senators all over saying vote no; the senior Senator from New Mexico is not doing what he told us he would do.

Now, I regret that but that is just the result of the way we do things. I am very proud of the words, the date, and the negotiation. I do not lose a lot of Senators on that language and that date. Maybe six or eight wanted more time but we got a pretty good deal for almost everybody. So I just cannot take the risk. I am sorry.

With that, I do not need any more time. I yield back any time I have remaining.

VOTE ON AMENDMENT NO. 1413

Mr. DOMENICI. I move to table the first Bingaman amendment, which is the pending subject matter, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—53

Alexander	Domenici	McConnell
Allard	Ensign	Miller
Allen	Enzi	Murkowski
Bennett	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Breaux	Graham (SC)	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Cornyn	Landrieu	Talent
Craig	Lincoln	Thomas
Crapo	Lott	Voinovich
DeWine	Lugar	Warner
Dole	McCain	

NAYS—44

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Byrd	Feinstein	Pryor
Cantwell	Graham (FL)	Reed
Carper	Harkin	Reid
Chafee	Hollings	Rockefeller
Clinton	Inouye	Sarbanes
Collins	Jeffords	Schumer
Conrad	Johnson	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—3

Biden	Kennedy	Kerry

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I ask unanimous consent that the next two votes in this series be limited to 10 minutes each.

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

Mr. FRIST. Mr. President, there will be additional votes this evening. We are going to stack these two rollcall votes at 10 minutes. The chairman and ranking member have been here since 9 o'clock this morning. They have been working hard. We will continue tonight. We will finish the electricity amendment today. Therefore, Members can expect votes into the evening.

VOTE ON AMENDMENT NO. 1418

The PRESIDING OFFICER. The question occurs to the amendment of the Senator from New Mexico.

Mr. THOMAS. Mr. President, I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

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

[Rollcall Vote No. 314 Leg.]

YEAS—54

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Murray
Bond	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham (SC)	Roberts
Bunning	Grassley	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Cantwell	Hollings	Smith
Chambliss	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Cornyn	Landrieu	Talent
Craig	Lott	Thomas
Crapo	Lugar	Voinovich
DeWine	McCain	Warner

NAYS—44

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Pryor
Byrd	Graham (FL)	Reed
Carper	Gregg	Reid
Chafee	Harkin	Rockefeller
Clinton	Inouye	Sarbanes
Collins	Jeffords	Schumer
Conrad	Johnson	Snowe
Corzine	Kohl	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	

NOT VOTING—2

Kennedy	Kerry

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1416

The PRESIDING OFFICER. The question now occurs on the Feingold amendment No. 1416.

Mr. DOMENICI. Mr. President, parliamentary inquiry. Is there any time to speak on this amendment?

The PRESIDING OFFICER. There is no time to speak on the amendment.

Mr. DOMENICI. I move to table the Feingold amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Mississippi (Mr. LOTT) is necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER (Ms. COLLINS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 315 Leg.]

YEAS—50

Alexander	DeWine	Lugar
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (NE)
Bond	Fitzgerald	Nickles
Breaux	Frist	Pryor
Bunning	Graham (SC)	Santorum
Burns	Grassley	Sessions
Campbell	Gregg	Shelby
Carper	Hagel	Smith
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thomas
Cornyn	Kyl	Voinovich
Craig	Landrieu	Warner
Crapo	Lincoln	

NAYS—48

Akaka	Dorgan	Lieberman
Baucus	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Brownback	Graham (FL)	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Roberts
Chafee	Inouye	Rockefeller
Clinton	Jeffords	Sarbanes
Collins	Johnson	Schumer
Conrad	Kennedy	Snowe
Corzine	Kohl	Specter
Daschle	Lautenberg	Stabenow
Dayton	Leahy	Talent
Dodd	Levin	Wyden

NOT VOTING—2

Kerry	Lott

The motion was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I wonder if the minority whip will advise me—we are on the electricity title—are we ready to vote on passage of the electricity title or do you have additional amendments?

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Madam President, as I indicated last night, we have Senator DAYTON who still wishes to offer amendments. Senator CANTWELL has at least two more amendments. Senator FEINSTEIN has an amendment. Those are the ones I know of at this time. And Senator BOXER has an amendment. Senator CANTWELL is here. She has a very important amendment to offer.

I relate to my distinguished friend, the manager of this bill, that Senator KENNEDY is here and wishes to speak also. We are in a position where we are ready to move forward on the electricity title with a number of amendments.

Mr. DOMENICI. Does Senator KENNEDY have an amendment?

Mr. REID. The Senator from New Mexico will have to ask Senator KENNEDY.

Mr. KENNEDY. No. It has been the decision of the leadership to have a vote on Judge Pryor tomorrow. Under the agreement, we will have 1 hour for debate. This is an important nomination. I wish to address the Senate on that matter since we are going to be under very strict time limitations on the morrow.

We had that series of votes. I want to accommodate the managers of the bill. If there is an amendment that needs to be disposed of, I will be glad to wait; otherwise, at some point, I wish to address the Senate because this is an extremely important nominee. The nomination was just reported out of committee, and we will be voting in a very short period of time on the nominee. It is an extremely important nomination. If the decision was to not have that vote on the morrow, I am glad to withhold my statement and make my statement at the time the Senate addresses the nomination. I will certainly work with the floor managers to work out a time that is suitable, but I am ready to speak. If there is a pending amendment, and it is the desire of the floor manager to move ahead, I will accommodate him.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I say to the distinguished Senator from Massachusetts, I will speak to the majority leader, as soon as an amendment is laid down, with reference to the issue Senator KENNEDY just raised. I understand if we proceed on an amendment, we will have an hour or so, at which time I will talk with the majority leader and tell him of your desire and others to speak, and see what his wishes are in that regard.

Mr. SCHUMER. Will my colleague yield?

Mr. DOMENICI. Without losing my right to the floor.

Mr. SCHUMER. There are others who wish to speak in addition to the Senator from Massachusetts.

Mr. DOMENICI. I will mention the Senator's name.

Mr. REID. I know the Senator from New Mexico has the floor.

Mr. DOMENICI. Yes.

Mr. REID. Madam President, earlier today I alerted the Senate that we would have members of the Judiciary Committee come to the floor, and we have members of the Judiciary Committee here today. We have the Senator from Massachusetts, who is a three-decade member of that committee. We have Senator SCHUMER, who is a relatively new member of that committee. Sometime tonight they are going to speak on the Pryor nomination. I indicated that would happen, and that is going to happen. They have an absolute right to speak. I know the Senator from Massachusetts is being kind and generous, but he has a right to speak. It can either be done now or 5 minutes from now or 10 minutes from now, but the Senator from Massachusetts is going to get the floor, and he is going to speak on the Pryor nomination, as I alerted the Senate today that would happen.

We did not make the choice that we would vote for the seventh time on Estrada today. The votes have not changed. We did not make the decision we would vote on Priscilla Owen. We have voted three times, and the votes have not changed. We did not make the decision that the Pryor nomination would be voted on without a single bit of debate on the Senate floor, but just move it forward for cloture. This is not as if it is a surprise.

We telegraphed our intentions today that there would be members of the Judiciary Committee who would come to the Chamber and speak, and that is going to happen tonight.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I cannot do anything more than that, and I think the distinguished Senator from Massachusetts accepts my statement as an honest statement.

Mr. KENNEDY. Yes.

Mr. DOMENICI. I will leave the floor. I will find the leader, and I will tell him what is going to happen. I will seek his advice and give him my advice. I very much appreciate the Senator from Massachusetts letting me know. We have a number of amendments left. We have important legislation before us. It is absolutely impossible to do the people's business if, in fact, during the next 12 hours we have 6 or 8 hours taken up by speeches with reference to a judge. We will get it done, but we will be here Sunday, which is all right with this Senator. I do not think I want to let that happen under my watch as manager, but I guarantee my colleagues, for those who insist they are going to speak, I can assure them we are going to be here.

Sooner or later the speeches will run out, and we will be here, and we will take up the pending amendments on this bill. I have been told that by the leader unequivocally. I assume that is true if only 60 Senators stick around. So long as we do not lose a quorum, I presume we are going to be here on Friday, on Saturday, and on Monday to finish this bill. Senators have their rights, but we have an obligation to do this work.

I say to the distinguished whip, if he will call up the next amendment, I will leave the floor and find out what the leader will do about this, and perhaps we can come up with some accommodation with reference to this issue. I thank Senator KENNEDY for his willingness to let me do that.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will proceed then. I just wish to indicate, as someone who also has been a bill manager, I understand completely the frustration the Senator from New Mexico has and his desire to move along. As Senator REID mentioned, we did not anticipate at the time this nominee was reported out that we would have a vote so early in the consideration.

Then last week, the chairman of the committee made a very extensive statement about the nominee and also the procedures of the committee itself, and I want to attempt to correct that record.

We are on the eve of a vote on the nominee, and that has been established by not the Senator from New Mexico but by the majority leader. We are just trying to meet our responsibilities as members of that committee who have strong views and want to share those views with the membership and we also feel a responsibility to tell, to the extent the American people are interested, what our reservations are in terms of the merits and the process.

I say to the Senator from New Mexico, I plan to be here this evening, and if it is the desire of the floor managers to consider another amendment, I am glad to take my turn, although I do think we ought to have at least an opportunity to speak in the next few hours.

I will begin my statement on this nominee. If it so works out and the Senator from New Mexico wants to intercede, I will be glad to try to accommodate him.

Mr. DOMENICI. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. DOMENICI. How long does the Senator intend to speak?

Mr. KENNEDY. I expect to talk probably 30 minutes.

Mr. DOMENICI. Does the Senator from New Mexico have the floor or the Senator from Massachusetts?

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

Mr. KENNEDY. I would rather not get caught into a precise time limit at this time but my general sense is about 30 minutes.

Mr. DOMENICI. Will the Senator yield? I will get right back to him.

Mr. KENNEDY. That is fine.

Mr. DOMENICI. Madam President, let me repeat——

Mr. KENNEDY. Madam President, I think I have the floor but I will yield to the Senator from New Mexico for whatever comment he wants to make.

Mr. DOMENICI. I ask for a couple of minutes, and it will not take any longer.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. First, I say judges are important, and

speaking on behalf of or against judges is very important. I say that not only to the Senators but to our majority leader. It is also very important that we pass an Energy bill. We have been waiting for weeks and weeks. This committee was asked to put a bill together. The Senator from New Mexico wants to get the Energy bill finished. Clearly, I find nothing in the rules that says the Senator from Massachusetts is not entitled to make his speech of 30 minutes or up to an hour. I do believe it is important, nonetheless, that somewhere along the line there be some accommodation and that we proceed to get the Energy bill finished. I understand there are four or five amendments. I wish I could see them sooner or later so I will know what they are about but nobody owes me that, either. We will take it as it comes.

I will ask the distinguished majority leader to be accommodating so we can get this bill finished, but I am doing that with great trepidation, not as to Senator KENNEDY but as to whether there is a willingness to pursue this bill with vigor if that accommodation is made. I am not sure about that based on some things that have been happening but I hope it is. It is with that in mind that I will talk to the leader, hoping it does mean that if accommodation is made, we will proceed with dispatch on the Energy bill.

I thank the Senator for yielding to me.

The PRESIDING OFFICER. The Senator from Massachusetts.

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

Mr. KENNEDY. I will be glad to yield for a question.

Mr. SARBANES. I have been listening to this discussion. Am I correct in saying that the Senator would not be seeking to speak now if the other side had not indicated that they were intending to try to bring the nomination of Mr. Pryor to the Senate tomorrow? Is that right?

Mr. KENNEDY. The Senator is exactly correct.

Mr. SARBANES. The Senator is not inserting himself into the debate on the Energy bill seeking to slow the Energy bill down; he is prompted to do this by the fact that the other side is scheduling this nominee for a vote, I understand, with no debate whatsoever. Is that correct?

Mr. KENNEDY. Well, that is correct. It is not the members of the Judiciary Committee who are holding up the consideration of the Energy bill. It is the decision to put before the Senate, under the legitimate procedures of the Senate, a cloture petition to have a vote on this nominee, effectively shutting off all the debate.

Quite clearly, my own belief is if we had the time, and also had the time during the August recess, to complete the investigation which needs to be done on this nominee, the Senate would be much better informed, the American people would be much better informed, and the judiciary would be much better served. That is not the decision of the leadership and, therefore, we believed that as the day wore on, after 5, we would at least have an opportunity, since this is an enormously serious nominee for a very serious position and there are very serious charges, to address the Senate.

Mr. SARBANES. Will the Senator yield for a further question?

Mr. KENNEDY. Yes.

Mr. SARBANES. It is my understanding that twice this week, if I am not mistaken, we have had to go off of the Energy bill, which we are being told we must move forward, in order to address other judgeship nominees who had previously been voted on a number of times. So we have been diverted off the track of the Energy bill by these judicial nominees, not of our doing but because of the scheduling which the other side has undertaken.

I know our assistant leader has been concerned about that as well, if I am not mistaken, in that regard. Is that not correct?

Mr. KENNEDY. The Senator is correct. As the Senator remembers, I think those votes were in the late morning and even interrupted committee work at that time, which many of us were involved in, let alone the consideration of the Energy bill.

Mr. SARBANES. I thank the Senator.

Mr. KENNEDY. I thank the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Massachusetts.

NOMINATIONS

Mr. KENNEDY. Mr. President, contrary to the widespread impression of a partisan breakdown in the judicial nomination process, Democrats in this closely divided Senate have, in fact, tried our best to cooperate with the President on judicial nominations. We have largely succeeded, even though there are a handful of nominees who we believe are too extreme.

Since President Bush's inauguration, the Senate has confirmed 140 of his nominees and so far blocked only 2. We have said ''no'' in those cases partly because these few nominees were too extreme for lifetime judicial appointments and partly because the White House and the Senate majority have tried to jam the nominations through the Senate without respect for the Senate's advice and consent role under the Constitution and without respect for the Senate rules and traditions.

The nomination of Mr. Pryor illustrates all of these issues. Even his advocates concede that his attitudes and beliefs are the very extreme of legal thinking. I am confident that when the Members of the Senate and the public fully understand and consider his prejudices and attitudes, a majority of the Senate, with the strong support of the public, will agree that he does not merit confirmation to a lifetime seat on an appellate court that often has the last word on vital issues, not only for the 4½ million people of Alabama but also for the 8 million people of Georgia and the 15 million people of Florida. In fact, this nomination does not belong on the Senate floor at this time.

The Pryor nomination was reported out of the committee as a result of a gross violation of the same committee rule of procedure which caused the Cook and Roberts nominations to be held up in the Senate floor earlier this year. The Judiciary Committee has a rule which clearly prevents the termination of debate on a nominee unless a majority of the committee, including at least one member of the minority, is ready to vote on the nominee.

This rule, Rule 4, was adopted at the insistence of Senator HATCH, Senator Thurmond, and other Republicans in 1979, when I was chairman of the Judiciary Committee, as a reasonable protection for the minority. After the rule was ignored in the Cook and Roberts case, we thought we had resolved this matter amicably and equitably. Both nominees were later confirmed based on a clear understanding that Democrats would not in the future be deprived of their Rule 4 rights.

After all, these rules were put in place at the start of this Congress, with the support of the Republican chairman of the committee, and now we have seen a blatant and flagrant disregard, which is not just an issue of procedure but affects the substance of this issue in a very important way.

Just as important is the reason why Democrats were unwilling to vote on this nomination in the committee. The reporting of this nomination was totally premature because the committee was forced to move to a vote in the midst of a serious investigation of substantive questions of candor and ethics raised at the hearing by the nominee's own testimony, by his answers and non-answers to the committee's followup questions.

On Friday, Chairman HATCH presented a version of the history of this nomination and this investigation which does not comport with the facts. I want to go through that history so the Senate can fully understand that Democrats have proceeded expeditiously and responsibly and that the rush to judgment in the committee last week was an effort to cut off an important investigation. The full Senate deserves to know its result before it considers this nomination.

The basic facts on this issue are straightforward. Democrats did not invent the issue. Years before this nomination, lengthy articles in Texas and DC newspapers raised the question of the propriety of the activities of the Republican Attorneys General Association.

It was reported that the organization sought campaign contributions to support the election of Republican attorneys general because they would be less aggressive than Democratic attorneys general in challenging business interests for violations of the law. Some descriptions of this effort characterize it as a shakedown scheme. The leaders of the association denied the allegation but refused to disclose its contributors. They were able to maintain secrecy by funneling the contributions through an account at the Republican National Committee that aggregated various kinds of State campaign contributions, thus avoiding separate public reporting of the contributions or the amount of these gifts. The issue received significant press coverage during the 2002 U.S. Senate campaign in Texas especially since several Republican attorneys general have denounced the association as fraught with ethical problems.

Since Mr. Pryor had been identified publicly as a leader of the association's efforts and the ethical issues raised by it, these issues are obviously relevant to his qualifications. Senator FEINGOLD asked the nominee about it at the June 11 hearing. Until this point in the hearing, Mr. Pryor was, in Senator HATCH's own words, ''no shrinking violet.'' He had been open and honest about his personal beliefs and ideological views. He did not retreat a single step or hedge his opinions. Nor were there any ''confirmation conversions'' taking new views, contradicting old ones. Mr. Pryor was a model of outspokenness, with clear recollections of the details of briefs, legal opinions, speeches, and other complex legal issues.

Only on the issue of the Republican Attorneys General Association were his statements cramped and fudged, his recollections virtually nil. His answers were unresponsive and incomplete. They raise serious questions about his candor and truthfulness. He was asked a broad question reciting the allegations against the association. He was asked whether, if the allegations of soliciting contributions from potential target corporations are true, his own role in the association would present at least an appearance of conflict of interest. His answer was what would have been called a ''nondenial denial'' in the Watergate days. He said the contributions were made to the Republican National Committee, not to the association. He said that ''every one of these contributions, every penny, was disclosed [by the Republican National Committee] every month.''

The association's own materials show that its contributions were being given to the association and that the writing of checks to an aggregated account of the Republican National Committee was merely a way to use a reporting loophole to mask the association's contributions and the amounts of their gifts.

Even more startling, Mr. Pryor's assertion that every penny of the contributions was disclosed by the Republican National Committee was a clear misrepresentation. The fact is, the association and its members have explicitly refused to disclose the contributions. Republican National Committee reports did not mention any association funds, let alone every penny. Mr. Pryor's statement raised a giant red flag.

Senator FEINGOLD immediately told the nominee there would be followup on this issue in written questions. On June 17, Senator FEINGOLD and I both asked the followup questions. We gave him an opportunity to review the previous answers and make them more responsive. He refused. He said: ''I stand by them.'' We asked about other details of the association's operation and his specific role in it. Once again, his answers were unresponsive and silent on key facts.

This careful lawyer could remember the most esoteric details of complex legal cases going back many years but could not remember a single company or person he himself had solicited for the association. He could not recall whether any of the leading tobacco or other companies identified by the President were contributors. He could not remember the name of a single association member or contributor or whether he had ever personally received any of the campaign funds.

Typical was this question and answer: I asked, ''To the extent that the RAGA designated system funds were transmitted to or through another entity, did that entity disclose publicly the funds raised by or for RAGA?''

His answer was a non-answer: ''To my knowledge, RAGA complied with all the applicable campaign laws and its operations.

He later said, ''I never solicited for RAGA a contribution from any person who has been the subject of an investigation or legal action of my office.'' He refused to say whether someone else on behalf of the association had made such solicitations. He refused to say whether contributions came from companies his office might have investigated, but did not.

These issues that were raised about the telephone companies, about the calls, about the meetings, about the breakfast meetings, who was there, have all been left open. There is strong evidence that is in conflict with what the nominee has presented. This is part of the committee's work in terms of the future, to get to the bottom of this, in fairness to the nominee and so that the Senate will be able to make its judgment.

Senator HATCH's floor statement made much of the number of times the Pryor nomination appeared on the committee's agenda. In fact, the Pryor nomination was on the agenda for June 19 but the listing was obviously premature since the answers to our questions had not even arrived. The answers were received on June 25. Again, Pryor was placed on the agenda for the next day, but before any of us had a chance to examine his intricate web of answers, partial answers and non-answers. The nomination was obviously not even close to ready for consideration. Even our first look at the answers made clear there would have to be further investigation, more followup questions. Even Senator HATCH realized proceeding the next day would be inappropriate.

By this time, Pryor's statements had been widely reported and had come to the attention of many people who knew the facts and some who might cast light on the facts that Mr. Pryor could not recall. On July 2, during the Fourth of July recess, just before the long holiday weekend, extensive new material from one such source arrived at the minority office in the committee. After a brief initial review to assess the authenticity and relevance, the material was turned over to the majority staff when the Senate returned from the recess. At the same time, the chairman's staff was fully briefed about the process by which the materials had reached the committee.

Then, contrary to the chairman's floor assertion, a bipartisan group of investigators questioned the source of material in detail. No question was raised about the authenticity of the materials. On the contrary, when the joint staff shortly thereafter interviewed the author of the document, she confirmed the source had full access to them.

The material was then distributed by each side to each member. After reviewing the documents, the minority requested that a bipartisan investigation be conducted. That investigation was to begin July 15, with calls to the association's former finance director and executive director. Until then, not a single document had been disseminated outside the committee.

However, on that day, the majority gave the documents to the nominee and to the Justice Department. Someone on the Republican side gave them to a strongly pro Pryor columnist on the Mobile Register newspaper. The columnist called the former finance director, a close Pryor ally and former campaign director. That call was made before the investigators could reach her, warning her that she could expect a call from the committee staff. Although the call to her did produce

some useful information, it also marked the beginning of a consistent effort by the majority investigators to interfere with the investigation.

After the interviewee stated that she might well have the files of the association, the Democratic investigator requested she provide them to the committee. The Republican investigator told her not to comply with the request and not even to comply with the request to at least begin searching for association materials in her possession.

The Mobile Register columnist disclosed and discussed the documents on July 16, and others in the press wrote about them on the 17th. The committee had a brief discussion of the documents on the 17th with the expectation that the just started investigation would continue on a bipartisan basis in accordance with an investigative plan provided to the majority.

However, at that point, the Republican investigative staff began informing the interviewees that the calls to them were not part of an official committee investigation, implying that they did not have to cooperate.

Between July 17 and July 23, many calls were made in accordance with the plan. Many of these calls did not reach the parties called.

By the time of the committee's meeting scheduled for July 23rd, the investigators had just begun accumulating significant information in accordance with the investigation plan. The day before the meeting, all nine Democrats, having considered the information available up to that point, wrote to the chairman and informed him that the investigation was producing serious and disturbing information, that it would require substantial additional time, that his investigators were interfering with it, and that after it was complete, we would want to question the nominee under oath.

The Republican staff had offered interviews with the nominee before that time, but the Democratic investigators had declined to participate until the basic investigative work had been done, and in any event, the Democratic members wanted to question the nominee in person under oath at the appropriate time.

At the meeting on July 23, the chairman rejected the minority's request out of hand. He insisted on a vote on the nomination without completion of the investigation and without further questioning of the nominee under oath. That was the situation when Senator LEAHY invoked the committee's Rule 4 to prevent a premature vote on the nomination. The chairman refused to follow Rule 4 and insisted on an immediate vote.

The nine Democrats on the committee voted against reporting the nomination, and the 10 Republicans voted to report it, with one member of the majority noting that his vote to report did not mean he would necessarily vote for the nominee on the floor. He also noted that he would want to review the results of the investigation with the nominee before any floor vote.

Despite the lack of co-operation from the majority staff, the investigation has continued. It has developed new information which expands both the scope and the gravity of the original concerns. It tends to show not only that the nominee was not candid with the committee, but that his statements may have been intended to obscure facts that would raise extremely serious ethical or legal questions about the nominee's activities.

I raise these points because the chairman has suggested that these issues are not serious. They are very, very serious. I do not know how it will ultimately come out after the investigation is complete, but as I said in committee, the nomination comes to the floor with a ticking ethical time bomb which might explode at any moment.

There is no doubt that this nomination is not ripe for a vote of the full Senate. The committee majority was not willing to finish its job before reporting the nomination to the Senate. But that is no reason for the Senate to allow the nomination to be voted on, before these matters are thoroughly reviewed, and the nominee has responded.

On the issue of the merits, Mr. Pryor is simply too ideological to serve as a Federal court judge. The concern is not simply that Mr. Pryor is a conservative. The question is not whether all of us agree with his views. Mr. Pryor's litigation positions, public statements and his writings leave little doubt that he is committed to using the law not simply to advance a ''conservative'' agenda, but a narrow and extreme, ideological agenda.

Mr. Pryor's record is clear. He is an aggressive supporter of rolling back the power of Congress to remedy violations of civil rights; he is a vigorous opponent of the constitutional right to privacy and a woman's right to choose; he is an aggressive advocate of the death penalty, even for individuals who are mentally retarded. He is contemptuously dismissive of claims of racial bias in the application of the death penalty. He is an ardent opponent of gay rights.

More than just disagreeing with much of the Supreme Court's jurisprudence over the last 50 years on issues such as privacy, the death penalty, criminal justice, and the separation of church and state, Mr. Pryor has dedicated his advocacy and litigation to rolling back widely accepted legal principles and laws. What we know about Mr. Pryor leaves little doubt that he will try to advance that agenda if he's confirmed as a Federal judge.

At his hearing and in answers to written questions, Mr. Pryor, for the most part, adhered to his past, extreme, views. He did not renounce his view that the Supreme Court's decisions in Miranda v. Arizona and Roe v. Wade were the worst examples of judicial activism or that the Roe decision was an abomination. What are we expected to believe? That despite the intensity with which he holds these views and the years he has devoted to dismantling these legal rights, he will still ''follow the law'' if he is confirmed to the Eleventh Circuit? Repeating that mantra again and again in the face of his extreme record does not make it credible that he will do so.

We know the cases that Mr. Pryor has won at the Supreme Court to narrow Federal rights, and the effect of these cases on the lives of disabled workers—of breast cancer victims like Patricia Garrett—and of the many older workers who face discrimination by State agencies.

Mr. Pryor's agenda is more far-reaching. He has consistently advocated views to narrow individual rights far beyond what any court in this land has been willing to hold.

Just this term, his radical views were rejected by the Supreme Court. In its recent term, the Supreme Court rejected his argument that States could not be sued for money damages for violating the Family and Medical Leave Act. The Court rejected his argument that States should be able to criminalize private sexual conduct between consenting adults. The Court also rejected his far-reaching argument that counties should have the same immunity from lawsuits that States have.

What is more disturbing, Mr. Pryor has plans for narrowing Federal power far beyond the Supreme Court's current case law. The Supreme Court has held that Congress has broad power under the spending clause, but Mr. Pryor's agenda would restrict Congress's power under that clause. He has praised a district court's decision to limit the ability of individuals to enforce spending clause statutes. That decision would have reversed more than 60 years of Supreme Court precedents, and it was rejected unanimously by the Sixth Circuit. Seventy-five constitutional law scholars had joined a brief opposing the decision. Yet, Mr. Pryor said that the District Court decision was ''sublime'' and ''brilliant.''

He has even argued in a race discrimination case that Alabama should not be subject to a lawsuit under title VII of the Civil Rights Act of 1964. That argument was unanimously rejected by the Eleventh Circuit, because it would have reversed decades of settled Supreme Court law. It shows how far he would go—trying even to limit Federal power to address race discrimination under the 14th amendment, even though combating race discrimination is the amendment's very purpose.

These examples rebut the notion, repeatedly urged by Mr. Pryor's supporters, that Mr. Pryor is simply ''following the law'' or that his views are within the mainstream. Again and again his statements and litigation positions make clear that his agenda to ''make the law'', and again and again his radical views to change decades of Supreme Court jurisprudence are rejected by the Federal courts.

Mr. Pryor even seems to resist the application of Supreme Court decisions with which he disagrees. In 2002, Mr. Pryor authored a friend-of-the-court brief to the Supreme Court arguing that it did not violate the eighth amendment to execute people who are mentally retarded. The Court rejected his argument by a 6 to 3 vote in Atkins v. Virginia. Yet this past May, Mr. Pryor attempted to prevent a prisoner with an IQ of 65—and whom even the prosecution had noted was mentally retarded—from raising a claim under Atkins. The Eleventh Circuit unanimously rejected Mr. Pryor's arguments, and stayed the execution of the Alabama prisoner.

Do you call that mainstream? Judicial mainstream?

Mr. Pryor does not simply advocate these views in public life. He has used his position as Attorney General to advance his own ideolgical agenda. His State was one of only three States to submit an amicus brief in support of Texas in the Lawrence case on gay rights. His restrictive view of the constitutional right of privacy and his argument that States should be allowed to criminalize homosexual activity were rejected by the Supreme Court in its decision last month.

He was the only State attorney general—with 37 on the other side—to submit an amicus brief opposing the remedy in the Violence Against Women Act. He was the only attorney general to argue to the Supreme Court that Congress has no power to make provisions of the Clean Water Act enforceable against the States.

Do we understand now? He was the only State attorney general, with 37 on the other side, to submit an amicus brief opposing the remedy in the Violence Against Women Act; the only attorney general to argue to the Supreme Court that Congress has no power to make provisions of the Clean Water Act enforceable against the States. He had ridiculed the Supreme Court of the United States for granting a temporary stay of execution of a prisoner in a capital case who even the prosecution had noted was mentally retarded. The Eleventh Circuit unanimously rejected his arguments and stayed the execution of the Alabama prisoner, and the proponents of this nominee say he is in the mainstream? The mainstream of thinking?

Mr. Pryor has vigorously opposed gun control laws. He says the victims of violence who sue gun dealers or manufacturers failing to follow the Federal law are ''leftist bounty hunters.''

He filed an amicus brief for the State of Alabama opposing a law limiting possession of firearms.

In this case, a Federal district court judge dismissed an indictment against a man in Texas who had possessed a firearm while under a restraining order for domestic violence, in violation of Federal law. The judge ruled that the law violated the second amendment. Alabama was the only State to file an amicus brief in the Fifth Circuit. The brief broadly argued that the Federal Government's interpretation of the statute was so broad that it constituted a ''sweeping and arbitrary infringement on the second amendment right to keep and bear arms.''

Mr. Pryor's argument went far beyond what the Fifth Circuit or any other court has held. The concern is that here again Mr. Pryor was using the attorney general's office in Alabama to advance his own personal ideological agenda in a Texas case, and that he will continue this mission if his nomination is confirmed.

What he was trying to intervene on was the fact that you have a law that restricts the ability for someone to bear an arm who is under a restraining order for domestic violence. Do we understand this? State law has said people who are under restraining orders for domestic violence should not bear arms. Attorney General Pryor is saying, ''Wait a minute. That violates the second amendment.'' And we are saying that this is in the mainstream of judicial thinking? A State law says that when you have domestic violence and an individual is under a restraining order, that individual can't bear arms. He is trying to override it and you say that is in the mainstream?

Mr. Pryor has ridiculed the Supreme Court of the United States for granting a temporary stay of execution in a capital punishment case. Alabama is one of only two States in the Nation that uses the electric chair as its sole method of execution. The Court granted review to determine whether the use of the electric chair was cruel and unusual punishment. For Mr. Pryor, however, the Court should not have even paused to consider this eighth amendment question.

Listen to this. He stated that the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court.''

He stated that the issue ''should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court'' of the United States.

Talk about respect for the law and respect for the Supreme Court. All of us know that the courts may support our views at times. We may differ with the other courts. We just saw this in recent times when they made a decision on the outcome of an election. Many had concerns about it. It was supported by the American people because of the great respect that we have for the Supreme Court. And he is talking about ''nine octogenarian lawyers who happen to sit on the Supreme Court.''

Mr. Pryor's many inflammatory statements suggest that he lacks the temperament to serve as a judge. He is dismissive of concerns about fairness and racial bias in capital punishment. He has stated: ''make no mistake about it, the death penalty moratorium movement is headed by an activist minority with little concern for what is really going on in our criminal justice system.''

Many of his statements reflect an alarmingly politicized view of the judiciary—hardly appropriate for someone who wants to serve as a Federal judge. In a speech to the Federalist Society, he praised the election of George Bush as the ''last best hope for federalism'' and ended his speech with these words a ''prayer for the next administration: Please God, no more Souters.''

That is obviously a derogatory remark about a very distinguished jurist, Justice Souter.

He was thankful for the Bush v. Gore decision because, as he said, ''I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.''

I hope that his nomination will be rejected.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, is the Senator from New Mexico recognized?

The PRESIDING OFFICER. Yes, the Senator is recognized.

Mr. DOMENICI. Madam President, I conferred with the majority leader, and he is thinking about the situation we are in. I would like to chat for a little bit as one who greatly appreciates the Senate, the committees, and the jobs we all have and the job I have.

While the majority leader is thinking about matters and deciding what to do, I want to talk a little bit about the situation.

First of all, let me say there is no question that the United States of America needs an Energy bill and needs an Energy bill sooner rather than later. We have already passed the

time to have an Energy bill. As far as I am concerned, whatever this interference of a judge and a judge's vote and Senators on the other side of the aisle wanting to speak, the way I look at it, I would let them all do it. In fact, I would say to the Democratic Members of that committee, why don't you all speak? I would set up the vote on the judge at the earliest possible time under the rules, and let them speak if we have to stay here all night. Let them all speak. Then we will have the judge out of the way sooner than later. Then we would just say to everybody, fine. One day we were supposed to be debating the Energy bill and we debated the judge, so we will stay here an extra day. I would just say, let's start tomorrow, and after you talk for the next 9 hours, instead of working on the Energy bill, let us go to work and let us do the Energy bill. That might mean instead of Friday we would be here Saturday. We would just substitute one day called Saturday for a day called Wednesday. Wednesday was the day we ought to be working on the Energy bill, but there has been a decision to speak to a very important subject which the other side of the aisle has thought to be very important, and that is their privilege. They think it is important to talk about a judge. I think it is important that we in fact get an Energy bill. I think there is only one way to do both of them. That is to let the Democrats talk as long as they would like. If they want to talk now, or want to talk for the rest of the night, or want to talk right up until the time we are supposed to vote, then sooner or later that vote will be over. That will be one of the jobs we have in front of us.

Then I would turn to the next job we have, and that is the Energy bill. If we don't get to that until tomorrow morning, we will then be on the Energy bill. Then we will decide how much time we want to take on the Energy bill. Then the public will know where we are.

Everything will have been done: Democrats will have gotten to talk all they wanted on a judge and the Republican leader will have brought up the judge and the Senate having voted on the judge—whatever happens, a cloture vote, approval, nonapproval, but the vote will be over, and we will be back on the Energy bill. Then we will have nothing else before us.

Straightforward, looking out to the public of America, looking across the aisle to our friends and saying: You had it your way. Now, are we ready? Are we ready to go and finish the Energy bill the American way? You can't have both of them. You can have one or the other. You can have one at a time but you can't have both at the same time.

So I think it is pretty easy. I don't think it is the only way, though. I think the majority and minority leaders can, in fact, reach an agreement. That is not the business of the Senator from New Mexico but I believe they could reach an agreement.

Let me repeat, if nobody wants to agree, and the Democrats want to talk—and they have told us absolutely they have the right to talk, not about the Energy bill, about a judge. And I am not being critical. There is a judge nominee who they claim they want to talk about. I think they ought to talk about it. I think they ought to talk right up until the time we vote. But sooner or later we will vote on that judge and then we ought to come back to the Energy bill. Then we can tell the public, clear and simple, there is no judge in the way, there is nothing in the way. Here we are, full speed ahead.

We have as many days as we need. We have Friday—well, that would still only be Thursday. We have the rest of Thursday. We have Friday. We have Saturday. Then certainly some people would not want to work on Sunday but then we could come back Monday. If the Democrats think we need 4 more days, we could have 4 more days.

I, frankly, believe, without any doubt, you can finish this Energy bill in a day and a half, and people can have all the time they want on important matters—maximum, 2 but you can finish it in 1½ to 2 days.

So from this Senator's standpoint—I repeat, I do not speak for anyone but myself as the chairman of the Energy Committee and someone who has worked pretty hard to get a bill I think is pretty good but that I would like to take to conference someday with the House and get an Energy bill for the country. This bill does not please everybody but it is pretty good.

I have been pondering it, but I think probably the best thing to do is to make arrangements to do them both, to do the judge and to do the bill. If that is what the other side wants, to take the time that I think belongs to the Energy bill so they can speak, I would say, let them do it. But that time will end. When that time ends, we go to the Energy bill and then there will not be any excuses—that will be it.

Whatever are the amendments—my friend, the whip, has told me there are three or four more on the electricity section—let's have them. We can do them whenever that time comes that I have just described, one after another, just like we have done. None have passed yet. That is not to say some will not in the future.

Then we will go to the other ones, three of which are important to people but that do not even belong on this bill. And they are important. They are going to take a lot of time. They literally do not belong on this bill.

So I have spent a lot of time so far. I am willing to spend a lot more. I don't think it needs 3 more days of the time of the Senator from New Mexico. I think it needs 2 days. But I can't do that so long as the other side wants to talk about a judge. I can't do both. The public ought to know that. It just can't be done.

Having said that, let me repeat, let's do both. But let's have an understanding that when we are finished with the judge—and the Democrats will have had all the time they needed to talk about the judge; and that is fine; we have the ranking member here; he might want to talk about him—then we will go to the Energy bill, and we will stay here Friday and Saturday and Sunday and Monday and finish the Energy bill.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Nevada.

Mr. REID. Mr. President, as the distinguished Senator from New Mexico said, the public should know. The public should know the following: The last 4 weeks the distinguished majority leader has been saying we are going to complete the Energy bill in 1 week. For 4 weeks, the minority has said: We cannot do that. There is not enough time to do that.

Last year, when we worked our way through this bill, there were 140-some odd amendments. This year, we have had stops and starts on this bill. The majority leader said we have been on it 16 days. Everyone knows that is simply not factual. We have been on it days but these were Fridays and Mondays when nothing was going on here.

Now, the public should know that in addition to having a difficult time finishing this bill in 1 week, the majority leader has made the decision to schedule votes on judges.

The public should know that the vote we took today on Miguel Estrada was the seventh time we have voted on this judge. There has not been a single vote change all seven votes but yet the valuable time of the Senate was taken on this wasteful exercise.

We also voted, for the third time, on Justice Owen from Texas. Votes have not changed on that. Also, another waste of time.

My friend from New Mexico says: Well, let's finish the debate on Pryor and then go to energy. The problem with that is, we have been told there is going to be another cloture motion filed on a judge. There has been no time spent on the floor on her, either, a woman from California by the name of Kuhl. So using the logic of the Senator from New Mexico, then we would take and debate all day Thursday, and some of Friday, prior to the vote on that.

We have not caused the stops and starts on this bill. Not only have we had stops and starts dealing with judges, which have slowed this up immensely, but we also have had thrown in here two trade bills, the Singapore and Chile trade bills. We still have 6 hours to complete on that debate.

The public should know there is not a single Democrat who opposes an Energy bill. We think this Energy bill is imperfect and there should be amendments filed on it. We have not filed a single amendment that has been, in any way, an effort to slow down this bill. There have been meaningful and important debates, and every vote has been extremely close. Had there been not arm-twisting on the other side on the Cantwell amendment and the Feingold amendment—people in the well wanted to vote with us but did not. As we know what happens down here in close votes, they were unable to vote with us.

These are not meaningless amendments. They have been very important amendments. As I have explained on several occasions, we have other amendments that are just as meaningful as these that have been filed.

We have also heard my friend from New Mexico say: We want to do this the American way. I don't know what that means. But that is what this is. We are in the Senate and we are doing things the American way, as established by the U.S. Constitution. That is how we are going to do things.

We did not make the decision to have the parliamentary posture as it is. That has been made by the majority leader. He has a right to do that, but he also has the obligation to know that the stops and starts on this Energy bill has made it virtually impossible to pass this bill.

Now, to have threats made—and that is what they are: You are going to be here Friday afternoon; you are going to be here Saturday, Sunday, Monday, Tuesday—well, that is the way it is. But always remember, any inconvenience that is caused to the Democrats will be caused to the Republicans also. Remember, there are two more of them than there are of us, so they will have a little extra inconvenience.

But this Senator and all 48 other Senators who are here in the minority are willing to work to complete whatever work needs to be done. But we are not going to be rushed into voting for a judge such as the man from Alabama who has been hustled out of the Committee of the Judiciary without proper debate in the committee itself. We are going to have proper debate in the Senate. We are going to have the American people know because the public should know. We are going to do it the American way.

We are going to hear the ranking member of the committee, who, by the way, has been responsible for our approving, during this administration, 140 Federal judges.

We have turned down two. The American public should know that. That is the American way. One-hundred and forty to two isn't that bad. Anybody who has a basic knowledge of math understands those are pretty good odds.

There is also a complaint that the distinguished ranking member has requested votes on some of these judges. Well, yes, and we have six judges now who could have been approved during the 4 hours we are going to be wasting on these cloture votes. In fact, we probably could have done all of them in the 4 hours set aside. Of course we could have.

The plaintive cries create no pity on our side. We are here ready to work on the Energy bill. If they don't want Senators from the Judiciary Committee and others speaking about Pryor, then let's not have a cloture vote tomorrow. Let's not have a cloture vote on Kuhl on Friday. We can spend more time on the Energy bill.

Until the majority leader understands that he is his own worst enemy, we are going to continue what we are doing to protect the rights of the American people because the public should know.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I must say I completely agree with the senior Senator from Nevada on this. The senior Senator from New Mexico, who was in the Chamber, expressed concern about time being taken talking about William Pryor's nomination. We are not the ones who scheduled William Pryor's nomination in the middle of the Energy bill.

The distinguished senior Senator from Utah, chairman of the Senate Judiciary Committee, is in the Chamber. He knows the concerns expressed by members of the committee that this nomination was voted out of committee before investigations underway involving Mr. Pryor were completed.

It is passingly strange that when we say that after the nomination has been moved prematurely out of the Senate Judiciary Committee with pending questions, very serious questions involving the conduct of that nominee unresolved, but it gets sort of rocketed onto the floor. Then we are asked to lie down and just let it go through without even saying why we object.

First, the rules of the Senate Judiciary Committee itself were violated. Rule 4 was violated. The matter is still coming up. The distinguished majority leader and the distinguished Democratic leader had a conversation in which the distinguished majority leader assured us that this would never happen again. Within a few weeks of that assurance, it happens again, an assurance that no nomination of this nature would come up if it was sent out in violation of rule 4 of the Senate Judiciary Committee. It was. The nomination is up. And we don't ask questions about it?

Then we hear some on the other side say: Our judges are being blocked. Well, it is true; 2 out of 140 have been. But at the same time, they want to quietly voice vote all these other judges through so that nobody will notice that we are passing judges. One of the reasons we have asked for rollcall votes on a number of them is to show how easy it is to pass a judge where there is a consensus.

In those rare instances where people have actually been consulted about a judge and where a judge has been nominated who is not going to be an ideological arm of either political party but, rather, be an independent judge, they go through easily.

In this case, the Republican leadership—not the Democratic leadership, the Republican leadership—filed a cloture motion on the nomination of William Pryor to the Eleventh Circuit. So we are going to have this premature debate.

I hope there is one aspect on which we can get closure in the Senate. In connection with this nomination, supporters of the administration have leveled the unfounded charges that Democratic Senators are anti-Catholic. This charge is despicable. I have waited patiently for more than 2 years for Republican Senators to disavow such charges. So far, only one has, the distinguished Presiding Officer. This is a despicable, slanderous charge. It is one calculated to throw us back into a time that maybe some in this Chamber may not remember. Some of us have parents who do remember when anti-Catholic bias ran rampant in this country.

It is outrageous, of course, that Republicans will not knock down these slanderous charges of anti-Catholicism and allow them to go forward. This slander and the ads recently run by a group headed by the President's father's former White House counsel and a group whose funding includes money raised by Republican Senators and the President's family are personally offensive. They have no place in this debate or anywhere else.

For a charge of anti-Catholicism to be leveled against any Member of this Chamber, Republican or Democratic, is wrong. But for those who stay silent and allow it to go forward, who take part in it, the only way for a lie to get traction is for people to remain silent. And those who could stop this lie in a hurry remain silent.

I challenged the Republican Senators on the Judiciary Committee who are so fond of castigating special interest groups and condemning every critical statement of a Republican nominee as being somehow a partisan sneer, to condemn this ad campaign and the injunction of religion into these matters. Only the junior Senator from Georgia now presiding responded to that challenge. Other Republican members of the Judiciary Committee and of the Senate have either stood mute in the face of these obnoxious and disgusting and scurrilous charges or, worse, they have fed the flames.

Today, Republican Senators have another chance to do what they have not yet done and what this administration has not yet done—disavow this campaign of division and those who have played wedge politics with religion. I hope the Republican leadership of the Senate and of the Judiciary Committee will finally disavow the contention that any Senator is being motivated in any way by religious bigotry, just as I and others on this side of the aisle have defended members of the Republican side of the aisle when they have been attacked on their religion. We find it so painful that not only do they remain silent when people on this side of the aisle are attacked on their religion but in some instances have even continued the attack in statements they have made outside this Chamber.

When we began debate on the nomination of Miguel Estrada in February, I made a similar request with respect to the charges that Senators were being anti-Hispanic. The other side never withdrew that ridiculous charge. Instead, the special interest groups and others trying to intimidate the Senate into voting on that nomination broadened the attack to include Hispanic members of the Congressional Hispanic Caucus, MALDEF, the Puerto Rican Legal Defense and Education Fund, past presidents of the Hispanic National Bar Association, and many other Hispanic and civil rights organizations that opposed the Estrada nomination. It was so bad that one Hispanic organization that supported Miguel Estrada issued a statement that the charge was wrong, that they certainly didn't believe it applied to any Member of the Senate, and urged the Republicans to stop it.

They didn't, but they were urged by other Hispanic groups to stop it. The demagoguery, divisive and partisan politics being so cynically used by supporters of the President's most extreme judicial nominees needs to stop. There are at least five judicial nominations on the Executive Calendar on which we can join as Democrats and Republicans. I would be willing to bet that they would be confirmed by an overwhelming vote.

I remember when we had a circuit court of appeals judge nominated by President Bush. For a month, the Democrats tried to get a vote on that nominee. For a month, one Republican had an anonymous hold and refused a vote to go forward. There are people we could vote on. Why don't they? We took a month to get the Republicans to release the anonymous hold on Judge Edward Prado, who was nominated by President Bush. Interestingly enough, I finally found out why. They didn't want a vote. They wanted to attack us for not voting on him, even though we were the ones asking to vote on him. It is Alice in Wonderland to the tenth power.

Now, the assistant minority leader suggested going to these matters and making progress. I have suggested scheduling rollcall votes on these nominees and making further bipartisan progress. Instead, we waste time on cloture motion after cloture motion after another cloture motion in connection with the most controversial of this President's nominees. Now I find out why. I am told by members of the press that the Republicans said this was supposed to be our issue this week. We are not getting appropriations bills done, we are not going to finish the Energy bill, or do anything else, so we are going to tie up the Senate with a number of cloture votes. Then they all went out with their talking points with members of the press to tell them how terrible it was that we were having these votes, which they scheduled.

Mr. DORGAN. Will the Senator from Vermont yield for a question?

Mr. LEAHY. Yes.

Mr. DORGAN. I listened to some of the complaints on the floor recently while I was in my office. They were concerned about not moving ahead on energy. I guess the obvious question is—we didn't bring up the judge; we are not requiring a vote on the judge; we are not requiring a vote on the trade agreements; and there is no requirement to vote on the trade agreements this week. There is no requirement to vote on this judge this week. So isn't the proposition that those who are scheduling this place, who insist on a vote on a judge, insist on bringing up trade agreements in the middle of the discussion on energy, isn't that what is causing the delay?

Mr. LEAHY. Mr. President, the Senator is absolutely right. The distinguished assistant Democratic leader pointed out just a short while ago that we have had a number of votes on the Energy bill, which were very close votes, which could have gone either way. We had a good debate going and we were actually voting. Now, instead we spend more time in quorum calls and bringing up judicial votes that are not going anywhere.

I must say to my friend from North Dakota, as ranking member of the Judiciary Committee, if we would have taken the time that has been wasted on things not going anywhere, if we had taken time to vote through some of the judges, where I believe we could get consensus of both Democrats and Republicans, and vote and confirm them and let them go to the bench, that would be a better way. We spent a whole month, as I mentioned, trying to get the Republicans to allow a vote on Judge Edward Prado for a circuit court of appeals position. He had been nominated by President Bush and was strongly supported by President Bush. For a month, they blocked it from going to a vote. We found out afterward it was because they went to the same members of the press they have gone to this week and they said: This is terrible. The Democrats aren't allowing us to vote.

Democrats, time after time, came on the Senate floor and said we can have unanimous consent to go to a vote, and they objected.

Mr. DORGAN. Mr. President, further inquiring of the Senator from Vermont, is it the case, then, that there are judge candidates that could be brought to the Senate floor without any controversy at all, which would require very little time? Those are not the ones brought to the floor. Very controversial nominations are brought to the Senate floor, and complaints arise because someone wants to debate it. Isn't it the point that we didn't bring this judgeship to the floor for a cloture vote?

Mr. LEAHY. No. In fact, I say to my friend that the one time we did try to bring one of President Bush's circuit court nominees to the floor and ask to have him considered, for a month we were not allowed to because the Republicans objected. I have not done a whip check, but I am willing to bet that if we brought them to a vote, and they are on the calendar now, they would get confirmed. Even in the time we have had quorum calls and discussions on this today, we could have brought them up and had a series of 10-minute rollcall votes. And I am willing to bet we would have passed them all.

Mr. DORGAN. The Senator indicated we were dealing with very important issues today. Indeed we were. I mention the Cantwell amendment, which lost by two votes. It was a very significant amendment which I think, in the rear view mirror of public policy, will turn out to be one of the most important amendments turned down by the Senate dealing with energy.

We know what is happening on the west coast. Firms bilked people out of billions of dollars. There is substantial criminal investigation still ongoing and the proposition today on the Energy bill was important: Will there be adequate protections for consumers, and will we do something about the scandals that occurred on the west coast and stand up and support the interests of consumers and prevent manipulation of energy markets? That amendment failed by two votes. There was a significant debate, a big amendment. These are big, important issues.

The question is, Why are we not continuing to work on the Energy bill? What interrupted it? Have we done that or has someone else brought something else to the floor of the Senate?

Mr. LEAHY. Mr. President, I answer my friend from North Dakota that we have been willing to move forward on amendments on the Energy bill. We are not the ones who brought up the extraneous cloture votes which are not going anywhere. Maybe some want to

get off the Energy bill. I note that the distinguished Senator mentioned Senator CANTWELL's amendment. I was very proud to support that amendment. It was excellent and, as the Senator said, it would protect the consumers.

It was interesting because, at one point, she had the amendment won, and you heard the snap, crackle, and pop, not of Rice Crispies but the arms being twisted and snapped as votes were being changed. Most of the power company lobbyists were saying to the leadership on the other side that you cannot allow that to go through, and votes were being changed. It came within two votes.

I agree with the Senator from North Dakota that people are going to look in the rear view mirror and say Senator CANTWELL was right, and that should have been allowed to go through.

Mr. DORGAN. If the Senator will yield further, and I am sorry to continue to inquire, at this point, is there a cloture vote that is now scheduled on Mr. Pryor? Is there a vote scheduled and, if so, when is it scheduled?

Mr. LEAHY. Mr. President, it is scheduled for tomorrow under the normal circumstances, unless there has been an agreement entered into otherwise. That would be an hour after we come into session. Unless the established quorum is waived, we could go to a vote.

Mr. DORGAN. Mr. President, I inquire further, if a cloture motion has been filed and it ripens tomorrow and we presumably would have a cloture vote on this nomination tomorrow, for those tonight who are concerned about not moving ahead on energy, we could resolve that by vitiating the cloture motion vote tomorrow.

I was sitting in my office listening to those complaining that we are not moving ahead on energy, understanding it was not us who brought this judgeship forward. We did not put forward the proposal that we have to do two free-trade agreements this week.

It seems to me, at least with respect to the judgeships, perhaps what ought to be done is unanimous consent ought to be entertained to vitiate the cloture vote tomorrow on this judge and move on. After all, there is no reason that we have to vote on this judge tomorrow. This nomination has not been waiting a great length of time. It can be done in September. For those who are worried about moving ahead on energy—and we should—it seems to me what we probably ought to do is join together and vitiate this cloture vote, move on, and continue with the Energy bill tonight. Does the Senator think that is an appropriate course?

Mr. LEAHY. Mr. President, I tell my friend from North Dakota, not only would it be an appropriate course because cloture is not going to be invoked primarily because, for one major reason because of his qualifications, but also because the rules of the Judiciary Committee were not followed in having this nomination go out.

We could very well at that time, if we want to get judges through, not have this cloture vote, which is not going to go anywhere. We have James Cohn, of Florida. During this time we could have voted on him to be a judge. We could have voted on Frank Montalvo, of Texas. These are nominees I would support and I think a majority of us would support. Xavier Rodriguez, of Texas, could have been voted on. The Republicans have made no effort to bring them up, even though we told them they could. H. Brent McKnight, of North Carolina—these are people we would allow to being brought up. We would allow the home State Senators to take a few minutes to speak about them. In fact, they could bring them all up and do them in a stack of 10-minute rollcall votes. They would have gone through in the amount of time of some our quorum calls today.

Mr. DORGAN. Mr. President, if I may address the Senator from Vermont with one final inquiry, it seems to me if the issue in the Senate is we have limited time and we have a substantial amount of work to do on energy—I was at the White House yesterday. President Bush called a number of us down to the White House to talk about the urgent need to pass this Energy bill. If that is, in fact, the case—and I believe it is and the majority leader has said it is—in order to get back on this Energy bill, it seems to me what we should do—and I encourage the majority leader to do this—is vitiate the cloture vote on the judgeship. We do not need to do it this week. We all know we do not. He can decide we do not have to bring up the two free-trade agreements this week. There is nothing urgent about those agreements. That need not be done this week.

If the President is correct—and I believe he is—and if the majority leader is correct—and I believe he is—that this Energy bill ought to move, it is urgent public business, then let's move back to the Energy bill and do it now. I encourage the majority leader to make that decision.

Mr. SANTORUM. Will the Senator from Vermont yield?

Mr. DORGAN. The Senator from Vermont has the time. I thank the Senator from Vermont for yielding to me. I, again, say to the majority leader, I do not want to hear people complaining about the fact that we are not on the Energy bill. We are not making progress on the bill because the majority leader and others said we have to move to the judgeships and then move to the trade agreements.

The fact is, they are the ones taking us off the Energy bill, not us. We ought to offer the next amendment right now on the Energy bill and vitiate the cloture vote tomorrow morning on the judgeship. That will solve the problem.

The PRESIDING OFFICER. The Senator may yield for questions but not for comments. The Senator from Vermont has the floor.

Mr. LEAHY. Mr. President, the distinguished Senator from Pennsylvania has asked if I will yield for a question. I will yield without losing my right to the floor or my right to reclaim the floor within 1 minute.

Mr. SANTORUM. Mr. President, I ask if the Senator from North Dakota and the Senator from Vermont will agree to a unanimous consent request that we have a final vote on the Energy bill by noon on Friday and in exchange for that, we will vitiate the cloture votes on the two judges that are in the queue right now. I think we can probably get unanimous consent on that on our side fairly quickly.

If the Senator from North Dakota agrees with that, we will be happy to move forward.

Mr. LEAHY. Mr. President, I have the floor. I am not on the Energy Committee.

Mr. SANTORUM. I think that is what the Senator from North Dakota suggested.

Mr. DORGAN. Mr. President, if the——

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

Mr. LEAHY. Mr. President, let me respond this way. I have been in the Senate for 29 years. I love the Senate. I love following our normal course of doing business. The Senator from Pennsylvania has raised an appropriate question. I suggest that is a question that should be directed to the Republican leader and the Democratic leader and the chairman and the ranking member of the committee, which is the normal course of doing business, the way we have always done it. Naturally, I would be guided by the direction of the Republican and Democratic leaders, not only in the Senate but in the committee.

Obviously, I am not in a position to speak for the Republican or Democratic leaders or the Republican chairman or Democratic ranking member on this issue. The Senator from Pennsylvania is perfectly within his rights in raising the issue, and I hope that might prompt a discussion with them.

Mr. DORGAN. Mr. President, I ask the Senator to yield for one more question.

Mr. LEAHY. I yield.

Mr. DORGAN. Mr. President, I ask the Senator, would it make the most sense to have a final vote on the Energy bill when we have finished our work on the Energy bill? And wouldn't that best be accommodated by not going off and on to come up with judgeships and trade agreements? Wouldn't the best approach to reaching a final vote on the Energy bill be to stop

bringing to the floor of the Senate other business, business that need not be done now?

Mr. LEAHY. Mr. President, I will answer this way: We have diverted some 6 to 10 hours off the Energy bill now. I see my friend, the senior Senator from Nevada. I know over the years he has worked very closely with his counterpart on the Republican side and usually tried to work out a finite list of amendments to the Energy bill. Again, based on my experience, my years in the Senate—almost three decades—I find usually if we stay on a bill that is your important bill, if you do not keep going off it for the trade agreements about which the Senator from North Dakota spoke, or these various cloture motions, if we keep going off these bills, then nobody feels the pressure to work things out.

On the other hand, if we just stay on the bill and people bring up amendments, we will find which ones are close amendments and actually have a chance of being adopted and which ones are not going to be adopted. Usually the Republican and Democratic leadership get together and whittle down the finite number. Then, as the Senator from Pennsylvania suggested, we are usually in the position to find a time for a final vote.

My suggestion is that we use what he has suggested but stay on the Energy bill, work toward a finite list of amendments. We will then know when they are going to take place and how much time they are going to take. And then we will know when we are going to have final passage. We can do that and then go back to anything else they want.

If we are going to keep going back to these judges—as I said, we so far stopped two of President Bush's judges and confirmed 140, unlike the 60 of President Clinton's judges who were stopped by the Republicans, usually because someone objected anonymously. We have done it out here on the floor where we stood up on the nomination.

I am one Senator who actually takes seriously the role of the Senate. There are only 100 of us, and we are given the privilege to represent 270 million Americans. But we also have a very unique place. There is no other parliamentary body in the world quite like the Senate. We have this unique spot where we have checks and balances, especially on confirmations. The Constitution does not say advise and rubberstamp; it says advise and consent.

Nobody should underestimate our commitment to the independence of the Federal judiciary and to our constitutional duty to advise and consent on these lifetime appointments. Nobody should underestimate our commitment to the protection of the rights of all Americans—Republicans and Democrats, Independents—in every part of this Nation.

The Senate was intended to serve as a check and balance in our unique system of Government. We fail our oaths of office as Senators if we allow the Federal judiciary to be politicized, if we cast votes that would remove their independence.

Mr. President, I ask unanimous consent that it be in order to yield to the distinguished senior Senator from California.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. LEAHY. Mr. President, then I will continue my speech.

Mr. HATCH. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Objection has been heard.

Does the Senator from Pennsylvania withdraw his objection?

Mr. SANTORUM. No, I do not.

Mr. LEAHY. Mr. President, then I would——

Mr. HATCH. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. HATCH. Could I ask how much time the distinguished Senator from California desires?

Mrs. FEINSTEIN. I do not think more than 10 or 12 minutes.

Mr. HATCH. My personal belief is we ought to let her go ahead, and I would encourage my colleague to do that.

Mr. LEAHY. Mr. President, I would renew my——

Mr. HATCH. I ask unanimous consent that we——

Mr. LEAHY. I have the floor. I would renew my request.

Mr. HATCH. Would the Senator add that I be given time?

Mr. LEAHY. Along with the distinguished senior Senator from Utah, I renew my request that I be allowed to yield now to the distinguished senior Senator from California.

Mr. HATCH. I add to that, when the distinguished Senator from California is finished I would be granted the floor for my remarks.

Mr. LEAHY. For how long?

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

Mr. HATCH. I have no idea.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. I object.

The PRESIDING OFFICER. The Senator from Illinois objects.

Mr. DURBIN. I reserve the right to object, Mr. President. I inquire of the Senator from Utah how much time he would want to be recognized.

Mr. HATCH. I do not have an exact time, but I would hope not too long.

Mr. DURBIN. Well, if the Senator from Utah would give me a fair approximation so I can request to follow him in speaking order, that is all I am asking for.

Mr. HATCH. I would estimate up to an hour.

Mr. REID. Objection.

The PRESIDING OFFICER. The objection is heard.

Mr. HATCH. Then I will ask for the floor when the distinguished Senator from Vermont ends his remarks.

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

Mr. REID. Will the Senator from Vermont yield for a question?

Mr. LEAHY. I yield to the distinguished senior Senator from Nevada for a question.

Mr. REID. I say to the Senator from Vermont, it is my understanding that the Senator has approximately 15 or 20 minutes on his speech. What the Senator wanted to do is yield to the Senator from California for 10 or 12 minutes, I think she said. Then it is my understanding that the request was the Senator from Utah be recognized for up to an hour, and then following that I would like to modify the request that the Senator from Illinois be recognized for up to 45 minutes

Mr. SANTORUM. Mr. President, I object.

The PRESIDING OFFICER. The Senator from Nevada cannot propound a unanimous consent request. He does not have the floor. The Senator from Vermont does.

Mr. LEAHY. Mr. President, on behalf of both myself and the Senator from Utah, Mr. HATCH, I ask unanimous consent that the distinguished Senator from California be recognized for no more than 15 minutes; the distinguished Senator from Utah be recognized for up to an hour; and then the distinguished senior Senator from Illinois be recognized for up to 40 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. I object.

The PRESIDING OFFICER. The objection is heard.

Several Senators addressed the Chair.

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

Mr. LEAHY. Mr. President, I tried to accommodate the Senator from Utah.

Mr. HATCH. Who is trying to accommodate the Senator from Vermont.

Mr. LEAHY. Who is trying to accommodate the Senator from Vermont. I will try to do that even though the Senator from Utah wants to speak longer than I thought. But he is, after all, the chairman of the committee. I was willing to stop my speech at this point to accommodate him. We have probably taken longer in making these unanimous consent requests.

Mr. HATCH. I have a suggestion. Why does not the distinguished Senator end his speech and we will go to the distinguished Senator from California before

me, and then I will try to be less than an hour?

Mr. LEAHY. Mr. President, I ask that that be the order; that I complete my speech, yield to the Senator from California, and then the Senator from Utah be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I have spoken to the distinguished junior Senator from Pennsylvania. He said the reason he objected is because he felt it was an unequal distribution of time. If that is the case, we want to make sure there is an equal distribution of time. Through the chair, to the Senator from Utah, I am wondering who wants to speak after the Senator from Utah. I am trying to figure out how to balance this out fairly.

We recognize that Senator KENNEDY spoke for 20 minutes or so.

Mr. HATCH. He spoke for half an hour.

Mr. LEAHY. Mr. President, I suggest to my colleagues that we do this, as we have offered before: We allow the Senator from California to speak, and then the Senator from Utah, and then, as we have done before, we go back and forth.

Mr. REID. I do not think we should go back and forth. Whoever gets recognized should speak after the Senator from Utah.

Mr. SANTORUM. That is fine.

Mr. LEAHY. I ask unanimous consent that it be in order to recognize the Senator from California, and then be in order to recognize the Senator from Utah, Mr. HATCH.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, as I understand the unanimous consent request, we are now moving forward to debate this judgeship so that we can have a cloture vote in the morning, much to the angst of many who believe we should be on the electricity title of the Energy bill. So I ask when is it in order for us to ask unanimous consent to vitiate the cloture vote in the morning so we might do what every one of us in this Chamber knows we should be doing, and that is be back on the energy title to try to finish the Energy bill?

I ask the Presiding Officer when might it be in order for me to seek unanimous consent to vitiate the cloture vote tomorrow morning so we can get back to the Energy bill now?

The PRESIDING OFFICER. The Senator can make a unanimous consent at any time he gains the floor in his own right.

Mr. DORGAN. Would that include the time during a reservation of another unanimous consent request?

The PRESIDING OFFICER. No, it would not.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I would renew any request.

The PRESIDING OFFICER. Is there objection?

Mr. SANTORUM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I say for the purpose of edification of the Senator from North Dakota, the two leaders have met and talked and our leader went to the Democratic leader and actually suggested to do just that, vitiate in exchange for a time certain this week to finish this bill, which is what I know the Senator from North Dakota was looking to do.

Mr. DORGAN. No, that is not the case.

Mr. SANTORUM. As a result, that was not accomplished. The Senator from South Dakota said that was not acceptable, so as a result we are now stuck on what seemingly some Members of this Chamber would like to talk about.

Mr. DORGAN. Mr. President, continuing to reserve the right to object.

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

Mr. LEAHY. I renew my request.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I continue my reservation to object. Let me just say that I speak fairly well for myself on this floor, and I have never suggested that in exchange for anything we have a time certain. What I suggested is that if we want to finish this Energy bill, we be able to offer the amendments on the title and debate the amendments. We are not going to get to that point if we keep interrupting the Energy bill with judges and trade agreements.

If we believe this is urgent—and the President says it is, I believe it is, others believe it is—let's get back to it this moment. Let's vitiate the cloture vote tomorrow on the judgeship. Let's hold over the free-trade agreements until September and decide this is important, as we have always said it was, and move to finish this Energy bill. I am not talking about a time certain. The time for finishing it is when we finish the amendments, have debate on the amendments, and have votes on the amendments.

We can do that if I ask unanimous consent to vitiate the cloture vote tomorrow, but I guess I cannot do that under a reservation of objection.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from Vermont?

Mr. LEAHY. Mr. President, I will withhold my request for the moment without losing my right to the floor so that the Senator from Utah might make a point.

The PRESIDING OFFICER. Without objection.

Mr. HATCH. Reserving my right to object, Mr. President, it is not unusual to have multiple matters heard by the Senate. It is certainly not unusual to have cloture votes on judges, especially under the current situation. I would be happy to quit debating General Pryor tonight, even though there has been probably close to an hour of the Senate's time utilized on this debate, and just go to the cloture vote tomorrow, quit playing around with the Energy bill that we know is being slow-walked, and try to finish the Energy bill before the end of this week.

There is no excuse for not having a cloture vote on Judge Pryor or Judge Kuhl on Friday.

Mr. LEAHY. Mr. President, regaining my right to the floor, I probably could have completed my speech during this time, but I was trying to save everybody some time. I was trying to accommodate the distinguished senior Senator from Utah, who is the chairman. I think everybody has agreed now to the request I have made.

I would renew my request that the distinguished Senator from California be recognized, the ball then goes back to the distinguished Senator from Utah.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I am prompted to do this by the statement of the chairman of the Judiciary Committee.

It is outrageous you should suggest you would schedule the judge for tomorrow on a cloture vote and not provide time for debate, which is the issue that is at stake here. We need the debate on the judge, and then you say, well, you are interfering with the progress of the Energy bill.

Who was it who scheduled the judge for tomorrow? That is where the intrusion came in terms of the process of dealing with the Energy bill.

Mr. HATCH. People have a right to schedule the judge.

Mr. SARBANES. And at the same time assert that you have to pass the Energy bill.

Mr. HATCH. This is the first time we have ever——

The PRESIDING OFFICER. The Senator from Vermont has the floor. Is there an objection to the unanimous consent?

Mr. DORGAN. I object.

The PRESIDING OFFICER (Mr. COLEMAN). The objection is heard.

Mr. LEAHY. Well, Mr. President, I know everyone stands riveted to hear the rest of my speech. I was trying to

complete the speech so the Senator from California could be recognized.

Mr. President, sometimes after all this work, the Senate actually does work. Those who are watching someday will explain what exactly has happened.

To continue, the Senate has already confirmed 140 of this President's judicial nominees, including 27 circuit court nominees. We could have confirmed at least five more this week if the Republican leadership would have worked with us to schedule votes on them. That stands in sharp contrast to the treatment of President Clinton's nominees by a Republican-controlled Senate from 1995 through 2001, when judicial vacancies on the Federal courts were more than doubling from 16 to 33.

Opposition to Mr. Pryor's nomination is shared by a wide spectrum of objective observers. Mr. Pryor's record is so out of the mainstream that, even before last month's hearing, a number of editorial boards and others weighed in with significant opposition.

Last April, even the Washington Post, which has been exceedingly generous to the administration's efforts to pack the courts, termed Mr. Pryor ''unfit''. Both the Tuscaloosa News and the Hunstville Times wrote in early May against the nomination. Other editorial boards across the country spoke out, including the San Jose Mercury News and the Pittsburgh Post-Gazette. Since the hearing, that chorus of opposition has only grown and now includes the New York Times, the Charleston Gazette, the Arizona Daily Star and the Los Angeles Times. I ask unanimous consent to print the full package of these editorials and op-eds in the RECORD.

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

[From the Washington Post, April 11, 2003]

UNFIT TO JUDGE

President Bush must have worked hard to dream up an escalation of the judicial nomination wars as dramatic as his decision this week to nominate Alabama Attorney General Bill Pryor to the U.S. Court of Appeals for the 11th Circuit. A protege of Alabama Republican Sen. Jeff Sessions, Mr. Pryor is a parody of what Democrats imagine Mr. Bush to be plotting for the federal courts. We have argued strongly in favor of several of Mr. Bush's nominees—and urged fair and swift consideration of all. And we have criticized Democratic attacks on nominees of substance and quality. But we have also urged Mr. Bush to look for common ground on judicial nominations, to address legitimate Democratic grievances and to seek nominees of such stature as defies political objection. The Pryor nomination shows that Mr. Bush has other ideas.

Mr. Pryor is probably best known as a zealous advocate of relaxing the wall between church and state. He teamed up with one of Pat Robertson's organizations in a court effort to defend student-led prayer in public schools, and he has vocally defended Alabama's chief justice, who has insisted on displaying the Ten Commandments in state court facilities. But his career is broader. He has urged the repeal of a key section of the Voting Rights Act, which he regards as ''an affront to federalism and an expensive burden.'' He has also called Roe v. Wade ''the worst abomination of constitutional law in our history.'' Whatever one thinks of Roe, it is offensive to rank it among the court's most notorious cases, which include Dred Scott and Plessy v. Ferguson, after all.

Mr. Pryor's speeches display a disturbingly politicized view of the role of courts. He has suggested that impeachment is an appropriate remedy for judges who ''repeatedly and recklessly . . . overturn popular will and . . . rewrite constitutional law.'' And he talks publicly about judging in the vulgarly political terms of the current judicial culture war. He concluded one speech, for example, with the following prayer: ''Please, God, no more Souters''—a reference to the betrayal many conservatives feel at the honorable career of Supreme Court Justice David H. Souter.

Mr. Pryor has bipartisan support in Alabama, and he worked to repeal the provisions in that state's constitution that forbade interracial marriage. But this is not a nomination the White House can sell as above politics. Mr. Bush cannot at once ask for apolitical consideration of his nominees and put forth nominees who, in word and deed, turn federal courts into political battlegrounds. If he sends the Senate nominees such as Mr. Pryor, he cannot complain too loudly when his nominees receive the most researching scrutiny.

[From the Tuscaloosanews.com, May 4, 2003]

PRYOR'S OPINION GOES BEYOND MAINSTREAM

Attorney General Bill Pryor's opinion that lumps homosexuality in with abusive crimes such as child pornography, bestiality, incest and pedophilia puts him well within the camp of recent nominees to the federal bench but well outside the mainstream of American life.

Pryor was nominated by President Bush to a seat on the U.S. Court of Appeals for the 11th Circuit, which has jurisdiction over Alabama, Georgia and Florida. A legal argument Pryor wrote earlier this year, which just came to light last week, parallels comments by Sen. Rick Santorum, that landed the Pennsylvania Republican in hot water recently.

The amicus brief, penned by Pryor and signed by attorneys for South Carolina and Utah, declared that states' support for the Texas sodomy law in the Supreme Court case of Lawrence vs. Texas, which the court is expected to decide in June or July. Pryor argues the Texas law should be upheld, otherwise constitutional protections ''must logically extend to activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia (if the child should credibly claim to be 'willing').''

Hardly so.

It is a long step from sanctioning, or even tolerating, consensual private activity between two adults to permitting abusive crimes such as pedophilia. The law is perfectly capable of drawing such distinctions in theory and in practice.

We have cautiously supported Pryor's nomination, while taking issue with a number of his controversial positions. These include his defense of state Supreme Court Chief Justice Roy Moore's decision to display the Ten Commandments in the state Judicial Building, his opposition to multistate lawsuits against tobacco companies and his defense of utility companies in upgrading their coal-fired power plants without adding new pollution control devices.

Several of Bush's nominees for federal bench hold extreme anti-gay views. Timony Tymkovich, confirmed to an appeals court last month, has compared homosexuality to cockfighting, bestiality, prostitution and suicide.

Pryor's confirmation hearings have not yet been set. The Judicial Committee will certainly want an explanation of his incendiary comments, which unfortunately are typical of the nominees they will be asked to consider.

[From the Huntsville Times, May 4, 2003]

PRYOR'S PREACHING

Churches promote faith; courtrooms promote justice.

Attorney General Bill Pryor usually has been what few Alabama politicians seem to know how to be: principled. Though unabashedly a conservative Republican, Pryor has usually been more nonpartisan than partisan.

More than once, he has ignored the prevailing political winds to do what he thought was right. Trying to reform the state's sentencing system is a prime example. One that he thought was right again. But this time Pryor has gotten it wrong.

In a ''friend of the court'' brief filed almost three months ago regarding the Texas sodomy case before the U.S. Supreme Court, Pryor compared homosexual acts to ''prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia.''

This is the same case, of course, the Pennsylvania Sen. Rick Santorum, another conservative Republican, made similarly troubling remarks about.

The problem here is neither that Pryor has a certain point of view that others may not share, nor that he expressed it. In the United States, we all have a right to think and speak freely.

The problem is that as the attorney general of Alabama—and President Bush's nominee to the 11th Circuit Court of Appeals—Pryor did not separate his personal moral views from his public role as a promoter of justice.

Bill Pryor has championed causes that many Republicans and not a few Democrats would probably have walked away from: such as the removal of the interracial marriage ban from the state constitution and the recruitment of mentors for underprivileged children, to mention a few.

Alabama has benefited from having him as attorney general, and would probably benefit if he decided to seek an even higher elected office one day.

Perhaps the nation would too, but not if Pryor plans to use a judicial appointment as an opportunity to give his moral points of view the heft of the law's brief seems to be a part of a trend to infuse public policy and the law with morality of an abashedly religious strain.

Until God—or whoever or whatever it is you do or do not worship—decides to clarify the myriad matters of faith that have caused us to separate into different churches, temples, mosques, sects, and beliefs, it would be best for those who believe to enjoy their beliefs in a way that allows others to enjoy theirs—or to enjoy not having any beliefs at all.

Churches are supposed to promote faith, and courtrooms, justice. If Pryor is confirmed to the 11th Circuit, he would do well to honor this distinction.

[From the San Jose Mercury News, May 21, 2003]

COUP IN THE COURTS

President Bush has treated judicial nominations like tax cuts: Declare, with a straight face, that the extreme is reasonable and that any opponent is obstructionist.

In the case of judgeships, that means nominating one conservative ideologue after another, knowing that Democrats in a Republican Senate have neither the will nor a way to challenge and defeat most of them.

Instead, the Democrats have picked their shots—and they should continue to do that.

Contrary to his protestations, Bush has had tremendous success. In his first 28 months of office, the Senate has approved 121 of his nominations—better than President Clinton averaged over his administration. Bush has named one out of seven active federal judgeships.

What's at stake is whether Bush will be able to stuff the federal courts with judges narrow in their view of minority and women's rights, staunch in opposition to abortion, and intent on overturning decisions that have been long accepted by the courts and the public.

Individuals like James Leon Holmes, nominated to a federal court in Arkansas, who has written that the role of a woman ''is to place herself under the authority of the man.'' And Alabama Attorney General Bill Pryor, who characterized Roe v. Wade, the decision establishing a right to an abortion, as ''the worst abomination of constitutional law in our history.''

The latest troubling nomination is that of Los Angeles Superior Court Judge Carolyn Kuhl to the 9th Circuit Court of Appeals. That court is the ultimate authority, save for the U.S. Supreme Court, for a huge swath of the West, including California.

As an eager young lawyer in the Reagan administration, Kuhl fought the IRS to retain a tax-exempt status for Bob Jones University despite its record of religious and racial discrimination. The Supreme Court later overturned that decision 8–1. As a deputy attorney general, she co-wrote a brief calling on the Supreme Court to overturn Roe. v. Wade. Three years ago, she dismissed the suit of a breast-cancer patient who claimed a violation of privacy after a drug-company salesman watched her examination without her permission. That appallingly insensitive ruling was also overturned.

Kuhl has plenty of supporters among lawyers, including Democrats, who say she's a good trial judge. If so, that's where she should stay—not placed on an appeals court where decisions are binding an all lower courts.

Both home state senators, Barbara Boxer and Dianne Feinstein, oppose Kuhl's appointment; traditionally, that's been enough to sink a nomination. But Senate Republicans are pushing ahead, after slipping by the Judiciary Committee on a party-line vote.

Democrats have used the filibuster to delay two nominations to federal appeals courts, that of Washington attorney Miguel Estrada and Texas Supreme Court Justice Priscilla Owen.

Bush deserves the right to appoint capable, smart, conservative judges. But senators must exercise their constitutional veto over nominees whose values and judicial philosophy are way out of the mainstream.

[From the Pittsburgh Post-Gazette, July 20, 2003]

NOT FIT FOR THE BENCH

ALABAMA'S PRYOR IS A WALKING STEREOTYPE

The problem with Senate Republicans during the Clinton administration was that they too often assumed the president's nominations to the federal bench were wild-eyed liberals. Now that a Republican president is in the White House, the Democrats and their friends are playing tit-for-tat by viewing Mr. Bush's nominations as reactionary by definition.

The Post-Gazette has deplored these tendencies, which have made it difficult to sort out the slanderous caricatures from the solid characters. It is why we rose strongly to the defense last year of Western Pennsylvania's D. Brooks Smith, a Republican nominee who was eventually confirmed for an appeals court seat after seeing his record distorted by liberal special-interest groups.

One trouble with crying wolf is that, just as in the old story, sometimes a real wolf turns up. Such a one is Alabama Attorney General Bill Pryor, whom The Washington Post observed in an editorial ''is a parody of what Democrats imagine Bush to be plotting for the federal courts.''

If Mr. Pryor is confirmed for a seat on the 11th U.S. Circuit Court of Appeals, he will be well placed to begin preying on a number of settled legal precedents and doctrines. Roe v. Wade? ''The worst abomination in the history of constitutional law'' in the United States, he said. Separation of church and state? He's cozy with the religious right, so he looks favorably on such things as the display of the Ten Commandments on public property. Protect the environment? Mr. Pryor thinks the feds should get out of that business and leave it to the states.

And so it goes with this reactionary's reactionary, who would be in the mainstream only if it were far to the right.

On Thursday, the Senate Judiciary Committee put off voting on Mr. Pryor's nomination amid concerns raised about his fundraising activities for the Republican Attorneys General Association, specifically focusing on how accurately he answered the committee's questions.

This is no small matter, but it was dismissed as ''pure politics, pure and simple'' by Committee Chairman Sen. Orrin Hatch, R-Utah. In a sense, he was right, except that the process began in the White House. This nomination is entirely political, meant to curry favor with President Bush's right-wing constituency.

The delay represents an opportunity for Pennsylvania's Sen. Arlen Specter, who has a reputation for reason and moderation but has been fretting for days about exposing his flank to a right-wing challenger in the primary. Whatever happens with the fund-raising questions. Sen. Specter and the others have before them a self-confirming stereotype who should be opposed.

[From the New York Times, July 23, 2003]

AN EXTREMIST JUDICIAL NOMINEE

The Senate Judiciary Committee could vote as early as today on the nomination of the Alabama attorney general, William Pryor, to a federal appeals court judgeship. Mr. Pryor is among the most extreme of the Bush administration's far-right judicial nominees. If he is confirmed, his rulings on civil rights, abortion, gay rights and the separation of church and state would probably do substantial harm to rights of all Americans. Senators from both parties should oppose his confirmation.

Mr. Pryor, who has been nominated for a seat on the Federal Court of Appeals for the 11th Circuit, based in Atlanta, has views that fall far outside the political and legal mainstream. He has called Roe v. Wade, the landmark abortion-rights ruling, ''the worst abomination'' of constitutional law in our history. He recently urged the Supreme Court to uphold laws criminalizing gay sex, a position the court soundly rejected last month. He has defended the installation of a massive Ten Commandments monument in Alabama's main judicial building, which a federal appeals court recently held violated the First Amendment. And he has urged Congress to repeal an important part of the Voting Rights Act.

Moderates in the Senate and in the legal community have repeatedly called on the Bush administration to stop trying to stack the federal judiciary with far-right partisans like Mr. Pryor. But the White House and its supporters have chosen instead to lash out at these reasonable critics. In a shameful bit of demagoguery, a group founded by Boyden Gray, a White House counsel under the first President George Bush, has run newspaper ads accusing Mr. Pryor's critics in the Senate of opposing him because he is Catholic.

At today's committee meeting, much of the attention will be on Arlen Spector, the Pennsylvania Republican who could cast the deciding vote. Mr. Specter owes it to his constituents to break with the White House and vote against Mr. Pryor, whose extremist views are out of step with most Pennsylvanians'. Standing up for an independent, nonideological judiciary is an urgent cause, and one that should find support on both sides of the aisle.

[From the Charleston Gazette, June 30, 2003]

EXTREMIST FAR-RIGHT NOMINEE

President Bush hopes to pack the federal judiciary with numerous ultraconservative appointees who eventually will revoke women's right to choose abortion—a goal of the Republican national platform—and make other legal changes desired by the party's ''religious right'' wing.

Many of the White House appointees are evasive about their personal views when questioned at Senate confirmation hearings. But one of them, Alabaman William Pryor, nominated to the Atlanta circuit court, has such an inflammatory record that he can't hide his extreme beliefs.

He told the senators that allowing women to choose abortion is ''morally wrong'' and this freedom has caused ''the slaughter of millions of unborn children.'' He said he once refused to take his family to Disney World on a day that gays attended, because his personal ''value judgment'' dictated it.

In the past, he has sneered at the U.S. Supreme Court as ''nine octogenarian lawyers'' because the justices delayed an execution that Pryor desired.

The New York Times commented:

''As Alabama attorney general, Mr. Pryor has turned his office into a taxpayer-financed right-wing law firm. He has testified to Congress in favor of dropping a key part of the Voting Rights Act. In a Supreme Court case challenging the Violence Against Women Act, 36 state attorneys general urged the court to uphold the law. Mr. Pryor was the only one to argue that the law was unconstitutional. This term, he submitted a brief in favor of a Texas law that makes gay sex illegal, comparing it to necrophilia, bestiality, incest and pedophilia. . . .

''If a far-right legal group needs a lawyer to argue extreme positions against abortion, women's rights, gay rights and civil rights, Mr. Pryor may be a suitable candidate. But he does not belong on the federal bench.''

Where on Earth does Bush find such narrow-minded nominees—from TV evangelist shows? It will be tragic if America's federal

courts become dominated by one-sided, puritanical judges far out of step with the majority of people.

Senate Democrats are threatening filibusters to block the worst of Bush's judicial appointees. Republicans want to change Senate rules, banning filibusters when judges are up for confirmation. We hope that West Virginia's senators, Robert C. Byrd and Jay Rockefeller, do their utmost to hold the line against extremist judges.

[From the Arizona Daily Star, June 14, 2003]

DENY THE IDEOLOGUE

President Bush continues his quest to pack the American judicial system with ideologically driven, conservative activists who simply are unfit to take a seat on the nation's appellate courts. The latest is William H. Pryor, the Alabama Attorney General.

Pryor's nomination to the 11th Circuit Court of Appeals is outrageous. It is designed, as are the president's other ideological nominations, to appeal to the base instincts of the right-wing, conservative Christian element of the Republican Party.

Pryor makes no attempt to distance himself from his outlandish comments. He has said that if a Texas law outlawing homosexual sex were overturned, it would open the door to legalized ''prostitution, adultery, necrophilia, bestiality, possession of child pornography and even incest and pedophilia.''

That statement is breathtakingly bigoted.

But Pryor is a multi-dimensional ideologue. Here's his stance on Roe v. Wade, the Supreme Court decision allowing abortion: The law is ''an abominable decision'' and ''the worst abomination in the history of constitutional law.'' He opposes abortion even in the case of rape.

Though these are his personal opinions about legal decisions, he says, he would uphold the law as an appellate court judge. That is disingenuous, at best. He admitted during a Senate hearing that in a meeting with a conservative group, he ended by saying a ''prayer for the next administration: Please, God, no more Souters.''

David Souter, a Supreme Court justice appointed by the first President Bush, is widely scourned by conservatives because he is a moderate rather than a conservative Supreme Court justice.

Only once during questioning before the Senate Judiciary hearing on his nomination did Pryor backtrack on previous remarks. He admitted he made an inappropriate remark when he referred to the Supreme Court as ''nine octogenarian lawyers who happen to sit on the Supreme Court.'' He made the comment after the Court issued a stay of execution in his state. The stay was issued in order to determine whether the use of the electric chair was unconstitutional.

His background also includes efforts to allow students-led prayers in schools; defense of an Alabama judge who displays the 10 Commandments in his courtroom; and support of Alabama prison guards who handcuff prisoners to hitching posts during the summer.

Civil rights activists signed a letter arguing against Pryor's confirmation. The letter said the group was alarmed that Pryor ''. . . is not only an avowed proponent of the modern states rights movement, now called federalism, but he has also asked Congress to 'repeal or amend' Section 5 of the Voting Rights Act, which he said is an 'affront to federalism.' '' The section requires Justice Department approval to changes in voting procedures made by states.

This ideologue is also delusional. Pryor believes that only guilty people are executed in this country. The judicial system, he said, has ''extraordinary safeguards, many safeguards.'' Further, he said, ''the system catches errors.''

One of the benefits of nominating a right-winger like Pryor is that the president gets valuable political points for it. Even if Pryor is not confirmed by the Senate, and he should not be, the president still wins. In this age of cynical politics, Bush will get credit among the most distasteful elements of his party for nominating one of their own for a seat on the bench. It will serve him well when he runs for re-election.

[From the Los Angeles Times, June 30, 2003]

SKEWED PICTURE OF AMERICA

By nominating William H. Pryor Jr. to the federal appeals court, George Bush has declared that the Alabama attorney general is not only qualified to sit on the nation's second-highest court but is the kind of judge most Americans want. Senators should reject this implausible assessment.

Even though the Senate has already confirmed 132 judges, pushing court vacancies to a 13-year low, the White House still complains about delays. Go-along-to-get-along Republicans may want to approve Pryor rather than buck their president.

But the appointment of Pryor, 41, to a lifetime seat on the U.S. Court of Appeals would be an endorsement of an ominous view of American law. At this month's Senate Judiciary Committee hearing, he defended—even amplified on—his disturbing views. His candor is refreshing but it leaves squirming senators no cover.

''Congress . . . should not be in the business of public education nor the control of street crime,'' he has argued, a position at odds with Bush's education initiative and support for beefed-up law enforcement and tougher criminal penalties.

Pryor contends that the Constitution does not grant the federal government power to protect the environment. He regards Roe vs. Wade, the 1973 Supreme Court decision upholding the legal right to an abortion, as ''the worst abomination of constitutional law in our history'' and hopes that the landmark ruling will be overturned.

He would urge repeal of the 1965 Voting Rights Act requirement that the federal government review state and local changes to voting procedures that may affect minorities. It's ''an affront to federalism and an expensive burden,'' Pryor believes.

Before the Supreme Court last week struck down Texas' anti-sodomy statute, he argued for upholding that law and another like it in Alabama. If the Constitution protects the choice of a sexual partner, he contends, it also permits ''prostitution, adultery, necrophilia, bestiality . . . and even incest and pedophilia.'' He also believes that the 1st Amendment's establishment clause should permit a two-ton granite representation of the Ten Commandments to sit in an Alabama courthouse.

These views and Pryor's lack of judicial experience caused the American Bar Assn. to splinter over his fitness for the appeals seat.

With the Senate already having confirmed so many of Bush's picks for the federal bench, there's no argument for this unqualified nominee.

Mr. LEAHY. We have also heard from a number of organizations and individuals concerned about justice before the Federal courts. The Log Cabin Republicans, the Leadership Conference on Civil Rights, the Alliance for Justice, NARAL and many others have provided the committee with their concerns and the basis for their opposition. We have received letters of opposition from organizations that rarely take positions on nominations but feel so strongly about this one that they are compelled to write, including the National Senior Citizens' Law Center, the Anti-Defamation League and the Sierra Club. I ask unanimous consent to print a list of the letters of opposition we have received in the RECORD.

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

LETTERS OF OPPOSITION TO THE NOMINATION OF BILL PRYOR, TO THE 11TH CIRCUIT COURTS OF APPEAL

ELECTED OFFICIALS

Congressional Black Caucus.

PUBLIC INTEREST ORGANIZATIONS

Ability Center of Greater Toledo, Access Now, Inc., ADA Watch, AFL-CIO, AFSCME, Alliance for Justice, Americans for Democratic Action, American Association of University Women, Americans United for Separation of Church and State, Anti-Defamation League, B'nai B'rith International, California Council of the Blind, California Foundation for Independent Living Centers.

Citizens for Consumer Justice of Pennsylvania letter also signed by: PennFuture, Sierra Club, NARAL-Pennsylvania, National Women's Political Caucus, PA, United Pennsylvanians.

Coalition For Independent Living Options, Inc., Coalition To Stop Gun Violence, Disabled Action Committee, Disability Resource Agency for Independent Living, Stockton, CA, Disability Resource Center, North Charleston, SC, Eastern Paralyzed Veterans Association, Jackson Heights, NY, Eastern Shore Center for Independent Living, Cambridge, MD.

Environmental Coalition Letter signed by: American Planning Association, Clean Water Action, Coast Alliance, Community Rights Counsel, Defenders of Wildlife, EarthJustice, Endangered Species Coalition, Friends of the Earth, National Resources Defense Council, The Ocean Conservancy, Oceana, Physicians for Social Responsibility, Sierra Club, U.S. Public Interest Research Group, The Wilderness Society, Alabama Environmental Council, Alliance for Affordable Energy, Buckeye Forest Council, Capitol Area Greens, Citizens Coal Council, Committee for the Preservation of the Lake Purdy Area, Dogwood Alliance, Foundation for Global Sustainability, Friends of Hurricane Creek, Friends of Rural Alabama, Kentucky Resources Council, Inc., Landwatch Monterey County, Sand Mountain Concerned Citizens, Southern Appalachian Biodiversity Project, Tennessee Environmental Enforcement Fund, Waterkeepers Northern California, Wisconsin Forest Conservation Task Force.

Feminist Majority, Heightened Independent & Progress, Houston Area Rehabilitation Association, Human Rights Campaign, Independent Living Center of Southern California, Inc., Independent Living Resource Center, Ventura, CA, Interfaith Alliance.

Justice for All letter signed by the following California organizations: Southern California Americans for Democratic Action, California Abortion and Reproductive Rights

Action League, California Women's Law Center, Committee for Judicial Independence, Democrats.Com of Orange County, San Diego Democratic Club, National Center for Lesbian Rights, National Council of Jewish Women/Los Angeles, California National Organization for Women, Planned Parenthood Los Angeles County Advocacy Project, Progressive Jewish Alliance, Public Advocates, Inc., Rock the Vote Educational Fund, Stonewall Democratic Club, Unitarian Universalist Project Freedom of Religion, Workmen's Circle/Arbeter Ring, Lake County Center for Independent Living, IL, Leadership Conference on Civil Rights, Log Cabin Republicans, MALDEF, NAACP, NARAL Pro-Choice America, National Abortion Federation, National Association of Criminal Defense Lawyers, National Council of Jewish Women, National Council of Jewish Women Chapter in Florida, Alabama and Georgia, National Disabled Students Union, National Employment Lawyers Association, National Family Planning & Reproductive Health Association, National Partnership for Women & Families, National Resource Defense Council, National Senior Citizens Law Center, National Women's Law Center, New Mexico Center on Law and Poverty, Albuquerque, NM, Options Center for Independent Living, People for the American Way, Pennsylvania Council of the Blind, Placer Independent Resource Services, Planned Parenthood Federation of America, Protect All Children's Environment, Marion, NC, Religious Action Center of Reform Judaism, SEIU, Sierra Club, Society of American Law Teachers, Summit Independent Living Center, Inc., Missoula, MT, Tennessee Disability Coalition, Nashville, TN, Vermont Coalition for Disability Rights.

LETTERS FROM THE 11TH CIRCUIT

Joseph Lowery, Georgia Coalition for the Peoples' Agenda, NAACP, Alabama State Conference, Alabama Chapter of the National Conference of Black Lawyers, Alabama Hispanic Democratic Caucus, Hispanic Interest Coalition of Alabama, Latinos Unidos De Alabama, Jefferson County Progressive Democratic Council, Inc., Morris Dees, Co-Founder and Chief Trial Counsel, Southern Poverty Law Center, Bryan Fair, Professor of Constitutional Law at University of Alabama, Tricia Benefield, Cordova, AL, Judy Collins Cumbee, Lanett, AL, Michael and Becky Pardoe, Mobile, AL, Harold Sorenson, Rutledge, AL, Patricia Cleveland, Munford, AL, Larry Darby, Montgomery, AL, Sisters of Mercy letter signed by Sister Dominica Hyde, Sister Alice Lovette, Sister Suzanne Gwynn, Ms. Cecilia Street and Sister Magdala Thompson, Mobile, AL.

LETTER SUBMITTED BY CIVIL RIGHTS MOVEMENT VETERANS

Rev. Fred Shuttlesworth, Leader, Birmingham Movement; Rev. C.T. Vivian, Executive Staff for Dr. Martin Luther King, Jr.; Dr. Bernard LaFayette, Executive Staff for Dr. Martin Luther King, Jr.; Rev. Kim Lawson, Jr., Advisor to Dr. Martin Luther King, Jr.; President of Southern Christian Leadership Conference (Los Angeles); Rev. James Bevel, Executive Staff or Dr. Martin Luther King, Jr.; Rev. James Orange, Organizer for National Southern Christian Leadership Conference; Claud Young, M.D., National Chair, Southern Christian Leadership Conference; Rev. E. Randel T. Osbourne, Executive Director, Southern Christian Leadership Foundation.

Rev. Joseph Ellwanger, Alabama Movement Activist and Organizer; Dorothy Cotton, Executive Staff for Dr. Martin Luther King, Jr.; Rev. Abraham Woods, Southern Christian Leadership Conference; Thomas Wrenn, Chair, Civil Rights Activist Committee, 40th Year Reunion; Sherrill Marcus, Chair, Student Committee for Human Rights (Birmingham Movement, 1963); Dick Gregory, Humorist and Civil Rights Activist; Martin Luther King, III, National President, Southern Christian Leadership Conference; Mrs. Johnnie Carr, President, Montgomery Improvement Association (1967–Present) (Martin Luther King, Jr. was the Association's first President. The Association was established in December, 1955 in response to Rosa Park's arrest.)

OTHER

H.J. Bobb, Defiance, OH; Davis Budd, Sr, Defiance, OH; Don Beryl Fago, Evansville, WI; Daily Dupre, Jr., Lafayette, LA; Greg Jones, Parsons, KS; Catherine Koliha, Boulder, CO; Ashley Lemmons, Defiance, OH; Rebecca Lindemann, Defiance, OH; Patricia Murphy, Juneau, AK; Randy Wagoner, location unknown; Rabbi Zev-Hayyim Feyer, Murrieta, CA.

Mr. LEAHY. The ABA's evaluation also indicates concern about this nomination. Their Standing Committee on the Federal Judiciary gave Mr. Pryor a partial rating of ''not qualified'' to sit on the Federal bench. Of course this is not the first ''not qualified'' rating or partial ''not qualified'' rating that this administration's judicial nominees have received. As of today, 20 of President Bush's nominees have received some form of ''not qualified'' rating. Perhaps that is a reflection of the ideological basis for so many of these nominations, and the concern on the part of some on what has been a rather compliant ABA committee that these nominees cannot be fair to every litigant who may come before them.

Like Jeff Sutton, Bill Pryor has been a crusader for the federalist revolution, but Mr. Pryor has taken an even more prominent role. Having hired Mr. Sutton to argue several key federalism cases in the Supreme Court, Mr. Pryor is the principal leader of the federalist movement, promoting State power over the Federal Government.

A leading proponent of what he refers to as the ''federalism revolution,'' Mr. Pryor seeks to revitalize State power at the expense of Federal protections, seeking opportunities to attack Federal laws and programs designed to guarantee civil rights protections. He has urged that Federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited.

He has argued that the Federal courts should cut back on the protections of important and well-supported federal laws including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, and the Family and Medical Leave Act. He has repudiated decades of legal precedents that permitted individuals to sue States to prevent violations of Federal civil rights regulations. Mr. Pryor's aggressive involvement in this ''federalist revolution'' shows that he is a goal-oriented, activist conservative who has used his official position to advance his ''cause.'' Alabama was the only State to file an amicus brief arguing that Congress lacked authority to enforce the Clean Water Act. He argued that the Constitution's commerce clause does not grant the Federal Government authority to prevent destruction of waters and wetlands that serve as a critical habitat for migratory birds. While this is a sign to most people of the extremism, Mr. Pryor trumpets his involvement in these cases and is proud of his work to limit Congress's authority.

Bill Pryor's passion is not some obscure legal theory but something in which he has believed deeply since he was a student and something that guides his actions as a lawyer. Mr. Pryor's speeches and testimony before Congress demonstrate just how deeply-rooted his views are, how much he seeks to effect a fundamental change in the country, and how far outside the mainstream his views are. Mr. Pryor's judicial ideology is something in which he deeply believes, not just an argument that he makes as a lawyer.

Mr. Pryor is candid about the fact that his view of federalism is different from the current operation of the Federal Government—and that he is on a mission to change the Government to fit his vision. His goal is to continue to limit Congress's authority to enact laws under the 14th amendment and the commerce clause—laws that protect women, ethnic and racial minorities, senior citizens, the disabled, and the environment—in the name of sovereign immunity. Is there any question that he would pursue his agenda as a judge on the Eleventh Circuit Court of Appeals—reversing equal rights progress and affecting the lives of millions of Americans for decades to come?

His strong views against providing counsel and fair procedures for death row inmates have led Mr. Pryor to doomsday predictions about the relatively modest reforms in the Innocence Protection Act to create a system of competent counsel. When the U.S. Supreme Court questioned the constitutionality of Alabama's method of execution in 2000, Mr. Pryor lashed out at the Supreme Court, saying ''[T]his issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court.'' Aside from the obvious disrespect this comment shows for this Nation's highest Court, it shows again how results-oriented Mr. Pryor is. Of course an issue about cruel and unusual punishment ought to be decided by the Supreme Court. It is addressed in the eighth amendment, and whether or not we agree on the ruling, it is an elementary principle of constitutional law

that it be decided by the Supreme Court, no matter how old its members.

Mr. Pryor has also vigorously opposed an exemption for persons with mental retardation from receiving the death penalty, exhibiting more certainty than compassion. He authored an amicus curiae brief to the Supreme Court arguing that the Court should not declare that executing mentally retarded persons violated the eighth amendment. After losing on that issue, Mr. Pryor made an unsuccessful argument to the eleventh circuit that an Alabama death-row defendant is not mentally retarded.

Mr. Pryor has spoken harshly about the moratorium imposed by former Illinois Governor George Ryan, calling it a ''spectacle,'' and saying that it will ''cost innocent lives.'' How can someone so sure of his position be relied upon to hear these cases fairly? Over the last few years, many prominent Americans have begun raising concerns about the death penalty, including current and former supporters of capital punishment. For example, Justice O'Connor recently said there were ''serious questions'' about whether the death penalty is fairly administered in the United States, and added: ''[T]he system may well be allowing some innocent defendants to be executed.'' In response to this uncertainty, Mr. Pryor offers us nothing but his steadfast belief that there is no problem with the application of the death penalty. This is a position that cannot possibly offer a fair hearing to a defendant on death row.

Mr. Pryor's troubling views on the criminal justice system are not limited to capital punishment. He has advocated that counsel need not be provided to indigent defendants charged with an offense that carries a sentence of imprisonment if the offense is classified as a misdemeanor. The Supreme Court nonetheless ruled that it was a violation of the sixth amendment to impose a sentence that included a possibility of imprisonment if indigent persons were not afforded counsel.

Like Carolyn Kuhl, Priscilla Owen, and Charles Pickering, Bill Pryor is hostile to a woman's right to choose. There is every indication from his record and statements that he is committed to reversing Roe v. Wade. Mr. Pryor describes the Supreme Court's decision in Roe v. Wade as the creation ''out of thin air [of] a constitutional right,'' and opposes abortion even in cases of rape or incest.

Mr. Pryor does not believe Roe is sound law, neither does he give credence to Planned Parenthood v. Casey. He has said that, ''Roe is not constitutional law,'' and that in Casey, ''the court preserved the worst abomination of constitutional law in our history.'' When Mr. Pryor appeared before the committee, he repeated the mantra of those who desire confirmation, saying that he would ''follow the law.'' But his deeply held and intense commitment to overturning established Supreme Court precedent that protects fundamental privacy rights makes it impossible to give his promises any credence.

Bill Pryor has expressed his opposition to fair treatment of all people regardless of their sexual orientation. The positions he took in a brief he filed in the recent Supreme Court case of Lawrence v. Texas were entirely repudiated by the Supreme Court majority just a few weeks ago when it declared that the ''The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private conduct a crime.'' Mr. Pryor's belief is the opposite. He would deny certain Americans the equal protection of the laws, and would subject the most private of their behaviors to public regulation.

Mr. Pryor's comments have revealed an insensitivity to the barriers that disadvantaged persons and members of minority groups and women continue to face in the criminal justice system.

In testimony before Congress, Bill Pryor has urged repeal of Section 5 of the Voting Rights Act the centerpiece of that landmark statute because, he says, it ''is an affront to federalism and an expensive burden that has far outlived its usefulness.'' That testimony demonstrates that Mr. Pryor is more concerned with preventing an ''affront'' to the States' dignity than with guaranteeing all citizens the right to cast an equal vote. It also reflects a long-discredited view of the Voting Rights Act. Since the enactment of the statute in 1965, every Supreme Court case to address the question has rejected the claim that Section 5 is an ''affront'' to our system of federalism. Whether under Earl Warren, Warren Burger, or William Rehnquist, the United States Supreme Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy not a ''burden'' that has ''outlived its usefulness.''

On all of these issues, the environment, voting rights, women's rights, gay rights, federalism, and more, William Pryor's record of activism and advocacy is clear. That is his right as an American citizen, but it does not make him fit to be a judge or likely to be fair on such issues. I think the length and level of his devotion to these issues creates a situation in which his impartiality on such issues would reasonably be questioned by litigants in his court. He should not be confirmed to the United States Court of Appeals for the Eleventh Circuit.

Mr. HATCH. I yield to the distinguished Senator from California, and I intend to take the floor as soon as she is through.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object.

Mr. DOMENICI. Object to what?

Mr. HATCH. You cannot object.

Mr. DORGAN. Does the Senator from Utah, does the chairman of the committee, have the opportunity to yield the floor to another Member of the Senate?

The PRESIDING OFFICER. He does not.

Mr. DORGAN. What did the Senator from Utah just try to do?

Mrs. FEINSTEIN. It was a nice thing.

Mr. HATCH. I ask unanimous consent that the distinguished Senator from California be recognized for 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I object.

Mr. DOMENICI. Reserving the right to object, I want to say to everyone who is listening, in case you are confused, we are not on the Energy bill.

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

Mrs. FEINSTEIN. Mr. President.

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

Is there an objection to the unanimous consent request of the Senator from Utah?

Mr. DORGAN. I object.

The PRESIDING OFFICER. There is an objection.

Mr. HATCH. Mr. President, let me take the floor. I am going to yield the floor in just a second.

I expect the distinguished Senator from California to be recognized so she can take 15 minutes. Then I am going to warn the Senate, right now, the minute she is through, I want the floor back, and I have a right to have it as the leader on the majority side. Am I right, parliamentarily?

The PRESIDING OFFICER. The Senator from Utah is seeking recognition. He has priority of recognition as the majority manager.

Mr. DORGAN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from North Dakota will state his parliamentary inquiry.

Mr. DORGAN. Mr. President, the Senator from Utah stated that when he finishes his presentation, he expects the Senator from California to be recognized, after which he expects to be recognized.

Does the Senator from Utah have a right to yield the floor to the Senator from California?

Mr. HATCH. I didn't do that.

The PRESIDING OFFICER. He does not have the right to yield the floor, but he did not propose that as a unanimous consent request.

Mr. DORGAN. Mr. President, the Senator from Utah has priority recognition as manager of the bill. He may seek the floor on that basis following the presentation by the Senator from California, not by prearrangement, however; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. Thank you.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, thank you very much. I thank the chairman of the committee and I thank the ranking member.

I have served on this committee for 10 years. I love this committee. The Presiding Officer serves on this committee. It is a challenging committee. It is particularly challenging for me because I am a nonlawyer. I have had a great opportunity to work across the aisle on any number of different proposals with the chairman of the committee, with the Senator from Arizona, Mr. KYL, with Senator LINDSEY GRAHAM, with others. I have enjoyed it. There has always been a spirit of collegiality.

However, that spirit of collegiality is at a crossroads. Something very ugly has been injected. It has to do with this nominee, and it has to do with circumstances around this nominee. I will spend a few moments discussing them. This kind of thing that has been going on has to stop.

Last week, the Democratic members of the committee were accused by outside groups, and even some of our colleagues on the committee, of applying an anti-Catholic religious litmus test on the nomination of William Pryor. These charges are false. They are baseless. They are offensive. And they are beneath the dignity of a Senate committee tasked with making very important decisions on the future of the Federal judiciary.

We have heard a lot about the ad. I never thought I would see an ad like this. It is a rather insidious ad. I will not show it, but I will describe it. It is two courtroom doors. Atop it says ''Judicial Chambers.'' On the doorknob hangs a sign that says ''Catholics Need Not Apply.'' When I saw this ad, I thought we were going back decades. When I saw this ad, I thought: Uh-oh, if there is one thing I know—and I have watched cities polarized, I have seen assassinations result from the polarization—I know what happens when people seek to divide. One of the easiest ways to divide is to use race or religion in an adverse manner. That is what this ad sought to do. It sought to divide.

Then I watched C–SPAN the other night. I saw clergy discussing the ad. I saw them beginning to believe that religious litmus tests were being used by the Judiciary Committee. Now, in fact, that has never been the case.

Senator SCHUMER pointed out during Mr. Pryor's markup in the committee that this kind of thing is becoming somewhat of a pattern. Once it becomes a pattern, no one really knows where it goes.

We have not opposed a lot of nominees. The ranking member has made that clear: 140 nominations have gone through. Just today we had a hearing in the morning. I introduced two California judges who were going through in a 4-month period of time, new judges produced because the chairman and the ranking member agreed there was a very heavy caseload in San Diego and there should be a number of new judges. They were nominated in May. Already these judges have had their hearing. So good things do happen.

However, each time we have opposed a nominee, there has been bias used as a rationale for those who do not agree with us, to purport that bias is part of our rationale. It happened with an anti-Hispanic charge with Miguel Estrada, an anti-woman charge with Priscilla Owen, an anti-Baptist charge with Charles Pickering, and now with William Pryor an anti-Catholic charge.

You have no idea what happens when this begins to circulate throughout the electorate. People do not know exactly what goes on. It is a dastardly thing to do. In a sense it is scurrilous, because it caters to the basic insecurity of all of us who share a religion that may be different from someone else's. So it has a truly insidious quality to it.

To call us antiwoman—I don't have to tell you how bizarre it is for me to be called antiwoman. And to say we have set a religious litmus test is really equally false.

Many of us have concerns about nominees sent to the Senate who feel so very strongly, and sometimes stridently, and often intemperately about certain political beliefs and who make intemperate statements about those beliefs. So we raise questions about whether those nominees can be truly impartial, particularly when the law conflicts with those beliefs.

It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice. But pro-choice Democrats on this committee have voted for many nominees who are anti-choice and who believe that abortion should be illegal, some of whom may even have been Catholic. I do not know because I have never inquired.

So this truly is not about religion. This is about confirming judges who can be impartial and fair in the administration of justice. I think when a nominee such as William Pryor makes inflammatory statements and evidences such strongly held beliefs on a whole variety of core issues, it is hard for many of us to accept that he can set aside those beliefs and act as an impartial judge—particularly because he is very young, 41; particularly because this is a lifetime appointment; and particularly because we have seen so many people who have received lifetime appointments then go on and do just what they want, regardless of what they said. So it is of some concern to us.

I hope these accusations will stop. I hope we can focus on the merits of each nominee, not on baseless allegations against Members of the Senate who are trying to do their constitutional duties.

I am very concerned because, to date, not a single Member on the other side has said they believe these ads are baseless, have said they know we do not practice this kind of decisionmaking. No one has disavowed these ads.

So I call on the committee to disavow these ads. I call on the administration to disavow these ads. And I call on them to set the record straight.

There was a time in our history when the phrase ''Catholics need not apply'' was used to keep countless qualified Americans from pursuing the American dream. The same can be said for ''no Jews need apply'' and ''no Irish need apply.'' And, much like Justice Sandra Day O'Connor, when she first looked for her first job and I first looked for my first job, really ''women need not apply.''

In fact, I lost my first job to a man who was less qualified than I, but I was a woman and I had a small child and at that time that was not much coin of the realm to get a job. So I was beaten out many times by men who were less qualified—had less academic experience, less graduate experience, et cetera.

These were dark times in American history and many of us in this body remember those times. But every one of us should be absolutely committed to preventing those days from ever recurring. What this is a sign of is that those days are beginning to occur again.

I hope we do not see political cheapshot artists bringing painful phrases back for the purposes of intimidating Senators and stacking Federal courts. We should be above that in this debate. This is the Senate, as the distinguished Senator from Nevada has said, and our constitutional duty should not be marred by false allegations or intimidating political tactics. Our Nation's history in fighting bigotry of all kinds must continue. I urge my colleagues very sincerely to condemn these tactics and move on to debating the merits of controversial nominees.

Now a second event at the Pryor markup also disturbed me greatly and was especially troubling because we faced a repeated refusal to acknowledge the clear application of a longstanding committee rule on ending debate. Without the violation of the rule, Mr. Pryor would still be before the Judiciary Committee, as I deeply believe he should be.

The Judiciary Committee rules contain a clause known as Rule 4 that prevents closing off debate on a nominee unless at least one member of the minority agrees to do so.

It isn't used a lot but it has been used before when I have been on the committee.

During debate on the Pryor nomination, the Ranking Member attempted to invoke this rule because members of the minority did not believe that an ongoing investigation into Mr. PRYOR's nomination had been given sufficient time.

Serious allegations were made about Mr. Pryor's truthfulness to the committee during the hearing, and staff had been looking into those allegations. Put simply, the job has not been completed.

But, as Chairman HATCH did earlier this Congress with regard to the nomination of Deborah Cook and John Roberts, he chose to ignore this rule and force through a vote over the objections of every member of the minority on the committee.

We thought the issue had been resolved during discussions over what happened last time, but apparently we were wrong.

The rule contains the following language:

> The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bringing the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

That is a reading on its face. It stands on its face. It is what it is.

Over the last few decades, it has clearly meant that unless one member of the minority agrees to cut off debate and move straight to a vote, no vote can occur. This is one of the only protections the minority party has in the Judiciary Committee. Without it, there might never be debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. This is not how a deliberative body should function, and more importantly, it is contrary to the rules. Either the rules are observed or we have chaos on the committee. If we do not like the rules, we should change the rules. But we should follow the rules.

As I understand it, this rule was first instituted in 1979. Senator KENNEDY was chairman of the committee at the time. It has been followed ever since.

Senator HATCH, our current chairman, has also followed the rule. I make no bones about the fact that I am very fond of the chairman, but he has been going through some kind of a change lately, and I don't quite know what it is.

During the markup of Bill Lann Lee to be the Assistant Attorney General for the civil rights division, there was some fear that Republicans, who had the votes to defeat the nomination would move directly to a vote and prevent any debate on the issue at the markup. Democrats, on the other hand, wanted the chance to explain their position, and maybe even try to change some minds on the other side.

During that markup, then, there was significant discussion about what rule 4, the rule about cutting off debate, really means. At one point, it is interesting to note, Chairman HATCH himself commented that:

> At the appropriate time, I will move to proceed to a vote on the Lee nomination. I assume there will be no objection. It seems to me he deserves a vote. People deserve to know where we stand on this issue. Then we will, pursuant to Rule IV, vote on whether to bring the Lee nomination to a vote. In order to vote on the nomination, we need at least one Democrat to vote to do so.

That is precisely what we are discussing. The situation then was the same as the situation regarding Mr. Pryor. In order to vote on the nomination, we need at least one Democrat to vote to do so. But we never even had the chance to vote on cutting off debate.

I don't need to lecture this body that we are a nation of laws. We know that. We expect these laws to be obeyed. This is a Senate of rules. Our rule book is 1,600 pages long. There is no greater expert on rules than the senior Senator from the great State of West Virginia. Rules have always been observed. Some of them are complicated. This happens to be pretty simple, and we all understand it.

I want to spend a moment on the materials that have been before us that are being investigated. The materials in question came to the Judiciary Committee just 2 or 3 weeks ago.

Those materials raise real questions about whether Mr. Pryor misled the committee about his activities on behalf of the Republican Attorneys General Association, a fundraising organization that I believe raises serious concerns about conflicts of interest.

For instance, questions have been raised about whether Mr. Pryor raised money from tobacco companies, while at the same time arguing against pursuing those companies through litigation. I don't know whether this allegation is true or not true. None of us do. I wasn't really prepared to vote. But we should look into it and we should be able to match his statements to the committee with the facts.

There are other areas where the documents given to the committee suggest that Mr. Pryor may not have been completely forthcoming at his hearing.

We will never get past the partisan bad-feelings that are increasingly apparent in the Judiciary Committee if we cannot even rely on having our rules followed to the extent of carrying out an investigation with materials about which none of us knew existed when we had the hearing on the nominee.

On the merits, this is a nominee who has been before us for just a few months.

I mentioned the investigation. I mentioned rule 4. But let me go into a couple of the merits from our side and from our point of view.

He used his position as Attorney General to limit the scope of crucial civil rights laws like the Violence Against Women's Act, the Age Discrimination In Employment Act, the American with Disabilities Act, the Fair Labor Standards Act, and the Family Medical Leave Act.

He said that he doesn't believe that the Federal Government should be involved in ''education or street crime.''

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

Mrs. FEINSTEIN. I beg your pardon?

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

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

Mrs. FEINSTEIN. No. I would rather finish my remarks. If I have time left, I will yield.

Mr. SESSIONS. I wanted to clear up a misstatement.

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

Mrs. FEINSTEIN. Mr. Pryor calls Roe v. Wade ''the worst abomination of constitutional law in our history.'' He has written that he could ''never forget January 22, 1973, the day seven members of our highest court ripped out the life of millions of unborn children.'' That is a quote. It is a very strong statement.

He has lobbied for the repeal of section V of the Voting Rights Act.

After the Bush v. Gore decision, Pryor made the astounding statement, ''I'm probably the only one who wanted [the decision] 5–4 . . . I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.''

This is a sitting attorney general taking on a Justice of the U.S. Supreme Court by name. I have never heard of that before. Of course, there is always a first time. It was also an attack on a Justice who was well known as being more moderate than he was expected to be and who does not simply toe a party line.

So is Mr. Pryor saying he would want only those judges who remain completely faithful to the ideology of those who choose them? Is he saying that Justice Souter is simply not conservative enough? I think he is.

Mr. Pryor has taken positions so extreme that they are at odds with the rest of the Nation's attorneys general. For example, he was the only attorney general to argue against a key provision in the Violence Against Women Act on federalism grounds.

So there is a reason we feel strongly about it.

My experience is that in appointing someone to the trial bench when that individual has never been a judge is probably a good idea, even if they are an attorney general. One can make some judgments about people who hold political office and who are strong advocates as to whether in fact they can separate themselves from their ideology, whatever that ideology may be. I believe people can do this. I voted for Jeffrey Sutton because I had that belief. In this case, I am not so sure because the rhetoric is so strident and so very intemperate.

The Senator from Alabama, who is present on the floor, believes he can, and there are people who believe he can. But I think the jury is out because there is a venture into an attack on a sitting U.S. Supreme Court Justice, there is a characterization of a landmark Supreme Court case as ''an abomination,'' and other things as well. There is an attack on many significant—significant to those of us on this side of the aisle—pieces of Federal legislation.

Truly, this is a nomination that deserves and merits debate—an open debate. But I would like the debate to take place with the observation of the rules of the committee and after the investigation that is ongoing is finished.

I hope the Senator from North Dakota's importuning to leadership is taken. We don't need to have a cloture vote at this time on this nominee. That cloture vote can come after the results of the investigation are finished—certainly after the Energy bill—because I think if a cloture vote is taken, these arguments I have made on the merits of the case are really going to be dispositive as far as votes on our side are concerned.

I thank the Chair. I yield the floor. I thank very much the chairman of the committee.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished Senator from California as well. I feel very deeply toward her. I think she is a wonderful person, and I think she is a fine Senator who works very hard on the Judiciary Committee. And I appreciate her kind remarks about me.

Mr. President, let me make something clear. I keep hearing that we are going to vote on judges. Well, I certainly wish that were the case. What we are talking about is a cloture vote tomorrow, and one on Friday. It is not unusual at all, in fact it is a matter of course, for the Senate to double track various items in the interests of the body to keep on top of matters.

The two trade bills are extremely important for this country, with two of our greatest allies and supporters, Chile and Singapore. It needs to be done. There is no reason to have hours of debate on it. There are some hard feelings about it, and so forth, but it can be done.

We could have debated this in the hour before the cloture vote, which is what the rule calls for. If we invoke cloture, there will be ample opportunity to devote time to the total debate on General Pryor.

But now let me just make another point or two. The distinguished Senator from California is very upset at him because he actually took up to the Supreme Court an issue on the Violence Against Women Act. She takes great umbrage at that. Unfortunately, he won. So to indicate that he may be outside the mainstream or somebody who should not be supported because he wins in front of the Supreme Court—and almost everything they criticize, as far as Supreme Court matters are concerned, he has won on, until this last term when he lost on a couple of issues. And in every case he followed what he believed the law was regardless of his own personal beliefs. By the way, I am one of the coauthors in the Congress of the Violence Against Women Act.

So to criticize him for something that the Supreme Court agrees with him on gives an indication who is outside the mainstream. It isn't General Pryor. And there is case after case after case where he wins that has been criticized by our colleagues over there as though somehow or other he has been off the charts when it comes to the law. He has been on the charts. I admit, he has lost some, too. But I don't know of anybody who has taken multiple cases to the Supreme Court who has won everything. I know a few who have had pretty good records—and he has one of the better records as an attorney general in this country.

My Democratic colleagues assert, in laundry list format, that General Pryor is basically against everything they are for. He is ''out of the mainstream.'' We hear that over and over again. Pryor is against civil rights, disability rights, minorities and women themselves, the environment—the whole thing, presumably, and of course—abortion rights.

I am paraphrasing just one Democratic Senator's statement during the markup on July 23, 2003, but it is a fair representation of the types of assertions against General Pryor that are designed not to debate his fitness for the Federal bench but, rather, to strangle debate before it begins. To paint this excellent nominee as so ''extreme'' as to be not worth discussing.

By the way, we did not bring this debate up tonight. I did not want to stand here tonight and answer these so-called allegations. My friends on the other side did. They are the ones who interrupted the Energy bill, which is being slow-walked. And we all understand that—as almost everything has been this year.

These are what you call obstructionist tactics. And that is what is going on here. For them to come out here on the Senate floor and act like, well, we are interrupting the energy debate—it is almost more than I can take.

This energy debate is very important. It should be over. And I would be happy to end it right now, have the cloture vote tomorrow. I will even give up the hour before cloture, if they want to, to keep working on the Energy bill. But, no, that is not what they are doing. This is all a slow-walk to try to make this Congress look as if it isn't a good one, even though, in spite of these slow-walks, we have done bill after bill after bill, some of them extremely important pieces of legislation.

Let me provide you with a succinct but very different, and much more realistic picture of General Pryor.

General Pryor has been criticized as insensitive to the rights of the disabled because he argued in the Garrett case that the Americans with Disabilities Act could not, under section 5 of the 14th amendment, validly abrogate States' 11th amendment immunity and authorize money damage suits against States in Federal court.

But the Supreme Court agreed with General Pryor. He is being criticized by others on the Senate floor for cases that he has won in the Supreme Court.

He has also been criticized as insensitive to age-based discrimination because he and a bipartisan group of 23 other State attorneys general—23 other bipartisan State attorneys general—argued in the Kimel v. Florida Board of Regents case that the provision of the Age Discrimination in Employment Act that allowed money damage suits against States in Federal courts was invalid under the 11th amendment, something that they should have argued because it is an important issue.

But, again, the Supreme Court agreed with General Pryor. He is being criticized for winning cases in the Supreme Court as though he is the one who is out of the mainstream. I don't think it takes any brains to realize who is out of the mainstream. It is not General Pryor.

And we have heard criticism that he is insensitive to women's rights because he argued in the case of U.S. v. Morrison that neither the commerce clause nor the 14th amendment provided Congress with the authority to enact one civil remedies provision of the Violence Against Women Act. But the Supreme Court agreed with him again.

Further, General Pryor has been criticized as anti-environment because of his argument in Solid Waste Agency of Northern Cook County that the Army Corps of Engineers did not have

the authority, under the Federal Clean Water Act, to exercise Federal jurisdiction over entirely intrastate bodies of water—in this case, an abandoned gravel pit.

He was arguing for his State, which is what attorneys general are obligated to do. He even urged the Court not to reach the issue of whether the Commerce Clause allowed Congress to regulate entirely intrastate bodies of water. The Court did not reach the Commerce Clause issue and again agreed with General Pryor's statutory interpretation argument.

So I guess those who oppose Pryor are saying when the Supreme Court agrees with you that an environmental statute should be interpreted in accordance with its actual language, rather than expanded through bureaucratic fiat, that makes you extreme and anti-environment, especially when you win the case in front of the Supreme Court. Talk about turning the world upside down.

General Pryor has even been criticized as insensitive to civil rights concerns because of his argument in Alexander v. Sandoval that there is no private right of action under title VI of the Federal Civil Rights Act to challenge Alabama's policy of issuing drivers' licenses only to English speakers—a policy that I understand is no longer in effect. Once again, the Supreme Court agreed with his argument, holding that Congress, not Federal courts, should create causes of action to enforce Federal laws. That proposition should not be controversial, nor should supporting it be held against General Pryor, who again won in the Supreme Court.

Finally, let me just give one more example. The Supreme Court, including Justice Souter, agreed with General Pryor's argument in the Scheidler v. NOW case that Federal antiracketeering laws could not properly be applied to pro-life protest groups who admittedly had not engaged in any activities covered by those laws with respect to the targets of their protests. So while General Pryor may have criticized Justice Souter, they do not always disagree when it comes down to interpreting the law.

Let me say this. A nominee is not an extremist—or should I put the word ''extremist'' in quotes because it seems to be a special word that is used so often by our colleagues—a nominee is not an extremist when the positions he has taken have been consistently supported by Supreme Court majorities. We know who the extremists are, and it isn't General Pryor.

We will hear more about these cases, and I'm not saying Bill Pryor has won all of these arguments at the Supreme Court. Not even the best lawyers can win them all, and he did lose a couple in this last session. But to say that Bill Pryor is ''out of the mainstream,'' when he has been such a successful advocate for his State in the Nation's highest Court, is plainly wrong.

Anybody who makes that argument should think twice before they make that type of argument.

We are in the middle of a slow walk here, trying to make the Senate look bad—not by Republicans but by the other side. Frankly, to complain about double-tracking important things like a circuit court of appeals judgeship, the third branch of Government in our society, I think is hitting a little bit below the belt.

It is certainly not unusual for cloture votes on judgeship nominees when the other side is filibustering for the first time in history Federal judicial nominees. I made the mistake of saying the Fortas nomination was the only filibuster up until now. I was wrong. I was corrected by none other than former Senator Robert Griffin who led the fight against Fortas. He said: We weren't filibustering, and they knew it. They knew we had the votes to beat them up and down and they are the ones who called for the cloture vote, which they barely won. They only had 45 votes, and there were 12 who weren't there, many of whom were going to vote against Fortas for justifiable reasons.

So these filibusters going on now are the only ones we've ever had in the Senate. My colleagues on the other side are fond of saying: There have been 140 Bush judges confirmed by us and only two have been filibustered. That is two too many. Constitutionally, that is two too many. One is one too many. I have to admit there were a few on our side during the Clinton years who wanted to filibuster some of those judges. I personally stopped them with the help of the leadership and others who thought it through that we should not be filibustering judges. It is the wrong thing to do. It should not be done, but it is being done here.

Mr. SANTORUM. Mr. President, will the Senator yield?

Mr. HATCH. If the Senator will just wait for a few more minutes, I want to make a point on Rule 4. For the life of me, I can't understand how anybody reading the Judiciary Committee's Rule 4 would interpret it any differently than the way I did. I was surprised to see my comments during the Bill Lan Lee nomination used against me. What happened there was, I was Chairman. We had the votes to stop the nomination. The Democrats didn't want us to stop the nomination because it would have been embarrassing and might have made it more difficult for them to recess-appoint Lee, who I would have supported for any other job in Government but not that one. Because I knew he would get there and he would use the power of the civil rights office to bring litigation against communities, municipalities who would have to give in rather than spend millions of dollars in defense fees and accept full scale racial quotas. My fears were confirmed. Because they recess-appointed him and he did bring that kind of litigation.

But with the Lee nomination, the Democrats started a filibuster of their own nominee. There was no reason for them to make any arguments. I would have given them a vote up or down right there. They started the filibuster. I, in graciousness, agreed not to have a vote. I have to admit I myself was in error by making some of the statements I did because I didn't realize the importance of this, nor had I even looked at Rule 4. But let's look at this Rule.

It says: ''The chairman shall entertain. . . .'' That means this is a rule that forces the chairman to entertain a nondebatable motion to bring a matter before the committee to a vote. It is a way of forcing the chairman to give a vote that you could not otherwise give if the chairman decided not to do it.

''The chairman shall entertain a nondebatable motion to bring a matter before the committee to a vote if there is objection to bringing the matter to a vote without further debate''—a rollcall vote, in other words. If the chairman refuses, they can then demand a rollcall vote of the committee to be taken. It is nondebatable. It has to happen. And ''debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 10 votes in the affirmative, one of which must be cast by the minority.''

Anybody with brains can read that and say: That is a rule that forces a recalcitrant chairman to have to call a vote. But any competent person reading that can also conclude, as have I, having consulted with the two Parliamentarians beforehand, that a chairman cannot be foreclosed from his right to call a vote. Because if that were the rule, that means the minority would always control whether there would ever be a vote on a judge. That can't possibly be the rule, though that is what Democrats now are trying to say it is, with regard to the Committee's vote on General Pryor.

We are all well aware by now that Democrats invoked the Judiciary Committee's rule 4 to try to block a committee vote on General Pryor's nomination. Their interpretation of this rule was and is simply incorrect, and let me explain why.

Rule 4, entitled ''Bringing a Matter to a Vote,'' was clearly intended to serve as a tool by which a determined majority of the committee could force a recalcitrant chairman to bring a matter to vote. In fact, the rule provides, ''The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote.'' On July 23, there was no motion to

bring a matter before the committee to a vote. In fact, there was an objection to voting, which I overruled. Thus, on its face, rule 4 was inapplicable to the Pryor nomination.

If we followed the interpretation that Democratic members of the committee urged, it would mean that the committee minority would essentially control the committee's agenda. Essentially, the committee's chairman, on behalf of the majority, could not bring any nomination or piece of legislation to a vote without the affirmative vote of at least one member of the minority. So the chairman would have no right to call for a vote—the minority could restrict that right at their discretion.

No chairman would suffer such limitations on his power. The limitation that exists in rule 4 as properly interpreted is entirely reasonable: that all members of the committee's majority, plus one minority member, can force the committee to have a vote over the objection of the chairman—who, in that case, clearly would not be representing his committee's majority. Rule 4 does not, as Democrats, would currently, expediently, have it allow the minority to prevent a vote. Rule 4 does not authorize filibusters in the Judiciary Committee.

Despite claims to the contrary, there has been no inconsistency in the interpretation of this rule. During the Clinton administration, in an effort to prevent the defeat in committee of a controversial Justice Department nominee and spare both committee Democrats and the administration considerable embarrassment, I chose not to exercise the inherent power that I and all committee chairmen have to bring a matter to a vote. President Clinton ultimately made a recess appointment of the nominee. In retrospect, my graciousness to the other side, and my reliance on rule 4 to accomplish this was admittedly not the best course of action. I nevertheless believe that I had the power to bring that matter to a vote, and that I used the discretion of the chairman to decide not to do so.

In short, there was no violation of committee rules or process in bringing the Pryor nomination to a vote on July 23, and any argument to the contrary was merely a last-ditch effort to prevent the full Senate from considering it.

Unfortunately, that effort continues, in a manner equally offensive to the ultimate rules that govern the Senate, the U.S. Constitution.

The fact is, this was the fifth markup that General Pryor was on, having had his confirmation hearing on June 11. And there were continual Democratic efforts to try and thwart these markups every time. I went along with a number of those efforts just out of graciousness. But on July 23 everybody knew we were going to vote because at the prior markup they invoked the two-hour rule, the Democrats did, so that we couldn't possibly, during the time the Senate was in session, vote on Mr. Pryor.

I said: Well, then we will meet after the Senate goes out, which would get around the two-hour rule. That meant about 9 o'clock at night that night, the Thursday before we finally voted. Everybody knew I had the votes. Everybody knew I was going to go ahead. We gave them all day to resolve any problems they had in this so-called ''investigation'' which is as phony as any investigation I have ever seen. By the time we got ready, nobody told me about this, but by the time we got ready for the vote or for the Senate to go out of session and for us to meet—and we worked all day to make sure we would have a quorum—I was informed that there was a personal exigency that existed, a legitimate personal exigency, that was known about earlier in the day, and I agreed to not continue the markup.

I put it over then until the next Wednesday, a full week, and said: Get the staffs together, interview the four witnesses you want to, interview General Pryor in the process, but next Wednesday we are going to vote. There have been comments that our staff stalled that. That is not true. I believe the distinguished Senator from Massachusetts tried to make that point. That is not true.

As a matter of fact, the Democrats' staff refused to interview or ask questions of Mr. Pryor who could have easily answered them all, and would have, and in fact already had answered all of these questions at his hearing and in writing. It was a phony ''gotcha'' type of a situation which Democrats on the Judiciary Committee are putting nominees through.

Let me talk about the religious problem. I am getting a little tired of this. The outside groups have been outrageous with the smears they have brought upon Republican judicial nominees. If you made one mistake in your life or what they perceive to be a mistake, you are going to be smeared because of it. That perceived mistake is going to be enough for these groups to try to ruin your whole career. The tactics used against Judge Kuhl are a perfect illustration. Her whole career she has had the support of Democratic and Republican judges and everybody else in California who really counts, it seems to me, as far as judges are concerned. They found one thing they can beat into the ground, they think. I don't think even that is valid. I think we can rebut that case. And yet they are going to stop this brilliant woman who has a well-qualified rating, their gold standard, from the American Bar Association.

What is particularly offensive is what the outside groups have done against some of our nominees because of religious beliefs. By the way, throughout the extensive, lengthy, one-of-a-kind hearing on Judge Pryor, there were consistent questions about his deeply held beliefs. This has caused a lot of people to become very upset.

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

Mr. SANTORUM. Will the Senator from Utah yield for a question?

Mr. HATCH. I am sorry. I am happy to yield for a question without losing my right to the floor.

Mr. SANTORUM. I thank the Senator from Utah because he has hit on a point that is deeply disturbing to me as a member of the Senate. I understand the Constitution talks about, we shall establish no religion, and that is generally termed, in many cases, the separation of church and State, although the words ''separation of church and State'' do not appear in the Constitution.

What appears to be going on in the Judiciary Committee by Members of the other side of the aisle is not a separation of church and State, but a separation of anybody who believes in church and faith from any public role. I do not believe that is what the Constitution was founded to do. I listened to the comments of the Senator from California who said because of General Pryor's ''strongly held beliefs'' basically he cannot be impartial.

So if you have strongly held religious beliefs, because of your strongly held religious beliefs——

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

Mr. SANTORUM. I will not. Because of those beliefs that are referred to continually, the ''strongly held beliefs''——

Mr. DURBIN. Mr. President, I have a——

The PRESIDING OFFICER. The Senator from Utah has the floor and the Senator has yielded for a question to the Senator from Pennsylvania.

Mr. DURBIN. Mr. President, parliamentary inquiry.

Mr. SANTORUM. Are the beliefs that are referred to—

Mr. DURBIN. Mr. President, parliamentary inquiry.

Mr. SANTORUM. Mr. President, the Senator yielded to me for a question, which I am about to ask.

Mr. DURBIN. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DURBIN. If a Member of the Senate characterizes the words of another Member of the Senate incorrectly, can those words be taken down?

The PRESIDING OFFICER. There is no such right.

Mr. DURBIN. I thank the Chair.

Mr. SANTORUM. I ask the Senator from Utah, when the other side uses the term ''deeply held beliefs'' over and over again, which we have heard on

certain issues, would the Senator from Utah characterize what those ''deeply held beliefs'' might pertain to, and on what issues, and what they might tie to from the perspective of religious beliefs?

Mr. HATCH. At least in one instance over and over it was on the issue of abortion. Several Democrats asked questions about that.

Mr. SANTORUM. With respect to abortion and Mr. Pryor's beliefs, if the Senator from Utah will allow me, I would like him to comment on a letter just received today, written by Carl Anderson, who is with the Knights of Columbus. I ask unanimous consent that the letter be printed in the RECORD.

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

KNIGHTS OF COLUMBUS,
New Haven, CT, July 30, 2003.

Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee,
U.S. Senate.

DEAR SENATOR HATCH: I am writing to express concerns as to the way the nomination of Alabama Attorney General Bill Pryor for the federal appeals court in Atlanta is being handled in the Senate.

Many have questioned Mr. Pryor's fitness for this position because of his ''deeply held beliefs,'' in particular his opposition to abortion. Yet this ''deeply held belief'' is grounded in Mr. Pryor's adherence to his Catholic faith, which unequivocally declares abortion to be a grave evil.

Raising Mr. Pryor's ''deeply held beliefs'' in terms of his qualifications to serve on the federal bench thus suggests a de facto religious test for public office, something clearly prohibited by the Constitution. Of even more concern, it comes perilously close to suggesting that Catholics who faithfully adhere to their church's teaching on abortion, and perhaps other public moral issues, are unfit to serve their country in the federal judiciary.

Those who fault Mr. Pryor's ability to serve on the federal bench argue that his deeply held beliefs preclude him from judging and applying the law impartially. In effect, they are trying to put Mr. Pryor in the very uncomfortable and very unjust position of choosing between following his faith or serving his country. No candidate for any public office should be put in such a position. As Attorney General of Alabama, Mr. Pryor has already demonstrated an unquestioned record of applying the law impartially. He has already shown that one can be a faithful Catholic, with ''deeply held beliefs'' and still render unimpeachable service to his country and fellow citizens.

Perhaps it is worth remembering on this occasion that many distinguished jurists have dissented from the Supreme Court's decision in Roe v. Wade including the current Chief Justice of the United States and former Justice Byron White. To suggest that such jurists are unfit to serve on the Federal Bench does a disservice to the confirmation process itself. Moreover, it is worth reiterating that the Catholic Church teaches that abortion is unjust, not as a matter of faith, but as a matter of natural justice which obligates all citizens regardless of religious belief or lack thereof. This is attested to by the many persons of diverse religious belief or none at all who find abortion to be gravely unjust.

As head of the world's largest Catholic fraternal organization and as a former member of the United States Commission on Civil Rights, I am dismayed that the course of Mr. Pryor's nomination compels me to make a point which by now should be obvious: a good Catholic can also be a good public servant. Much as I would wish otherwise, a continuation of the trend that critics of Mr. Pryor's nomination have set in motion will compel American Catholics to face religious bigotry of a kind many of us thought to be extinct in this nation. I urge that Mr. Pryor be judged solely on his ability, his qualifications and his judicial temperament.

Respectfully,

CARL A. ANDERSON,
Supreme Knight.

Mr. SANTORUM. I want to refer to a couple of paragraphs and I want the Senator to comment, because this is the point that I think is very important. There is a code word going on here—code words. When you hear the term ''deeply held beliefs''—I know the Senator from Illinois was upset when I used the term ''religious'' as a characterization. I think it is a completely accurate characterization of exactly what is going on. I am not alone. I will read a portion of the letter:

Many have questioned Mr. Pryor's fitness for this position because of his ''deeply held beliefs,'' in particular his opposition to abortion. Yet, this ''deeply held belief'' is grounded in Mr. Pryor's adherence to his Catholic faith, which unequivocally declares abortion to be a grave evil.

I am ending the quotation from Mr. Anderson's letter, and I just suggest that it is obvious to anyone that this code word is an antireligious bias—not an antireligious bias if you don't hold your faith deeply, but only if you do. Would the Senator from Utah care to comment on this letter I just quoted briefly from?

Mr. HATCH. First, I have seen the letter dated July 30, 2003, which I believe the Senator has put into the RECORD. The first time I have seen it is tonight.

Mr. SANTORUM. Yes, the July 30 letter.

Mr. HATCH. Right. I am concerned about this. I know some of these outside groups have been doing this regularly. I personally do not believe the distinguished Senator from California is—and I hope none of the other Democrat Senators on the committee are—against Mr. Pryor because of his religious beliefs. But I have to admit that people all over the country have been calling me and talking to me and saying, how could it be anything else? People are drawing that conclusion, and I will be honest with you, I am concerned about it.

Mr. SANTORUM. If the Senator will yield for a further question, I want to read the next paragraph and get his comment:

Raising Mr. Pryor's ''deeply held beliefs'' in terms of his qualifications to serve on the Federal bench thus suggests a de facto religious test for public office, something clearly prohibited by the Constitution.

Would the Senator from Utah agree that the religious test for holding an office with the Government of the United States of America would be unconstitutional?

Mr. HATCH. There is no question about that. We all have to agree that our Constitution states no religious test shall ever be required as a qualification to any office of public trust in the United States. I don't believe any Senator would intentionally impose a religious test on the President's judicial nominees. I do not think any Senators are guilty of anti-religious bias. However, I am deeply concerned that some are indirectly putting at issue the religious beliefs of several judicial nominees.

I will give you one illustration. During the Pryor hearing, General Pryor's religion was an issue—and this is why I have raised it, which I have never done before. One Senator accused General Pryor during the hearing of ''asserting an agenda of your own, a religious belief of your own.'' In his opening statement, another Senator stated:

''In General Pryor's case, his beliefs are so well known, so deeply held that it is very hard to believe that they are not going to deeply influence the way he comes about saying 'I will follow the law,' and that would be true of anybody who had very deeply held views.''

The only deeply held views that I know outside of belief in the law would be his own personal religious beliefs. I will just say this on another point. On the subject of Roe v. Wade, Senator SCHUMER said, ''I for one believe that a judge can be pro-life, yet be fair, balanced, and uphold a woman's right to choose. But for a justice to set aside his or her personal views, the commitment to the rule of law must clearly supersede his or her personal agenda. . . . But based on the comments Attorney General Pryor has made on the subject, I have some real concerns that he cannot because he feels these views so deeply and so passionately.''

I don't know how you read it any other way.

Another Senator told General Pryor:

I think the very legitimate issue at question with your nomination is whether you have an agenda, and that many of the positions you have taken do not reflect just an advocacy, but a very deeply held view and a philosophy, which you are entitled to have, but you are also not entitled to get everyone's vote.

As you know, General Pryor is openly pro-life.

Mr. SANTORUM. If the Senator will yield, does the Senator from Utah, who I know is not Catholic, know that as part of the Catholic faith, one of the central teachings with respect to faith and morals is that it is not an option under the Catholic church doctrine to be a faithful Catholic and not be pro-life. It is a core teaching of the church. It is not an optional teaching or a recommended teaching; it is a core teaching of the church. So to be a faithful

Catholic, according to the church, someone has to embrace this opposition to abortion. Is the Senator aware of that?

Mr. HATCH. Yes. I am so advised. I have studied the Catholic faith and I respect it deeply, as I do all religions.

Mr. SANTORUM. So according to what the Senator has just said, someone who considers oneself a faithful Catholic, faithful to the core teachings of the Catholic church, which leaves no leeway on the issue of abortion, under that understanding, someone who has a deep faith and understands that with deep faith as a Catholic comes the requirement to be against abortion, that as a result of that deep faith and as a result of that deep faith in Catholicism, having to subscribe to the church's teaching on abortion, would that not lead, in a sense, to a prohibition by some Members of having anybody who is a faithful Catholic as a member of the judiciary?

Mr. HATCH. I cannot speak to that. All I can say is that I will take the Senator's statement at face value, as I know he is a practicing member of the Catholic faith, and I respect him for that. I know he is very sincere, and I know he has even written about it. But I am concerned.

Three of the people we have been told will be filibustered are traditional prolife, Catholic conservatives. Certainly, Pryor is one of them. Kuhl is another. Holmes is another. It is a matter of great concern. I have to say that these inside-the-Beltway outside groups will use anything; they will distort a person's record. It is abysmal what they are doing, and they are well heeled to the tune of millions of dollars, which they spend spreading this bile all over the Senate. Unfortunately, I believe there are some in this body who do not decry what they are doing.

Mr. SANTORUM. Mr. President, will the Senator yield for another question?

Mr. HATCH. I will be happy to yield for another question without losing my right to the floor.

Mr. SANTORUM. Mr. President, I just described what is my understanding as a Catholic of what the teachings of the church are and what the responsibilities as a faithful Catholic are as a member of the church. I also understand the oath of office you take and the role that you play as a civil servant in a government and that you have an obligation to serve and to adhere to the law, particularly when you are sworn to uphold that law.

Are there any examples where Attorney General Pryor upheld the law even though he, as a Catholic, as a person of deep beliefs, went ahead and followed the law even though his personal viewpoints may have been different?

Mr. HATCH. I think there are all kinds of examples. Let me go through a few, if I can. Hopefully, this will be helpful in what the good Senator has asked for.

General Pryor's record speaks with far more authority and with much greater eloquence than the fulminations against him. His record of enforcing the Supreme Court dictates on abortion is unquestioned. He has enforced them all. Despite criticizing them all as a traditional pro-life, Catholic conservative, he has criticized abortion but he has upheld the law.

Although he has been attacked for his federalism arguments before the Supreme Court, the Supreme Court sided with him in most of those cases. Arguing that Congress does not have the power that it has assumed through certain legislative acts is not activist or radical. It is principled, entirely consistent with our constitutional separation of powers, and it is General Pryor's duty as State attorney general.

In all the federalism cases he has argued, he advocated that only certain portions of Federal laws were unconstitutional. In all cases, remedies remained available for aggrieved parties or the Federal Government. I cited some of these cases earlier.

Let me give another illustration. His critics have also attempted to portray him as an official without the respect for the separation of church and State. Again, it is simply beyond dispute that his record proves his repeated ability to enforce the law regardless of his strong personal religious beliefs.

In an effort to defeat challenges to school prayer and the display of the Ten Commandments in the Alabama Supreme Court, both the government that appointed General Pryor and Alabama Chief Justice Roy Moore urged General Pryor to argue that the Bill of Rights does not apply to the States.

General Pryor refused, even though his personal beliefs were different, and he argued the case on much narrower grounds despite his own deeply held Catholic faith and personal support for both of those issues.

General Pryor has always been attacked for his statements urging modification or repeal of section 5 of the Voting Rights Act. However, despite General Pryor's well-documented concerns about section 5 of the Voting Rights Act, he has vigorously enforced all provisions of the act. He successfully defended before the Supreme Court several majority-minority voting districts approved under section 5 from a challenge by a group of white Alabama voters. He feels deeply about these issues.

He also issued an opinion that the use of stickers to replace one candidate's name for another on a ballot requires preclearance under section 5. Again, General Pryor enforced the law despite its conflicts with his beliefs.

Despite the distortions, half-truths, and outright falsehoods we have heard about him from the usual leftist inside-the-Beltway interest groups, General Pryor is a diligent, honorable, faithful man whose loyalties as a public servant have been to the law and its impartial administration.

He has told us under oath he will continue to follow the law, just as he has demonstrated in his distinguished career in Alabama. We should be proud to give his nomination an up-or-down vote.

Throughout his hearing, it was one question after another on abortion—one question after another—and he made it clear that as much as he thinks that the outcome of the case of Roe v. Wade is an abomination, because it has resulted in the death of millions of unborn children—and he was very straightforward about it, very honest about it, and was complimented by my colleagues for his honesty, yet they will not accept his honesty on this topic—he said he would enforce Roe v. Wade, which is the law.

Mr. SANTORUM. Mr. President, isn't there a case of the partial-birth abortion law in Alabama where he actually gave advice that would be contrary to what his personal beliefs are with respect to the issue of abortion?

Mr. HATCH. After the Supreme Court's decision in Stenberg v. Carhart, he upheld that law by ordering state officials not to enforce the conflicting Alabama partial-birth abortion law. Earlier, he had enforced Alabama's partial-birth abortion law narrowly, to ensure consistency with Supreme Court's dictates in Planned Parenthood v. Casey. Even though he disagrees violently with both of those cases from a personal religious standpoint, but he enforced and upheld those laws, in the face of criticism from many of his conservative friends in Alabama.

Let me read one other item. At his hearing, I asked him this question:

So even though you disagree with Roe v. Wade, you would act in accordance with Roe v. Wade on the Eleventh Circuit Court of Appeals?

This was his answer:

Mr. PRYOR. Even though I strongly disagree with Roe v. Wade, I have acted in accordance with it as attorney general and would continue to do so as a Court of Appeals judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

To be honest with you, that is the way he is, and he is being condemned for that.

I have to say that some of my colleagues on the other side have become tremendously annoyed and hurt by the issue of religion being brought up in this matter, but the attacks on personal beliefs came originally from these inside-the-Beltway groups. They are well heeled, with money coming out of their ears, hiring all kinds of far left liberal lawyers to make these smear attempts and, frankly, that is what is distorting this whole process.

I suggest to my friends on the other side, they are going to have to start

some day standing up to these people, but they do not seem to be able to do it.

Frankly, during the Clinton years, I stood up to some of the right wing groups that were occasionally trying to distort somebody's record. We did not see anywhere near what we are seeing today but I stood up. I am not asking them to do something I did not do.

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

Mr. HATCH. I will be glad to yield without losing my right to the floor.

Mr. SESSIONS. I remember a conservative group demanded of Senator HATCH, with regard to Clinton nominees, that he sign a Hatch pledge. I ask the Senator how he handled outside conservative pressure groups at that time?

Mr. HATCH. Mr. President, as my colleague knows, I had to stand up to some in my own caucus. Not many. There were some, one or two, who wanted to filibuster President Clinton's nominees. As the Senator will recall, I stood up to that and said we are not going to filibuster judicial nominees. It is not right, and I believe it is constitutionally unsound.

Some of the outside groups were sincere but they wanted to—I believed them to be sincere but wrong—distort some of these matters, and I refused to allow them to do it. They demanded to testify in a variety of cases, and I told them no, we are not going to denigrate the judicial process with that type of stuff.

Mr. SESSIONS. If the Senator will yield for a further question?

Mr. HATCH. I am happy to yield without losing my right to the floor.

Mr. SESSIONS. I note that the Senator made quite clear that elected Senators have the responsibility to decide matters, and they cannot be driven by forces outside. We have to do it on the facts and the law, and he has been honorable and consistent on that. He deserves great praise. Some of the criticism that has come his way from those who are now altering the historic ground rules of confirmation is unjust and wrong.

As a former attorney general of Alabama and knowing that the attorney general had the power in Alabama to direct district attorneys on how to enforce certain Alabama laws, I ask the distinguished chairman of the Judiciary Committee is he aware that even though Attorney General Pryor strongly believes that partial-birth abortion is one of the worst forms of abortion of all, that he wrote a letter directing district attorneys to narrowly construe an Alabama partial-birth abortion statute because he had concluded under the Supreme Court law that parts of it was unconstitutional?

Mr. HATCH. Well, the Senator is right.

He is a very serious practicing Catholic. He despises Roe v. Wade. He makes very strong and principled arguments against it. He did not mince any words when he was asked, Did you call it an abomination? And he said: Yes, I did, sir.

When they asked why, he said he called it an abomination because, words to the effect, he believes that it led to the deaths of millions of unborn children. Yet when it came down to enforcing the law on partial-birth abortion, that he despises, he enforced the law, and he directed his prosecutors in the State to do likewise.

I do not know whether we can find any better people than that. There are a lot of politicians who have been attorneys general who I do not think would have done that in the face of their personal beliefs, but he did because he is dedicated to the law. He knows if one does not uphold the law, even if they disagree with it, it would not be long until we would not have any laws. The Constitution would go itself, and he understands that. He is a brilliant man, graduated magna cum laude from Tulane, which is a fine law school, and was editor in chief of the Law Review, something that very few people have the privilege of doing, and that is because he was one of the best students in his class.

Frankly, he has more than shown an aptitude to the law and an ability to follow the law.

Mr. SESSIONS. If the Senator will yield for another question.

Mr. HATCH. Without losing my right to the floor, I will be happy to yield.

Mr. SESSIONS. Is the Senator aware, being an Alabama official myself and keeping up with these things, that when Attorney General Pryor, not required to do so but following what he believed was the proper procedure, directed the district attorneys who would be enforcing this partial-birth abortion law to construe the statute narrowly, that he was criticized by pro-life groups, sincere, wonderful people, and one went so far as to say that his decision had gutted the partial-birth abortion law?

Mr. HATCH. That is exactly right. He took a lot of flack for it and he believed the way they did, but he also made it clear that that is the law and that he was going to follow it. He followed it as an elected political official.

Now, if he can follow the law impartially as an elected political official, imagine the honor he would bring to the bench, where it's his job to be impartial. He did not have to do it as an elected political official, although I would not have respected him had he not, but as a judge, I think we have more than ample evidence that this man would follow the law regardless of his personal beliefs. Yet he has been smeared by the outside groups on his personal beliefs. It is just that simple.

Mr. SESSIONS. Mr. President, one more question.

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. I have researched his record and background. I find that even though he does firmly believe that abortion is an immoral practice, that other than the matter I just raised about directing on partial-birth abortion not to enforce parts of the law, he has not taken any action in any way to use the power of his office to undermine the law of the Supreme Court on that matter. I just wonder if the Senator would agree with that?

Mr. HATCH. I do agree with that. The Senator knows Bill Pryor better than anybody. He worked for the distinguished Senator when he was attorney general. I am absolutely amazed at how many Democrats and people of diversity and others in Alabama are supportive of him. The people who knew him best are the people who support him. The people of Alabama know him best. Yet we are going to second-guess that, for political reasons?

Mr. SANTORUM. Will the Senator yield?

Mr. HATCH. I am happy to yield, without losing my right to the floor.

Mr. SANTORUM. To get to the rest of this letter by Carl Anderson, who is the head of the Knights of Columbus nationwide, I want to read the concluding paragraph and ask the Senator to comment as to whether he agrees with Mr. Anderson in his conclusion as to what is going on with this nomination. He says this:

> As head of the world's largest Catholic fraternal organization and as a former member of the United States Commission on Civil Rights, I am dismayed that the course of Mr. Pryor's nomination compels me to make a point which by now should be obvious: a good Catholic can also be a good public servant. Much as I would wish otherwise, a continuation of the trend that critics of Mr. Pryor's nomination have set in motion will compel American Catholics to face religious bigotry of a kind many of us thought to be extinct in this nation.

Does the Senator agree that such continuation of activity could lead to such bigotry?

Mr. HATCH. Well, I believe it can be, and I believe there is some from the outside groups. I do not think there is any question. I would not want to attribute that to any of my colleagues on the Judiciary Committee, although I have to admit this issue of abortion is becoming a litmus test issue to Democrats, that is pro-abortion. I think that is wrong. I remember what the media did to Republicans during the Reagan administration, continually trying to say there was a litmus test. I know there was not because the person who vetted all the judges is a former staffer of mine who is now on the Michigan Supreme Court. I know it is not being done by this administration. But literally, Democrats are making abortion a litmus test issue.

The Democrats are fond of saying, yes, but we have passed all kinds of

Bush judges, 140 of them so far. Well, they cannot stop them all. So they selectively pick people like General Pryor who clearly has very strongly held views but who clearly has abided by the law. They ignore that he abided by the law and attack him on his strongly held views. In large measure, it comes down to the issue of abortion because he differs with them on the policy issue of abortion.

Mr. SANTORUM. If the Senator will yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. Is the Senator familiar with a letter written by Austin Ruse, president of the Catholic Family and Human Rights Institute, which was sent yesterday?

Mr. HATCH. I just saw it tonight, so I am familiar. I have not read it in detail, but I am familiar with it.

Mr. SANTORUM. Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

Mr. SANTORUM. I say to the Senator from Utah that I wanted to bring up this letter. This is not the only Catholic group that has expressed concern about what is code worded as ''deeply held beliefs'' but seems to be a little stronger than that. I will read the second paragraph of this letter and ask the Senator to comment again on this:

I think of the young mother, struggling to raise her children in what is a challenging culture. She raises them to be good citizens and good Catholics. What should this mother tell her children? ''Sorry, in order to serve our government, you will have to shed your Catholic beliefs.'' Putting Catholics in this position is shameful and not a proper measure of our great land?

I ask the Senator if he has any thoughts on this issue?

Mr. HATCH. This is the first time I have seen this letter. To him, this is a very important issue. The views he expresses are drawn from what he's heard at the hearing and the markup. Reasonable people can draw these conclusions from the markup, from the debate.

It is coming down to where abortion is the be-all and end-all issue to my colleagues on the other side. Sure, they cannot vote against everyone. I don't know how many of these people are pro-life or pro-choice. I never ask anyone that.

The fact is, I can see why people are drawing this conclusion. I will give a few other reasons they are drawing that conclusion before we are through here tonight.

Mr. SANTORUM. If the Senator will yield for another question, I ask unanimous consent to have printed an article by Bishop Charles J. Chaput, Archbishop of Denver, written as a result of this nomination. The article talks about a friend of his in Alabama and the fact there were not very many Catholics in Alabama in the 1960s when he was growing up and how Alabama has changed to the point where they can elect a Catholic as their attorney general.

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

[From www.archden.org, July 30, 2003]

SOME THINGS CHANGE, SOME THINGS REALLY DON'T

Some things change, and some things don't.

In the summer of 1963, a friend of mine—she was just 11 at the time—drove with her family to visit her sister, who had married and moved away to Birmingham, Ala. Stopping for gas in a small Alabama town on a Sunday morning, her father asked where they could find the local Catholic church.

The attendant just shrugged and said, ''We don't have any of them here.''

The family finished gassing up, pulled out of the station—and less than two blocks away, they passed the local Catholic church.

Most people my age remember the '60s in the South as a time of intense struggle for civil rights. Along with pervasive racial discrimination, Southern culture often harbored a suspicion of Catholics, Jews and other minorities. Catholics were few and scattered. In the Deep South, like Alabama, being Catholic often meant being locked out of political and social leadership.

Today, much of the old South is gone. Cities like Atlanta and Raleigh-Durham are major cosmopolitan centers. Time, social reform and migration have transformed the economy along with the political system. The South today is a tribute both to the courage of civil rights activists 40 years ago, and to the goodness of the people of the South themselves.

Most people, most of the time, want to do the right thing. And when they change, they also change the world they inhabit, which is one of the reasons why the Archdiocese of Atlanta can now draw thousands of enthusiastic Catholic participants to its Eucharistic Congress each year in a state where Catholics were once second-class citizens. It also explains how a practicing Catholic, William H. Pryor, can become Alabama's attorney general—something that was close to inconceivable just four decades ago.

I've never met Mr. Pryor, but his political life is a matter of public record. He has served the State of Alabama with distinction, enforcing its laws and court decisions fairly and consistently. This is why President Bush nominated him to the 11th U.S. Circuit Court of Appeals, and why the Senate Judiciary Committee approved him last Wednesday for consideration by the full Senate.

But the committee debate on Pryor was ugly, and the vote to advance his nomination split exactly along party lines. Why? Because Mr. Pryor believes that Catholic teaching about the sanctity of life is true; that the 1973 Supreme Court Roe v. Wade decision was a poorly reasoned mistake; and that abortion is wrong in all cases, even rape and incest. As a result, Americans were treated to the bizarre spectacle of non-Catholic Senators Orrin Hatch and Jeff Sessions defending Mr. Pryor's constitutionally protected religious rights to Mr. Pryor's critics, including Senator Richard Durbin, an ''abortion-rights'' Catholic.

According to Senator Durbin (as reported by EWTN), ''Many Catholics who oppose abortion personally do not believe the laws of the land should prohibit abortion for all others in extreme cases involving rape, incest and the life and the health of the mother.'' This kind of propaganda makes the abortion lobby proud, but it should humiliate any serious Catholic. At a minimum, Catholic members of Congress like Senator Durbin should actually read and pray over the ''Catechism of the Catholic Church'' and the encyclical ''Evangelium Vitae'' before they explain the Catholic faith to anyone.

They might even try doing something about their ''personal opposition'' to abortion by supporting competent pro-life judicial appointments. Otherwise, they simply prove what many people already believe—that a new kind of religious discrimination is very welcome at the Capitol, even among elected officials who claim to be Catholic.

Some things change, and some things don't. The bias against ''papism'' is alive and well in America. It just has a different address. But at least some people in Alabama now know where the local Catholic church is—and where she stands—even if some people in Washington apparently don't.

Mr. HATCH. This article reads in part:

I have never met Mr. Pryor, but his political life is a matter of public record. He has served the State of Alabama with distinction, enforcing its laws and court decisions fairly and consistently. This is why President Bush nominated him to the 11th U.S. Circuit Court of Appeals, and why the Senate Judiciary Committee approved him last Wednesday for consideration by the full Senate.

But the committee debate on Pryor was ugly, and the vote to advance his nomination split exactly along party lines. Why? Because Mr. Pryor believes that Catholic teaching about the sanctity of life is true; that the 1973 Supreme Court Roe v. Wade decision was a poorly reasoned mistake; and that abortion is wrong in all cases, even rape and incest. As a result, Americans were treated to the bizarre spectacle of non-Catholic Senators Orrin Hatch and Jeff Sessions defending Mr. Pryor's constitutionally protected religious rights to Mr. Pryor's critics, including Senator Richard Durbin, an ''abortion-rights'' Catholic.

He concludes with:

Some things change, and some things don't. The bias against ''papism'' is alive and well in America. It just has a different address. But at least some people in Alabama now know where the local Catholic church is—and where she stands—even if some people in Washington apparently don't.

I ask the Senator from Utah if he has seen that article.

Mr. HATCH. I had not seen it before tonight, that I was aware of. I had been told the Catholic bishop had written this article. I can see why he has drawn this conclusion. I can see why anyone would.

I hear the moaning and groaning and scheming, but I happen to be a member of the Church of Jesus Christ of Latter-day Saints. I belong to the only church in the history of this country that had an extermination order out against it, where our people were brutally murdered and driven from State to State leaving trails of blood.

I don't like religious discrimination in any way. I can see why people are drawing these conclusions from this debate. I can see why people draw such

conclusions when you start attacking a man because he has deeply held beliefs. Earlier, I read one statement from Pryor's hearing, questioning his religious beliefs. It was made; and anyone with brains would say, what are his deeply held beliefs? He is a traditional pro-life Catholic conservative. And I guess that is not a good thing to be if you're before this body seeking confirmation to the federal bench.

I think it is a good thing to be. I don't think it is bad to be a liberal pro-life Catholic. I think it is important to live your religion, regardless of what religious persuasion you are. I understand religious discrimination. The name of my church is the Church of Jesus Christ of Latter-day Saints, yet I am unacceptable in certain groups because they don't think we are Christians. I will match my Christianity up against anyone's. I read the Bible all the time. I try to read it from beginning to end every year. I pretty well do that. It is the greatest book in the world. And it is the greatest literature. But I understand discrimination. Some people will not handle the music I write because they don't think I am Christian. I don't mean to bring that up here except that it applies. I understand that. I understand why people feel this way. If my colleagues on the other side don't understand it, I say shame on them.

When abortion becomes the be-all and end-all in the judicial nomination process—which is what these outside groups, almost every one of them, are committed to on the Democratic side—it is a serious issue. There are serious decent people on both sides of that issue. But when it becomes the be-all and end-all litmus test whether a person can serve—that's wrong. And don't give me the argument we have approved all kinds of people who may be pro-life. Of course, Members cannot vote against everybody.

But we are filibustering, for the first time in history, good people, judicial nominations to the Federal courts of the United States of America, for the first time in history. I know a lot of it comes down to abortion. I did not let that happen when I was chairman during the Clinton years. I don't think it should happen right now, especially somebody such as Pryor who has a reputation for obeying and standing up for the law even though he disagrees with it.

As a politician he has that reputation. I imagine if he can do it as a politician, he can do it and we can take his word on it that he would abide by the law and sustain the law of the land as a judge. Yet the principal argument against him is that he won't enforce the law regarding abortion. There are other arguments used, all of which are false, in my opinion. This abortion issue is becoming the be-all and end-all issue for Democrats in the Senate. There is always somebody who wants to enforce an abortion litmus test, but we stopped it on our side. It ought to be stopped on their side.

Mr. SANTORUM. If the Senator will yield for another question, I sincerely thank the Senator from Utah for his yielding to me for these questions and for his very articulate defense of this nominee and the principle which I believe and I think the Senator believes in.

One of the reasons I brought the article up was, many people outside of this Chamber—not just Catholic, not just Christian, but of all faiths—are deeply concerned about what is going on in this Chamber. I thank the Senator for his willingness to stand up and to have the courage to articulate that. I make the point that he is not alone in coming to the conclusion he has come to, that many people in this Chamber have come to, that this litmus test that is being applied ultimately is a religious one.

Mr. HATCH. The practical application.

Mr. SANTORUM. Which is a very threatening thing.

I say for the record, as a pro-life Catholic, I voted for hundreds of Clinton nominees who I knew were not pro-life—hundreds of them—never voted against one of them, never filibustered any of them. I will match up my fervor in defense of human life against anyone in this Chamber. But not once did I vote against one.

Why? Because that is not my role as a Senator, as a civil servant. I know my duties under the Constitution. I know my role. I know what I am supposed to do. What we are experiencing here now is not, again, the separation of church and state but the separation from anybody who is faithful to their church from the state. That is turning separation of church and state that would cause any of the Founders to be spinning in their grave today. It is exactly what—you can call it anything you want—but that is exactly what is going on.

The greatest of the freedoms we have in this country, the greatest that any country can have, is the freedom to believe the freedom to think. Because if you don't have the freedom to think what you want and the freedom to do what you want, the freedom to speak, to assemble—the freedom to do anything else is meaningless. It is the first of all freedoms. That is under assault in this process.

I commend the Senator from Utah for standing up in defense of this.

Mr. HATCH. If my colleague will stay a few minutes longer, because I want to make one more point in this area and it needs to be made—a couple maybe.

I believe the Senator has put the letters and op-ed piece from the Catholic Leader into the RECORD.

I also ask unanimous consent to have printed in the RECORD—because these are people who are good people writing these letters. And they are just starting. An avalanche is coming. This is from the Union of Orthodox Jewish Congregations of America, July 23:

DEAR SENATOR HATCH: We write to you with regard to the Judiciary Committee's consideration of the nomination of William Pryor, the current Attorney General of the State of Alabama, to the U.S. Court of Appeals for the Eleventh Circuit.

The Union of Orthodox Jewish Congregations of America, the nation's largest Orthodox Jewish umbrella organization representing nearly 1,000 congregations nationwide, is a non-partisan, religious organization and—like most other organizations in the American Jewish community—it has been the UOJCA's longstanding policy neither to endorse nor oppose judicial nominees in the confirmation process. However, to our dismay, we have witnessed several of our community's organizations deviate from this shared policy in recent weeks and oppose the confirmation of Mr. Pryor.

Moreover, we are profoundly troubled by the manner in which this opposition has been framed. We thus feel compelled, unlike our fellow communal organizations, to remain faithful to our non-endorsement policy but express our view on a critical issue that has been raised in connection with this nomination—Mr. Pryor's personal religious faith and his capacity to serve as a federal judge in light of that personal faith.

As a community of religious believers committed to full engagement with modern American society, we are deeply troubled by those who have implied that a person of faith cannot serve in a high level government post that may raise issues at odds with his or her personal beliefs. There is little question in our minds that this view has been the subtext for some of the criticism of Mr. Pryor. We urge you and your colleagues to emphatically reject this aspersion and send a clear message that such suggestions, whether explicit or implied, are beyond the pale of our politics. In our view, Mr. Pryor's record as Alabama's Attorney General demonstrates his ability to faithfully enforce the law, even when it may conflict with his personal beliefs.

The role of religion and of religious citizens in American life was much discussed during the last presidential campaign. To our nation's credit, it was discussed in a serious and meaningful way, which revealed a national consensus favoring a society where citizens of many faiths are not only welcome in our society, but encouraged to bring their faith into our nation's ''public square.'' We urge you to ensure that the deliberations over William Pryor's nomination do not undermine the great progress we have seen on this issue so critical to America's civil society.

We pray your committee's deliberations will be fair and serve the nation well.

There are a lot of people concerned about this around here. Let me make this point. I want to respond to the concerns of my dear friend, Senator FEINSTEIN. She is one of my dearest friends in this body. I think the world of her.

She made comments about an ad that used the slogan, ''Catholics need not apply.'' I don't have a copy of it here on a poster.

She used that because she wants us to decry this ad.

Well, I am not happy with this ad.

But I can see why people have done this, because they believe that this—these debates are devolving to the point of attacking a person for his or her personal beliefs, in the case of Pryor, Kuhl, Holmes, others.

Let me respond to Senator FEINSTEIN's concerns about the ad that used the slogan ''Catholics need not apply.'' In fact, it was the liberal groups, the liberal inside-the-beltway groups, that used the slogan ''Catholics need not apply'' to argue against Republicans for supporting the Charitable Choice legislation in 2001.

Let me put one of these ads up, along with the words of the Americans United for Separation of Church and State. Here is the paragraph down here:

Ashcroft's Charitable Choice provisions allow a government-funded program to hang a sign that says ''Catholics need not apply.''

I will not read the rest of it. We will put it into the RECORD.

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

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

AMERICANS UNITED URGES SENATE TO REJECT ASHCROFT NOMINATION FOR ATTORNEY GENERAL

BUSH NOMINEE'S VIEWS ARE 'OUTSIDE THE MAINSTREAM,' SAYS AU'S BARRY LYNN

In written testimony submitted to the U.S. Senate Judiciary Committee, Americans United for Separation of Church and State today urged senators to reject the nomination of John Ashcroft for attorney general.

''[W]e at Americans United have come to the conclusion that Senator Ashcroft's policy positions and legal opinions are so far outside the mainstream that it is doubtful he could enforce the very laws and rights that the attorney general must protect and uphold,'' said Barry W. Lynn, executive director of Americans United. ''We call on this committee to reject his confirmation.''

In his statement to the Senate panel, Lynn noted that Ashcroft has frequently expressed contempt and disdain for the Supreme Court and its legal precedents. (Hearings on the nomination begin today.)

For example, Lynn pointed to Ashcroft's comments to the Christian Coalition in 1998, where the former Missouri Senator said, ''A robed elite have taken the wall of separation designed to protect the church and they have made it a wall of religious oppression.''

Responded AU's Lynn, ''Ashcroft's characterization of the Supreme Court as a 'robed elite' shows a lack of respect unbefitting a candidate for attorney general. It is a phrase more commonly associated with religious extremists and anti-government militias than our nation's chief law enforcer and protector of civil rights and liberties.''

Lynn also told the Senate committee that Ashcroft's legislative efforts reflect a disregard for constitutional principles.

''Senator Ashcroft's contempt for First Amendment case law is not merely rhetorical, but also took legislative form,'' Lynn said. ''During his sole Senate term, Ashcroft developed legislation called 'charitable choice,' a plan that allows religious groups to receive taxpayer funds to perform government services and then discriminate in the employment of staff people to run the program.

''Ashcroft's Charitable Choice provisions allow a government funded-program to hang a sign that says 'Catholics Need Not Apply' or 'Unwed Mothers Need Not Apply,' '' Lynn added. ''Such a scheme amounts to no less than unconstitutional government-funded employment discrimination.''

Lynn found Ashcroft's comments to students at Bob Jones University in 1999 particularly revealing about the attorney general nominee's commitment to government neutrality on religion. In the speech, Ashcroft said that America has ''no king but Jesus.''

''Such a statement shows a total lack of regard for the principle that it is the U.S. Constitution that serves as the basis for our laws and national life, not one faith tradition,'' said Lynn. ''Our Constitution guarantees unqualified religious liberties for each of us, regardless of our beliefs.''

Ultimately, Lynn argues that Ashcroft's hostility for our constitutional principles disqualify him for the position of attorney general.

''As the nation's top law enforcement officer, the attorney general must represent all Americans,'' Lynn noted. ''He must stand for the rights of Christians, Jews, Muslims, Buddhists, and Hindus. He must advocate for those who are completely devout about religion as well as those who are totally indifferent toward it. He must understand certain things about America—that the nation was not founded on any one particular set of religious beliefs but rather was deliberately designed to extend freedom to them all. Our nation guarantees this freedom to all faiths by erecting a wall of separation between church and state.

''Senator Ashcroft views this wall as one that fosters oppression, not freedom,'' Lynn concluded. ''By taking this position, he puts himself at odds with both the early American statesmen who built that wall—men like Thomas Jefferson and James Madison—and more importantly, the decisions of the U.S. Supreme Court. For these reasons, we respectfully ask this committee to reject John Ashcroft's confirmation as attorney general of the United States.''

Americans United is a religious liberty watchdog group based in Washington, D.C. Founded in 1947, the organization represents 60,000 members and allied houses of worship in all 50 states.

Mr. HATCH. Let's go to People for the American Way. It is estimated that People for the American Way have between $12 and $30 million given to them, mainly by the Hollywood crowd and big business people, to do what they do in this town, which is to distort Republican nominees' records. This is People for the American Way. I will not read it all:

Charitable Choice, a bad choice for government and religion.

Here is the paragraph.

An Evangelical church running a government-funded welfare program could state that ''Catholics need not apply,'' in a help wanted ad.

I do not recall any Democratic Senators expressing outrage about that. I did not see one comment about the fact that the liberals have used this language against the Charitable Choice legislation.

Whether you agree with that or whether you agree with General Pryor, or not——

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

Mr. HATCH. I am happy to yield without losing my right to the floor.

Mr. MCCONNELL. I ask the chairman of the committee if he is aware of any time in which the Senate, having set a precedent, tended to unset it lately?

Mr. HATCH. I have no doubt that we have unset precedents in this body.

Mr. MCCONNELL. My fear, I say to my friend from Utah, is that we crossed the Rubicon on the issue of filibustering judges.

Mr. HATCH. No question about that.

Mr. MCCONNELL. I can recall as recently as the last year of the Clinton administration, the chairman of the Judiciary Committee and others and myself voting for cloture on judges that we personally opposed and subsequently did oppose, even though we knew there was a chance of killing them on filibuster. I think of Paez and I think of Berzon.

Does the chairman of the committee share my view that we may have gone so far now that this would be the pattern forever in the Senate, denying judges up-or-down votes because we find them unacceptably liberal or conservative or too steeped in personal beliefs that they are willing to express before the committee?

Mr. HATCH. I have no doubt, to answer the Senator's question, if we continue down this pathway we are going to devolve to where people with strongly held religious beliefs are not going to be able to serve in this country. That is what it comes down to. I have no doubt that if we continue to violate the Constitution by allowing filibusters against—under our advise and consent mandate in the Constitution, we are going to wind up with a mess on our hands that we will not be able to repair. So we have to get out of this. I call on our colleagues on the other side to get real here.

Mr. MCCONNELL. Further, I inquire of the Senator from Utah, the chairman of the committee, whether he thinks it will now be routine for every nominee to be asked their personal beliefs on a whole range of issues, personal and religious beliefs on a whole range of issues, and be expected to answer those kinds of questions.

Mr. HATCH. I do not think we will go that far. At least while I am chairman of the committee we are not going to do that. I did ask him what his religion was, after all of these questions that were asked in a very extensive hearing where religion was put squarely in issue by the other side. I did ask him that because I wanted to establish that this had gone too far.

I don't intend to ever ask that question again. I don't think my colleagues will. The distinguished Senator from

Vermont said he will never ask that question, and he criticized me for doing so. But I think it was highly justified under the circumstances, and I think we made a pretty good case tonight that it was justified, although I am sure some of my colleagues will take umbrage.

But let them take umbrage. People all over this country are starting to say there is litmus test arising. Certainly there are outside groups that are trying to smear our nominees—especially Attorney General Pryor, Judge Kuhl, and Mr. Holmes.

Mr. MCCONNELL. Mr. President, I further ask the chairman of the committee. He may well have received—I know I did and other Members of the Senate did—a letter today from William Donohue, Ph.D., who is president of the Catholic League For Religious and Civil Rights. He said, among other things, in his letter:

Some of Pryor's critics are themselves Catholic and thus resist the contention that is being opposed because of his religion. But they do so by falsely claiming that on the subject of abortion, there is more than one acceptable position for Catholics to take. They are dead wrong. Catholic teaching on abortion is unequivocal: It is gravely sinful. This is not a matter of dispute—it is a matter of doctrine that all Catholics are expected to uphold. Especially public officials.

The danger, then, is that Bill Pryor may be rejected because of his religious convictions.

I think what is so disturbing here to many of us—I am personally not a Catholic—is that you could adhere to the teachings of your church and then in effect be penalized for it even though there is no evidence that in carrying out your duties as a public official you wouldn't follow the law.

I ask the chairman: Are we being penalized for our own personal religious convictions in seeking public positions?

Mr. HATCH. There are people all over this country who are coming to the conclusion that Bill Pryor is being treated that way. Personally, if you are going to apply abortion as a litmus test, and that is his deeply held personal belief, even though he has exhibited more than an effort to obey the laws no matter what they are, I can see why people arrived at that conclusion.

I see why Mr. Donohue feels that way. This is getting to be an avalanche. The new code words for some are that, well, I don't personally believe in abortion but I believe a woman ought to have a right to choose.

Give me a break. That is a nice excuse. But that certainly is not acceptable, it seems to me, to many religions, including the Catholic faith, as has been said by these letters.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that this letter to which I referred from Dr. Donohue be printed in the RECORD.

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

CATHOLIC LEAGUE
FOR RELIGIOUS AND CIVIL RIGHTS,
New York, NY, July 25, 2003.

DEAR SENATOR: You will soon be voting on the candidacy of Alabama Attorney General Bill Pryor for the federal appeals court in Alabama. As president of the nation's largest Catholic civil rights organization, I ask that you subject him to the same standards as you would any candidate. I am also asking that you challenge any colleague of yours who may attempt to subject Pryor to a de facto religious test.

I have plainly said there are no anti-Catholics in the U.S. Senate. But I have also said that this does not empty the issue.

Bill Pryor's deeply held opposition to abortion as a moral issue, as well as his deeply held opposition to the jurisprudential reasoning as evidenced in Roe v. Wade, have made him a lightning rod for abortion-rights advocates. In other words, it is precisely Pryor's religious convictions that are bring scrutinized. Given the cast of mind of some of his critics, it makes it virtually impossible for practicing Catholics to ascend to the federal bench.

Some of Pryor's critics are themselves Catholic and thus resist the contention that he is being opposed because of his religion. But they do so by falsely claiming that on the subject of abortion, there is more than one acceptable position for Catholics to take. They are dead wrong. Catholic teaching on abortion is unequivocal: it is gravely sinful. This is not a matter of dispute—it is a matter of doctrine that all Catholics are expected to uphold. Especially public officials.

The danger, then, is that Bill Pryor may be rejected because of his religious convictions. This would be outrageous and that is why I am asking you to do what you can to prevent this from happening.

Sincerely,

WILLIAM A. DONOHUE, Ph.D.,
President.

Mr. MCCONNELL. Mr. President, I ask the chairman of the committee, isn't the important thing whether there is demonstrable evidence that a nominee has been unwilling to follow established law and it is my understanding—I ask the chairman whether it is his understanding—that Attorney General Pryor has followed the law when it was very tough to do so as an elected official in Alabama.

I believe our friend from Alabama, the junior Senator from Alabama, Mr. SESSIONS, cited a number of cases upon which Attorney General Pryor, as an elected official and not insulated from the wishes of the voters, took very tough positions on various issues because he was following the law. Isn't that the fundamental question that we ought to ask of nominees, whether to the left or to the right? Will you follow the law? And if they have demonstrated examples where they have done so, that would be relevant to whether or not they ought to be confirmed.

Mr. HATCH. It certainly would. We have reached a point on the Judiciary Committee where a person who has always had an honorable reputation such as General Pryor is immediately told by my Democratic colleagues that he cannot follow the law because of his deeply held beliefs. Come on. He has more than shown that he follows the law even though sometimes it is totally in conflict with his religious beliefs because he is a great lawyer. He realizes that if you do not follow the law, pretty soon we will not have any laws. The quickest way to get rid of the Constitution is to not abide by it. Even though there are decisions by the Supreme Court that I abhor, and that I think are bad decisions to start with, the fact is that when it is the law, I believe we ought to abide by it.

He has more than amply shown that he would, even under severe criticism by his supporters—by his own Governor who appointed him, by the Supreme Court Chief Justice who begged him to make certain arguments, he abides by the law. Yet his assertions and his word as a man of integrity and honor all his life are given short shrift.

Democrats are playing this phony ''gotcha politics'' game, in which they ''investigate'' unauthenticated—and many believe, stolen documents—and we object but participate only to keep our side informed. After weeks of their ''investigation,'' they didn't find one thing inconsistent with Pryor's testimony. They called almost everyone named in these documents. I don't know if they got all of them on the phone. But they didn't find one thing wrong. Pryor made himself available twice, so they could ask any question they wanted to ask, but twice, they didn't ask a single question. Then they come here and said they haven't had the full investigation. Give me a break.

It is getting to be where it is hard for people of devout beliefs to not be criticized if those beliefs contradict abortion rights.

Look. We have people on our side who feel very deeply about that. Some of them—very few—wanted to filibuster. We stopped it because we knew it would be terrible for this body to go through filibustering nominees to the Federal judiciary.

But now Democrats are filibustering nominees. When a person of the integrity of Bill Pryor is constantly called into question because of deeply held beliefs, I can see why people from all over the country are starting to ask what his deeply held beliefs are. They are religious beliefs because he is a traditional pro-life Catholic—and God forbid conservative—and that is, frankly, behind this in the eyes of many people.

I don't want to attribute that to my colleagues on the committee but I believe they are letting this happen. I call on them to help stop it.

The reason I bring up these two posters tonight is because these liberal groups use these slogans that ''Catholics need not apply'' to argue against Republicans for supporting Charitable Choice legislation. When that slogan was used against Republicans, I did not

hear any outcry from my friends on the other side. I did not hear any outcry. Specifically, Americans United for Separation of Church and State argued against John Ashcroft's nomination for Attorney General. Their press release stated that Ashcroft's Charitable Choice provisions allow a government-funded program to hang a sign that says ''Catholics Need Not Apply.''

That is ridiculous. But that is what they did. I did not hear any screaming about that. I did not hear any of this righteous indignation from our colleagues over here about that. We didn't dignify it; at least I didn't.

People for the American Way, which I think has a very checkered reputation in this town—I am getting so I don't believe anything they do—criticized the Bush administration for supporting Charitable Choice legislation. They said:

> Charitable Choice opens the door to government approved discrimination. . . . An evangelical church running a government-funded welfare program could state that ''Catholics need not apply.''

I am sure some will say maybe they will do that. Maybe they will. I don't know. But they are saying a lot of the best welfare programs in this country, a lot of the best programs in this country—from the taking care of people standpoint—are done by religious organizations, including the Catholic Church.

Where was the outrage back in 2001 when the liberals were using the slogan ''Catholics Need Not Apply'' against the Bush administration and John Ashcroft?

My friends on the other side of the aisle were silent. I did not hear one of them complain about that.

I met with some 50 people yesterday from all over the country who believe we are devolving into an antireligious body because of what is going on here.

Again, it is all coming down to abortion.

All we have asked is for Senators not to filibuster judges. We think it is a dangerous, unconstitutional thing to do. Judicial nominees of any President deserve an up-and-down vote, especially once they are brought to the floor. There are all kinds of ways of stopping them before they get to the floor, and colleagues on both sides of the aisle understand those ways.

But I can tell you this, we can match the decency of our approach any day of the week to what went on during the Reagan and Bush 1 administrations, and now what is going on in this administration—any day of the week—statistically, number-wise, fairness, from a dignity standpoint.

All we want are up-and-down votes for these nominees, especially once they are brought to the floor. What is really bothering our friends on the other side is, we do have a right to bring people to the floor because we have this one-person majority. Can you imagine how much good work we could do if we had a few more in the majority? It would not be nearly this screaming and shouting and this bitterness that sometimes does arise, coming primarily from outside.

I think the public has a right to know exactly where their Senators stand on these issues. If you do not like Bill Pryor, vote against him. If you think that his religious views are going to color his decisions on the bench, vote against him. If I thought that, I would vote against him.

The public needs to know, how are you going to vote on these issues? Some of our colleagues are afraid to take on these outside groups. We did. I did. I have been condemned by some of them, even to this day, for having done so. And I put through a lot of Clinton judges. The all-time champion was Ronald Reagan: 382 judges in his 8 years. He had 6 years of a Republican Senate to help him, only 2 years with Democrat opposition, and he got 382. It was remarkable. Guess how many Clinton got, with only 2 years of his own party in control of the Senate? In 6 years, where I was chairman, 377—5 less than Reagan. Had it not been for some of the holds on the other side—one Senator was not getting his, so he stopped another from getting his—I think Bill Clinton would have been the all-time confirmation champion, with 6 years of a Republican Senate. We treated him fairly. Now, you can always find something to complain about on both sides, but he was treated fairly under the circumstances. And I know it, and I know he knows it.

These people deserve an up-and-down vote, at least once they come to the floor. Justice delayed is justice denied. There are many of these cases, among the litany of people the Democrats have indicated they are going to filibuster—it is not just two. Pryor looks like he is going to be filibustered. Kuhl looks like she is going to be filibustered. Holmes looks like he is going to be filibustered. We have talked about Pickering being filibustered. You can go down through some others as well—Boyle from North Carolina, et cetera.

Our courts cannot work if we don't have judges to run them. What is really bothering some of our colleagues on the other side is that in relation to the American Bar Association, their gold standard during all my 6 years as chairman of the Judiciary Committee during the Clinton years has suddenly not been a gold standard but a tin standard to them, because people like Miguel Estrada, with the unanimously well-qualified highest rating of the American Bar Association, are stopped. For what reason? They do not even have a good reason.

The first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia, and not even a valid reason—at least I have not heard one yet, and I have heard everything they have said.

Priscilla Owen, you can't find a better woman. Priscilla Owen became a top-flight partner in one of the major law firms, broke through the glass ceiling for women, has been a mentor for women, is unanimously well qualified, and a justice on the Texas Supreme Court. She has all kinds of Democrat support from Democrat co-justices right on through the State—the people who know her the best. And she is being filibustered.

Bill Pryor is as good a man as I have seen come before the committee; yes, a person with very deeply held views. He might be filibustered.

Judicial nominees' qualifications should matter most. And a person's judicial qualifications ought to be the sole criteria by which we judge them. You cannot find better people than the ones I have been mentioning. I don't understand it. I don't understand why the other side is doing this. But they are doing it. And I think they are hurting this process tremendously.

All I want—and all any reasonable person should want—and all the public wants—is to have an up-and-down vote. Let these people be voted upon. If they are defeated, I can live with that. But if they are not defeated, they should be able to serve without having their reputation smeared, which is what these outside groups are doing. I don't think outside groups of the left or the right should be doing that. And they are distorting this process like I have never seen it distorted before.

Now, Senator FEINSTEIN was not here when I showed that the left used this slogan ''Catholics Need not apply.'' I don't think it is a good idea, whether these ''Catholics need not apply'' signs or ads come from the left or from the right. And I would prefer them to be stopped.

I don't like my colleague from Vermont thinking that I think he has even an ounce of religious bigotry. I do not. He needs to know that. But he can't just slide off and not recognize that this is where we are being taken by some of the attitudes and some of the approaches that are going on in the Senate Judiciary Committee—at least that is what the people outside think, religious people.

I have to tell you something, some of the greatest judges in this country are Catholics—and from every other religion. And some of the greatest ones have deeply held beliefs. But they are honorable, decent, honest people, just like Bill Pryor.

Now, look, what really has offended me and got me going here today—and I knew we were not going to go any further on energy tonight because the Democrats brought this up. We have an hour scheduled for the debate early in the morning tomorrow for a cloture

vote. They don't want this cloture vote. Why not? It takes 15 minutes. And they are trying to say that we are tossing energy over the hill. They brought it up. And I am not going to let them get away with it anymore.

I care a lot for my colleagues on the other side. There is not one I do not like. That is not the usual BS around here. I do like my colleagues, and they know it. I don't feel good pointing out to them that what they are doing is dangerous for this process, and that people all over this land are starting to get some wrong ideas—maybe right ideas. I think these church leaders are not too far off. In fact, they may very well be right. They took the time to let us know how they feel.

But to come out here tonight and start this mess, and make these points, and then say that we are not willing to get the Energy bill done—come on. We have been doing a slow-walk around here for weeks now on the Energy bill. My colleagues on the other side know that Senator DOMENICI has had some health problems and that it has been very difficult for him, but he is a gutsy, strong Senator, one of the greatest ones who has ever sat here. And he is never going to let you know that he has been hurting. But they know.

We can do this bill by the end of this week, and we can still have our votes on cloture, which need to be done because the Senate is capable of doing multiple things. If we were not, we would not have lasted for over 200 years. And we can do those trade bills, too, if we just have a modicum of cooperation from the other side. But, no, there is a slow-walk here. And some on our side—in fact, it is a growing number—are starting to believe that slow-walk is to try to make the Senate look bad. You can't make it look bad because we have had a lot of legislation go through this year. And we are going to keep plugging away until we get more that this country needs. But it sure is a chore every step of the way.

I don't want to hear these phony arguments that we can't have 15 minutes for a cloture vote, or even an hour debate beforehand. We can start at any time in the morning.

Most people do not even get moving around here until 10 o'clock. We can do that without interfering with the energy debate. Senator DOMENICI was willing to be here all night long, if he had to, to take amendments and move this along. I think we Republicans were ready to be here for as long as it took to support him and others on the Democrat side who believe we need an Energy bill.

But to come out here and make these points against Bill Pryor that are not only false but demeaning to this body is wrong.

I am going to yield the floor. I know my colleague would like to speak. I am tired of hearing these arguments how holy some on the other side are. But I tell you this, there are people all over this land who are starting to think this system is not fair to people of belief, to people who have deeply held beliefs. I want you to know I am one of them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank so much the distinguished chairman of the Judiciary Committee. He has been a consistent defender of an independent judiciary. He takes those issues exceedingly seriously. He has defended them when there was a Democratic President and he was Chairman of the majority-Republican Judiciary Committee. He defended the President's legitimate prerogatives in nominations. He has been consistent on that and everybody knows it. There is no basis to criticize him.

Bill Pryor is a friend of mine. He is one of the finest, most decent people I have ever known. There is not a Member of this body or a member of any of these outside groups that has any more integrity, any more decency, any more character than Bill Pryor. He is a sterling individual, an honest man. He tells the truth.

When asked, ''if you disagree with a law or a court opinion that goes against your values, will you enforce it?'', he said: ''Senator, you can take it to the bank.'' Not only did he say that, as so many of our nominees have and as we have accepted, he has demonstrated it time and time again as Attorney General of Alabama.

It is really extraordinary to me. I don't think there is a politician in America who has so consistently taken very difficult positions in a political environment—positions most people would say a politician was crazy to take—than Bill Pryor. He did it, and there is only one principle guiding him. What is that principle? It was required by the law. He is a man of the law.

Yes, he is a Christian gentleman. When he makes a statement, part of his religion teaches that it ought to be an honest statement. So when he said, ''if the courts rule on something I don't agree with, if it contradicts my views on abortion, I will follow the law,'' you can take it to the bank. That is the kind of man Bill Pryor is.

There has been an awful lot of railing about this ad by the Committee for Justice. It has a courthouse chambers with a little sign on it, and the sign says ''Catholics need not apply.'' Isn't this a legitimate commentary on how people feel about what is happening here? You can agree or disagree, and say it is not a really an accurate statement if you want to. I say it is legitimate commentary.

My colleagues went into a conniption fit about it. The ranking member twice, in two separate hearings, called this ad despicable. Let me read for you what it says.

As Alabama Attorney General, Bill Pryor regularly upheld the law even when it was at odds with his personal beliefs. Raised a Catholic, those personal beliefs are shared by Mainers all across the Pine Tree State. But some in the U.S. Senate are attacking Bill Pryor for having ''deeply held'' Catholic beliefs to prevent him from becoming a Federal judge. Don't they know the Constitution prohibits religious tests for public office? Bill Pryor is a loving father, a devout Catholic, and an elected Attorney General who understands the law. The job of a judge is to uphold the law, not legislate from the bench. It's time for his political opponents to put his religion aside and give him an up-or-down vote. It is the right thing to do. Thanks Senators Snowe and Collins for making sure that the Senate stops playing politics with religion.

I think that is a legitimate ad. It represents the view of a lot of Americans. There is nothing despicable about that. But I will tell you what is despicable. It is despicable to lie and distort and misrepresent this fine man's reputation, to impugn his integrity, to suggest he did one thing wrong when he and a group of attorneys general raised money for the Republican Attorneys General Association. They are candidates for office. They raise money all the time. There is nothing wrong with that. But the Democrats insisted there be an investigation, even though they had the records for many weeks.

Parenthetically, let me just talk about how they got those records. The records came to Senator KENNEDY, not to the chairman of the committee, myself, or the senior Senator from Alabama. Senator KENNEDY had them for some time before anyone else knew they existed. The lady who gave them to him had been an associate of a certain Lannie Young in Alabama, who recently pled guilty to a bribery scheme investigated by the United States Attorney's Office and Attorney General Bill Pryor. So she leaks those documents to Senator KENNEDY, and then, at his staff's suggestion, to Senator LEAHY. And then the Democrats want to have an investigation. So the chairman's staff says, OK, let's get the attorney general on the phone. You can interview him, ask him any questions you want to ask him about this effort to raise funds for the committee.

The bipartisan investigative staff had the phone call. The chairman's staff asked many detailed questions, and Attorney General Pryor's answers corroborated his testimony before the committee during his hearing and in written questions. The Democrats refused to ask Attorney General Pryor any questions. Why? Because they wanted to stall his vote in committee. It was already the fourth time his hearing had been set. The time had come up for a vote to be cast on his nomination in committee. The Democrats didn't want a vote. So they dragged it out, partly by invoking a rarely used two-hour rule, cut off debate, and obstructed a vote.

The chairman then said we were going to continue the investigation again that night. He gave the Democrats another chance to call Attorney General Pryor on the phone. They again turned down this opportunity. So the investigation dragged on for over another week. They were given yet another chance to get Attorney General Pryor on the phone and ask him any questions they had about this alleged issue. Instead, they called 20 of the alleged contributors on the list. They called employees of the Republican Attorneys General Association. Not one contradiction was found. Nothing unethical was found. Yet the Democrats continue to sully his reputation by implying that the investigation proved that Pryor misled the Committee. This is wrong, because not one person in this body has the integrity of Bill Pryor, I would say. This is a fine, decent man who has lived his life doing the right thing. I feel strongly about that. I won't back down.

I will tell you some other things that are despicable in the attack on Bill Pryor. One of our Senators just said recently on this floor, with regard to Bill Pryor's participation in a certain Supreme Court case: He used his power as attorney general to obstruct the enforcement of the Violence Against Women Act in Alabama.

Now that is the kind of thing People for the American Way do. That is the kind of attack the Alliance for Justice puts out. I am sure some staff person put that language together for the Senator, and perhaps she made her speech and didn't really understand what she was saying.

That is a false and unfair statement. Let me tell you what he argued with respect to the Violence Against Women Act. He participated as amicus in an appeal to the Supreme Court questioning whether the part of that act creating a federal civil remedy for a purely intrastate act violated the Commerce Clause. Pryor argued his position to the Supreme Court, and the Supreme Court agreed with him.

This falsehood about Bill Pryor's indifference to violence against women is also ironic, because he has a tremendous reputation in the State of Alabama for standing up for the victims of domestic violence. Kathryn Coumanis is one of the leaders in the State in the movement to protect women against domestic violence. She heads the Penelope House. She has written on Bill Pryor's behalf and noted that the women's groups in the State involved in the issue of violence against women put Bill Pryor in their Hall of Fame. Yet we have people on this floor and we have outside groups saying Bill Pryor does not care about violence against women. That is flat-out wrong.

We have seen some outside groups attack Bill Pryor, saying that he was against the disabled. These groups should have been ashamed of themselves. Who are they? The ACLU, the People for the American Way, the National Abortion Rights Action League, Alliance For Justice. They work together and they have a tremendous amount of money. They created this supposed issue, sent out information to newspaper editors and made these allegations that Bill Pryor had gutted the Americans With Disabilities Act, and he didn't care about people with disabilities. They said so directly.

But what did he really do? He argued in the Garrett case against the constitutionality of one small part of the Americans With Disabilities Act that said a State employee could sue the State of Alabama, or any other State, for money damages in federal court for violations of the Act. It was a suit against the University of Alabama, a State institution; and the Attorney General of Alabama, charged with the responsibility of defending the State, said this in his brief: I believe in the Disabilities Act. I believe people with disabilities should be treated fairly. The State of Alabama believes that under the Federal statute this person can get his or her job back. The Federal court can issue an injunction against the State of Alabama to remedy a violation. But the Congress could not allow this State employee to sue the State for money damages because, under the Eleventh Amendment principle of sovereign immunity, a state cannot be sued for money damages in federal court. This is because the power to sue is the power to destroy. A State always controls and limits the power of a suit against itself.

Bill Pryor took this argument to the Supreme Court. What did the Supreme Court do? The Supreme Court ruled Attorney General Pryor was correct. And in any event, this affected only 4 percent of all the cases that might be brought, because only 4 percent of the employees in America work for States. Most States have disability rights protections, anyway. They don't need to file under the Federal Act.

This is why it is wrong and despicable and dishonest to say Bill Pryor lacks sensitivity for the disabled simply because he legitimately defended the State of Alabama and won in the Supreme Court. This attack should not have been made.

Some say Bill Pryor is an activist. I would say he is an active attorney general. He is constantly working to preserve the rule of law and protect the legitimate interests of the people of Alabama. That is what he is paid to do. He is absolutely not an activist in the way Chairman ORRIN HATCH defines it. As Chairman HATCH defines it, an activist is a nominee for the bench who will not restrain himself or herself to the law, but in fact seeks to carry out and further their personal ideological agenda by twisting the meaning of words in statutes and the Constitution, and to otherwise act in a way that allows their personal views to dominate their legal requirements. An activist who seeks to be on the bench is someone who ought to be scrutinized carefully.

Bill Pryor is no activist. In fact, he is absolutely committed to the rule of law. His whole life and whole political philosophy has been built on the fact that judges should be true to the law whether they agree with it or not. That is the whole purpose of the rule of law. That is why this Nation is so wonderful, why we have so much freedom. We follow the law to an extraordinary degree. A lot of countries that have great potential never reach it because they don't have a rule of law that ensures predictability and justice.

As attorney general, Bill Pryor had to be an advocate. He proved to be a great one. As attorney general, he consistently has followed the law courageously, even when he knew he might face complaints from friends and allies. Members of the Senate should study his testimony carefully and evaluate his real record, not the trumped-up charges, not the bogus attack sheets being produced by outisde groups, and not mischaracterizations by these groups, some of which themselves have very out-of-the-mainstream positions.

Let me say, parenthetically, that a number of these groups have extreme views on the separation of church and State. Some of these groups believe there can be no drug laws, that we ought to legalize drugs. Some believe there can be no laws against pornography. The ACLU opposes laws against child pornography. Who is out of the mainstream here?

And let me ask you this: Why would leading African-American Democrats like our Congressman ARTUR DAVIS, a Harvard graduate and a lawyer himself, former U.S. Attorney; why would Representative Joe Reed, chairman of the Alabama Democratic Conference, a member of the Democratic National Committee, one of the most powerful political figures in Alabama for 30 years; why would Representative Alvin Holmes, Representative Holmes, a lieutenant with Dr. Martin Luther King, who has been beaten for his commitment to civil rights, all speak up for him? Why does the former Democratic Governor of Alabama speak so highly of him? Why does the Speaker of the Alabama House speak so admiringly of him?

All these people support him because he is not as Beltway attack groups have caricatured him. He has been a champion of liberty and of civil rights. Much has been changed in Alabama over the years. We have the highest number of elected African-American officeholders in the United States. On the day we had General Pryor's nomination hearing, it marked the anniversary of a sad day in which Governor

Wallace stood in a schoolhouse door. But you must know that Bill Pryor was not part of that. He was a mere child at that time. Secondly, his parents were John F. Kennedy Catholic Democrats. I suspect this hearing might change some of their views. When he gave his inaugural speech after winning election as attorney general, with 59 percent of the votes, he opened that speech with these very telling words:

Equal under the law today; equal under the law tomorrow; equal under the law forever.

Not segregation today, tomorrow, and forever, but equality. That is how he led off his speech, and that is the kind of man Bill Pryor is. Those words were a fitting response 40 years after a promise of another kind.

Bill Pryor is one of the good guys. He does the right thing. He frequently has refused pleas from his Republican friends when he thought the law didn't support their position. For example, those friends rightly believed the legislative district lines had been gerrymandered in the State, making it very difficult for Republicans to win legislative seats.

In fact, although we had in Alabama two Republican Senators, five Republican Congressmen, and a Republican Governor, only a third of the state legislature was Republican. Some Republicans felt that this was a redistricting problem. So they filed a voting rights suit arguing that the majority-minority legislative districts were improper. They asked for support from the Republican Attorney General. He would not take their side. He courageously led the case, as it turned out, for the African-American Democratic position.

He lost before the three-judge district court—and backed up by an amicus brief from the NAACP—won in the U.S. Supreme Court. His argument was plain and simple. He said the plaintiffs did not have standing to file a lawsuit. Whether the lawsuit had been meritorious or not, it was not a legitimate lawsuit because they did not have standing. Attorney General Pryor took it to the Supreme Court, and the Supreme Court ruled with him. Some of my friends and some of Bill's friends are still mad about that situation, but he believed that was the right thing to do under the law, and he made that call as the attorney general for the State of Alabama.

He had taken an oath to defend the State of Alabama. These gerrymandered districts were the laws of the State of Alabama, endorsed by the legislature. So he defended the districts even when it went against the interest of his political allies.

That is why Joe Reed and Alvin Holmes speak highly of Bill Pryor. They have seen him in action.

On one of the church-and-state issues that came up not long after he was appointed Attorney General by our former Governor, the Governor had a firm view about separation of church and State. Basically, he did not think there was much separation. He read the Constitution pretty plainly. The First Amendment says Congress shall make no law respecting the establishment of a religion, and the Governor thought that meant the United States Congress, not the State of Alabama. He did not adhere to the view that the 14th amendment incorporates the First and applies it to the States.

Then-Governor James said: What is wrong with coaches leading the players in prayer? He wanted Bill Pryor to file a lawsuit to vindicate him. Shortly after having been appointed Attorney General—at a very intense and emotional time in the State, with the Governor of the State speaking up for prayer in schools—Bill Pryor had to make a tough decision. He had to review the law carefully.

What did he do? He filed a respectable brief in court. He would not file the brief the Governor wanted, so the Governor got his own lawyer and he also filed a brief. As I know as a former Attorney General of Alabama, only the Attorney General is legally allowed to speak for the State in court. So Bill Pryor, as Attorney General, filed a brief saying that the Governor—who had just appointed him—did not speak for the State of Alabama.

Opponents said that Bill Pryor somehow is a tool of the chief justice of the Alabama Supreme Court, Roy Moore, who has deep convictions about how the Constitution and the laws ought to be applied with regard to separation of church and State, and who put in a monument in the court recently that had the Ten Commandments on it. The judge did not think anything was wrong with that. He met with the Attorney General, and they discussed legal actions against him to remove the monument. They did not reach an accord. The attorney general did not agree with the Chief Justice on his views of what the law was. So eventually, the Chief Justice had to hire his own lawyer and file his own brief, and Attorney General Pryor filed a more limited brief pointing out that if you go to the Supreme Court of the United States, there are several different depictions of the Ten Commandments on the walls of the U.S. Supreme Court. He basically said: What is good for the U.S. Supreme Court ought to be good for the Alabama Supreme Court.

Opponents say Bill Pryor is extreme on religious issues. That is not true. For example, I mentioned earlier how he stood up and did what was right with regard to the pressure from the Governor on school prayer. After that decision, there was much confusion in the State. School boards did not know what to do; teachers were leading prayer; others said you cannot do that. What was the law?

To answer that question, Attorney General Pryor wrote guidelines for school systems in Alabama advising them on what they could legally do as teachers, principals, and coaches, and what they could not do, and what children could do and what they could not do.

The Atlanta Journal Constitution wrote an editorial praising him for stepping up in a tough, emotional time and providing good leadership. And, indeed, the Clinton Administration basically adopted verbatim Bill Pryor's guidelines, and sent them around the country to other schools.

This idea that he is some sort of extremist is absolutely false. This is a courageous lawyer who does the right thing day after day, time after time to a degree I have never seen before by any politician in my life.

On abortion, they say he has deeply held beliefs about abortion; he cannot be trusted to be a judge. The distinguished Senator from Kentucky a few moments ago hit it exactly correctly. When a nominee has taken a view that they believe abortion is wrong, then it is perfectly proper for the Senate to inquire about that. What should the inquiry be? Senators should not say: Mr. Pryor, we want you to grovel down here on the floor; we want you to renounce your views about abortion; we want you to say, ''I don't believe that anymore,'' as a price for being confirmed—that is absolutely wrong.

What should Senators say? They should say: Mr. Pryor, you have expressed your view that abortion is bad, that you do not think Roe v. Wade was rightly decided; but will you follow it? Then see what he says. Senators do not have to accept what he says; they can inquire further. To those inquiries, Bill Pryor said ''Of course, I will follow the law, Senator. You can take it to the bank.'' What is significant is that Bill Pryor has a record showing that he will live up to that answer.

As far as I can tell, there have been only two instances in his public life in which he has dealt with abortion. The first had to do with Alabama's partial-birth abortion statute, that severely restricted partial-birth abortion. Partial-birth abortion is a very horrible procedure. Overwhelmingly, Americans reject it. The American Medical Association said it is never justified as a medical procedure. And Alabama passed legislation to virtually eliminate it.

As Attorney General, he superintended the State's district attorneys who enforced this law. He sent them a directive in 1997 stating that parts of the partial-birth abortion bill were unconstitutional and could not be enforced. Isn't that proof that he will follow the law even if he disagrees with it?

The other example involving abortion was when Attorney General Pryor issued stern warning that those who threatened violence against abortion

clinics, or against those who sought to exercise the constitutional right to abortion at those clinics, would be fully prosecuted.

So outside groups attack him on his deeply held beliefs, even deeply held religious beliefs, and they suggest that somehow he is an extremist because he personally thinks that abortion is a taking of innocent human life.

Bill is a thoughtful person. He is not some automaton for any church or any person. He thinks about these issues carefully. He has shared his views about it. He believes that the life that is in the womb has all the characteristics of what that life will be as an adult. There is no doubt that it is going to become a human being. He believes that we ought not to withdraw the law's protection from that life. That is his view.

But the Supreme Court has not bought it. In Roe v. Wade and Planned Parenthood v. Casey they held differently. Bill Pryor said: I understand that. I will follow the Supreme Court precedents.

How do we know he will? Because he did it even with respect to the partial-birth abortion statute in Alabama. So I do not know what more a person can do to prove his fidelity to the rule of law.

Bill has gained great support in the State. He is a man who is respected across party lines, across racial lines. Representative Alvin Holmes wrote this powerful letter on his behalf, and he told the story about Alabama's old constitutional provision that prohibited interracial marriages. Of course, that had been struck down some time ago by the United States Supreme Court. It was unconstitutional, but it remained in the constitution.

Alvin Holmes, as a lieutenant for Dr. Martin Luther King, and still a vibrant battler for civil rights in Alabama, said it ought to come out of the constitution. Attorney General Bill Pryor, as Alvin Holmes said, was the only white politician in the State, Democrat or Republican, who supported him. They got it out of the legislature, put it on the ballot, and the people of Alabama eliminated it from our constitution. Bill Pryor campaigned for that elimination throughout the State because he thought it was wrong that our constitution would have those words still in it.

This is a man of quite extraordinary character, a man of great skill and ability, who has taken cases to the Supreme Court and won them to an extraordinary degree.

So I submit there is nothing wrong with the ad that that group put out to defend Bill Pryor. It is basically an honest evaluation of the situation. Somebody might disagree with it, but it is honest.

In contrast, many of the attacks on Bill Pryor have not been honest. Outside groups have been unfair and have deliberately twisted his record. What they have done is not right.

Some in this chamber say we need collegiality. They say Republicans should renounce this outside ad about ''Catholics need not apply.'' I would say this to my friends: Let's see you renounce some of these ridiculous, obscene, despicable misrepresentations of Bill Pryor's record and his character. I would like to see that.

Yes, we do have a problem with collegiality, but I do not think it is the result of Chairman HATCH's leadership. When he was Chairman of the Committee, we moved 377 Clinton nominees. Only one was voted down. When he was Chairman of the Committee, not one time did we vote down a Clinton nominee on a party-line vote. During that short time, a year and a half or so, that the Democrats had a majority in the Senate Judiciary Committee, they voted down in committee, on a party-line vote, two President Bush nominees.

In May, President Bush nominated 11 judges for the court of appeals. He renominated one Democrat who had been nominated by President Clinton, but not confirmed, and two Democrats overall. The Democratic Judiciary Committee promptly moved the 2 Democrats and confirmed them. Almost 2 years later, several of the remaining nine had not even had a hearing in committee. This was an unprecedented slowdown of the confirmation process.

The Democrats met and decided deliberately and consciously to change the ground rules for confirmation. There is no doubt about that. Who is changing the ground rules? I submit it is the Democratic members of the Judiciary Committee, by some of their tactics. They started an effective filibuster in the committee, creating a situation in which 9 out of the 19 members of the committee could withhold a vote by relying on a misinterpretation of Rule IV. I have never heard of that.

The chairman properly ruled under Rule IV that the chairman has the prerogative to bring a matter up for a vote.

Their citation of rule IV ignores what it says is the purpose of that rule. The first sentence says to bring a matter up for a vote and to deal with a recalcitrant chairman who will not allow a matter to be voted on, if you get one member of the other party and a majority vote, then you can bring a matter up for a vote even if the chairman does not agree. But the rule does not give a group a right to filibuster and keep a vote from occurring, which is what they wanted to do.

We have had two open, notorious and unprecedented filibusters on the floor against superb circuit court nominees, Miguel Estrada and Priscilla Owen. Both received the highest rating by ABA, and both have extraordinary records. In the history of this country, we have never had filibusters of circuit and district judges, but the Democrats have started two now because they decided to change the ground rules.

Now we have these Members come down on the Senate floor and act all upset that somehow collegiality is being upset here. They do not know why the chairman has determined to move nominations forward and not let them be obstructed and delayed. I call on the Democratic leader, Senator DASCHLE who speaks for this party. There would not be a filibuster of these nominations if he did not approve it. He needs to remember the history of this body. It is a mistake for him to lead the Democrats into an unprecedented period in which we filibuster Presidential nominees for the federal courts.

I firmly believe a fair reading of the Constitution is that nominations for judgeships should be confirmed based on a majority vote. Any fair reading of the Constitution will show that. That is why we have never filibustered in the history of the country, but the Democrats have now created what in effect is a supermajority requirement to block the right of nominees to an up-or-down vote.

There are many more things I could say about Bill Pryor. But I will not do that tonight. I appreciate the indulgences of my colleagues and the staff. This battle to allow people to have honest personal views, so long as those views do not influence their official interpretations of existing law, is an important battle for America. I intend to be a part of it and a lot of others do, too. It is not going away. We are not backing down.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, to those of us who have been given this great honor to serve in the Senate, there is a moment when we are asked to take the oath of office. In taking that oath of office, we swear to uphold one document. That document, of course, is the Constitution of the United States of America.

We are not asked our religion, nor our beliefs in our religion. We are only asked if we will take an oath to God that we will uphold this Constitution. All of us take it very seriously and all of us take the wording of this Constitution very seriously because within this small document are words that have endured for more than two centuries. There was wisdom in that Constitutional Convention which America has relied on ever since.

Sometimes people say, times have changed. And we do amend the Constitution from time to time. By and large the principles that guided those men who wrote this Constitution have guided this Nation to greatness. I am

honored to be a small part of this Nation's history and to serve in the Senate.

I looked to this Constitution for guidance for this debate tonight, and I find that guidance in Article 6 of the Constitution. Let me read a few words from that book.

. . . no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Most of the men who wrote this Constitution were religious people. They had seen the abuse of religion. They had seen leaders in other countries using religion for political purposes and against other people. They came to this land and said, it will be different in America. We are going to protect your right to believe. We are not going to establish a government church and we will say in our Constitution that no religious test will ever be required of a person seeking a nomination for public office in our land.

Those are very absolute and clear words. I am a Catholic, born and raised. My mother and father were Catholics. My children have been raised in the Catholic faith. In my lifetime, I have seen some amazing things happen. In 1960, I was about 15 or 16 years old. There was a Presidential race with a candidate by the name of John Fitzgerald Kennedy of Massachusetts. That may be the first Presidential election I followed closely. I remember watching the Los Angeles convention on my black-and-white television at home in East St. Louis. I took a special interest because I had a stake. The John Fitzgerald Kennedy candidacy was the first opportunity since Alfred Smith for the election of a Catholic to be President of the United States. We do not think twice about that now, but in 1960 it was a big deal. And a big problem for John Kennedy. So much so that he feared he might lose the election over that issue.

He did something that was historic and I guess unprecedented. He went to Texas and addressed a Baptist convention to explain his view of the relation of church and State because there were real concerns. Many people felt that those who were believers of the Catholic church were so connected and so committed to the teachings of the church and to the leader of the church, the Pope in Rome, that they could not make objective decisions on behalf of the United States; they would be clouded in their judgment because of the demands of their faith.

John Kennedy, a Catholic, went to Texas to a Baptist convention to tell those gathered that his first allegiance as President was to the United States and not to any religion. He said: I believe in America where the separation of church and State is absolute.

Many people think that statement and that visit turned the election for John Kennedy, an election which he won by just a very small margin. It dispelled the fears and concerns of many people across the country that a Catholic would be first loyal to Rome and then loyal to the United States.

It is an interesting thing to reflect on the view of Catholics in public life in 1960 and the debate which is taking place tonight. The issue has come full circle. Now there are those who argue that because a nominee comes before the Senate and professes to be a Catholic that we cannot ask that nominee questions about his political beliefs. There are many religious beliefs that are also political beliefs. There are some religious beliefs that are not. You can be an adherent to the Jewish religion, keep kosher, and I cannot imagine how that becomes a political issue. What is the purpose of asking a question about that? But whether you are Jewish, Catholic, Protestant, or Muslim, it is appropriate to ask any nominee for a judicial position, Where do you stand on the death penalty? That is a political issue. It is a social issue. And yes, it is also a religious issue.

Some have argued tonight if a person comes before the Senate with strong religious convictions that somehow we are disqualified from asking questions about political issues. I see it much differently. I think the Constitution makes it very clear we should never ask a person their religious affiliation. Article 6 of the Constitution says that is not a qualification for public office.

So what business do we have asking that question? But to say that because a person's political beliefs also happen to be their religious beliefs, that for some reason we cannot ask questions about them, goes entirely too far.

Consider a so-called church in my State, the World Church of the Creator in Pekin, IL. A deranged individual named Matt Hale—who could not be approved by the committee on character and fitness after he had passed law school and therefore was never licensed to practice law—decided to create a church and an Internet Web site in the name of that church, the World Church of the Creator, and started peddling the most venomous beliefs imaginable—bigoted, hateful, racist, anti-Semitic beliefs in the name of religion. This church and its so-called teachings drew some demented followers. It culminated one day when one of those followers went on a shooting spree, killing a basketball coach of Northwestern University, Ricky Birdsong, and then driving over to the University of Indiana and gunning down an Asian student, and was finally apprehended.

When Matt Hale was asked about the activities of this individual, he said, that is just our religion. Their religion.

If someone who comes before us with unusual beliefs and political issues says, stop, you cannot ask me about those beliefs because they are my deeply held personal religious convictions, are we then disqualified? If we are, imagine where that can lead.

In this case we have an individual, William Pryor, Attorney General of Alabama, who is a Catholic. The reason I know that is the chairman of the Senate Judiciary Committee, ORRIN HATCH, asked him. That is the first time I can recall in the 4½ years I have served on this committee that it has ever been asked of any nominee. Tonight Senator HATCH said he would never do it again. I am glad to hear him say that. I hope he never does that again and I hope no committee chairman of any committee ever asks any nominee for office their religion. The Constitution makes it clear we should not. But the exception was made by Senator HATCH and he asked Mr. Pryor his religion.

That triggered this ad campaign which we have discussed tonight and this heated debate which many have followed in the Senate. We have had Members come to the Senate, one who is a Catholic, saying, This is what good Catholics believe.

I guess I was raised in a little different branch of the Catholic church, maybe a branch that believes there ought to be a little more humility in religious belief. I don't like to stand in judgment of my peers as to whether they are good people or not; let their lives speak for themselves. And I certainly would never stand in judgment of someone's adherence to a certain religious belief. That is personal, as far as I am concerned. But not personal to some of my colleagues.

They come to the floor and make pronouncements about who is a good religious person and who is not. I am not comfortable with that. In fact, I am a little bit uncomfortable discussing this issue of religion in the Senate, but I have no choice. It has been brought before us.

What I believe is this: Within the Catholic church there are many differences of opinion, even within the church members who serve in the Congress. I know of one or two who I think are really close to adhering to all of the church's beliefs in the way that they vote, but only one or two, because although those who come to the floor want to argue to you that the Catholic Church is only about one issue, abortion, there are many of us who believe it is about a lot of issues.

It is about the death penalty—the death penalty, where the church has been fairly clear in its position. Again, I am troubled that I would even read this and put it into the CONGRESSIONAL RECORD, but I have no choice, based on what has been said over the last 3 hours. This is a statement by Pope John Paul II, St. Louis, MO, January 22, 1999:

The new evangelization calls for followers of Christ who are unconditionally pro-life, who will proclaim, celebrate, and serve the

Gospel of life in every situation. A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.

The words of Pope John Paul II. You didn't hear much reference to the Catholic Church's position on the death penalty tonight by those who were saying that William Pryor is being discriminated against because of his Catholic beliefs. Perhaps it is because Mr. Pryor not only supports capital punishment, he fought State legislation in Alabama which sought to replace the electric chair with lethal injection.

I am not going to stand in judgment as to whether or not he is a good Catholic. That is not my place. But I bring this issue before my colleagues so they can understand that the Catholic Church is about more than one issue. There are those who hold beliefs which may or may not agree with all the teachings of that church, and that is within their conscience and their right to do. It is not mine to judge.

But for us to be told repeatedly by the other side of the aisle that to oppose William Pryor is to be against him because he is Catholic is just plain wrong, and I resent it. I resent it because, frankly, there are many reasons to oppose his nomination—because of his political beliefs.

Oh, yes, some relate to his religion and some don't. But what we are told in the Constitution is that distinction makes no difference; whether they are religious or not, stick to political beliefs. And I believe my colleagues have really tried to do that on the committee.

Let me also say I was disappointed that the Senator from Pennsylvania, Mr. SANTORUM, earlier quoted, I believe out of context, the statement made by Senator FEINSTEIN of California. It was unfair to her because she had left the floor and he characterized some of her remarks in ways that I don't believe she intended. To make certain that the record is clear, I asked her staff to provide me with a copy of the speech which she gave, and I would like to read an excerpt of that speech given on the floor this evening by Senator FEINSTEIN to clarify and make certain the Senate understands that the quote which was referred to earlier by the Senator from Pennsylvania was inaccurate.

I quote what Senator FEINSTEIN said:

> Each time the Democrats oppose a nominee, we are accused of some sort of bias unrelated to the merits. With Miguel Estrada, we were accused of being anti-Hispanic. With Priscilla Owen, anti-woman. With Charles Pickering, anti-Baptist. And now, with William Pryor, anti-Catholic.
>
> These charges have been described by some as ''scurrilous,'' and I agree. To describe Democrats as anti-Hispanic after the many Hispanic Clinton nominees that were stopped in their tracks by a Republican majority is disingenuous at best.
>
> To call us anti-woman, well, [as Senator Feinstein said] I don't have to tell you how bizarre it is for me to be called anti-woman.
>
> And to say we have set a religious litmus test is equally false.
>
> Many of us have concerns about nominees sent to the Senate who feel so very strongly about certain political beliefs, and who make intemperate statements about those beliefs that we raise questions about whether those nominees can be truly impartial.
>
> And it is true that abortion rights are often at the center of those questions. As a result, accusations have been leveled that anytime reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice.
>
> But pro-choice Democrats have voted for many nominees who are anti-choice and who believe that abortion should be illegal—some of whom may have even been Catholic. I don't know, because I have never inquired.
>
> So this is not about religion. This is about confirming judges who can be impartial and fair in the administration of justice. And when a nominee like William Pryor makes some fairly inflammatory statements and evidences such strongly held beliefs on such core issues, it is hard for many of us to accept that he can set aside those beliefs and act as an impartial judge.

Somehow, that was characterized as questioning General Pryor's religious beliefs. I do not think any fair reading would reach that conclusion. In fact, I think Senator FEINSTEIN was as careful as we all have been to draw that clear and bright line that the Constitution requires us to draw.

She said at one point there—and it may come as curious to people following the debate—that she is not certain about how many Catholics we voted for because, you see, that is not one of the required questions when a person applies for a judgeship in this country. We do know, though, just by taking a look at some of their resumes, that they belong to some organizations which suggest that they might be Catholic. So I would like to say for the record that the argument that we have somehow discriminated against Catholics who are opposed to abortion is not supported by the evidence.

We have, for example, confirmed a circuit judge who was active in the Knights of Columbus and the Serra Club and sits on the board of a Catholic school—Michael Melloy.

We confirmed a district court judge who is a member of the parish council of his Catholic church, the president's advisory board of a Jesuit High School Parents' Club, the St. Thomas More Society for Catholic lawyers, and his State's chapter of Lawyers for Life—Jay Zainey.

We confirmed a district court judge who was the former president of Catholic Charities of her city's diocese and a member of both the Catholic League and of the St. Thomas More Society—Joy Flowers Conti.

This serves as clear evidence that Democrats do not have an abortion litmus test for judicial nominees. There have been many we have confirmed who were opposed to Roe v. Wade and have made it very clear that they are opposed to it.

Some names that I can refer to very quickly: John Roberts, DC Circuit; Jeffrey Howard, First Circuit; John Rogers, Sixth Circuit; Deborah Cook, Sixth Circuit; Lavenski Smith, Eighth Circuit; Timothy Tymkovich, Tenth Circuit; Michael McConnell, Tenth Circuit; and the list goes on.

So for colleagues to stand before us and say we discriminate against Catholics, the record doesn't show it. There are people who clearly have Catholic affiliations in their background who have been approved by this committee and are supported by Democrats. For them to argue that we have a litmus test and turn down judges just because they oppose abortion denies over 140 nominees coming out of the Bush White House, most of whom are pro-life and most of whom disagree with Roe v. Wade personally and still have won our approval. I read a partial list.

In my own situation, I am pro-choice. I have personal feelings against abortion but believe that in my public capacity women should have the right to choose. And yet in my own home State of Illinois, of the 12 judges I have had the privilege to appoint to the Federal bench, at least 3 I have come to learn afterward were pro-life. I learned it afterward because I didn't ask them in advance. It really wasn't a condition for their appointment as far as I was concerned. I just want them to be fair minded and balanced. Whether they disagree with me on that issue or one other issue is really secondary.

So what we have before us today is an effort by the proponents of William Pryor to ask us to look beyond his political beliefs and really turn this into a debate about religion. I hope we don't do that. I hope we don't do it for his sake and I hope we don't do it for the sake of the Senate.

The Senate Judiciary Committee meeting of last week was one of the saddest times I have spent as a Senator. I saw things happen in that committee that I hope will never be repeated. I saw members of the committee raise the issue of religion in a way which the Constitution has never countenanced and I hope and pray has never happened before in that committee. I hope it never happens again.

The nomination of William Pryor is fraught with controversy. This whole question about his involvement with the Republican Attorneys General Association—we haven't even completed that investigation. This man's nomination comes to the floor before questions have been asked and answered

that are serious questions about possible ethical considerations.

I won't prejudge the man as to whether he will be cleared of any suspicion or not. But in fairness to him, in fairness to the process, in fairness to the Senate, should not we have completed that investigation before he was reported from committee?

When it comes to critical issues involving Mr. Pryor's background, a lot of different groups have raised questions about him. The argument is being made on the other side that the only reason you can possibly oppose William Pryor is if you are anti-Catholic.

How then do you explain the editorials in opposition to his nomination? Editorials from Tuscaloosa, AL; editorials from Huntsville, AL; the Washington Post; Charleston, SC; St. Petersburg, FL; Arizona; the Atlanta Journal-Constitution; Honolulu Adviser; Pittsburgh newspapers—the list goes on.

Are we to suggest that all these newspapers that oppose his nomination are anti-Catholic? Not if you read the editorials. They have gone to his record and they have come to the conclusion that he is not the appropriate person to serve in this circuit court capacity.

Let me tell you some of the issues they raise. Mr. Pryor's zeal to blur the lines between church and state, a line that was clearly drawn in our Constitution and clearly drawn by John Kennedy, Presidential candidate, is a problem. He is so ideological about the issue that he has confessed, ''I became a lawyer because I wanted to fight the ACLU.'' He then derided that organization as standing for ''the American 'Anti-Civil' Liberties Union.'' I asked him if he would recuse himself in cases involving the ACLU. He said no, but he pledged:

As a judge, I could fairly evaluate any case brought before me in which the ACLU was involved.

Mr. Pryor and I are just going to have to disagree on that particular statement.

He has been a staunch supporter of Alabama Chief Justice Roy Moore and his midnight installation of a 6,000-pound granite Ten Commandments monument in the middle of the State courthouse. The Eleventh Circuit Court recently ruled that the display was patently unconstitutional and had to be removed.

At his confirmation hearing, Senator FEINSTEIN asked him to explain his statement that:

. . . the challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective.

He ducked the question.

I think if you are going to serve this Nation and you are going to serve this Constitution, you have to have some sensitivity to the diversity of religious belief in this country. To argue that this is a Christian nation—it may have been in its origin but today it is a nation of great diversity. That diversity is protected by this Constitution. Obviously, Mr. Pryor has some problems in grasping that concept.

On the issue of judicial activism, not only does Mr. Pryor have problems with separation of church and state, he also has problems separating law and politics. He believes that it is the job of a Federal judge to carry out the political agenda of the President. How else could you interpret his comments about the Bush v. Gore case in the year 2000 when he said:

I'm probably the only one who wanted it 5 to 4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have not more appointments like Justice Souter.

That is a statement by William Pryor.

On another occasion, he said:

[O]ur real last hope for federalism is the election of Gov. George W. Bush as President of the United States, who has said his favorite Justices are Antonin Scalia and Clarence Thomas. Although the ACLU would argue that it is unconstitutional for me, as a public official, to do this in a government building, let alone at a football game, I will end my prayer for the next administration: Please God, no more Souter.

I ask Mr. Pryor, a member of the Federalist Society, whether he agrees with the following statement from the Federalist Society mission: ''Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.'' I have asked this question of almost every Federalist Society member that has been nominated by President Bush. Mr. Pryor is the only person who gave me a one word answer. He said, ''Yes.''

On the issue of federalism, Mr. Pryor has been a predictable, reliable voice for entities seeking to limit the rights of Americans in the name of States' rights. He has filed brief after brief with the Supreme Court arguing that Congress has virtually no power to protect State employees who are victims of discrimination.

Under his leadership, Alabama was the only State in the Nation to challenge the constitutionality of parts of the Violence Against Women Act, while 36 States filed briefs urging that this important law be upheld in its entirety—the exact opposite position of one Attorney General William Pryor.

He also filed a brief in the recently decided case of Nevada v. Hibbs. He argued that Congress has no power to ensure that State employees have the right to take unpaid leave from work under the Family and Medical Leave Act. A few months ago the Supreme Court rejected his argument and said:

Mr. Pryor, you have gone too far this time.

The issue of women's rights has been well documented. I will not go into those again.

On the issue of voting rights, Mr. Pryor urged Congress to eliminate a key provision in the Voting Rights Act which protects the right to vote for African Americans and other racial minorities. While testifying before this committee in 1997, Mr. Pryor urged Congress to ''seriously consider . . . the repeal or amendment of section 5 of the Voting Rights Act'' which he labeled ''an affront to federalism and an expensive burden that has far outlived its usefulness.''

Given the importance of section 5 of the Voting Rights Act to the ability of African Americans and other racial minorities to achieve equal opportunity in voting, this call for its repeal is deeply disturbing. Thankfully, the Supreme Court and Congress disagreed with Mr. Pryor about the importance of section 5 of the Voting Rights Act.

There was one case involving inmates' rights which I thought was particularly noteworthy. He has been a vocal opponent of the right of criminal defendants. In Hope v. Pelzer, Attorney General Pryor vigorously defended Alabama's practice of handcuffing prison inmates to outdoor hitching posts for hours without water or access to bathrooms. The Supreme Court rejected Mr. Pryor's arguments citing the ''obvious cruelty inherent in the practice,'' and calling the practice ''antithetical to human dignity'' and circumstances ''both degrading and dangerous.''

In a July 2000 speech, Attorney General Pryor was outspoken in his disdain for the Supreme Court's reaffirmation in Dickerson v. United States of the constitutional protection of self-incrimination first articulated in Miranda. He called the Dickerson decision, authored by Chief Justice Rehnquist an ''awful ruling that preserved the worst example of judicial activism.''

The list goes on.

In the case called United States v. Emerson, Attorney General Pryor filed an amicus brief to argue that a man who was the subject of a domestic violence restraining order should be allowed to possess a firearm.

Let me repeat that.

The man who was the subject of a domestic restraining order should be allowed to own a firearm.

Mr. Pryor called the Government's position a ''sweeping and arbitrary infringement on the second amendment right to keep and bear arms.'' He was the only State attorney general in the United States of America to file a brief in support of that position.

When it comes to tobacco, he has been one of the Nation's foremost opponents of a critical public health issue—compensation for the harms caused by tobacco companies. He has ridiculed litigation against companies stating:

This form of litigation is madness. It is a threat to human liberty, and it needs to stop.

Mississippi Attorney General Michael Moore said:

Bill Pryor was probably the biggest defender of tobacco companies of anyone I know. He did a better job of defending the tobacco companies than their own defense attorneys.

Arizona Attorney General Grant Woods, a Republican, said of William Pryor:

He's been attorney general for about five minutes, and already he's acted more poorly than any other attorney general.

On the issue of environmental protection, time and again he has looked the other way when it comes to protecting our environment.

For people to argue that the only position against William Pryor is based on his religion ignores the obvious. When it comes to his political beliefs, when it comes to his actions as attorney general of Alabama, time and time again he has taken extreme positions.

Should this man be entrusted to a lifetime appointment to the second highest court of the land? I think not. Many others agree with that conclusion.

I certainly hope that when this debate ends, however it ends, that we will call an end to the involvement of religion in this debate.

It has been a sad night for me to listen to what some of my colleagues have said in an effort to promote the political agenda of a certain part of America in an effort to promote the candidacy of an individual. I am afraid many of my colleagues have crossed a line they should never have crossed.

I hope and pray that before we utter the next sentence in relation to the Pryor nomination that each of us who has taken an oath to uphold this Constitution will stop and read article VI:

No religious test shall ever be required as a qualification to any office or public trust in the United States.

Those words have guided our Nation for over 200 years. They should guide each of us in good conscience.

I yield the floor.

Mr. REID. Mr. President, I served in the Congress since 1972. I have had the good fortune to listen to some brilliant statements made on various subjects over 21 years. But I have to say that the statement by the senior Senator from Illinois tonight is the finest statement I have ever heard in some 21 years. I hope the people of Illinois know what pride we have in DICK DURBIN.

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

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

ENERGY POLICY ACT OF 2003—Continued

Mr. FRIST. Mr. President, obviously we have not had the progress we had hoped for on the Energy bill over the course of the last several days. I know that Senators have indicated they still have amendments to the electricity amendment. And it is clear to me there is not a definite sign as to when we might finish that issue.

Members have the ability to slow down this bill. With the lengthy amendment list that is before us, there are many options to do that. After numerous discussions today, it is clear to me we are not on a course to complete this bill over the next couple of days.

It is important to do. I set out several weeks ago—actually 2 months ago—stating that the objective would be to work aggressively over the course of this final week, having had the bill before us in May, spending a number of days before this week on this bill.

In spite of that commitment on my part to plow ahead, it appears to me now—Wednesday night at 10 o'clock—that the writing is on the wall: We are not going to be able to complete the bill.

Having said that, I think it is important that Members have an opportunity to really prove their commitment to this underlying bill. Again and again, I have heard: Yes, we want to pass a comprehensive national energy policy. Although I hear that, and I express this willingness—and I think that is probably right—it is important, before we leave for this August recess, to see what that commitment really represents. Thus, I will shortly file cloture, and the Senate will have the opportunity to go on record for completing a bill which will accomplish just that—establishing a national energy policy.

Mr. President, in that regard, I now ask unanimous consent to set aside the pending amendments in order for me to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

MOTION TO COMMIT

Mr. FRIST. Mr. President, I send to the desk a motion to commit the pending legislation with instructions.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] moves to commit S. 14 to the Committee on Energy and Natural Resources with instructions to report back forthwith with the following amendment numbered 1432.

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

AMENDMENT NO. 1433

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 1433 to instructions of the motion to commit S. 14.

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

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

The amendment is as follows:

At the end of the amendment add the following: ''All provisions of Division A and Division B shall take effect one day after enactment of this act.''

AMENDMENT NO. 1434 TO AMENDMENT NO. 1433

Mr. FRIST. Mr. President, I send a second-degree amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 1434 to amendment No. 1433.

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

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

The amendment is as follows:

On line 3 of the amendment strike ''one day'' and insert ''two days.''

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending motion.

Bill Frist, Pete Domenici, Orrin G. Hatch, Rick Santorum, Saxby Chambliss, Larry E. Craig, Jon Kyl, Craig Thomas, Charles Grassley, Sam Brownback, Lamar Alexander, Norm Coleman, Mike DeWine, John Cornyn, Mitch McConnell, Gordon H. Smith.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum be waived.

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

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR NO. 169

Mr. FRIST. Mr. President, I now ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of Calendar No. 169, the nomination of Carolyn Kuhl, to be U.S. Circuit Judge for the Ninth Circuit; further, that there be 4 hours of debate equally divided in the usual form, and that following that debate, the Senate proceed to a vote on

the confirmation of the nomination, with no intervening action or debate; finally, I ask consent that following that vote, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. The Senator from Nevada objects.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. I would ask if the request were modified to 10 or 12 hours, would it be agreed to?

Mr. REID. At this time, it would not.

EXECUTIVE SESSION

NOMINATION OF CAROLYN B. KUHL, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 169, the Kuhl nomination.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 169, the nomination of Carolyn Hill, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin G. Hatch, Ben Nighthorse Campbell, Craig Thomas, Charles Grassley, John Cornyn, Chuck Hagel, Jim Talent, Thad Cochran, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, Larry E. Craig, Jeff Sessions, Lindsey Graham of South Carolina, and Rick Santorum.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum provided for under rule XXII be waived.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. FRIST. Mr. President, I ask unanimous consent that we resume legislative session.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

COMMERCIAL AIRLINE HIJACKINGS

Mr. NELSON of Florida. Madam President, I have been trying to find the appropriate wrinkle in this important debate on the Energy bill to share with the Senate something that I heard on the radio this morning that almost caused me to drive off the road.

Given the fact that we have, over the last couple of weeks, just gone through and passed an important bill with regard to the Department of Homeland Defense, given the fact that former Senators Warren Rudman and Gary Hart have compiled a major report continuing to warn us that we are dangerously unprepared to prevent and respond to a catastrophic terrorist attack in the U.S., and given the fact that we are all, every day, reminded of the war on terror and how we are going to protect ourselves, something I heard on the radio this morning makes me wonder that we must not be listening.

According to intelligence reports made public yesterday, terrorists may be plotting suicide missions by hijacking commercial airliners, most likely in the United States, but clearly it could be anywhere in the world. Such a plot is detailed in a memo from our own Transportation Security Administration. I want to quote from it:

The plan may involve the use of five-man teams, each of which would attempt to seize control of a commercial aircraft either shortly after takeoff or shortly before landing at a chosen airport. This type of operation would preclude the need for flight-trained hijackers.

Madam President, the threat that we face from terrorist organizations is still with us ever since we were rudely awakened on September 11. And interestingly, at the same time that we are informed of these potential new terrorist plots, the Transportation Security Administration, in a shocking disclosure that I heard on the radio today, reportedly intends to cancel air marshals on some of our most vulnerable commercial flights.

And if that is not enough, they are reportedly also cutting back on the training for new air marshals. In the wake of these reports, the agency says it has every available air marshal deployed right now and additional resources are being directed to this critical program. I certainly hope so.

The air marshal program was instituted as the front line of defense against would-be hijackers. Just knowing there is someone trained and armed who is usually sitting in the first-class section if somebody is trying to bust forward into the cockpit is a great comfort. What is the reasoning behind these reported cuts I heard on the radio that almost caused me to run off the road? It is that the Transportation Security Administration does not want to pay for the hotel rooms for the air marshals for overnight stays.

What price do we pay for security? That is almost like saying, while we are at it, we are going to get rid of the x-ray machines in security lines at the airports because we want to save on electricity, which, of course, is a ridiculous argument.

The Transportation Security Administration, according to the news reports, says it is trying to save $104 million. That might be a laudable goal, but I suggest we ought to start looking at the $8 million program that has already been spent in the Pentagon that has recently come to the fore and has caused such a flap. That is the program that would allow people to gamble on on the likelihood of terrorist attacks and assassinations, on which we have all joined in mutual disgust—that there was such a program.

Now having been denied that program, it will not continue, said the Deputy Secretary of Defense in testimony yesterday before the Senate Foreign Relations Committee, and yet that was an $8 million program.

I have been waiting all day to say—and I thank the Senators for their indulgence—that when it comes to the defense of our citizens, we cannot afford to cut corners. If we do, we will have forgotten the lessons of September 11. I hope the radio report I heard this morning that they are seriously considering cutting back on the air marshals program is not true. Clearly, let's not forget the lessons of September 11.

I thank the Chair.

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 July 28, 2003. 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 $1.833 billion in budget authority and by $2.985 billion in outlays in 2003. Current level for revenues is $1 million below the budget resolution in 2003.

Since my last report, dated July 3, 2003, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues: the Veterans' Memorial Preservation and Recognition Act of 2003 (P.L. 108–29), the Welfare Reform Extension Act of 2003 (P.L. 108–40), and the Burmese Freedom and Democracy Act (P.L. 108–61).

I ask unanimous consent to print a cover letter and attached tables 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, July 29, 2003.

Hon. DON NICKLES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached tables show the effect of Congressional action on the 2003 budget and are current through July 28, 2003. 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.

Since my last report, dated June 2, 2003, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues: the Veterans' Memorial Preservation and Recognition Act of 2003 (P.L. 108–29), the Welfare Reform Extension Act of 2003 (P.L. 108–40), and the Burmese Freedom and Democracy Act (P.L. 108–61). The effects of these new laws are identified in Table 2.

Sincerely,

ROBERT A. SUNSHINE
(for Douglas Holtz-Eakin, Director).

Attachments.

TABLE 1.—SENATE CURRENT-LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2003, AS OF JULY 28, 2003

[In billions of dollars]

	Budget resolution	Current level [1]	Current level over/under (-) resolution
On-Budget:			
Budget Authority	1,874.0	1,875.8	1.8
Outlays	1,826.1	1,829.1	3.0
Revenues	1,310.3	1,310.3	(2)
Off-Budget:			
Social Security Outlays	366.3	366.3	0
Social Security Revenues	531.6	531.6	0

[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.

[2] 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 2003, AS OF JULY 28, 2003

[In millions of dollars]

	Budget Authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues	n.a.	n.a.	1,359,834
Permanents and other spending legislation	1,013,810	977,842	n.a.
Appropriation legislation	1,133,856	1,160,341	n.a.
Offsetting receipts	−369,104	−369,106	n.a.
Total, enacted in previous sessions	1,778,562	1,769,077	1,359,834
Enacted this session:			
Emergency Wartime Supplemental Appropriations Act, 2003 (P.L. 108–11)	79,190	42,024	2
Postal Civil Service Retirement System Funding Reform Act of 2003 (P.L. 108–18)	3,479	3,479	0
Gila River Indian Community Judgment Fund Distribution Act of 2003 (P.L. 108–22)	1	1	0
Unemployment Compensation Amendments of 2003 (P.L. 108–26)	3,165	3,165	0
Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108–27)	11,347	11,347	−49,489
Veterans' Memorial Preservation and Recognition Act of 2003 (P.L. 108–29)	0	0	(2)
Welfare Reform Extension Act of 2003 (P.L. 108–40)	64	26	0
Burmese Freedom and Democracy Act (P.L. 108–61)	0	0	−1
Total	97,246	60,042	−49,488
Entitlements and mandatories: Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs	0	0	n.a.
Total Current Level [1]	1,875,808	1,829,119	1,310,346
Total Budget Resolution [1]	1,873,975	1,826,134	1,310,347
Current Level Over Budget Resolution	1,833	2,985	n.a.
Current Level Under Budget Resolution	n.a.	n.a.	1

[1] Excludes administrative expenses of the Social Security Administration, which are off-budget.

[2] Less than $500,000.

Source: Congressional Budget Office.

Note: n.a.=not applicable; P.L.=Public Law.

HONORING OUR ARMED FORCES

Mr. LIEBERMAN. Mr. President, I rise today to pay tribute to Private First Class Wilfredo Perez, Jr., United States Army, of Norwalk, CT. Private Perez's loyalty, patriotism, and selflessness has served to further the legacy of our great Nation's principles of freedom and justice. His service to our Nation is an example of the powerful spirit that permeates American history. His country, his family, his Army, his brothers-in-arms, and his friends from home will keenly miss Private Perez.

A mortarman in the 1st Battalion, 67th Armor Regiment, 4th Infantry Division, PVT Perez and members of his unit were guarding a hospital where wounded comrades were being treated. In a contemptible and cowardly act, a grenade was lobbed from the upper floors of the hospital, killing PVT Perez and two other gallant soldiers.

PVT Perez, or ''Junior,'' as his family called him, was an outgoing and charming person, well liked and remembered fondly by both staff and classmates of Norwalk High School as someone who had found focus and was pursuing his dreams. He cared about his family, and had a propensity for the simple things in life, like playing golf with his dad, working on his car or skiing. He worked with his dad as a remodeling contractor prior to going into the Army and his family had high hopes for him as he started to plan for his future.

I am both proud and grateful that our military is made up of young men and women whose values are exemplified by PVT Perez's service to the United States Army and his country. PVT Perez was a messenger of high justice and idealism in the best tradition of American principles and patriotism.

I join a grateful Nation in extending my heartfelt condolences to his family. Thank you for sharing this outstanding soldier with us. His country, his Army, his brothers-in-arms and his friends at home will keenly miss PVT Perez. You may be justifiably proud of his contributions to a noble cause and a people in need.

ANTHONY G. FREEMAN

Mr. HATCH. Mr. President, at the end of this week, Anthony G. Freeman will leave the post of Director of the Washington Office of the International Labor Organization, or ILO, after almost a decade serving this specialized agency of the United Nations in its liaison with the executive and federal branches of the U.S. Government. These last 9 years spent in this important role follow his 33-year career as a U.S. Foreign Service Officer.

In that career, Mr. Freeman represented our country all over the world: in Valencia, Spain and Rome, Italy; in Buenos Aires, Sao Paulo and La Paz. From 1983 to 1992, he served as Coordinator for International Labor Affairs and the Agency for International Development. In that capacity, he was Special Assistant to three Secretaries of State.

Tony Freeman's professional focus has been advancing the role of freedom of labor around the world, promoting the dignity and safety of workers wherever they toiled. He was a labor specialist who served as labor officer in many of his posts around the world. This experience was developed over three decades, culminating in his last assignment at the State Department as Deputy Assistant Secretary of State for Democracy, Human Rights and Labor. No one understands better than Tony Freeman that true democracy cannot exist without human rights and neither exist without the freedom of the working man and woman.

Some may not be aware of the importance that American labor has played in U.S. foreign policy through the decades. Some may not appreciate the role that the American worker has played in building alliances with workers around the world, conveying and supporting traditions of freedom—freedom to work and to organize and to be free of oppression—that are an essential aspect of American society. American unions, working through the State Department and working independently, have done great work advancing freedom around the planet, and continue to do so today.

American unions were some of the greatest forces fighting communism during the cold war. The great Irving Brown, who I am pleased to say became my mentor and friend early in my career, when he introduced me to a fledgling Polish union named Solidarity, made his reputation immediately after World War II, when he worked tirelessly with Italian and French labor movements to prevent those nations from succumbing to Soviet influence.

Lane Kirkland, the president of the AFL–CIO from 1979–1995, was a staunch anti-communist who played an important role in defending Solidarity in its early years. I was happy to work with these great men. I come from the working class. I worked as a lather to support my young family while I went to school, and I am proud to this day that I was a union member. It was easy and natural for me to work with other anti-communists from the labor movement to help defeat Soviet tyranny. In later years, Lane Kirkland would say to me, ''Orrin, if only your domestic policy was as good as your foreign policy.'' ''Well, Lane,'' I would retort, ''I could pay you the same compliment!''

After 33 years working labor issues at the Department of State, Tony Freeman accepted the position of Director of the Washington Office of the International Labor Organization in late 1994. I first worked closely with Tony in 1995 and 1996, when a misguided congressional initiative threatened to defund U.S. participation in the ILO. It was a time when the ILO needed to make itself relevant to U.S. audiences, particularly Congress. Irving Brown's legacy with the ILO, when we all worked together to fight Soviet communism, was a great historical achievement, but that did not move policy-makers in Washington searching for new roles for international organizations in the post-Cold War era.

I joined with the late senator from New York, Daniel Patrick Moynihan, who, incidentally, did his doctoral dissertation on the ILO, to defend continued U.S. support for this organization. Supporters of the ILO came to our offices, including representatives from the Labor Department, unions and U.S. businesses. The beauty and strength of the ILO is that it is the only tripartite international organization of its type in the world, where workers and employers from all member nations join to address labor questions alongside their governments. We made our case that the ILO's relevance in an era of expanding trade and globalization, as well as spreading transnational challenges like child labor exploitation, was greater than ever.

And we prevailed, and the U.S. continues to play a role in that important body. All of the coordination to preserve that role was organized by Tony Freeman, and today I want to express my personal gratitude for that important work in 1996.

Tony's efforts did not peak then, and he spent the following years raising the ILO's visibility, and its new missions, before new audiences in the U.S. He developed closer ties between the ILO and human rights groups in the U.S. He drew their attention to the basic human right of working people around the world to have a voice in the workplace, and to the work of the ILO to free people trapped in slavery and bondage, including the forced laborers in Burma. He strengthened the common bond between the ILO and organizations and policy makers fighting to end abusive child labor and saw large increases in U.S. funding for the ILO's child labor programs. In addition, Tony Freeman worked tirelessly to gain U.S. ratification of ILO conventions, and, during his tenure at the ILO, he made a signal contribution to the efforts that led to U.S. ratification of Convention No. 176 on Safety and Health in Mines in 2001.

I understand that Tony will be teaching in Washington in the coming years, as well as continuing to offer his lifetime of experience and counsel. I am relieved to hear this, because we still need Tony Freeman's experience. He has lived a great life of service to the working man and woman, across all borders, and he has served the American public well. Today, I wish to honor the work of Tony Freeman all these years. I thank him for his 33 years in the State Department. I thank him for the critical leadership he provided the International Labor Organization. I thank him for putting up with all my Irving Brown stories. I thank him for his friendship. Most of all, I wish to thank Tony Freeman for his service to his country.

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.

I would like to describe a terrible crime that occurred in Portland, OR. On November 13, 1988, Mulugeta Seraw was savagely beaten to death by three white supremacists. Seraw had been visiting with two other Ethiopian males and was on his way home when he was attacked. Three members of the East Side White Pride jumped out of their car and beat 27-year-old Seraw to death with steel baseball bats.

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.

POSTWAR IRAQ

Mr. EDWARDS. Mr. President, President Bush did the right thing today by taking personal responsibility for the inclusion of misleading intelligence information in this year's State of the Union. But he has yet to turn his full attention to the more urgent matter at hand, winning the peace in Iraq.

To finish the fight and help build a free Iraq, President Bush must create a new national and international consensus for the benefit of our Nation's

security, the future of the Middle East and the well-being of America's fighting men and women.

A new consensus is only possible, however, if the administration is honest enough to admit what is not working in Iraq and courageous enough to design a new approach that will.

The President must acknowledge a plain truth that everybody knows. This war is not over, and his administration declared a premature victory. Our military did a superb job toppling Saddam; now they need the support, the resources, and the right troops to defeat the significant pockets of guerilla opposition that remain.

Unfortunately, unless we adjust our course, the management of postwar Iraq may well be viewed by history as the most consequential mismanagement of an international crisis by any U.S. administration since Vietnam.

Notwithstanding the deaths of Qusai and Odai Hussein, the joint U.S.-UK mission is in deep trouble. Nine months ago, I called for the administration to enlist NATO in comprehensive planning for postwar Iraq. What we are seeing now is the costs of failing to plan and refusing to internationalize our approach.

The departure of Saddam Hussein from power is an opportunity to change the course of history in the Middle East. That is one reason I supported and celebrated Iraq's liberation. It could have been, should have been, and still might prove a victory for people everywhere who respect human rights, cherish freedom, seek to halt the spread of weapons of mass destruction, and believe that peace between Arabs and Israel is both achievable and essential.

To succeed, we will need all the help we can get—from NATO and other allies, the U.N., and friends within the Arab and Muslim communities. The President apparently believes that we can succeed largely on our own.

The American people are starving for some straight talk. There is no reason except failed Presidential leadership that 90 percent of the foreign troops in Iraq are American. As commander in chief, he should be able to assure the families of our Armed Forces in Iraq that absolutely everything is being done to help them achieve their mission and come home safely and soon. He could not honestly provide such an assurance today.

Our troops won't get the help or protection they need unless the administration offers to share authority and responsibility for reconstruction efforts in Iraq. The President should not let past disagreements or misguided ideology stand in the way. The administration has little patience for diplomacy, so they argue that a U.N. framework means a loss of American control.

That is simply untrue. Like we did in Kosovo, we should ask the U.N. to provide a mandate for a coalition-led force that will work in consultation with, but not under the control of, the U.N. civilian administration. That will preserve the absolutely essential American control of our forces, but create a framework in which many nations can participate comfortably.

The Bush administration must level with the world and with the American people. A new consensus must be built on the truth. Winning the peace in Iraq will require many months, probably several years. It will cost tens of billions of dollars more than can be accounted for by Iraqi oil revenues. It will entail grave, ongoing risks to our Armed Forces. But it is a necessary, even noble, mission in which every law-abiding and freedom-loving country has a stake, and to which each should be invited to contribute not as a favor to America, but as a gift to our common future.

EXECUTIVE NOMINEES TO DOJ

Mr. GRASSLEY. Mr. President, I rise today to state that I object to proceeding to the consideration of two executive nominees to the Department of Justice. The first nominee is Mr. Christopher A. Wray, who is nominated to be the assistant attorney general of the criminal division at the Department of Justice. The second nominee to which I object is Mr. Jack Landman Goldsmith III, who is nominated to be assistant attorney general, office of legal counsel at the Department of Justice.

I have placed holds on these individuals because I have numerous outstanding issues that have yet to be resolved by the Department of Justice. More specifically, I have several outstanding written requests before the Department of Justice. Some of these requests are more than 6 months overdue. In addition, I am presently working with the Department of Justice to overcome a number of procedural issues directly affecting my ability, as a member of the Judiciary Committee to, among other things, conduct oversight of the Department of Justice, and the Federal Bureau of Investigations.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS BILL

Mr. HATCH. Mr. President, I rise in support of the Fiscal Year 2004 Department of Homeland Security appropriations bill. As chairman of the Senate Judiciary Committee, I want to congratulate the members of the new Appropriations Subcommittee on successfully completing the first annual appropriations bill providing funding for the new Department of Homeland Security.

Just as the Department of Homeland Security has made momentous progress in protecting our citizens while simultaneously creating a new government agency, the members of the Homeland Security Subcommittee have moved expeditiously to recommend funding in a responsible manner. There is no bill more important to the citizens of Utah, and we recognize the committee's important efforts.

The bill's appropriation of $28.5 billion accomplishes many things. One of the most important is continued support of the Office for Domestic Preparedness. This office, which awards grants to State and local agencies to assist them in preparing our first responders, has had a 1,500 percent increase in funding since September 11, 2001. Today's recommendation of $3.6 billion will bring the total amount spent on first responder preparedness to $8.8 billion since that fateful day.

Our Nation's airports are infinitely more protected than they were just one year ago. The bill continues this important work by providing $4.5 billion for passenger and baggage screening and airport security. It also provides $4.9 billion for securing our borders. The bill funds the US VISIT system development with $380 million. This new system will allow our Nation to collect, maintain and share appropriate information in order to determine the eligibility of foreign citizens wishing to visit the United States.

I appreciate that the committee has decided not to earmark funding for specific Congressional requests and to leave these decisions to the appropriate agencies. The defense of our Nation and in particular the protection of our citizens will never be achieved by purely political decisions, but through diligent hard work and strategic planning.

However, I would like to bring to the Senate's attention a program that has already proven its effectiveness in protecting our citizens and was initiated by the Office for Domestic Preparedness. Last year, the Office for Domestic Preparedness asked Dugway Proving Ground to develop and teach a Ph.D driven chemical and biological emergency responder course. Dugway Proving Ground is our Nation's chemical and biological defense proving ground. The result of these classes has been an unparalleled success and the student responses were overwhelmingly positive. Participants in the class were unanimous in their praise and the Chief of the Chicago HAZMAT Unit categorized the program as ''one that all first responders should attend.'' A student commented further that ''This was the best use of time in my 25 year career.'' The courses focused on agent characteristics, sampling, protection, detection, decontamination and chem/bio production recognition, such as the difference between clandestine drug laboratories, industrial accidents or chemical/biological production capabilities. Students also learned to assess a situation in order to determine the proper course of action. Clearly, these

first responder training courses at Dugway are a national resource and though the Committee did not recommend funding for individual programs, I hope that the Office for Domestic Preparedness will continue to sponsor this important program.

I congratulate the committee on its fine work and urge the Senate's approval of the bill.

CULTURAL BRIDGES

Mr. KENNEDY. Mr. President, next week 54 high school students from the Islamic and Arab world will arrive in the United States for a year of study under a new exchange program to help bridge the cultural divide between America and the Islamic and Arab nations of the world. Secretary Powell will welcome the students at a ceremony at the State Department on Wednesday, August 5.

An initial $10 million for the Cultural Bridges Program was approved last year by Congress for the coming academic year. I commend the State Department for moving so quickly to organize the program and bring the first group of high school students to the United States. By the end of the summer as the new academic year begins, 135 high school students will be here for a year of study in high schools in 23 States under the program.

The students are coming from many nations throughout the Islamic world—Egypt, Indonesia, Jordan, Kuwait, Lebanon, Nigeria, Pakistan, Syria, Tunisia, Turkey, and Yemen, and from the West Bank and the Gaza strip as well. Each student will live with an American host family, attend a local high school, learn first hand about our society and values, and enable our students to learn about them.

Officials in the State Department are already preparing their recruitment and outreach efforts for the 2004–2005 academic year, when they hope to double the size of the program. If all goes well, that number will double again in the following year.

The terrorist attacks on September 11 and the war in Iraq have brought into sharp focus the many negative images and perceptions of our Nation abroad. Many Muslims believe our country is at war with Islam, not terrorism. With nearly 1.5 billion people living in the Islamic world today, we ignore these pervasive anti-American sentiments at our peril.

If the United States is to win a genuine victory in the war against terrorism, we must respond on many levels. We must ensure that our defenses are strong, our intelligence is accurate, and our borders are secure. But we must also do all we can to dispel the disturbing trend of anti-American rhetoric and beliefs. An effective way to do so is to engage Islamic peoples in the realm of values and ideas.

In a May 3, 2002 speech to the World Affairs Council in California, Deputy Secretary of Defense Paul Wolfowitz spoke of the need to strengthen voices of moderation in the Islamic world and to bridge the ''dangerous gap'' between that world and the West. There is ''no time for delay,'' he said.

As we have seen in Afghanistan, Pakistan, and the Middle East, some individuals and factions and even governments have supported terrorist organizations, while others have condemned terrorism and pledged to help the United States in combating it. By reaching out in friendship to those who oppose terrorism we can reduce the breeding grounds for terrorism and begin to eliminate the sentiments that terrorist recruiters exploit.

One of the most effective ways to engage the Islamic world is through educational exchange programs, which promote people-to-people contacts between Americans and other peoples.

Exchange programs help to build strong personal relationships and combat the misperceptions about the United States that threaten our security. Unfortunately, exchanges between the Islamic world and the United States are very limited today. Of the more than 500,000 foreign students in the United States, less than 5 percent are from the Arab Middle East.

There are many benefits in reaching out to students while they are young and open-minded. Today's high school students are tomorrow's leaders. Working with them now can improve their attitudes about our country and build future relationships based on trust and understanding. As Secretary of State Colin Powell said in his August 2001 statement on International Education Week: ''I can think of no more valuable asset to our country than the friendship of future world leaders who have been educated here.''

What makes the Cultural Bridges Program unique is that it enables high school students from other lands to obtain firsthand knowledge of our country, our way of life, and our people. Our Government sponsors many exchange programs for professionals, educators, journalists and academics, but, until now, there has been no Federal program to bring high school students from the Islamic world to the United States.

After September 11, many Muslim countries condemned the terrorist attacks and pledged to help the United States fight terrorism. But in the wake of the war in Iraq, anti-American sentiment is on the rise again.

A June 2003 poll by the Pew Charitable Trust found strong public support for Osama bin Laden's views in Arab countries whose governments are friendly to the United States. According to the poll, 55 percent of those in Jordan, 58 percent of those in Indonesia, 45 percent of those in Pakistan, and 49 percent of those in Morocco said they had confidence in Osama bin Laden to ''do the right thing regarding world affairs,'' and so did 71 percent of those in the areas controlled by the Palestinian Authority.

Our military action in Iraq has led to widespread fears throughout the region that we will launch other aggressive action. Majorities of those interviewed in Indonesia, Nigeria, Pakistan, Turkey, Lebanon, and Jordan worried that their country might be attacked by the United States. Even in Kuwait—where the public has a generally favorable view of the United States—53 percent expressed concern that the United States could someday pose a threat.

Especially disturbing is the finding of little support in the Islamic world for the war against terrorism—23 percent in Indonesia, 16 percent in Pakistan, 22 percent in Turkey, and 2 percent in Jordan and the Palestinian Authority. In Morocco, only one in 10 back the effort, while in Lebanon, 30 percent support the war. Only in Kuwait and Nigeria do majorities of the population now support the war against terrorism.

Clearly, we need to redouble our efforts to win the hearts and minds of peoples in the Arab and Muslim world, and change their negative perceptions about our country and values.

There are no better ambassadors for America than Americans themselves, and this new high school exchange program is an important way to begin reaching out more effectively to the next generation of leaders in that world.

Jordan's King Abdullah is an excellent example of what can be achieved. He is a friend of the United States, a partner in the war against terrorism, and a voice of tolerance and moderation in the Muslim world.

In 1977, as a young Jordanian, he enrolled in a high school in Massachusetts and later came to Washington to study at a university. He is living proof of the value of building bridges of understanding and tolerance with other cultures.

We need to create as many opportunities as possible for young people throughout the Islamic world to spend time in the United States and with our citizens, and we should begin to do so now. I have been delighted to work with Senators LUGAR, LEAHY, CHAFEE, DODD, HAGEL, SMITH, COCHRAN, BROWNBACK, JEFFORDS, DURBIN, and FEINGOLD on the Cultural Bridges Program, and I am hopeful that it marks a new beginning in our efforts to build forward lasting relationships with the future leaders in the Muslim world.

FY 2004 ENERGY AND WATER APPROPRIATIONS

SILVERY MINNOW PROVISION

Mr. BINGAMAN. Mr. President, I want to begin by commending my

friend and colleague from New Mexico and the Chairman of both the Energy and Natural Resources Committee, and the Energy and Water Appropriations Subcommittee, for addressing a difficult situation on the Rio Grande River.

The provision at issue is Section 205 of the Energy and Water Appropriations bill and I would like to take this opportunity to engage Senator DOMENICI on that legislative language as part of the Senate's consideration of the bill.

We worked on Section 205 together, and it concerns water use in the Middle Rio Grande and compliance with the Endangered Species Act (ESA). More specifically, Section 205 addresses the June 12, 2003 decision of the Tenth Circuit Court of Appeals in the case of Rio Grande Silvery Minnow v. Keys, and does the following:

Recognizing that importing San Juan-Chama project water from the San Juan River basin to the Rio Grande basin does not jeopardize endangered species in the Middle Rio Grande, Section 205(a) clarifies that the Bureau of Reclamation may not use discretion, if any, to unilaterally reduce or reallocate water to be delivered under San Juan-Chama project contracts for endangered species purposes in the Rio Grande River Basin.

Section 205(b) also expressly recognizes that compliance with the March 17, 2003 biological opinion concerning water operations in the Middle Rio Grande, as well as activities being conducted pursuant to P.L. 106–377, P.L. 107–66, and P.L. 108–7, constitute compliance with all ESA requirements as related to those actions, both federal and non-federal, that are incorporated as the proposed action in the biological opinion. Notwithstanding Section 205, the Secretary is to continue pursuing recovery of listed species in the Middle Rio Grande, including support for the Middle Rio Grande ESA collaborative program.

I believe we are in agreement on the effect of Section 205. Moreover, I think the legislation is an appropriate response to the Tenth Circuit's decision and strikes a proper balance by providing certainty for all water users in the Middle Rio Grande basin while still maintaining the policy that all water users have a shared interest and responsibility to comply with the requirements of the ESA. Given the benefits of this approach I would ask my colleague, as Chairman of Energy and Water Appropriations Subcommittee, to maintain this approach in the conference with the House of Representatives and to include this interpretive language as part of the conference report.

Mr. DOMENICI. I appreciate that my colleague and fellow New Mexican worked with me to help alleviate the current situation with the silvery minnow. I concur with his understanding of the language which is designed to narrowly address the silvery minnow situation in the Rio Grande. It is intended to prohibit the use of San Juan-Chama water in the Rio Grande for endangered species purposes and to implement the March 17, 2003 Biological Opinion. I also concur with his view of the benefits of Section 205 in general, and will strongly advocate for its retention in conference, as well as inclusion of this interpretive language in the conference report.

Mr. BINGAMAN. I thank the distinguished Chairman for his consideration and explanation of this important matter. I believe that this language offers hope for the minnow and protection for the people of New Mexico.

MAKAN DELRAHIM

Mr. HATCH. Mr. President, I would like to take a moment today to express in public my thanks and appreciation to the Judiciary Committee's Chief Counsel and Staff Director, Makan Delrahim. Makan's departure is a tremendous loss for the Senate and for me personally. But, we are fortunate that he will continue to serve our country in his new position in the Bush administration as Deputy Assistant Attorney General for the Justice Department's Antitrust Division.

Makan is, in my opinion, a fine example of a great American success story. Makan's family fled from Iran when he was eight years old, and he quickly learned English and immersed himself in American life.

After learning business fundamentals at his father's gas station, Makan unleashed his newfound American entrepreneurial spirit and pursued several successful business enterprises before receiving a bachelor of science in physiology from UCLA. Later, he earned a law degree from George Washington University and also a Master of Science in biotechnology from Johns Hopkins. On top of it all, he became a registered patent attorney.

Clearly, his wide range of abilities and interests explain in part why he has served the Judiciary Committee and the Congress so exceptionally well. He is a brilliant thinker with the rare ability to quickly grasp a wide variety of complex issues.

It was a stroke of good fortune for me when, back in 1995, Makan joined my Judiciary Committee health staff for a term as an intern. As an intern, Makan distinguished himself as an exceptional talent, and after spending a few years practicing law at Patton, Boggs, I convinced him to come back to the Judiciary staff as counsel handling e-commerce, antitrust and emerging technologies policy. I was once again so impressed with his dedication and ability that in 2001, I asked Makan to serve as Chief Counsel and Staff Director for the Judiciary Committee.

As Chief Counsel, Makan has been my right hand, providing valuable counsel on all matters that come before the Committee. I am particularly proud of his leadership in the development and passage of Hart Scott Rodino reform, the TEACH Act, the PATRIOT Act and the PROTECT Act, to name just a few. He has proved himself to be a skillful negotiator with the ability to bring parties together on divisive issues. It is no wonder that Makan is widely respected on both sides of the aisle.

Makan has worked tirelessly and capably, and I am afraid that his office in the Dirksen Building has become his virtual home as he has worked late into the night and many weekends over these past years. If he had stayed in private law practice and worked these hours, he would probably be a billionaire by now.

As Staff Director, Makan has demonstrated the extraordinary ability to find the greatest strengths in each staff member and to foster those strengths. And I am especially proud of Makan for helping me recruit a brilliant and impeccably qualified staff, and in doing so, bringing an unprecedented level of diversity to the Committee.

We will miss Makan's charismatic style and his ready sense of humor. And, we will miss his extraordinary ability to multitask. He is the only person I know who is capable of carrying on an intelligent conversation while simultaneously checking his e-mail and talking on his cell phone.

Since Makan won't be here to ignore my advice anymore, let me offer it once again: He should get married. And, on a serious note, Makan has not only been a trusted adviser, he has been a friend. He has made us proud and we will miss him.

ADDITIONAL STATEMENTS

HONORING MONICA AND BERNARD BENNING

• Mr. BURNS. Mr. President, today I rise in honor of Monica Conter Benning and Bernard Floyd Benning, Barney, on the celebration of their 61st wedding anniversary on August 20, 2003. Monica and Barney are the only surviving couple of the Pearl Harbor attack who both were in the immediate Pearl Harbor area at the time of the bombing. As the courtship between these two officers evolved in the setting of World War II, their experiences during the attack on America, December 7, 1941, are an important part of American history.

Barney, a college ROTC 2nd Lt. from Niles, MI, was ordered to active duty to Hawaii in May 1941. Barney joined an anti-aircraft battery in Fort Kamehameha at the entrance of the Pearl Harbor channel.

Army nurse 2nd Lt. Monica Conter of Apalachicola, FL served at Walter Reed General Hospital in 1940–1941, and was the official model for the Army Nurse Corps Recruiting Program. Monica was later assigned to the new Hickam Field Hospital, adjacent to Pearl Harbor and separated by a lone chain link fence. Monica is the only nurse still living today who was on duty at Hickam Field Hospital at the time of the attack. During the attack on December 7th, a bomb fell on the hospital lawn about 60 feet from the building, leaving a large crater. A banyan tree sapling was planted in the crater several days after the attack. Today, beside the huge tree is a granite monument and plaque, honoring Monica's service as an Army nurse on duty that fateful day.

Monica and Barney Benning first met on a prearranged ''blind date'' in September 1941; the beginning of a lifetime together. Their courtship continued with regularity until that ''Day of Infamy,'' December 7, 1941—the first terrorist attack on America. The following Wednesday, when Barney appeared at Hickam Hospital in a dirty, wrinkled uniform, it was quite an emotional moment when they found each other alive.

''Off Duty'' time was infrequent and often they were miles apart and usually on some kind of alert status until the American victory at the Battle of Midway in May.

They wed on August 20, 1942, in the temporarily camouflaged Hickam Field Chapel; the original chapel was destroyed on December 7.

On August 20, 2003, they will celebrate their 61st wedding anniversary. I congratulate and praise this couple, members of our Greatest Generation, for serving America to protect our precious democracy. I applaud your bravery and dedication to preserving freedom for all Americans.

Monica and Barney currently reside in Fort Myers, FL. They have two sons, Phil Benning and Gregory Benning and a daughter, Veronica Benning, as well as two grandchildren, Melanie and Lauren Benning.●

OREGON HEALTH CARE HERO

● Mr. SMITH. Mr. President, Vail Blackwell Horton is a self-described ''man with a vision on a mission.'' Vail was born 25 years ago without legs and has since dedicated himself to enabling people with disabilities to become active members of their communities.

As the founder and CEO of Keen Mobility, Vail and his team of outstanding employees are developing new technologies and services to empower people with disabilities. Innovative assistive devices like the ''Keen Krutch'' and ''Sure Foot Forearm'' are engineered to significantly reduce the onset of painful conditions and ailments like osteoarthritis. Vail's products have helped improve the quality of life for many with disabilities. One client raved: ''I can't find the words to tell you what your invention has done for my life . . . I am not as embarrassed to walk with my crutch because I think it is a real looker. It has given me a badly needed boost to keep on fighting the fight to live and walk in this world.''

In addition to Keen Mobility, Vail founded Incight, a nonprofit organization that focuses on employment and education issues for people with disabilities. Appearing frequently as a motivational speaker, Vail aims to ''educate and encourage individuals to acknowledge their handicap, but not let it dictate their life.''

Vail's tireless spirit serves as an inspiration to us all. Today, I am proud to honor Vail Blackwell Horton as a Health Care Hero for the great State of Oregon.●

WINCHESTER CELEBRATES ITS 250TH BIRTHDAY

● Mr. GREGG. Mr. President, I rise today in honor of Winchester, New Hampshire. This great American community is celebrating the 250th anniversary of its founding, and I am proud to recognize this historic event.

Over 4,000 people call themselves citizens of Winchester. From the town's incorporation in 1753 through today, they have had an enormous impact on the economic and cultural development of not only New Hampshire but our country as well. Winchester has long been a center for commerce and manufacturing. Companies like the Ashuelot Manufacturing Corporation, Thayer & Turner's Woolen Mill and Robertson Brothers' Paper Mill were early leaders in powering the expansion of the United States. The A.C. Lawrence Leather Company is another notable example of this proud heritage. It made thousands of boots and shoes which our troops needed during World War II. I know there are many residents still living in town who used to work at A.C. Lawrence at this time and I want to thank them for the vital contributions they made to supporting our troops during that conflict.

The town's people have made significant contributions to the security of our country in many other ways. Colonel Samuel Ashley commanded a regiment of soldiers in the American Revolution. Major General Leonard Wood, another Winchester native, became Chief of Staff for the Army just prior to the start of World War I. He was one of the first men to see the war in Europe as a challenge to the American military establishment. In response, he led a crusade for a larger and better prepared armed force. This effort involved an intensive speaking tour throughout the United States and the launching of summer training camps for college students in Pennsylvania, Vermont, North Carolina and Michigan. One can certainly conclude that our victory in World War I was possible in large part because of General Wood's vision.

This town has also played an important role in the political history of New Hampshire. Francis Parnell Murphy, elected Governor of the State in 1937, was born here. Today, Tom Magee, Gus Ruth, Bill Kelly, Ken Berthiaume and Brian Moser, the current members of the Board of Selectmen, are carrying on this tradition of public service.

These people, and so many others, highlight the rich history for which the people of Winchester can justifiably be proud. As they celebrate the Town's 250th birthday, I am honored to salute this great community.●

ONE SMALL SLICE OF THE AMERICAN DREAM

● Mr. LEVIN. Mr. President, on June 10, 1903, 26-year-old Giovanni Castellano married 21-year-old Santa Basile in Milazzo, Italy. Less than 2 months later, on July 24, the newlyweds boarded the SS *Lahn* steamship headed for the United States of America. On August 5, 1903, Giovanni and Santa Castellano set foot on American soil at Ellis Island, starting a new chapter in the American dream.

The story of the Castellano family in many ways reflects the typical American immigrant experience. Giovanni and Santa settled in New York City and presided over the development of a large family. The first generation born in America included Joseph, Jenny, Vincent, Florence, Faye, Steve, and Anthony. The members of this generation in turn had families of their own, and so on. As the new century gets underway, the fourth generation of American Castellanos begins grade school.

The first generation of the Castellano family tended to marry other Italian Americans, the likes of Carizzo, Cambria, and Fidele. Reflecting U.S. immigration patterns, there was the occasional McElligot. Over time, the genealogy of the Castellano family came to reflect the diversity of America. Ullmann, Cinotti, Burk, Garcia, Anchustegui, and Pray are just some of the names that may be found on the family tree now.

Many members of the Castellano family have stayed in New York but others have moved throughout the United States. One hundred years of history have brought the Castellano family literally from sea to shining sea—from New York, Maryland and Washington, DC, to Colorado, New Mexico, and California.

While many in the first generation of the Castellano family received only a grade school education, succeeding

generations have graduated from community colleges, State universities, private colleges, and the Ivy League. The Castellano family has spawned teachers, stockbrokers, delivery drivers, restaurateurs, soldiers, lawyers, doctors, dentists, bricklayers, and other professions; some have worked in business, some have worked in public service. They have served their country in both peace and in World War II, Vietnam, and Somalia.

Next week is the 100th anniversary of Giovanni and Santa's entry into the United States through Ellis Island—the beginning of the American dream for one family. Congratulations to the Castellano family; may the dream go on for all Americans.●

RECOGNITION FOR NATIONAL HEALTH CENTER WEEK 2003

● Mr. JOHNSON. Mr. President, I recognize the National Health Center Week that will be celebrated from August 10 to 16, 2003. Health centers provide services to over 10 million people living in underserved areas through the United States, with about 50 percent of the users being from rural areas such as South Dakota.

Community health centers have a longstanding history of providing quality primary health care services to medically underserved populations. Providing care to one of every 12 rural Americans and tending to needs of the increasing number of uninsured individuals, health centers provide medical attention to those who would otherwise lack access to health care. A unique aspect of community health centers allows them to individualize their center to meet the specific needs of a particular community. By partnering with community organizations, schools and businesses, health centers are able to best meet the health care needs of individuals in each respective community.

I want to pay special recognition to the Community HealthCare Association in South Dakota, and all of the staff at the association for the fine work they do on behalf of South Dakota. Furthermore, I want to commend all of the dedicated health care professionals in the health centers throughout South Dakota who work day in and day out devoting their lives to delivering critical health care to those most in need.

At this time, there are 25 community health centers serving individuals across my State and I am working with my colleagues in Congress and the administration to greatly increase the number of these centers nationwide. As a member of the Senate Appropriations Committee, I am pleased to have recently voted in committee to increase funding by $122 million over last year's funding, for a total of $1.62 billion for the Nation's community health centers next year. I will continue to work with my colleagues to see that we are able to double funding for these medical centers by 2006.

Once again, it gives me great pleasure to recognize the National Health Care Center Week on behalf of the South Dakota Community HealthCare Association and the many thousands of South Dakotans who may continue to benefit through this important program.●

TRIBUTE TO COLONEL CHARLES J. FIALA, JR., COMMANDER, BALTIMORE ENGINEER DISTRICT, U.S. ARMY CORPS OF ENGINEERS

● Mr. SARBANES. Mr. President, I want to pay tribute today to Colonel Charles Fiala, Commander and District Engineer of the Baltimore District, U.S. Army Corps of Engineers. COL Fiala is retiring after a distinguished 25-year career in the U.S. Army, and I would like to take this opportunity to congratulate him and commend him for his many years of service to our Nation.

Chuck Fiala graduated from West Point in 1978 and has served in numerous staff and command positions here in the United States and abroad. Beginning as combat engineer platoon leader with the 194th Armored Brigade in Fort Knox, KY he quickly rose through the ranks. Among other assignments he commanded C Company, 11th Engineer Battalion at Fort Belvoir; served as Executive Officer in U.S. Army Headquarters Europe in Heidelberg, Germany; and worked in the Pentagon for the Office of the Chief of Staff and the Deputy Chief of Staff. During the course of his career, Chuck earned a master's degree in civil engineering from Purdue University and was also awarded a master's degree in National Security and Strategic Studies from the National War College.

I came to know COL Fiala 3 years ago when he was first selected as Commander and District Engineer of the Baltimore District, U.S. Army Corps of Engineers, and have had the privilege of working closely with him on a number of water resource, environmental restoration, and military construction initiatives in Maryland and the mid-Atlantic region. Chuck has continued the tradition of outstanding leadership that has been the hallmark of the Baltimore District. Under his leadership, numerous military construction and civil works projects were initiated or completed including the Baltimore Harbor Anchorages Project, the straightening of the Tolchester Channel ''S'' Turn, the improvements to the Brewerton Channel and the construction of military housing at Fort Meade, to name only a few. Similarly, he directed and oversaw several critical environmental restoration projects including the cleanup of Fort Detrick's chemical and biological waste landfill, the restoration of the north end of Assateague Island National Seashore, the Chesapeake Bay oyster recovery effort, and 10 habitat restoration sites in the Anacostia River.

During his 25-year career in the Army, COL Fiala repeatedly demonstrated exceptional abilities and dedication that have earned him recognition and acclaim by his peers. He has been the recipient of many awards and decorations including the Legion of Merit, the Meritorious Service Medal, the Army Commendation medal, and the Parachute Badge. His work ethic and principles of responsibility, reliability, and dedication will continue to serve as a standard for others who follow him as District Engineer.

It is my firm conviction that public service is one of the most honorable callings, one that demands the very best, most dedicated efforts of those who have the opportunity to serve their fellow citizens and country. Throughout his career Chuck Fiala has exemplified a steadfast commitment to meeting this demand.

I want to extend my personal congratulations and thanks for his hard work and dedication and wish him and his family the best of luck in the future.●

MONT VERNON CELEBRATES 227TH BIRTHDAY

● Mr. GREGG. Mr, President, I rise today in honor of Mont Vernon, NH. This year, while the United States observed the 227th anniversary of our independence, the citizens of Mont Vernon have been planning the celebration of the town's 200th birthday. It is therefore timely and appropriate that we recognize this quintessential American community.

From its first settlement in the early 1700s through today, Mont Vernon has represented all that is great about the United States. Although it may not share the industrial or commercial legacy of its sister cities of Nashua or Manchester, the town's impact on our country has been just as vital. This impact is best symbolized by the sacrifices the residents here have made in times of conflict. Fifty men from what was to become Mont Vernon served in the War of Independence; five of them lost their lives. During the Civil War, 35 men enlisted in the Union Army and, tragically, seven of them died. The whole community demonstrated their support for these soldiers and for the cause for which they were fighting by voting at a special town meeting to provide wages and outfits for those men who volunteered to serve.

The town's dedication to protecting the ideals of this country was also clear during both World War I and World War II. In the First World War,

nine residents fought in that conflict. In the Second World War, twenty-three of them served including Mildred Coggin, Eleanor Carlton and Mary Holt Smith. These three women were nurses whose care of injured soldiers was critical to the war effort.

Of course, Mont Vernon continues to stand for those qualities which make New Hampshire such a special place to live: a dedication to public service and the spirit of volunteerism. The town's representatives to the New Hampshire General Court, Timothy Allen, Pam Coughlin and Margaret Hallyburton, are continuing in the path of the town's first elected official to that body, Major William Bradford. The members of the current Board of Selectmen, Mike Fimbel, John Koch and Peter Savage are honorably serving in the tradition the first Board of Selectmen, whose members included John Carlton, Joseph Langdell and Jacob Kendall, set in 1804.

So, on this the 200th anniversary of Mont Vernon, we salute its citizens and honor their accomplishments, their love of country and their overwhelming spirit of independence.●

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 which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 1490. A bill to eliminate the Federal quota and price support programs for tobacco, to provide assistance to quota holders, tobacco producers, and tobacco-dependent communities, and for other purposes.

S. 1504. A bill to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States.

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–3481. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to the voluntary national guidelines on ballast water management; to the Committee on Commerce, Science, and Transportation.

EC–3482. A communication from the Secretary of Transportation, transmitting, pursuant to law, a draft of proposed legislation entitled ''The Passenger Rail Investment Reform Act''; to the Committee on Commerce, Science, and Transportation.

EC–3483. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to funds for protection, control, and accounting of fissle materials in Russia; to the Committee on Energy and Natural Resources.

EC–3484. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to the status of the Exxon and Stripper Well Oil Exchange Funds; to the Committee on Energy and Natural Resources.

EC–3485. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon'' (RIN1018–AI26) received on July 28, 2003; to the Committee on Energy and Natural Resources.

EC–3486. A communication from the Assistant Secretary of the Army, Civil Works, transmitting, a report relative to the Little Calumet River Local Flood Control and Recreation Project; to the Committee on Environment and Public Works.

EC–3487. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relative to Small Drinking Water Systems; to the Committee on Environment and Public Works.

EC–3488. 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; Texas; Control of Emission of Oxides of Nitrogen From Cement Kilns'' (FRL#7536–8) received on July 25, 2003; to the Committee on Environment and Public Works.

EC–3489. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion'' (FRL#7537–5) received on July 25, 2003; to the Committee on Environment and Public Works.

EC–3490. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards'' (FRL#7537–4) received on July 25, 2003; to the Committee on Environment and Public Works.

EC–3491. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled the ''New Freedom Initiative Medicaid Demonstrations Act of 2003''; to the Committee on Finance.

EC–3492. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Respiratory Therapy Study''; to the Committee on Finance.

EC–3493. A communication from the Regulations Coordinator, Center for Medicaid and Medicare Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program: Third Party Liability Insurance Regulations'' (RIN0938–AM65) received on July 25, 2003; to the Committee on Finance.

EC–3494. A communication from the Chief, Regulations Unit, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Note/Purchase Contract Units'' (Rev. Rul. 2003–97) received on July 28, 2003; to the Committee on Finance.

EC–3495. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, a draft of proposed legislation relative to the Foreign Relations Authorization Act; to the Committee on Foreign Relations.

EC–3496. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more to the International Waters, Pacific Ocean; to the Committee on Foreign Relations.

EC–3497. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–3498. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license for the manufacture of significant military equipment abroad to Japan; to the Committee on Foreign Relations.

EC–3499. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of major defense equipment in the amount of $25,000,000 or more to Turkey; to the Committee on Foreign Relations.

EC–3500. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more to Brazil, Russia, Ukraine, and Norway; to the Committee on Foreign Relations.

EC–3501. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–3502. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Brazil; to the Committee on Foreign Relations.

EC–3503. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the

Arms Export Control Act, the certification of a proposed manufacturing license for the manufacture of significant military equipment abroad to India; to the Committee on Foreign Relations.

EC–3504. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles sold commercially under contract in the amount of $100,000,000 or more to Turkey; to the Committee on Foreign Relations.

EC–3505. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more to the International Waters, Pacific Ocean; to the Committee on Foreign Relations.

EC–3506. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Pacific Ocean/International Waters or Kourou, French Guiana; to the Committee on Foreign Relations.

EC–3507. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions list sold commercially under a contract in the amount of $1,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–3508. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–3509. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–3510. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–3511. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Israel and Singapore; to the Committee on Foreign Relations.

EC–3512. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more to Russia; to the Committee on Foreign Relations.

EC–3513. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad to Japan; to the Committee on Foreign Relations.

EC–3514. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacture license for the manufacture of significant military equipment abroad or defense services in the amount of $50,000,000 or more to Taiwan; to the Committee on Foreign Relations.

EC–3515. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license for the manufacture of significant military equipment abroad to Sweden; to the Committee on Foreign Relations.

EC–3516. A communication from the Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, transmitting, pursuant to law, the report of a rule entitled ''Certificates for Certain Health Care Workers'' (RIN1615–AA10) received on July 25, 2003; to the Committee on the Judiciary.

EC–3517. A communication from the Acting Director, Office of Regulatory Law, Board of Veterans' Appeals, transmitting, pursuant to law, the report of a rule entitled ''Board of Veterans' Appeals Title Change'' (RIN2900–AL15) received on July 28, 2003; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with amendments:

S. 1125. A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes (Rept. No. 108–118).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*Lawrence Mohr, Jr., of South Carolina, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2009.

Air Force nominations beginning Brigadier General Kenneth M. DeCuir and ending Brigadier General Mark A. Volcheff, which nominations were received by the Senate and appeared in the Congressional Record on April 28, 2003.

Air Force nomination of Col. Bruce E. Burda.

Air Force nomination of Lt. Gen. Teed M. Moseley.

Air Force nomination of Gen. Gregory S. Martin.

Air Force nomination of Gen. Richard B. Myers.

Air Force nomination of Maj. Gen. Roger A. Brady.

Air Force nomination of Lt. Gen. Richard E. Brown III.

Air Force nomination of Lt. Gen. Steven R. Polk.

Army nomination of Gen. Peter J. Schoomaker (Retired).

Army nomination of Lt. Gen. Bryan D. Brown.

Army nomination of Col. Charles S. Rodeheaver.

Army nomination of Brig. Gen. David T. Zabecki.

Marine Corps nomination of Gen. Peter Pace.

Marine Corps nomination of Maj. Gen. Robert M. Shea.

Navy nominations beginning Rear Adm. (lh) Roger T. Nolan and ending Read Adm. (lh) Robert O. Passmore, which nominations were received by the Senate and appeared in the Congressional Record on March 11, 2003.

Navy nomination of Rear Adm. Kirkland H. Donald.

Navy nomination of Rear Adm. (lh) Louis V. Iasiello.

Navy nomination of Rear Adm. (Select) Eric T. Olson.

Navy nomination of Rear Adm. Gary Roughead.

Navy nomination of Vice Adm. James. C. Dawson, Jr.

Navy nomination of Rear Adm. Rodney P. Rempt.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nomination of Patrice L. Pye.

Air Force nomination of *Rebekah F. Friday.

Air Force nomination of Dennis Hutson.

Army nominations beginning William R. Gladbach and ending Malcolm K. Wallace, Jr., which nominations were received by the Senate and appeared in the Congressional Record on June 19, 2003.

Army nomination of Regina M. Curtis.

Army nomination of Nancy M. Prickett.

Army nominations beginning Stephen J. Demski and ending Joseph F. Maranto, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2003.

Army nominations beginning Andrew S. Kantner and ending Daniel A. Tanabe, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 2003.

Army nominations beginning David A. Archer and ending Debra A. Spear, which nominations were received by the Senate and appeared in the Congressional Record on July 7, 2003.

Army nominations beginning Nathan E. Baker and ending Frederick V. Wright, which nominations were received by the Senate and appeared in the Congressional Record on July 7, 2003.

Army nominations beginning Lisa M* Anderson and ending James W* Turonis, which

nominations were received by the Senate and appeared in the Congressional Record on July 7, 2003.

Army nominations beginning Brett T* Ackermann and ending Michael J* Zapor, which nominations were received by the Senate and appeared in the Congressional Record on July 7, 2003.

Army nominations beginning Adio Abdu and ending Ricardo M Young, which nominations were received by the Senate and appeared in the Congressional Record on July 7, 2003.

Army nominations beginning David A Barr and ending Samuel R Young, which nominations were received by the Senate and appeared in the Congressional Record on July 7, 2003.

Army nominations beginning Wilfredo A. Colonmartines and ending Jeffery L. Lewis, which nominations were received by the Senate and appeared in the Congressional Record on July 22, 2003.

Army nominations beginning Thomas B. Howe and ending Michael J. Veasey, which nominations were received by the Senate and appeared in the Congressional Record on July 22, 2003.

Army nominations beginning James G. Lynch and ending Rafael A. Roldan, which nominations were received by the Senate and appeared in the Congressional Record on July 22, 2003.

Army nomination of Evan L. Williams II.

Marine Corps nomination of Thomas D. Gore.

Marine Corps nomination of Adam L. Musoff.

Marine Corps nomination of Jason K. Fettig.

Navy nominations beginning Chad F Acey and ending Frank A Shaul, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Conrad K Alejo and ending Carl B Weicksel, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Barbara M Burgett and ending Robert C Weitzman, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Robert J Allen and ending Harold E Williams, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Eric J Buch and ending Robin D Tyner, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Lee K Allred and ending Donald L Zwick, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Allan D Andrew and ending Johnny R Wolfe, Jr., which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Angela D Albergottie and ending Joseph B Spegelee, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Charles J Chan and ending Matthew A Webber, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Christopher A Adams and ending Richard J Zins, which nominations were received by the Senate and appeared in the Congressional Record on June 25, 2003.

Navy nominations beginning Steven S Hartzell and ending Stanley D. Rhoades, which nominations were received by the Senate and appeared in the Congressional Record on July 22, 2003.

Navy nomination of James P. Driscoll.

By Ms. COLLINS for the Committee on Governmental Affairs.

*Joel David Kaplan, of Massachusetts, to be Deputy Director of the Office of Management and Budget.

*Joe D. Whitley, of Georgia, to be General Counsel, Department of Homeland Security.

*Penrose C. Albright, of Virginia, to be an Assistant Secretary of Homeland Security.

By Mr. GREGG for the Committee on Health, Education, Labor, and Pensions.

*Howard Radzely, of Maryland, to be Solicitor for the Department of Labor.

*Michael Young, of Pennsylvania, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2008.

*Thomasina V. Rogers, of Maryland, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2009.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CAMPBELL:

S. 1489. A bill to authorize the burial of Bob Hope at Arlington National Cemetery; to the Committee on Veterans' Affairs.

By Mr. MCCONNELL (for himself, Mrs. DOLE, Mr. BUNNING, Mr. HOLLINGS, Mr. EDWARDS, Mr. MILLER, Mr. FRIST, Mr. WARNER, Mr. ALLEN, Mr. CHAMBLISS, Mr. GRAHAM of South Carolina, Mr. ALEXANDER, and Mr. BAYH):

S. 1490. A bill to eliminate the Federal quota and price support programs for tobacco, to provide assistance to quota holders, tobacco producers, and tobacco-dependent communities, and for other purposes; read the first time.

By Mr. CORNYN:

S. 1491. A bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use; to the Committee on Finance.

By Mr. CHAMBLISS:

S. 1492. A bill to amend the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and the Labor Management Relations Act, 1947 to provide special rules for Teamster plans relating to termination and funding; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CHAMBLISS:

S. 1493. A bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States; to the Committee on Finance.

By Mr. BUNNING (for himself and Mr. CONRAD):

S. 1494. A bill to amend the Internal Revenue Code of 1986 to extend the special 5-year carryback of certain net operating losses to losses for 2003, 2004, and 2005; to the Committee on Finance.

By Mr. BUNNING (for himself and Mr. CONRAD):

S. 1495. A bill to amend the Internal Revenue Code of 1986 to permit the consolidation of life insurance companies with other companies; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. HARKIN):

S. 1496. A bill to provide for the expansion and coordination of activities of the National Institutes of Health and the Centers for Disease Control and Prevention with respect to research and programs on cancer survivorship, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, and Mr. DURBIN):

S. 1497. A bill to amend the Communications Act of 1934 to revise and expand the lowest unit cost provision applicable to political campaign broadcasts, to establish commercial broadcasting station minimum airtime requirements for candidate-centered and issue-centered programming before primary and general elections, to establish a voucher system for the purchase of commercial broadcast airtime for political advertisements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself, Mr. COCHRAN, Ms. LANDRIEU, and Mr. KERRY):

S. 1498. A bill to provide for the establishment of a Health Workforce Advisory Commission to review Federal health workforce policies and make recommendations on improving those policies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY:

S. 1499. A bill to adjust the boundaries of Green Mountain National Forest; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CONRAD (for himself, Mr. ROCKEFELLER, and Mr. DASCHLE):

S. 1500. A bill to amend the Internal Revenue Code of 1986 to modify the tax credit for holders of qualified zone academy bonds; to the Committee on Finance.

By Mr. MCCAIN (by request):

S. 1501. A bill to amend title 49, United States Code, to provide for stable, productive, and efficient passenger rail service in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1502. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1503. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of

qualifying State; to the Committee on Finance.

By Mr. GREGG (for himself and Mr. KENNEDY):

S. 1504. A bill to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States; read the first time.

By Mrs. HUTCHISON (for herself, Mr. LOTT, Mr. BURNS, and Ms. SNOWE):

S. 1505. A bill to establish a National Passenger Rail Office, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN:

S. Res. 205. A resolution expressing the sense of the Senate that a commemorative postage stamp should be issued on the subject of autism awareness; to the Committee on Governmental Affairs.

By Mr. BROWNBACK (for himself and Mrs. DOLE):

S. Res. 206. A resolution honoring the memory of Dr. William R. (''Bill'') Bright and commending his life as an example to succeeding generations; considered and agreed to.

ADDITIONAL COSPONSORS

S. 52

At the request of Mr. WYDEN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 52, a bill to permanently extend the moratorium enacted by the Internet Tax Freedom Act, and for other purposes.

S. 274

At the request of Mr. GRASSLEY, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 317

At the request of Mr. GREGG, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 317, a bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs for work and family, and for other purposes.

S. 363

At the request of Ms. MIKULSKI, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 363, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 451

At the request of Ms. SNOWE, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 537

At the request of Mr. CRAPO, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 537, a bill to ensure the availability of spectrum to amateur radio operators.

S. 656

At the request of Mr. REED, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 656, a bill to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residence.

S. 736

At the request of Mr. ENSIGN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 835

At the request of Ms. LANDRIEU, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 835, a bill to amend the Higher Education Act of 1965 to provide student loan borrowers with a choice of lender for loan consolidation, to provide notice regarding loan consolidation, and for other purposes.

S. 874

At the request of Mr. TALENT, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 875

At the request of Mr. KERRY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 875, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S. 893

At the request of Mr. SANTORUM, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 893, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 894

At the request of Mr. WARNER, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 894, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center.

S. 971

At the request of Mr. HARKIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 971, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 1092

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 1092, a bill to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans.

S. 1129

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

S. 1143

At the request of Mrs. HUTCHISON, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of S. 1143, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1190

At the request of Mr. BINGAMAN, the name of the Senator from Colorado (Mr. CAMPBELL) 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. 1252

At the request of Mr. DAYTON, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1252, a bill to provide benefits to domestic partners of Federal employees.

S. 1283

At the request of Mr. GRAHAM of Florida, the name of the Senator from

Washington (Ms. CANTWELL) was added as a cosponsor of S. 1283, a bill to require advance notification of Congress regarding any action proposed to be taken by the Secretary of Veterans Affairs in the implementation of the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, and for other purposes.

S. 1296

At the request of Ms. MURKOWSKI, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1296, a bill to exempt seaplanes from certain transportation taxes.

S. 1298

At the request of Mr. AKAKA, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1298, a bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1331

At the request of Mr. SANTORUM, the names of the Senator from Colorado (Mr. CAMPBELL) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 1331, a bill to clarify the treatment of tax attributes under section 108 of the Internal Revenue Code of 1986 for taxpayers which file consolidated returns.

S. 1363

At the request of Mr. REID, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1363, a bill to prohibit the study or implementation of any plan to privatize, divest, or transfer any part of the mission, function, or responsibility of the National Park Service.

S. 1460

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1460, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S.J. RES. 17

At the request of Mr. DORGAN, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S.J. Res. 17, a joint resolution disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership.

S. CON. RES. 14

At the request of Mr. SMITH, the name of the Senator from New Jersey (Mr. LAUTENBERG) 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. 25

At the request of Mr. VOINOVICH, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Con. Res. 25, a concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month'', and for other purposes.

S. CON. RES. 40

At the request of Mr. HAGEL, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. Con. Res. 40, a concurrent resolution designating August 7, 2003, as ''National Purple Heart Recognition Day''.

S. RES. 30

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Virginia (Mr. ALLEN), the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Louisiana (Mr. BREAUX), the Senator from Kentucky (Mr. BUNNING), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Mississippi (Mr. COCHRAN), the Senator from Ohio (Mr. DEWINE), the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. EDWARDS), the Senator from California (Mrs. FEINSTEIN), the Senator from Florida (Mr. GRAHAM), the Senator from Utah (Mr. HATCH), the Senator from Texas (Mrs. HUTCHISON), the Senator from Massachusetts (Mr. KERRY), the Senator from Michigan (Mr. LEVIN), the Senator from Mississippi (Mr. LOTT), the Senator from Indiana (Mr. LUGAR), the Senator from Georgia (Mr. MILLER), the Senator from Alabama (Mr. SESSIONS), the Senator from Missouri (Mr. TALENT), the Senator from Ohio (Mr. VOINOVICH) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 30, a resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as ''National Historically Black Colleges and Universities Week''.

S. RES. 98

At the request of Mr. CAMPBELL, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Res. 98, a resolution expressing the sense of the Senate that the President should designate the week of October 12, 2003, through October 18, 2003, as ''National Cystic Fibrosis Awareness Week''.

S. RES. 170

At the request of Mr. DODD, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Res. 170, a resolution designating the years 2004 and 2005 as ''Years of Foreign Language Study''.

S. RES. 201

At the request of Mr. SESSIONS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. Res. 201, a resolution designating the month of September 2003 as ''National Prostate Cancer Awareness Month''.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

S. RES. 204

At the request of Mr. BIDEN, the names of the Senator from Nebraska (Mr. NELSON), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. Res. 204, a resolution designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

AMENDMENT NO. 1416

At the request of Mr. BROWNBACK, his name was added as a cosponsor of amendment No. 1416 proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

AMENDMENT NO. 1416

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 1416 proposed to S. 14, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CAMPBELL:

S. 1489. A bill to authorize the burial of Bob Hope at Arlington National Cemetery; to the Committee on Veterans' Affairs.

Mr. CAMPBELL. Mr. President, I ask unanimous consent that the text of the ''Bob Hope Arlington Honors Act of 2003,'' legislation authorizing the burial of Bob Hope at Arlington National Cemetery, be printed in the CONGRESSIONAL RECORD.

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

S. 1489

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 ''Bob Hope Arlington Honors Act of 2003''.

SEC. 2. AUTHORIZATION OF BURIAL OF BOB HOPE AT ARLINGTON NATIONAL CEMETERY.

The Secretary of the Army shall permit the burial of Leslie Townes (Bob) Hope of California, an honorary veteran of the Armed Forces of the United States, in Arlington National Cemetery, Virginia, upon the request therefor by the family of Leslie Townes Hope.

By Mr. MCCONNELL (for himself, Mrs. DOLE, Mr. BUNNING, Mr. HOLLINGS, Mr. EDWARDS, Mr.

MILLER, Mr. FRIST, Mr. WARNER, Mr. ALLEN, Mr. CHAMBLISS, Mr. GRAHAM of South Carolina, Mr. ALEXANDER, and Mr. BAYH):

S. 1490. A bill to eliminate the Federal quota and price support programs for tobacco, to provide assistance to quota holders, tobacco producers, and tobacco-dependent communities, and for other purposes, read the first time.

Mr. EDWARDS. Mr. President, the introduction of the Tobacco Market Transition Act is an important milestone for tens of thousands of farmers. I am proud to have been part of the bipartisan working group that crafted this bill.

For decades, thousands of farmers in my state have depended on their tobacco quotas. They made significant investments in equipment and land. They paid into the no-net cost assessment program knowing that the quota system they were locked into would provide for them. They didn't get rich—most of the farmers in my State will tell you that their tobacco profits allowed them to send their children to college or just pay the bills.

But that financial security has been eroded. The Federal quota is at an all-time low. In fact, just in the past five years tobacco farmers have seen their quotas cut in half. That same time has been particularly difficult for my farmers, who have had to adjust to the dwindling quota while losing their crops and in some cases their entire farms to three hurricanes, a massive ice storm and a severe drought.

It is time to end the Federal quota system. It is time to give these hard working men and women a chance to transition to other crops or to retire with dignity. And for those who want to continue to grow tobacco, we must end the antiquated quota system and give them a chance to compete with foreign producers just as if they were growing any other crop like corn or sweet potatoes.

Of course, this isn't just another crop. This is tobacco and the tobacco leaf is used to make addictive, deadly products. We must address that fact. I am certain that before the year is out, the Senate Health, Education and Labor Committee, of which I am a member, will consider relevant legislation to protect public health. I welcome that committee's efforts. But in the debate surrounding the tobacco industry, we cannot lose sight of the fact that thousands of honest, hard working people depend on the leaf for their economic livelihood.

People like Blythe and Gwendolyn Casey of Kinston, NC. Mr. and Ms. Casey began farming tobacco decades ago. They made a decent living doing what they loved. As the years passed, they increased their production and made substantial investments in equipment and regulation barns. They paid into the no-net cost assessment program and played by the rules. They never got rich, but they were confident their investments would allow them to one day retire and remain on their farm.

Through no fault of their own, they've watched the value of their quota essentially disappear. When they began farming, they never thought they would reach retirement age mired in debt. The Caseys, and thousands of tobacco farming families in eastern North Carolina face a bleak financial future unless Congress acts.

The Federal quota system has reached a crisis point and we must intervene. The Tobacco Market Transition Act is our best chance to stave off economic disaster for tens of thousands of farmers.

This bill represents a compromise literally years in the making. This bill is not perfect. But this bill could be the last hope for farmers.

Mr. ALEXANDER. Mr. President, I am proud to cosponsor the Tobacco Market Transition Act of 2003, which is a vital piece of legislation to farmers in Tennessee and other tobacco producing States. As our citizens and government respond to the dangers of cigarettes and tobacco, farmers and farm communities that have depended on this crop are contending with challenges greater than just the decrease in demand. Tobacco growing quotas, the leasing of those quotas, and the Federal price support system have combined with decreasing demand to form the ''perfect storm'' to afflict tobacco farmers.

I grew up in east Tennessee, and small family tobacco farms were a part of the lifestyle and economic vitality in our region. Tobacco farmers are currently suffering because of government programs and declining demand for their crops. The number of tobacco farmers in Tennessee has decreased from more than 35,000 farms in 1980 to fewer than 15,000 today. Revenue from tobacco in Tennessee has declined by $25 million over the same period.

This bill will provide a short term bridge to tobacco growers and quota holders, and the communities in which they live. Tennesseans who own quotas will receive a fair transition away from lease income they have received. Growers will receive transition payments as well. The buyout would last over six years and mean roughly $2 billion to the family farmers, quota lease owners, and communities in Tennessee.

Tobacco farming will continue to be faced with challenges, but successful passage of this legislation will provide a safety net to farmers and their communities. I applaud the work of Senator MCCONNELL on this important legislation and will work with him and our other cosponsors to provide the transition our tobacco farming communities desperately need.

By Mr. CORNYN:

S. 1491. A bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use; to the Committee on Finance.

Mr. CORNYN. Mr. President, over the past few months, the Medicare debate has focused our attention on a range of issues related to the future of health care in America. Central to our debate has been how to pay for the dramatically rising costs of health care and whether we can afford a prescription drug benefit to treat the disease of an aging population.

The Medicare and Medicaid programs currently spend $84 billion annually on five major chronic diseases, diabetes, heart disease, depression, cancer and arthritis. We have discussed options for paying for the treatment of these diseases, but have spent far less time exploring ways to prevent them in the first place.

I believe that disease prevention and the promotion of healthier lifestyles offers us an excellent opportunity to begin reversing the steep rise in health care costs we are facing today. Public health experts unanimously agree that people who maintain active healthy lifestyles dramatically reduce their risk of contracting chronic diseases. A physically fit population results in a decrease in health care costs, reduced government spending, fewer illnesses and improved worker productivity.

Given the tremendous benefits exercise provides, I believe we have a duty to create as many incentives as possible to get Americans off the coach and up and moving. With this in mind, I have introduced the Workforce Health Improvement Program, WHIP Act. The WHIP Act mirrors similar legislation introduced by Representative PAT TOOMEY, in the House of Representatives and would allow for the favorable tax treatment of health club memberships as an employee benefit.

Specifically, it would clarify an employer's right to deduct the cost of subsidizing or providing health club benefits for their employees. In addition, this legislation would exclude the wellness benefit from being considered income for the employees, i.e., employer contributions to the cost of health club fees would not be taxable income for employees.

Current law already permits businesses to deduct the cost of on-site workout facilities, which are provided for the benefit of employees on a pre-tax basis. However, if a business wants, or needs, to outsource these health benefits, they and/or their employees are required to bear the full cost.

The WHIP Act would correct this inequity in the current Tax Code to the benefit of many smaller businesses and their employees. It also would be an important step in reversing the devastating health trend that our country

is facing by promoting physical activity, reducing obesity and preventing disease.

According to the Surgeon General's ''Call to Action to Prevent Disease Overweight and Obesity,'' published in 2001, there are 300,000 deaths a year in the United States that are associated with overweight and obesity. Repair physical activity reduces the risk of developing or dying from some of the leading causes of illness and death in the United States.

Further, physical activity can: reduce the risk of dying prematurely; reduce the risk of dying prematurely of heart disease; reduce the risk of developing diabetes; reduce the risk of developing high blood pressure; help reduce blood pressure in people who already have high blood pressure; reduce the risk of developing colon and other types of cancer; reduce feelings of depression and anxiety; help control weight; help build and maintain healthy bones, muscles, and joints; help older adults become stronger and better able to move about without falling; promote psychological well-being.

Public Health experts unanimously agree that active lifestyles result in decreased health care costs, reduced governmental spending, fewer illnesses, and improved worker productivity.

I ask you to join me in supporting this preventive health and fitness bill.

By Mr. CHAMBLISS:

S. 1492. A bill to amend the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and the Labor Management Relations Act, 1947 to provide special rules for Teamster plans relating to termination and funding; to the Committee on Health, Education, Labor, and Pensions.

Mr. CHAMBLISS. Mr. President, I rise today to introduce the Multi-employer Pension Security Act of 2003. This bill will strengthen and protect the defined pension benefits of thousands of workers. These workers have no other choice than to participate in the pension fund that their employer offers. However, it is not just the employees who need these plans to be reformed, but many employers realize that to be fiducially responsible that these reforms need to be made as well.

Nearly 44 million working Americans participate in defined benefit pension plans. Of that amount, almost ten million people, approximately 25 percent of all those who have defined pensions, participate in multi-employer plans. Single-employer plans are completely managed under a different system. Although recent policy debate has focused primarily on single-employer plans, my reasoning in introducing this legislation today is to broaden the pension plan debate by dealing with the myriad of problems facing multi-employer pension plans.

This bill, the ''Multi-employer Pension Security Act,'' will provide millions of active and retired workers who participate in these plans with the long-term security of knowing their promised benefits will be funded and safeguarded. This reform legislation is necessary and long overdue.

The funding levels in single-employer pension plans have been greatly affected by stock market losses, a sluggish economy and record-low interest rates. These events have impacted multi-employer plans also. However, the issues affecting multi-employer plans are much broader than that. These plans operate under a fundamentally different structure. The main difference between single and multi-employer plans is that there is no minimum funding level required in multi-employer plans. Losses can mount until simply there is no more money and benefits cannot be paid to the participants in multi-employer pension plans. My bill will correct his deficiency in current law.

This proposed legislation would address the lack of adequate funding standards existing within the multi-employer pension plan system. Also hardworking employees who participate in these multi-employer pension funds do not currently have the guarantee of insurance. When a multi-employer pension plan is defunct or goes bankrupt, there is no Pension Benefit Guaranty Corporation (PBGC) to rely on—because multi-employer plans do not fall under the guise of the PBGC structure. My bill will address that and give the folks participating in a multi-employer plan the same governmental oversight as provided to participants of single-employer plans.

Again, I introduce the Multi-employer Pension Security Act today because we, as a nation, must tackle these issues now to prevent further deterioration of these plans and we must be willing to assure our constituents that their promised pensions are available to them as retirees currently and in the future. Single-employer plans must not be the only pension plan that Congress considers changes to because we are also responsible to the almost ten million Americans participating in multi-employer pension plans as well. I urge my colleagues to consider this legislation. We must engage in a discussion that will lead to positive changes in multi-employer pension plans now.

By Mr. CHAMBLISS:

S. 1493. A bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States; to the Committee on Finance.

Mr. CHAMBLISS. Mr. President, I rise today to introduce the Fair Tax Act of 2003. This bill will promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax.

The Fair Tax, commonly referred to as a national sales tax, is a necessary piece of tax reform that, should it pass, upon its inception would uproot our current unjust progressive tax code and replace it with a simpler, fairer one.

I believe our antiquated tax code, that was implemented in 1913, and has since been modified numerous times, is overly complicated and desperately in need of an overhaul. We are well beyond rectifying the unfairness in our current system by tinkering around the edges. All Americans are in dire need of unbiased sweeping tax reform—and the fair tax is just that.

The Fair Tax Act of 2003 would repeal the individual income tax, the corporate tax, capital gains taxes, all payroll taxes, the self-employment tax and the estate and gift taxes in lieu of a 23 percent tax on the final sale of all goods and services. The eradication of these taxes will not only bring about equality within our tax system, it will also bring about simplicity.

This bill will also provide for tax relief for business-to-business transactions. These transactions, including used product transactions which have already been taxed, are not subject to the sales tax, thereby abrogating any double taxation.

Social Security and Medicare benefits would remain untouched under the Fair Tax bill. There would be no financial reductions to either one of these vital programs. Instead, the source of the trust fund revenue for these two programs would be replaced simply by a sales tax revenue instead of a payroll tax revenue.

And lastly, under this bill, every American would receive a monthly rebate check equal to spending up to the Federal poverty level according to the Department of Health and Human Services guidelines. This rebate would ensure that no American pays taxes on the purchase of necessities.

The Fair Tax creates a fairer, simpler code that allows every American the freedom to determine his or her own priorities and opportunities.

Ronald Reagan once said, ''I believe we really can, however, say that God did give mankind virtually unlimited gifts to invent, produce and create. And for that reason alone, it would be wrong for governments to devise a tax structure or economic system that suppresses and denies those gifts.''

I couldn't agree more.

And as long as we continue to operate under our current skewed tax code, we will continue to suppress and deny these unlimited gifts to the American people who would otherwise thrive boundlessly under the Fair Tax.

By Mr. BUNNING (for himself and Mr. CONRAD):

S. 1494. A bill to amend the Internal Revenue Code of 1986 to extend the special 5-year carryback of certain net operating losses to losses for 2003, 2004, and 2005; to the Committee on Finance.

Mr. BUNNING. Mr. President, today, Senator CONRAD and I are introducing legislation that would greatly benefit our domestic economy. Our legislation would increase the cash flow of many struggling American companies, thus helping them hire and retain workers and fund capital investments.

The legislation involves the ''net operating loss'' (''NOL'') rules under the Internal Revenue Code. The NOL carryback and carryover rules are designed to allow taxpayers to smooth out swings in business income that result from business cycle fluctuations and unexpected financial losses.

Last year's economic stimulus bill, the ''Job Creation and Worker Assistance Act of 2002,'' allowed NOLs arising in 2001 and 2002 to be carried back five years, rather than two years, as otherwise would be provided under the tax law. The 2002 Act also removed a limitation that the corporate alternative minimum tax (''AMT'') unfairly places on these carrybacks. The 2002 Act thus gave taxpayers in many sectors of the economy an enhanced ability to increase their cash flow through refunds of income taxes paid in prior years.

Unfortunately, the same uncertain economic conditions that led to the enactment of last year's stimulus bill have continued. Many taxpayers are continuing to incur unexpected financial losses in 2003.

The legislation that we are introducing today would simply extend the 2002 Act's NOL carryback rules to cover NOLs arising in 2003 and to NOLs that may arise in 2004 and 2005.

I urge my colleagues to support this important legislation, which would give much needed relief to U.S. employers and would provide an additional jump start to our economy.

By Mr. BUNNING (for himself and Mr. CONRAD):

S. 1495. A bill to amend the Internal Revenue Code of 1986 to permit the consolidation of life insurance companies with other companies; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce legislation with my colleague, Senator CONRAD, which will allow affiliated life and non-life insurance companies to file consolidated tax returns. The rules currently on the books do not allow such consolidation, for reasons that are outdated and no longer applicable.

In general, consolidated return provisions under current law were enacted so that the members of an affiliated group of corporations could file a single tax return. The right to file a ''consolidated'' return is generally available irrespective of the nature or variety of the businesses conducted by the affiliated corporations. The purpose behind consolidated returns is simply to tax a complete business entity rather than its component parts individually. Whether an enterprise's businesses are operated as divisions within one corporation or as subsidiary corporations with a common parent company, a business entity should generally be taxed as a single entity and be allowed to file its return accordingly.

Corporate groups that include life insurance companies, however, are denied the ability to file a single consolidated return until they have been affiliated for a least five years. Even after this five-year period, they are subject to two additional limitations that do not apply to any other type of group: first, non-life insurance companies must be members of the affiliated group for five years before their losses may be used to offset life insurance company income, and second, non-life insurance affiliated losses, including current year losses and any carryover losses, that may offset life insurance company taxable income are limited to the lesser of 35 percent of life insurance company's taxable income or 35 percent of the non-life insurance company's losses.

There are no sound reasons to deny affiliated groups that include life insurance companies the same unrestricted ability to file consolidated returns that is available to other financial intermediaries, and corporations in general. Allowing the members of an affiliated group of corporations to file a consolidated return prevents the business enterprise's structure from obscuring the fact that the true gain or loss of the business enterprise is the aggregate of each of the members of the affiliated group. The limitations contained in present law are so clearly without policy justification that they should be repealed.

Our legislation will repeal the two five-year limitations for taxable years beginning after this year, and it will phase out the 35 percent limitation over seven years. The staff of the Joint Committee on Taxation has recommended repeal of two of the three limitations addressed by my bill—on the grounds of needless complexity. The third limitation is, in effect, merely a minimum tax on life insurance company income. That limitation should have been repealed when the alternative minimum tax was enacted, and certainly has no place in the tax laws today.

We hope our colleagues will join us as cosponsors of this bipartisan, much-needed legislation.

By Mrs. HUTCHISON (for herself, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. HARKIN):

S. 1496. A bill to provide for the expansion and coordination of activities of the National Institutes of Health and the Centers for Disease Control and Prevention with respect to research and programs on cancer survivorship, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. HUTCHISON. Mr. President, today I would like to pay tribute to a great Texan and a great American, Lance Armstrong. Last weekend, Lance sailed to his fifth consecutive victory in the Tour de France. On the heels of his stunning victory, I am pleased to introduce the Cancer Survivorship Research and Quality of Life Act of 2003.

To some, Lance's victories might begin to seem routine, winning year after year after year. But when you dig beneath the surface, past the hype and drama of the Tour de France, you find that there's nothing routine about Lance Armstrong.

By now, nearly everyone knows that Lance is a cancer survivor. It has become common knowledge, not because Lance uses it as an excuse or to seek sympathy. We know it because Lance has used his megaphone as a sports hero to raise awareness of cancer research and survivorship. He has dedicated himself to helping others and turning his personal devastation into a legacy of hope for those afflicted with cancer. When he was diagnosed, he was given a 40 percent chance of living. His survival and amazing comeback have proved that cancer is not a death sentence.

Sixty-two percent of adults and 77 percent of children diagnosed with cancer this year will be alive 5 years from now. There are more than 9 million cancer survivors living today. These numbers are improving because of advances in detection and early diagnosis, effective treatments, and healthier lifestyles by survivors and those at risk.

We must continue our commitment to research so fewer people will experience cancer.

The bill I am introducing today expands cancer research by authorizing the Office of Cancer Survivorship within the National Cancer Institutes to study the long- and short-term physical, psychological, social and economic effects of cancer. Research has shown that cancer survivors are often susceptible to other diseases. Expanding on this research will allow scientists and physicians to improve patients' quality of life and help prevent other diseases and disabilities.

Additionally, the bill expands the Centers for Disease Control programs to improve cancer survivorship. For example, the CDC will track the status of survivors to identify what health risks they face and the successful course of treatment they have utilized. Other

programs will demonstrate how to prevent and control cancer, especially in medically underserved populations.

This legislation has the support of CDC and NCI. It also has the support of Lance Armstrong.

I have been privileged to meet with Lance on several occasions. He has never boasted of his athletic feats or touted his ability to master the world's toughest bicycle race. He speaks with passion of the Lance Armstrong Foundation and the work it does on behalf of cancer survivors and their families. When he mounts his bike each summer it is a symbol of hope for cancer survivors the world over.

This year's Tour de France was no exception. Many predicted Lance's defeat and he had to overcome illness, fatigue and crashes to reach the finish line. But he never gave up. The trademark dedication and perseverance that characterize him as an athlete and a survivor kicked in once again. He pedaled to victory over the course of 3 weeks, more than 2,100 miles and 84 hours of cycling, winning with a lead of 1 minute and 1 second.

It was truly a stunning end to a remarkable race.

The record-tying fifth consecutive win places Lance among cycling's elite. Only four others can claim five-time winner of the Tour de France among their accolades. Only one other man has won it consecutively. If Lance wins the yellow jersey next year, it would be a world record. But whether he breaks the record or not, he is a hero to all of us.

I ask my colleagues to join me in congratulating Lance Armstrong on a great victory and signing on as cosponsors to this important legislation to help carry his message of survivorship to the Nation.

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. 1496

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 ''Cancer Survivorship Research and Quality of Life Act of 2003''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) There are more than 9,600,000 individuals in the United States today who are cancer survivors (living with, through, and beyond cancer).

(2) 61 percent of cancer survivors are 65 years of age and older.

(3) 62 percent of adults diagnosed with cancer today will be alive 5 years from now.

(4) In 1960, 4 percent of children with cancer survived more than 5 years.

(5) 77 percent of children (age 0 through 14) diagnosed with cancer today will be living five years from now.

(6) Three out of every four American families will have at least one family member diagnosed with cancer.

(7) 24 percent of adults with cancer are parents who have a child 18 years or younger living in the home.

(8) One of every four deaths in the United States is from cancer. In 2002, 556,500 Americans will die of cancer—more than 1,500 people a day.

(9) The annual cost of cancer in the United States is $180,000,000,000 in direct and indirect costs.

(10) In fiscal year 2001 the National Institutes of Health invested $38,000,000 in survivorship—less than $4.25 per survivor.

SEC. 3. CANCER CONTROL PROGRAMS.

Section 412 of the Public Health Service Act (42 U.S.C. 285a–1) is amended—

(1) in the first sentence, by inserting '', for survivorship,'' after ''treatment of cancer'';

(2) in paragraph (1)(B), by striking ''cancer patients'' and all that follows and inserting the following: ''cancer patients, families of cancer patients, and cancer survivors, and''; and

(3) in paragraph (3), by inserting ''and concerning cancer survivorship programs,'' after ''control of cancer''.

SEC. 4. EXPANSION AND COORDINATION OF ACTIVITIES OF NATIONAL INSTITUTES OF HEALTH WITH RESPECT TO CANCER SURVIVORSHIP RESEARCH.

(a) IN GENERAL.—

(1) TECHNICAL AMENDMENT.—Section 3 of Public Law 107–172 (116 Stat. 541) is amended by striking ''section 419C'' and inserting ''section 417C''.

(2) NEW SECTION.—Subpart 1 of part C of title IV of the Public Health Service Act (42 U.S.C. 285 et seq.), as amended pursuant to paragraph (1) of this subsection, is amended by adding at the end the following:

''SEC. 417E. EXPANSION AND COORDINATION OF ACTIVITIES WITH RESPECT TO CANCER SURVIVORSHIP RESEARCH.

''(a) IN GENERAL.—

''(1) EXPANSION OF ACTIVITIES.—The Director of NIH shall expand and coordinate the activities of the National Institutes of Health with respect to cancer survivorship research.

''(2) ADMINISTRATION OF PROGRAM; COLLABORATION AMONG AGENCIES.—The Director of NIH shall carry out this section acting through the Director of the National Cancer Institute and in collaboration with any other agencies that the Director determines appropriate.

''(b) OFFICE ON SURVIVORSHIP.—

''(1) IN GENERAL.—The Director of NIH shall establish an Office on Cancer Survivorship within the National Cancer Institute through which the activities under subsection (a)(1) shall be implemented and directed.

''(2) ASSOCIATE DIRECTOR FOR CANCER SURVIVORSHIP; APPOINTMENT; FUNCTION.—There shall be in the National Cancer Institute an Associate Director for Cancer Survivorship to coordinate and promote the programs in the Institute concerning cancer survivorship research. The Associate Director shall be appointed by the Director of the Institute from among individuals who, because of their professional training or experience, are equipped to address the breadth of needs associated with cancer survivorship.''.

(b) FUNDING.—Section 417B of the Public Health Service Act (42 U.S.C. 285a–8) is amended by adding at the end the following:

''(e) OFFICE OF CANCER SURVIVORSHIP.—Of the amounts appropriated for the National Cancer Institute for a fiscal year, the Director of the Institute shall reserve an amount for the Office of Cancer Survivorship under section 417E(b)(1).''.

SEC. 5. EXPANSION OF CDC COMPREHENSIVE CANCER PROGRAMS; PROGRAMS TO IMPROVE CANCER SURVIVORSHIP.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention, shall—

(1) expand and update the National Comprehensive Cancer Control Program;

(2) assist States, territories, tribal organizations, and the District of Columbia in developing and implementing a cancer prevention and control program so that each entity will have an active plan in place and so that States, territories, tribal organizations, and the District of Columbia will conduct activities to prevent and control cancer and so that disparities in specific populations will be addressed;

(3) establish programs that demonstrate how to prevent and control cancer and improve access to and the quality of cancer care among racial and ethnic minority and medically underserved populations with disproportionate incidence of or death from cancer;

(4) promote cancer education, prevention, and early detection of cancer; and

(5) award grants to public and nonprofit organizations for cancer control and prevention.

(b) CERTAIN STUDIES AND PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with the Director of the Office of Cancer Survivorship within the National Cancer Institute, shall study the unique health challenges associated with cancer survivorship and carry out projects and interventions to improve the long-term health status of cancer survivors. Such projects shall be carried out directly and through the awards of grants or contracts.

(2) CERTAIN ACTIVITIES.—Activities under paragraph (1) include—

(A) the expansion, in collaboration with the Surveillance, Epidemiology, and End Results Program (SEER) at the National Cancer Institute and with the Agency for Healthcare Research and Quality, of current cancer surveillance systems to track the health status of cancer survivors and determine whether cancer survivors are at-risk for other chronic and disabling conditions;

(B) assess the unique public health challenges associated with cancer survivorship; and

(C) the development and implementation of a national public health cancer survivorship action plan, in partnership with health organizations focused on cancer survivorship, to be carried out in coordination with the State-based comprehensive cancer control program of the Centers for Disease Control and Prevention, in collaboration with the Office of Cancer Survivorship at the National Cancer Institute, and in consultation with other appropriate entities, to support and advance cancer survivorship through—

(i) surveillance and research;

(ii) communication, education, and training;

(iii) program, policies, and infrastructure; and

(iv) access to quality care and services.

(c) COORDINATION OF ACTIVITIES.—The Secretary shall assure that activities under this section are coordinated as appropriate with other agencies of the Public Health Service.

(d) REPORT TO CONGRESS.—Not later than October 1, 2004, the Secretary shall submit to the Congress a report describing the results of the evaluation under subsection (a), and

as applicable, the strategies developed under such subsection.

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

SEC. 6. MONITORING AND EVALUATING QUALITY CANCER CARE AND CANCER SURVIVORSHIP.

(a) IN GENERAL.—Part M of title III of the Public Health Service Act (42 U.S.C. 280e et seq.) is amended by inserting after section 399E the following:

''SEC. 399E–1. MONITORING AND EVALUATING QUALITY CANCER CARE AND CANCER SURVIVORSHIP.

''(a) IN GENERAL.—The Secretary shall make grants to eligible entities for the purpose of enabling such entities to monitor and evaluate quality cancer care, develop information concerning quality cancer care, and monitor cancer survivorship. The Secretary shall carry out this section jointly through the Director of the Centers for Disease Control and Prevention and the Director of the National Cancer Institute.

''(b) ELIGIBLE ENTITIES.—For purposes of this section, an entity is an eligible entity for a fiscal year if the entity—

''(1) operates a statewide cancer registry with funds from a grant made under section 399B for such fiscal year;

''(2) is certified by the North American Association of Central Cancer Registries;

''(3) has personnel scientifically qualified to conduct population-based epidemiology or analyze health services or outcomes research; and

''(4) has access to a broad-based clinical research cohort or an established clinical case base.

''(c) CONTRACTING AUTHORITY.—In carrying out the purpose described in subsection (a), an eligible entity may expend a grant under such subsection to enter into contracts with academic institutions, cancer centers, and other entities, when determined appropriate by the Secretary.

''(d) APPLICATION FOR GRANT.—A grant may be made under subsection (a) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

''(e) AUTHORITY OF SECRETARY REGARDING USE OF GRANT.—The Secretary shall determine the appropriate uses of grants under subsection (a) to achieve the purpose described in such subsection.

''(f) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.''.

(b) CONFORMING AMENDMENT REGARDING AUTHORIZATION OF APPROPRIATIONS.—Section 399F(a) of the Public Health Service Act (42 U.S.C. 280e–4(a)) is amended in the first sentence by striking ''this part,'' and inserting ''this part (other than section 399E–1),''.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues Senator HUTCHISON, Senator HARKIN and Senator FEINSTEIN in introducing the Cancer Survivorship and Quality of Life Act. It is fitting that we are introducing this important legislation today. Just three days ago, as the world knows, Lance Armstrong, the champion cyclist from Texas, won his 5th consecutive Tour de France. His triumph is an extraordinary achievement in and of itself, and it is even more extraordinary, because just 6 years ago, he was diagnosed with a form of cancer—testicular cancer—that is often curable when detected early, but that in his case had already spread to his abdomen, his lungs, and brain. Twenty-five years ago, he probably would not have survived. But with the treatment and therapy now available and the same fighting spirit that made him a winner yesterday, he won the battle against cancer and became a worldwide symbol of courage and achievement.

His success is also a vivid symbol of the rapid progress being made in the ongoing battle against cancer. Never before have there been such high rates of survival for what used to be an overwhelmingly deadly disease. Cancer research has brought new and more sensitive screening tests and more accurate and less invasive diagnostic procedures. Greater arrays of treatments are available that can cure cancer completely or keep it at bay for many years.

As a result of these medical and technological advances, over half of all adults and over three-quarters of all children diagnosed with cancer today will be living five years from now and often far longer. Experts now refer to many forms of cancer as ''chronic diseases'' illnesses that never go away, but can be treated in ways enabling patients to focus on living instead of preparing for death.

In the United States today, there are almost 10 million cancer survivors, and 40 percent of them are younger than 65. The financial cost is large. Direct costs for cancer care and the indirect costs to the economy are now estimated at $180 billion dollars per year. But more important than the financial costs are the devastating personal and emotional costs to the patients, their families and loved ones, and their caregivers as well. Almost a quarter of adults with cancer are parents who have a child 18 years old or younger living at home. Nearly 1.3 million people will be diagnosed with cancer this year—3,500 persons each and every day.

The National Cancer Institute and other federal agencies now devote the majority of their funds to diagnosing and treating cancer, and we need to continue strong federal support for these purposes. Greater support is clearly needed to deal with the issues affecting survivors. Many cancer survivors say that equally important is the ''non-medical'' care that they have received, and that is the purpose of the bill we are introducing today.

The Cancer Survivorship Research and Quality of Life Act creates a Cancer Survivorship Office in the National Institutes of Health and a Cancer Control Center in the Centers for Disease Control and Prevention to develop effective ways to improve the quality of life for patients with cancer and their families. Such efforts include education of patients about their cancer, their options for treatment, and how and when to ask for a second opinion. They also include information about support networks and other services in their community.

Under our bill, the Centers for Disease Control and the National Cancer Institute will work together to expand their data collection to include information about survivors and improvements in the care of individuals newly diagnosed with cancer, such as successful treatments, rehabilitation, and nutritional and exercise programs. Currently, there is no effective way for new information to be widely shared. Patients who are cancer survivors or who have family members or loved ones with cancer understand the importance of this information. We introduce this bill with the full support of the Lance Armstrong Foundation, which has brought the issue of cancer survivorship to our national attention. I urge the Senate to give our legislation the priority it deserves.

By Mr. MCCAIN (for himself, Mr. FEINGOLD, and Mr. DURBIN):

S. 1497. A bill to amend the Communications Act of 1934 to revise and expand the lowest unit cost provision applicable to political campaign broadcasts, to establish commercial broadcasting station minimum airtime requirements for candidate-centered and issue-centered programming before primary and general elections, to establish a voucher system for the purchase of commercial broadcast airtime for political advertisement, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, today I am introducing the ''Our Democracy, Our Airwaves Act.'' This legislation is designed to increase the flow of political information in broadcast media and to reduce the cost to candidates of educating the electorate on their candidacy.

Consistent with broadcasters' obligations to serve the public interest in exchange for being licensed to use the public airwaves, the bill would require broadcast licensees to air a minimum of two hours per week of candidate-centered or issue-centered programming before a primary or general Federal election. This legislation also would establish a program to provide candidates and national committees of political parties vouchers that they may use for political advertisements on radio and television broadcast stations. An annual spectrum use fee paid by broadcasters would fund the voucher system. Finally, the bill would require broadcast television and radio stations to provide candidates and parties with

non-preemptible advertising time at the lowest rate provided to any other advertiser.

At a recent Committee hearing I chaired on the public interest obligations of broadcasters, it became apparent that local broadcasters are not adequately covering political campaigns as part of their local newscasts. The hearing examined the results of a study prepared by the Lear Center Local News Archive, which found that over a seven-week period from September 18, 2002 through November 4, 2002, 56 percent of the top-rated half-hour news broadcasts did not contain a single political campaign story. In the 44 percent of broadcasts that did contain campaign coverage, the average campaign story was 89 seconds long. When campaigned stories did air, only 28 percent contained stories where candidates spoke with the average sound bit being 12 seconds long.

This study illustrates the pressures on political candidates to raise money because they are forced to gain the public's attention through the use of costly advertisements. Our democracy is stronger when a candidate's success is achieved by ideas, not by dollars, and when an electorate is informed by facts, not 12-second sound bites. 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.1497

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 ''Our Democracy, Our Airwaves Act of 2003''.

SEC. 2. MEDIA RATES.

(a) LOWEST UNIT CHARGE; NATIONAL COMMITTEES.—Section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) is amended—

(1) by striking ''to such office'' in paragraph (1) and inserting ''to such office, or by a national committee of a political party on behalf of such candidate in connection with such campaign,''; and

(2) by inserting ''for pre-emptible use thereof'' after ''station'' in subparagraph (A) of paragraph (1).

(b) PREEMPTION; AUDITS.—

(1) IN GENERAL.—Section 315 of such Act (47 U.S.C. 315) is amended—

(A) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively and moving them to follow the existing subsection (e);

(B) by redesignating the existing subsection (e) as subsection (c); and

(C) by inserting after subsection (c) the following:

''(d) PREEMPTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding the requirements of subsection (b)(1)(A), a licensee shall not preempt the use of a broadcasting station by an eligible candidate or political committee of a political party who has purchased and paid for such use.

''(2) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.—If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the station, any candidate or party advertising spot scheduled to be broadcast during that program shall be treated in the same fashion as a comparable commercial advertising spot.

''(e) AUDITS.—During the 45-day period preceding a primary election and the 60-day period preceding a general election, the Commission shall conduct such audits as it deems necessary to ensure that each broadcaster to which this section applies is allocating television broadcast advertising time in accordance with this section and section 312.

(2) CONFORMING AMENDMENT.—Section 504 of the Bipartisan Campaign Reform Act of 2002 is amended by striking ''315), as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and'' and inserting ''315) is amended by''.

(c) STYLISTIC AMENDMENTS.—Section 315 of such Act (47 U.S.C. 315) is amended—

(1) by striking ''For purposes of this section—'' in subsection (e), as redesignated by subsection (b)(1)(A) of this section, and inserting ''DEFINITIONS.—In this section:'';

(2) by striking ''the'' in paragraph (1) of that subsection and inserting ''BROADCASTING STATION.—The'';

(3) by striking ''the'' in paragraph (2) of that subsection and inserting ''LICENSEE; STATION LICENSEE.—The''; and

(4) by inserting ''REGULATIONS.—'' in subsection (f), as so redesignated, before ''The Commission''.

SEC. 3. MINIMUM TIME REQUIREMENTS FOR CANDIDATE-CENTERED OR ISSUE-CENTERED BROADCASTS BY BROADCASTING STATIONS.

(a) IN GENERAL.—

(1) PROGRAM CONTENT REQUIREMENTS.—In the administration of the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Federal Communications Commission may not determine that a broadcasting station has met its obligation to operate in the public interest unless the station demonstrates to the satisfaction of the Commission that—

(A) it broadcast at least 2 hours per week of candidate-centered programming or issue-centered programming during each of the 6 weeks preceding a Federal election, including at least 4 of the weeks immediately preceding a general election; and

(B) not less than 1 hour of such programming was broadcast in each of those weeks during the period beginning at 5:00 p.m. and ending at 11:35 p.m. in the time zone in which the primary broadcast audience for the station is located.

(2) NIGHTOWL BROADCASTS NOT COUNTED.—For purposes of paragraph (1), any candidate-centered programming or issue-centered programming broadcast between midnight and 6:00 a.m. in the time zone in which the primary broadcast audience for the station is located shall not be taken into account.

(3) NONPARTISAN VOTER REGISTRATION AND GET-OUT-THE-VOTE BROADCASTS.—For purposes of paragraph (1), programming that constitutes nonpartisan activity designed to encourage individuals to vote or to register to vote, within the meaning of section 301(9)(B)(ii) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9)(B)(ii)), is deemed to be issue-centered programming to the extent it does not exceed—

(A) 30 minutes per week for purposes of paragraph (1)(A); and

(B) 15 minutes per week for purposes of paragraph (1)(B).

(b) DEFINITIONS.—In this section:

(1) BROADCASTING STATION.—The term ''broadcasting station''—

(A) has the meaning given that term by section 315(e)(1) of the Communications Act of 1934.

(2) CANDIDATE-CENTERED PROGRAMMING.—The term ''candidate-centered programming''—

(A) includes debates, interviews, candidate statements, and other program formats that provide for a discussion of issues by the candidate; but

(B) does not include paid political advertisements.

(3) FEDERAL ELECTION.—The term ''Federal election'' has the meaning given that term in section 315A(g)(2) of the Communications Act of 1934.

(4) ISSUE-CENTERED PROGRAMMING.—The term ''issue-centered programming''—

(A) includes debates, interviews, statements, and other program formats that provide for a discussion of any ballot measure which appears on a ballot in a forthcoming election; but

(B) does not include paid political advertisements.

SEC. 4. POLITICAL ADVERTISEMENTS VOUCHER PROGRAM.

(a) IN GENERAL.—Title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting after section 315 the following:

''SEC. 315A. POLITICAL ADVERTISEMENT VOUCHER PROGRAM.

''(a) IN GENERAL.—The Commission shall establish and administer a voucher program for the purchase of airtime on broadcast stations for political advertisements in accordance with the provisions of this section.

''(b) CANDIDATES.—

''(1) DISBURSEMENT OF VOUCHERS.—Beginning no earlier than January of each even-numbered year after 2003, the Commission shall disburse vouchers at least once each month for the purchase of radio or television broadcast airtime for political advertisements on broadcasting stations to each individual certified by the Federal Election Commission under paragraph (2) as an eligible candidate.

''(2) FEC TO CERTIFY ELIGIBLE CANDIDATES.—The Commission may not disburse vouchers under paragraph (1) to an individual, until the Federal Election Commission has made the following certifications with respect to that individual:

''(A) QUALIFICATION.—The individual is a legally-qualified candidate in a Federal election.

''(B) AGREEMENT.—The individual has agreed in writing—

''(i) to keep and furnish to the Federal Election Commission such records, books, and other information as it may require; and

''(ii) to repay to the Federal Communications Commission an amount equal to 150 percent of the dollar value of vouchers received from the Commission if the Federal Election Commission makes a final determination that the individual violated any term of the agreement.

''(C) HOUSE OF REPRESENTATIVES CANDIDATES.—For candidates for election to the House of Representatives, that—

''(i) the individual has received at least $25,000 in contributions from individuals, not counting any amount in excess of $250 received from any individual;

''(ii) the individual agrees not knowingly to make expenditures from the individual's personal funds, or the personal funds of the individual's immediate family, in connection with the campaign for election to the House

of Representatives in excess of, in the aggregate, $125,000; and

''(iii) the individual faces opposition by at least 1 other candidate who has received contributions or made expenditures of, in the aggregate, at least $25,000 or who has been certified by the Federal Election Commission under this paragraph as eligible to receive vouchers under paragraph (1).

''(D) SENATE CANDIDATES.—For candidates for election to the Senate, that—

''(i) the individual has received at least $25,000 in contributions from individuals, not counting any amount in excess of $250 received from any individual, multiplied by the number of Representatives from the State in which the individual seeks election;

''(ii) the individual agrees not knowingly to make expenditures from the individual's personal funds, or the personal funds of the individual's immediate family, in connection with the campaign for election to the Senate in excess of, in the aggregate, $500,000; and

''(iii) the individual faces opposition by at least 1 other candidate who has received contributions or made expenditures of, in the aggregate, at least $25,000 multiplied by the number of Representatives from the State in which the individual seeks election or who has been certified by the Federal Election Commission under this paragraph as eligible to receive vouchers under paragraph (1).

''(E) PRESIDENTIAL CANDIDATES.—For candidates for nomination for election, or election, to the Office of President—

''(i) the term 'Federal election' includes a primary election (as defined in section 9032(7) of the Internal Revenue Code of 1986 (26 U.S.C. 9032(7))); and

''(ii) in order to be eligible to receive vouchers under this section, the candidate shall—

''(i) execute the agreement described in subparagraph (B); and

''(II) certify in writing under penalty of perjury that the candidate has qualified to receive payments under section 9006 or 9037 of the Internal Revenue Code of 1986.

''(3) CERTIFICATION PROCESS.—In carrying out its duties under paragraph (2), the Federal Election Commission shall—

''(A) provide the requested certification, if the individual meets the requirements for certification, within 7 days after it receives the information necessary therefor; and

''(B) shall comply with the requirements of chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) and take other appropriate steps to minimize the paperwork burden on candidates seeking certification under this subsection.

''(c) POLITICAL PARTIES.—

''(1) DISBURSEMENT OF VOUCHERS.—In January, 2004, and January of each even-numbered year thereafter, the Commission shall disburse vouchers for the purchase of radio or television broadcast airtime for political advertisements on broadcasting stations to each political party committee certified by the Federal Election Commission under paragraph (2) as an eligible committee.

''(2) FEC TO CERTIFY ELIGIBLE COMMITTEES.—The Commission may not disburse vouchers under paragraph (1) to a political party committee, until the Federal Election Commission has made the following certifications with respect to that committee:

''(A) NATIONAL PARTY COMMITTEES.—The committee is the national committee of a political party or the national congressional campaign committee of a political party (as those terms are used in section 323(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441i(a)(1))).

''(B) MINOR PARTY COMMITTEES.—In the case of a political party committee that is not described in subparagraph (A), the committee meets the candidate base requirement of subparagraph (C).

''(C) CANDIDATE BASE.—The committee has candidates—

''(i) for election to the House of Representatives who have been certified by the Federal Election Commission under subsection (b)(2) as eligible candidates in at least 22 districts; or

''(ii) for election to the Senate in at least 5 States who have been certified by the Federal Election Commission under subsection (b)(2) as eligible candidates.

''(D) AGREEMENT.—The committee agrees in writing—

''(i) to keep and furnish to the Federal Election Commission such records, books, and other information as it may require; and

''(ii) to repay to the Federal Communications Commission an amount equal to 150 percent of the dollar value of vouchers received from the Commission if the Federal Election Commission makes a final determination that the committee violated any term of the agreement.

''(d) AMOUNTS.—

''(1) CALENDAR YEAR 2004 AGGREGATES.—For calendar year 2004, the Commission shall disburse vouchers in the aggregate amount of not more than $750,000,000, of which—

''(A) not more than $650,000,000 shall be available for disbursement to candidates under subsection (b); and

''(B) not more than $100,000,000 shall be available for disbursement to political parties under subsection (c).

''(2) PER-CANDIDATE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the Commission shall disburse vouchers to an individual candidate under subsection (b)(1) with respect to a Federal election equal, in the aggregate, to $3 multiplied by the contributions received by that individual with respect to that election, not counting any amount in excess of $250 received from any individual.

''(B) MAXIMUM.—Except as provided in subparagraph (C), the Commission may not disburse vouchers to an individual candidate under subsection (b)(1) with respect to a Federal election of more than—

''(i) $375,000, for a candidate for election to the House of Representatives; or

''(ii) $375,000 multiplied by the number of Representatives from the State from which the individual seeks election, for a candidate for election to the Senate.

''(C) SPECIAL RULE FOR PRESIDENTIAL CANDIDATES.—The Commission shall disburse vouchers to a candidate for nomination for election, or election, to the Office of President who receives payments under section 9037 or 9006 of the Internal Revenue Code of 1986 (26 U.S.C. 9037 or 9006), respectively, equal to—

''(i) $1 for each dollar received under section 9037 of such Code; and

''(ii) 50 cents for each dollar received under section 9006 of such Code.

''(3) PER-COMMITTEE AMOUNT.—

''(A) IN GENERAL.—The $100,000,000 available to be disbursed to political parties shall disbursed as follows:

''(i) The Commission shall reserve a percentage, determined by the Commission on the basis of the Commission's good faith estimate of demand by minor party committees, of the amount available for disbursement as provided in subparagraph (B) to political party committees described in subsection (c)(2)(B) that have been or will be certified by the Federal Election Commission as eligible political party committees.

''(ii) The Commission shall disburse the remainder of the amount available for disbursement in equal amounts among political party committees described in subsection (c)(2)(A) that have been or will be certified by the Federal Election Commission as eligible political party committees.

''(B) MINOR PARTY COMMITTEE AMOUNT.—From the amount reserved under subparagraph (A)(i), the Commission shall disburse to political party committees described in subsection (c)(2)(B) certified by the Federal Election Commission as eligible political party committees—

''(i) the same amount as the Commission disburses to each political party committee under subparagraph (A)(ii) if the political party with which the political committee is affiliated has—

''(I) candidates for election to the House of Representatives certified by the Federal Election Commission under subsection (b)(2) as eligible candidates in 218 or more districts; or

''(II) candidates for election to the Senate certified by the Federal Election Commission under subsection (b)(2) as eligible candidates in 17 or more of the States in which elections for United States Senator are being held; and

''(ii) a percentage of such amount, determined under subparagraph (C), if the political party with which the political committee is affiliated does not qualify for the full amount under clause (i).

''(C) PROPORTIONATE AMOUNT DETERMINATION.—The amount the Commission shall disburse to a political party committee described in subparagraph (B)(ii) is a percentage of the amount disbursed to a political party committee under subparagraph (A)(2) equal to the greater of the following percentages:

''(i) A percentage—

''(I) the numerator of which is the number of districts in which the party has candidates for election to the House of Representatives certified by the Federal Election Commission under subsection (b)(2) as eligible candidates; and

''(II) the denominator of which is 435.

''(ii) A percentage—

''(I) the numerator of which is the number of States in which the party has candidates for election to the Senate certified by the Federal Election Commission under subsection (b)(2) as eligible candidates; and

''(II) the denominator of which is 33 (or 34 in any year in which there are 34 Senators for election).

''(e) INFLATION ADJUSTMENT.—Each dollar amount in this section shall be adjusted for even-numbered years after 2003 in the same manner as the limitations in section 315(b) and (d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(b) and (d)) are adjusted under section 315(c) of that Act (2 U.S.C. 441a(c)), except that, for the purpose of applying section 315(c)—

''(1) '(commencing in 2005)' shall be substituted for '(commencing in 1976)' in paragraph (1) of that section; and

''(2) '2003' shall be substituted for '1974' in paragraph (2)(B) of that section.

''(f) USE.—

''(1) EXCLUSIVE USE.—Vouchers disbursed by the Commission under this section may be used exclusively for the purpose described in subsection (b) by the candidate or political party committee to which the vouchers were disbursed, except that—

''(A) a candidate may exchange vouchers with a political party under paragraph (2); and

''(B) a political party may use vouchers to purchase broadcast airtime for political advertisements for its candidates in a general election for any Federal, State, or local office if it discloses the value of the voucher used as an expenditure under section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441(d)).

''(2) EXCHANGE WITH POLITICAL PARTY COMMITTEE.—

''(A) IN GENERAL.—A individual who receives a voucher under this section may transfer the right to use all or a portion of the value of the voucher to a committee, described in subsection (c)(2)(A), of the political party of which the individual is a candidate in exchange for money in an amount equal to the cash value of the voucher or portion exchanged.

''(B) CONTINUATION OF CANDIDATE OBLIGATIONS.—The transfer of a voucher, in whole or in part, to a political party committee under this paragraph does not release the candidate from any obligation under the agreement made under subsection (b)(2) or otherwise modify that agreement or its application to that candidate.

''(C) PARTY COMMITTEE OBLIGATIONS.—Any political party committee to which a voucher or portion thereof is transferred under subparagraph (A)—

''(i) shall account fully, in accordance with such requirements as the Commission may establish, for the receipt of the voucher; and

''(ii) may not use the transferred voucher or portion thereof for any purpose other than a purpose described in paragraph (1)(B).

''(D) VOUCHER AS A CONTRIBUTION UNDER FECA.—If a candidate transfers a voucher or any portion thereof to a political party committee under subparagraph (A)—

''(i) the value of the voucher or portion thereof transferred shall be treated as a contribution from the candidate to the committee, and from the committee to the candidate, for purposes of sections 302 and 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 432 and 434);

''(ii) the committee may, in exchange, provide to the candidate only funds subject to the prohibitions, limitations, and reporting requirements of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.); and

''(iii) the amount, if identified as a 'voucher exchange' shall not be considered a contribution for the purposes of section 315 of that Act (2 U.S.C. 441a).

''(g) VALUE; ACCEPTANCE; REDEMPTION.—

''(1) VOUCHER.—Each voucher disbursed by the Commission under this section shall have a value in dollars, redeemable upon presentation to the Commission, together with such documentation and other information as the Commission may require, for the purchase of broadcast airtime for political advertisements in accordance with this section.

''(2) ACCEPTANCE.—A broadcasting station shall accept vouchers in payment for the purchase of broadcast airtime for political advertisements in accordance with this section.

''(3) REDEMPTION.—The Commission shall redeem vouchers accepted by broadcasting stations under paragraph (2) upon presentation, subject to such documentation, verification, accounting, and application requirements as the Commission may impose to ensure the accuracy and integrity of the voucher redemption system. The Commission shall use amounts in the Political Advertising Voucher Account established under subsection (h) to redeem vouchers presented under this subsection.

''(4) EXPIRATION.—

''(A) CANDIDATES.—A voucher may only be used to pay for broadcast airtime for political advertisements to be broadcast before midnight on the day before the date of the Federal election in connection with which it was issued and shall be null and void for any other use or purpose.

''(B) EXCEPTION FOR POLITICAL PARTY COMMITTEES.—A voucher held by a political party committee may be used to pay for broadcast airtime for political advertisements to be broadcast before midnight on December 31st of the odd-numbered year following the year in which the voucher was issued by the Commission.

''(5) VOUCHER AS EXPENDITURE UNDER FECA.—

''(A) CONGRESSIONAL CAMPAIGNS.—Except as provided in subparagraph (B), for purposes of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), the use of a voucher to purchase broadcast airtime constitutes an expenditure as defined in section 301(9)(A) of that Act (2 U.S.C. 431(9)(A)).

''(B) PRESIDENTIAL CAMPAIGNS.—Notwithstanding any provision of the Federal Election Campaign Act of 1971 or chapter 95 or 96 of the Internal Revenue Code of 1986 to the contrary, the use of a voucher by a candidate for nomination for election, or election, to the Office of President does not constitute an expenditure for purposes of that Act or chapter.

''(h) POLITICAL ADVERTISING VOUCHER ACCOUNT.—

''(1) IN GENERAL.—The Commission shall establish an account to be known as the Political Advertising Voucher Account, which shall be credited with commercial television and radio spectrum use fees assessed under this subsection, together with any amounts repaid or otherwise reimbursed under this section.

''(2) SPECTRUM USE FEE.—

''(A) IN GENERAL.—The Commission shall assess, and collect annually, a spectrum use fee based on a percentage of a broadcasting station's gross revenues in an amount necessary to carry out the provisions of this section.

''(B) LIMITATIONS.—The percentage under subparagraph (A) may not be—

''(i) greater than 1 percent; nor

''(ii) less than .05 percent.

''(C) AVAILABILITY.—Any amount assessed and collected under this paragraph shall be retained by the Commission as an offsetting collection for the purposes of making disbursements under this section, except that—

''(i) the salaries and expenses account of the Commission shall be credited with such sums as are necessary from those amounts for the costs of developing and implementing the program established by this section; and

''(ii) the Commission may reimburse the Federal Election Commission for any expenses incurred by the Commission under this section.

''(D) FEE DOES NOT APPLY TO PUBLIC BROADCASTING STATIONS.—Subparagraph (A) does not apply to a public telecommunications entity (as defined in section 397(12) of this Act).

''(3) ADMINISTRATIVE PROVISIONS.—Except as otherwise provided in this subsection, section 9 of this Act applies to the assessment and collection of fees under this subsection to the same extent as if those fees were regulatory fees imposed under section 9.

''(i) DEFINITIONS.—In this section:

''(1) BROADCASTING STATION.—The term 'broadcasting station' has the meaning given that term by section 315(e)(1) of this Act.

''(2) FEDERAL ELECTION.—The term 'Federal election' means any regularly-scheduled, primary, runoff, or special election held to nominate or elect a candidate to Federal office.

''(3) FEDERAL OFFICE.—The term 'Federal office' has the meaning given that term by section 301(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(3)).

''(4) LEGALLY-QUALIFIED CANDIDATE.—The term 'legally-qualified candidate' means a legally qualified candidate within the meaning of section 315 of this Act.

''(5) POLITICAL PARTY.—The term 'political party' means a major party or a minor party as defined in section 9002(3) or (4) of the Internal Revenue Code of 1986 (26 U.S.C. 9002(3) or (4)).

''(6) OTHER TERMS.—Except as otherwise provided in this section, any term used in this section that is defined in section 301 of the Federal Election Campaign of 1971 (2 U.S.C. 431) has the meaning given that term by section 301 of that Act.

''(j) REGULATIONS.—The Commission shall prescribe such regulations as may be necessary to carry out the provisions of this section. In developing the regulations, the Commission shall consult with the Federal Elections Commission.''.

(b) DELAYED EFFECTIVE DATE FOR PRESIDENTIAL CANDIDATES.—The provisions of subsections (b)(2)(E) and (d)(2)(C) of section 315A of the Communications Act of 1934, as added by subsection (a), shall take effect on January 1, 2008.

SEC. 5. FCC TO PRESCRIBE STANDARDIZED FORM FOR REPORTING CANDIDATE CAMPAIGN ADS.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall initiate a rulemaking proceeding to establish a standardized form to be used by broadcasting stations (as defined in section 315(e)(1) of the Communications Act of 1934; 47 U.S.C. 315(e)(1)) to record and report the purchase of advertising time by or on behalf of a candidate for nomination for election, or for election, to Federal elective office.

(b) CONTENTS.—The form prescribed by the Commission shall require, broadcasting stations to report, at a minimum—

(1) the station call letters and mailing address;

(2) the name and telephone number of the station's sales manager (or individual with responsibility for advertising sales);

(3) the name of the candidate who purchased the advertising time, or on whose behalf the advertising time was purchased, and the Federal elective office for which he or she is a candidate;

(4) the name, mailing address, and telephone number of the person responsible for purchasing broadcast political advertising for the candidate;

(5) notation as to whether the purchase agreement for which the information is being reported is a draft or final version; and

(6) the following information about the advertisement:

(A) The date and time of the broadcast.

(B) The program in which the advertisement was broadcast.

(C) The length of the broadcast airtime.

(c) INTERNET ACCESS.—In its rulemaking, the Commission shall require any broadcasting station reporting under this section that maintains an Internet website to make available a link to reports under this section on that website.

Mr. FEINGOLD. Mr. President, I am pleased to once again join with the Senator from Arizona, Senator MCCAIN, in introducing legislation that we believe will significantly improve media coverage of elections and reduce the negative impact that skyrocketing TV advertising costs have on Federal campaigns. And I am very glad that the Senator from Illinois, Senator DURBIN, has again joined us as an original cosponsor of this bill.

Although broadcast advertising is one of the most effective forms of communication in our democracy, it also diminishes the quality of our electoral process in two ways. First, broadcasters often fail to provide adequate coverage to the issues in elections, focusing instead on the horse race, if they cover elections at all. Second, the extraordinarily high cost of advertising time fuels the insatiable need for candidates to spend more and more time fundraising instead of talking with voters. These two problems interact to undermine the great promise that television has for promoting democratic discourse in our country.

It need not be this way. The public owns the airwaves and licenses them to broadcasters. Broadcasters pay nothing for their use of this scarce and very valuable public resource. Their only ''payment'' is a promise to serve the public interest, a promise that often goes unfulfilled. A study by the Committee for the Study of the American Electorate found that only 18 percent of gubernatorial, senatorial and congressional debates held in 2000 were televised by network TV and an additional 18 percent were covered by PBS or small independent TV stations. More than 63 percent were not televised at all. This is shocking in a democracy that depends on information and open debate.

The bill we introduce today addresses these problems by requiring broadcast stations to devote a reasonable amount of air time to election programming. It would also direct the FCC to create a voucher system in which candidates and parties would receive vouchers they could use for paid radio or TV advertising time, financed by a broadcast spectrum usage fee. Candidates would qualify for vouchers based on a ratio matched to the amount of small dollar donations they raise.

Our proposal would allow candidates to leverage their grassroots fundraising and would provide greater campaign resources to candidates without requiring them to become more beholden to special interests. The proposal would also make air time available to political parties, which could be directed to underfunded candidates and challengers who have a harder and harder time getting their message out under the current system as the costs of advertising continue to rise.

Senator MCCAIN and I remain devoted to improving the way our electoral process functions and reducing the impact of big money on our democracy. This bill will advance that cause in a very significant and necessary way. I look forward to working with my colleagues to fine tune this bill and enact it into law. Together we can make campaigns less expensive, and more informative, using the public airwaves as a tool to improve our democracy.

By Mr. BINGAMAN (for himself, Mr. COCHRAN, Ms. LANDRIEU, and Mr. KERRY):

S. 1498. A bill to provide for the establishment of a Health Workforce Advisory Commission to review Federal health workforce policies and make recommendations on improving those policies; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators COCHRAN, LANDRIEU, and KERRY entitled ''The Health Workforce Advisory Commission Act of 2003'' is designed to create a Health Workforce Advisory Commission to review Federal health workforce policies and make recommendations on improving those policies.

In my own State of New Mexico, over 9 percent of our total workforce is employed in the health sector. The New Mexico work force is not dissimilar to the rest of the Nation, where the total health workforce comprises 10.5 percent of the total U.S. labor force.

By 2020, the total population of New Mexico is projected to grow 32 percent and the population over 65 is projected to grow 80 percent, compared to national growth projections of 18 percent and 53 percent, respectively. But who will care for these burgeoning populations? New Mexico ranks 33rd among States in physicians per capita, and we graduate fewer new physicians per 1,000,000 population than the entire United States.

The problem is not simply one of too few physicians however. New Mexico ranks 7th lowest among the States in per capita employment of Licensed Practical/Vocational Nurses and we have 7 nurse anesthetists per 100,000 population, while the national average is close to 9 per 100,000 population. New Mexico ranks 49th in the Nation in then number of dentists per capita. In fact, while the State's population grew in the 1990s by 12 percent, the number of dentists in New Mexico declined 7 percent in the same time period. Among the 50 States, New Mexico ranks 42nd in the number of pharmacists per 100,000 population.

We are reflection of a crisis occurring in States across the Nation: a critical shortage in multiple areas of the health workforce in the face of a changing population whose health care needs are only going to grow and increase in complexity.

It is estimated that by 2050 the U.S. will need to more than triple its number of long-term care workers; enrollment in nursing education programs has been declining of the last 8 years; vacancy rates for pharmacists in Federal facilities is up to 18 percent and 11 percent in public hospitals. At the same time, the number of practitioners other than physician grew rapidly in the 1990s. How does this growth interact with the simultaneous shortages in other areas? How should the workforce of the future best be structured to meet the rise in baby boomers and how should we prepare for this?

These are the issues that health workforce policies attempt to address. There has been, and continues to be, a significant investment on the part of Federal and State governments in measuring, monitoring, and analyzing the numbers and types of health professionals who are trained and practice in the U.S. but despite such efforts, there remain significant problems in determining the appropriate number, type, and distribution of such personnel needed to provide access to appropriate care for Americans. The underlying problem is that health workforce policies developed by various State and Federal entities tend to be profession or position specific. What is lacking is a perspective on health workforce policies that is both interactive and global in nature. As health care becomes increasingly complex, and as the health needs of the Nation changes, it is imperative to have a means with which the dynamics of a changing health care market and health care workforce can be assessed and addressed.

We are all aware of the critical nursing shortages so many areas face now, the increasing difficulty in recruiting and retaining rural based physicians, the shortages of pharmacists and pharmacy techs, and of skilled laboratory technicians. And there are organizations focused on each of these specific issues; but these issues overlap in the marketplace and impact each other in ways we cannot currently define. It is as if there were a giant health care workforce machine with 500 interacting mechanisms and while there is a specific mechanic for each of these components, there is no mechanic looking at the machine as a whole. The health workforce is more than the sum of its individual parts, and in order to enact effective Federal workforce policies, this must be reflected in the analysis and creation of such policies. HWAC is designed to do that.

For these reasons, we have introduced legislation that will create a new health workforce commission, or HWAC for short. This legislation requires the creation of a national advisory commission to review and make recommendations pertaining to Federal health workforce policies. Specifically, it will: Review federal health

workforce policy under the following Acts and their titles: Social Security Act, titles 18 & 19; Public Health Service Act Titles 7 & 8, NIH, DOD, and VA and other pertinent Acts and titles; Analyze and make recommendations to improve the methods used to measure and monitor the U.S. health workforce and the relationship between numbers and mix of such personnel and access to appropriate health care; Review health workforce policies and other factors and their impact on the ability of the health care system to provide optimal medical and health care services; Analyze and make recommendations pertaining to federal incentives, financial, regulatory, and otherwise, and federal programs currently in place to promote the education of an appropriate number and mix of health professionals to provide access to appropriate health care for U.S. citizens; Analyze and make recommendations about the appropriate supply and distribution of physicians, nurses, and other health professionals and personnel to achieve a health care system that is safe, effective, patient centered, timely, equitable, and efficient; Analysis of the role(s) and global implications of internationally trained physicians, nurses, and other health professionals and personnel in the U.S. workforce; Analyze and make recommendations about achieving the appropriate diversity of the U.S. health workforce.

The Commission will be represented by national experts in health workforce issues, the commissioned corps of the Public Health Service, a wide spectrum of health professionals and personnel, and be geographically balanced in its representation. The Commission will work closely with other state and Federal advisory panels that deal with professional or work specific issues of health workforce policy. Membership in the Commission will be chosen by the Comptroller General, with representation from a diverse group of fields in health care, including members who are recognized for their policy expertise in health workforce measurement, monitoring, and analysis, health services, economic and other workforce related research and technology assessments. At least 25 percent of the members are to be health care providers from rural areas, in order to ensure a geographic balance in representation. Through the creation of HWAC, a nodal focus of information gathering, sharing, analysis, and implementation of the knowledge created about the dynamics of the U.S. health workforce will be put into place.

This legislation was created with significant input and assistance from a variety of national organizations representing a cross section of the spectrum of the U.S. health workforce. Organizations that have expressed support for this bill include: American College of Physicians—American Society of Internal Medicine, the American Clinical Laboratory Association, the National Organization of Nurse Practitioner Faculties, the American Society of Health-System Pharmacists, the American Chiropractic Association, the National Rural Health Association, the Commissioned Officers Association of the USPHS, and the Therapeutic Communities of America.

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. 1498

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 ''Health Workforce Advisory Commission Act of 2003''.

SEC. 2. HEALTH WORKFORCE ADVISORY COMMISSION.

(a) ESTABLISHMENT.—The Comptroller General shall establish a commission to be known as the Health Workforce Advisory Commission (referred to in this Act as the ''Commission'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 18 members to be appointed by the Comptroller General not later than 90 days after the date of enactment of this Act.

(2) QUALIFICATIONS.—In appointing members to the Commission under paragraph (1), the Comptroller General shall ensure that—

(A) the Commission includes individuals with national recognition for their expertise in health care workforce issues, including workforce forecasting, undergraduate and graduate training, economics, health care and health care systems financing, public health policy, and other fields;

(B) the members are geographically representative of the United States and maintain a balance between urban and rural representatives;

(C) the members includes a representative from the commissioned corps of the Public Health Service;

(D) the members represent the spectrum of professions in the current and future healthcare workforce, including physicians, nurses, and other health professionals and personnel, and are skilled in the conduct and interpretation of health workforce measurement, monitoring and analysis, health services, economic, and other workforce related research and technology assessment;

(E) at least 25 percent of the members who are health care providers are from rural areas; and

(F) a majority of the members are individuals who are not currently primarily involved in the provision or management of health professions education and training programs.

(3) TERMS AND VACANCIES.—

(A) TERMS.—The term of service of the members of the Commission shall be for 3 years except that the Comptroller General shall designate staggered terms for members initially appointed under paragraph (1).

(B) VACANCIES.—Any member who is appointed to fill a vacancy on the Commission that occurs before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(4) CHAIRPERSON.—

(A) DESIGNATION.—The Comptroller General shall designate a member of the Commission, at the time of the appointment of such member—

(i) to serve as the Chairperson of the Commission; and

(ii) to serve as the Vice Chairperson of the Commission.

(B) TERM.—A member shall serve as the Chairperson or Vice Chairperson of the Commission under subparagraph (A) for the term of such member.

(C) VACANCY.—In the case of a vacancy in the Chairpersonship or Vice Chairpersonship, the Comptroller General shall designate another member to serve for the remainder of the vacant member's term.

(c) DUTIES.—The Commission shall—

(1) review the health workforce policies implemented—

(A) under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395, 1396 et seq.);

(B) under titles VII and VIII of the Public Health Service Act (42 U.S.C. 292, 296 et seq.);

(C) by the National Institutes of Health;

(D) by the Department of Health and Human Services;

(E) by the Department of Veterans Affairs; and

(F) by other departments and agencies as appropriate;

(2) analyze and make recommendations to improve the methods used to measure and monitor the health workforce and the relationship between the number and make up of such personnel and the access of individuals to appropriate health care;

(3) review the impact of health workforce policies and other factors on the ability of the health care system to provide optimal medical and health care services;

(4) analyze and make recommendations pertaining to Federal incentives (financial, regulatory, and otherwise) and Federal programs that are in place to promote the education of an appropriate number and mix of health professionals to provide access to appropriate health care in the United States;

(5) analyze and make recommendations about the appropriate supply and distribution of physicians, nurses, and other health professionals and personnel to achieve a health care system that is safe, effective, patient centered, timely equitable, and efficient;

(6) analyze the role and global implications of internationally trained physicians, nurses, and other health professionals and personnel in the United States health workforce;

(7) analyze and make recommendations about achieving appropriate diversity in the United States health workforce;

(8) conduct public meetings to discuss health workforce policy issues and help formulate recommendations for Congress and the Secretary of Health and Human Services;

(9) in the course of meetings conducted under paragraph (8), consider the results of staff research, presentations by policy experts, and comments from interested parties;

(10) make recommendations to Congress concerning health workforce policy issues;

(11) not later than April 15, 2004, and each April 15 thereafter, submit a report to Congress containing the results of the reviews conducted under this subsection and the recommendations developed under this subsection;

(12) periodically, as determined appropriate by the Commission, submit reports to Congress concerning specific issues that the Commission determines are of high importance; and

(13) carry out any other activities determined appropriate by the Secretary of Health and Human Services.

(d) ONGOING DUTIES CONCERNING REPORTS AND REVIEWS.—

(1) COMMENTING ON REPORTS.—

(A) SUBMISSION TO COMMISSION.—The Secretary of Health and Human Services shall transmit to the Commission a copy of each report that is submitted by the Secretary to Congress if such report is required by law and relates to health workforce policy.

(B) REVIEW.—The Commission shall review a report transmitted under subparagraph (A) and, not later than 6 months after the date on which the report is transmitted, submit to the appropriate committees of Congress written comments concerning such report. Such comments may include such recommendations as the Commission determines appropriate.

(2) AGENDA AND ADDITIONAL REVIEWS.—

(A) IN GENERAL.—The Commission shall consult periodically with the chairman and ranking members of the appropriate committees of Congress concerning the agenda and progress of the Commission.

(B) ADDITIONAL REVIEWS.—The Commission may from time to time conduct additional reviews and submit additional reports to the appropriate committees of Congress on topics relating to Federal health workforce-related programs and as may be requested by the chairman and ranking members of such committees.

(3) AVAILABILITY OF REPORTS.—The Commission shall transmit to the Secretary of Health and Human Services a copy of each report submitted by the Commission under this section and shall make such reports available to the public.

(e) POWERS OF THE COMMISSION.—

(1) GENERAL POWERS.—Subject to such review as the Comptroller General determines to be necessary to ensure the efficient administration of the Commission, the Commission may—

(A) employ and fix the compensation of the Executive Director and such other personnel as may be necessary to carry out its duties;

(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(C) enter into contracts or make other arrangements as may be necessary for the conduct of the work of the Commission.

(D) make advance, progress, and other payments that relate to the work of the Commission;

(E) provide transportation and subsistence for personnel who are serving without compensation; and

(F) prescribe such rules and regulations at the Commission determined necessary with respect to the internal organization and operation of the Commission.

(2) INFORMATION.—To carry out its duties under this section, the Commission—

(A) shall have unrestricted access to all deliberations, records, and nonproprietary data maintained by the General Accounting Office;

(B) may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under this section, on a schedule that is agreed upon between the Chairperson and the head of the department or agency involved;

(C) shall utilize existing information (published and unpublished) collected and assessed either by the staff of the Commission or under other arrangements;

(D) may conduct, or award grants or contracts for the conduct of, original research and experimentation where information available under subparagraphs (A) and (B) is inadequate;

(E) may adopt procedures to permit any interested party to submit information to be used by the Commission in making reports and recommendations under this section; and

(F) may carry out other activities determined appropriate by the Commission.

(f) ADMINISTRATIVE PROVISIONS.—

(1) COMPENSATION.—While serving on the business of the Commission a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for under level IV of the Executive Schedule under title 5, United States Code.

(2) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(3) EXECUTIVE DIRECTOR AND STAFF.—The Comptroller General shall appoint an individual to serve as the interim Executive Director of the Commission until the members of the Commission are able to select a permanent Executive Director under subsection (e)(1)(A).

(4) ETHICAL DISCLOSURE.—The Comptroller General shall establish a system for public disclosure by members of the Commission of financial and other potential conflicts of interest relating to such members.

(5) AUDITS.—The Commission shall be subject to periodic audit by the Comptroller General.

(g) FUNDING.—

(1) REQUESTS.—The Commission shall submit requests for appropriations in the same manner as the Comptroller General submits such requests. Amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $6,000,000 for fiscal year 2004, and such sums as may be necessary for each subsequent fiscal year, of which—

(A) 80 percent of such appropriated amount shall be made available from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i); and

(B) 20 percent of such appropriation shall be made available for amounts appropriated to carry out title XIX of such Act (42 U.S.C. 1396 et seq.).

(h) DEFINITION.—In this Act, the term ''appropriate committees of Congress'' means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

By Mr. LEAHY:

S. 1499. A bill to adjust the boundaries of Green Mountain National Forest; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. LEAHY. Mr. President, today I am introducing a bill to expand the boundaries of the Green Mountain National Forest. This will allow for the inclusion of lands that have already been purchased using Land and Water Conservation Fund dollars to be brought into the boundaries of the national forest providing them full statutory protection. The Forest Service supports this administrative action and has been extremely helpful in providing the information needed for this legislation.

It is with pride that I can say that since I came to Congress in 1975 and began to seek funding for land acquisition in 1977 we Vermonters have seen the Green Mountain National Forest expand from approximately 264,100 acres to over 387,500 acres in size. This 123,400 acre expansion will provide unmeasured opportunities for the American public.

While there is much debate over the future management of our Nation's national forests today, this should not diminish their importance. In Vermont, where approximately five percent of land base is in federal ownership, these lands are treasured for the opportunities they provide not only to Vermonters, but to all who enjoy the Green Mountain National Forest. This includes recreational activities from camping, hiking, mountain biking, and skiiing to job opportunities provided through timber management activities, the ski industry, and other support services, as well as for their intrinsic value by providing that certain lands are set aside for in their natural state through wilderness protection and other special designations.

I am concerned that some will argue that we need to reduce our land acquisition dollars and to better manage what we already have. I do not dispute the need for better management, but I wholeheartedly disagree with reducing our land acquisition efforts. At one time this Nation believed that our boundaries were limitless. Today we realize that land is a finite resource and as more is acquired for development less will available for the American public to acquire for Federal ownership. There will come a time when the only land one can freely access, thereby avoiding the ''No Trespassing'' signs, will be our Federal, State, and county lands. Visionaries see what tomorrow will bring and prepare for that today—those who are still building upon our public land base have that vision.

At the turn of the century, the 20th century that is, there existed that vision, between then Chief of the Forest Service Gifford Pinchot and President Theodore Roosevelt who together expanded the boundaries of the national forests immensely. We continue to need that vision, as seen by the efforts by those on the Green Mountain National Forest, in continuing to fund land acquisition into the future.

This need, for providing the American public with unfettered access to open lands, is of significant importance to those who live east of the Mississippi; where more than 50 percent of the American public are within three hours of their national forests, but only have access to approximately one-quarter of the national forest land. I hope that my colleagues will join me in supporting this bill and continue to carry that vision on the future to build

upon our national forest system as we start the 21st century.

By Mr. MCCAIN (by request):

S. 1501. A bill to amend title 49, United States code, to provide for stable, productive, and efficient passenger rail service in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, today, by request, I am introducing the Passenger Rail Investment Reform Act, the Administration's long-awaited legislative proposal for restructuring Amtrak and the intercity passenger rail program. In doing so, I want to express my appreciation to Transportation Secretary Mineta and departing Deputy Secretary Michael Jackson for meeting their commitment to me in April to deliver the Administration's proposal before the August recess. I also want to credit the work of the Amtrak Reform Council, the basis for several elements of the Administration's plan.

Amtrak began operation in 1971 as a for-profit corporation and was to be free of all Federal support by 1973. Throughout its history, including between 1997 and 2001, Amtrak led Congress to believe that profitability, or at least operational self-sufficiency was achievable. But 32 years after its establishment, Amtrak is running annual deficits exceeding $1 billion; has run up a debt of nearly $5 billion; continues to operate trains that lose over $400 per passenger; and yet still has less than 1 percent of the intercity travel market. Clearly, reform is needed.

I hope the legislation I am introducing today will serve as the basis for developing a consensus about the future of Amtrak and intercity rail passenger service. Even Amtrak supporters should admit that without significant restructuring, the passenger rail program cannot be entrusted with billions of dollars of additional financial support from the taxpayers, as some are proposing, particularly financing outside of the annual appropriations process, which at least gives Congress the ability to adjust Amtrak's funding based on its performance and use of taxpayer dollars. Nor, in my view, should high-speed rail projects go forward until the Amtrak problem is solved.

My priority is to establish a network of train service that makes economic sense, minimizes subsidies at all levels of government, and provides fair and open competition for Amtrak. The Administration's proposal is a good start. Federal support for intercity passenger rail service would be modeled after the existing transit program and consist of capital funding matched by the States and managed through a ''full funding grant agreement'' process. States, rather than the Federal Government, would be responsible for funding operating losses after a transition period.

Following the recommendation of the Amtrak Reform Council, the legislation would divide Amtrak into an operating company which would operate train services, and an infrastructure company which would maintain the Northeast Corridor (NEC). After a transition period, the services provided by both companies would be subject to competition through competitive bidding. The NEC would be restored to a state of good repair, and leased to and managed by an interstate compact. Amtrak would not be privatized but would have to compete with companies in the private sector, ensuring a lower-cost solution for the taxpayers.

I intend to hold a hearing on the Administration's bill and the bill being introduced today by Senator HUTCHISON, the Chairman of the Subcommittee on Surface Transportation and Merchant Marine. If a consensus can be reached on a responsible proposal to fund and reform Amtrak and provide for an improved rail passenger program, the Committee will mark up legislation in the fall.

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. 1501

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Passenger Rail Investment Reform Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PURPOSES; DEFINITIONS.

(a) PURPOSES.—The purposes of this Act are to—

(1) preserve an intercity passenger rail service system in the United States that is driven by sound economics;

(2) provide a transition from the existing structure for providing such service to a structure that is more aligned with existing and emerging transportation needs;

(3) develop a system that provides high quality passenger rail service at a reasonable cost;

(4) establish a long-term partnership among the states and the Federal government to support intercity passenger rail service; and

(5) create an effective public-private partnership, after a reasonable transition, to manage the capital assets of the Northeast Corridor.

(b) DEFINITIONS.—In this Act:

(1) YEAR 1.—The term ''year 1'' means the earlier of—

(A) the fiscal year in which this Act is enacted if the fiscal year began less than 61 days before such date; or

(B) the first fiscal year beginning after the date of enactment of this Act.

(2) YEARS 2, 3, 4, 5, AND 6.—The terms ''year 2'', ''year 3'', ''year 4'', ''year 5'', and ''year 6'', mean, respectively, the first, second, third, fourth, and fifth fiscal years following year 1.

TITLE I—NATIONAL PASSENGER RAIL SERVICE RESTRUCTURING

SEC. 101. BOARD OF DIRECTORS OF AMTRAK.

Section 24302 of title 49, United States Code, is amended to read as follows:

''§ 24302. Board of directors

''(a) MEMBERSHIP.—

''(1) IN GENERAL.—Until the board of directors provided for in subsection (f) assumes operational responsibility and control, the board of directors of Amtrak shall be the transition board provided for by this subsection.

''(2) TRANSITION BOARD.—The transition board of directors of Amtrak shall consist of 11 voting members, including—

''(A) the Secretary of Transportation, or an officer of the United States within the Department of Transportation compensated under the Executive Schedule under title 5, who is designated by the Secretary; and

''(B) 10 other members appointed by the President, by and with the advice and consent of the Senate.

''(3) PRESIDENT OF AMTRAK.—The President of Amtrak shall serve as an ex officio, nonvoting, member of the transition board of directors.

''(b) COMPENSATION.—Members of the transition board of directors shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

''(c) TERM OF OFFICE.—Members serving un-expired terms on the date of enactment of the Passenger Rail Investment Reform Act may continue to serve until the earlier of the expiration of their terms or the date on which the restructuring mandated under section 24310 of this title is implemented. Members appointed by the President under subsection (a)(1)(B) shall serve for a term that

expires on the date the restructuring mandated in section 24310 of this title is implemented. At the expiration of their terms, members of the Board shall be eligible to serve as members of the boards of successor corporations to Amtrak.

''(d) QUORUM.—At any time after the date of enactment of the Passenger Rail Investment Reform Act, a majority of the transition board members who have been lawfully appointed shall constitute a quorum for purposes of conducting board meetings and making all necessary decisions regarding the operations, structure, and business affairs of Amtrak.

''(e) ASSET TRANSITION COMMITTEE.—

''(1) IN GENERAL.—The transition board of directors shall form an asset transition committee comprised of the Secretary or the Secretary's designee, and 2 other members, or 1 other member if 2 other members are not lawfully appointed.

''(2) POWERS AND DUTIES.—In addition to other powers and duties assigned by the board, the Asset Transition Committee has the duty to ensure that the public interest is served in board decisions and Amtrak management actions that change the use of or status of—

''(A) the contractual right of access of Amtrak to rail lines of other railroads;

''(B) Amtrak secured debt;

''(C) Northeast Corridor real property and assets; and

''(D) rolling stock.

''(3) APPROVAL REQUIRED.—The board may not take an action with regard to the assets or secured debt specified in paragraph (2), or permit an Amtrak management action with regard to those assets, that is not approved by the asset transition committee.

''(f) BOARD AFTER RESTRUCTURING COMPLETED.—

''(1) IN GENERAL.—Upon the commencement of operations of the Passenger Rail Service Provider and the Passenger Rail Infrastructure Manager established under section 24310 of this title, the board of directors of Amtrak shall consist of—

''(A) the Secretary of Transportation;

''(B) the Federal Railroad Administrator or another officer of the United States within the Department of Transportation compensated under the Executive Schedule under title 5, United States Code, who is designated by the Secretary; and

''(C) the Federal Transit Administrator or another officer of the United States within the Department of Transportation compensated under the Executive Schedule under title 5, who is designated by the Secretary.

''(2) TRANSITION BOARD DIRECTORS SHIFTED.—When the board of directors provided for in paragraph (1) takes office, the members of the transition board of directors, with the exception of the Secretary of Transportation, shall—

''(A) cease to serve as appointees of the President to the transition board of directors; and

''(B) become members of the board of directors of the Passenger Rail Service Provider or the Passenger Rail Infrastructure Manager established under section 24310 of this title.''.

SEC. 102. PASSENGER RAIL SERVICE RESTRUCTURING.

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by inserting after section 24309 the following:

''§ 24310. Amtrak restructuring mandate

''(a) IN GENERAL.—Within 6 months after year 1 begins, and notwithstanding any other provision of this title, the transition board of directors shall prepare a plan to restructure Amtrak management, personnel, assets, operations, and other activities and relationships to conform to the requirements of this section. The board shall transmit the completed plan to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the House of Representatives and Senate.

''(b) MINIMUM REQUIREMENTS.—At a minimum, the restructuring plan shall provide for the following:

''(1) ARTICLE OF INCORPORATION FOR 2 NEW ENTITIES.—The filing of appropriate articles of incorporation under State law for 2 business corporations that are entirely independent of Amtrak, 1 of which shall be known as the 'Passenger Rail Service Provider' and the other of which shall be knows as the 'Passenger Rail Infrastructure Manager', and referred to collectively as the 'successor corporations'.

''(2) TRIFURCATION OF AMTRAK.—The division of Amtrak into 3 functionally independent entities as follows:

''(A) A corporation, hereinafter referred to as 'Amtrak', that shall provide overall supervision of Amtrak restructuring and subsequent management of residual responsibilities, including succeeding to the legal rights of the National Railroad Passenger Corporation, and including specifically Amtrak's legal right of access to other railroads, following transfer of rail operations and infrastructure management to the successor corporations established under paragraph (1).

''(B) A corporation that shall provide passenger rail operating services nationwide, including operation of the reservation centers and ownership and management of existing rolling stock and its maintenance.

''(C) A corporation that shall provide passenger rail infrastructure management.

''(3) ASSIGNMENT OF AMTRAK PERSONNEL.—The assignment of all Amtrak personnel by name to one of the entities specified in paragraph (2), with no loss of pay or benefits, including seniority rights to employment within any entity, except that an employee who elects employment with the corporation described in paragraph (2)(A) shall become an employee of that corporation, with only such rights regarding pay and benefits as the corporation shall determine.

''(4) The division of accounting, finance, budget, assets, and personnel to provide for the operation and funding of each entity independently.

''(5) A transition schedule that provides for completion of the restructuring not later than the last day of year 1.

''(c) SUCCESSOR CORPORATIONS.—

''(1) Consistent with the business corporation law of the State of incorporation of the successor corporations under subsection (b)(1), each of the successor corporations shall be qualified to undertake railroad activities of an operational or infrastructure nature on a contractual basis with Amtrak or any other entity.

''(2) The Passenger Rail Service Provider—

''(A) shall have the exclusive right, until the last day of year 3, to continue to provide the intercity passenger service that is being provided by Amtrak on the date of enactment of the Passenger Rail Investment Reform Act, but after the last day of year 1, may operate such passenger rail service only under a contract; and

''(B) shall provide interline reservations services to any other provider of intercity passenger rail services on the same basis and rates as services are provided to the operational entities that provide service within Amtrak on the date of enactment of that Act.

''(3) The Passenger Rail Infrastructure Manager—

''(A) shall have the exclusive right, until the last day of year 6, to continue to provide the dispatching, maintenance, and infrastructure services that are being provided by Amtrak on the date of enactment of the Passenger Rail Investment Reform Act, but after the last day of year 1, may provide these services only under a contract; and

''(B) shall carry out the multi-year infrastructure plan prepared by Amtrak to the extent that funds are made available.

''(4)(A) The successor corporations are not a department, agency, or instrumentality of the United States Government nor are they Government corporations (as defined in section 103 of title 5).

''(B) Chapter 105 of this title does not apply to the successor corporations, except that—

''(i) laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a rail carrier providing transportation subject to chapter 105 apply to the successor corporations; and

''(ii) the employee retirement, annuity, and unemployment systems that apply to a rail carrier providing transportation subject to chapter 105 apply to the corporation described in subsection (b)(2)(A).

''(C) Subsections (c) through (l) of section 24301 of this title shall apply to the successor corporations.

''(5) Subject to further action by the board of directors, the president of Amtrak on the date of enactment of the Passenger Rail Investment Reform Act shall be offered the position of chief executive officer of the Passenger Rail Service Provider.

''(6) The contractual rights of successor corporations to provide services may not be extended beyond the dates set forth in paragraphs (2) and (3), as applicable, without competitive bid.

''(7) The Passenger Rail Service Provider shall provide to the Secretary of Transportation not later than the end of year 2, recommendations on the feasibility, advantages, and disadvantages of separation of the reservation centers into a free-standing entity that can become an element of an intermodal reservations service.

''(8) The corporation described in subsection (b)(2)(A) shall retain all legal rights pertaining to the name 'Amtrak,' and may, at its option, license or otherwise make the name 'Amtrak' commercially available in connection with intercity passenger rail and related services.

''(d) ROLLING STOCK AND SHOPS.—

''(1) With respect to any route on which intercity passenger rail service is provided on the date of enactment of the Passenger Rail Investment Reform Act, the Passenger Rail Service Provider shall make available to any replacement operator the legacy equipment that is associated with the service on the route.

''(2) Such equipment and services shall be made available on such terms as Amtrak determines are fair, reasonable, and in the public interest.

''(e) FREIGHT AND COMMUTER OPERATIONS.—

''(1) Amtrak shall ensure that the implementation of the restructuring prescribed in

this section gives due consideration to the needs of freight and commuter rail operations that, as of the effective date of the Passenger Rail Investment Reform Act, operate in the Northeast Corridor on Amtrak right of way.

''(2) Notwithstanding paragraph (1), commuter services headquartered in a State or Commonwealth that is not a member of the Northeast Corridor Compact after the last day of year 2, shall pay the fully allocated costs incurred by the successor corporation or any successor entity for access to and use of the Northeast Corridor for such services.

''(3) The right of access by Amtrak to rail lines owned by other carriers is, as of the date of enactment of the Passenger Rail Investment Reform Act, restricted as follows:

''(A) The terms and conditions for operation of an intercity passenger rail route or frequency to be added after that date shall be determined by negotiation and mutual agreement between the host railroad and the operator of the route or frequency sought to be added, with no preferential right of access.

''(B) If not utilized by Amtrak, Amtrak's right of access to any segment of rail line owned by another rail carrier may be assigned to no more than 1 intercity passenger rail operator during the term of the assignment, except by agreement among Amtrak, its assignee, and the owner of the rail line.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by inserting the following after the item relating to section 24309:

''24310. Amtrak restructuring mandate''.

SEC. 103. NORTHEAST CORRIDOR COMPACT.

(a) CONSENT TO COMPACT.—

(1) IN GENERAL.—The States and the District of Columbia that constitute the Northeast Corridor, as defined in section 24102 of title 49, United States Code, may enter into a multistate compact, not in conflict with any other law of the United States, to be known as the Northeast Corridor Compact, to provide passenger rail service and to conduct related activities in the Northeast Corridor.

(2) CONGRESSIONAL APPROVAL REQUIRED.—The Northeast Corridor Compact shall be submitted to Congress for its consent. It is the sense of the Congress that rapid consent to the Compact is a priority matter for the Congress.

(b) COMPACT COMMISSION.—

(1) IN GENERAL.—There is hereby established a commission to be known as the Northeast Corridor Compact Commission. The Commission shall be composed of—

(A) 2 members (or their designees), to be selected by the Secretary of Transportation;

(B) 2 members (or their designees), to be selected by agreement of—

(i) the governors of Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts (hereinafter referred to as the ''participating States''); and

(ii) the mayor of the District of Columbia; and

(C) 1 member to be selected by the 4 members selected under subparagraphs (A) and (B).

(2) ADMINISTRATIVE PROVISIONS.—

(A) Members of the Commission shall be appointed for the life of the Commission.

(B) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(C) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(D) The Chairman of the Commission shall be elected by the members.

(E) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(F) Upon the request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

(G) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(c) FUNCTIONS.—

(1) The Commission shall prepare for the consideration of and adoption by participating States, the District of Columbia, and the Secretary of Transportation an interstate compact that provides for—

(A) full authority for 99 years to succeed to the responsibilities of the National Railroad Passenger Corporation as operator of the Northeast Corridor, subject to the provisions of a lease from the Department of Transportation;

(B) execution of a lease of the Northeast Corridor from the Department of Transportation, for a period of 99 years, subject to appropriate provisions protecting the lessor's interests, including reversion of all lease interests to the lessor in the event the lessee fails to meet its financial obligations or otherwise assume financial responsibility for Northeast Corridor functions;

(C) responsibility for Corridor maintenance and improvement;

(D) operation of intercity passenger rail service;

(E) arrangements for operation of freight railroad operations and commuter operations;

(F) assumption of financial responsibility for Northeast Corridor functions;

(G) authority to make use of the Corridor for non-rail purposes; and

(H) participation by the Department of Transportation, as the non-voting representative of the United States.

(2) The compact terms shall, at a minimum, conform to the requirements of subsections (e) through (i) of this section.

(d) FINAL COMPACT PROPOSAL.—

(1) The Commission shall submit a final compact proposal to participating States, the District of Columbia, and the Federal Government not later than the last day of year 1.

(2) The Commission shall terminate on the 180th day following the date of transmittal of the final compact proposal under this subsection. All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the National Archives.

(e) GOVERNANCE AND FUNDING REQUIREMENTS FOR COMPACT.—

(1) The governance provisions of the compact shall provide a mechanism to ensure voting representation for the participating States and the District of Columbia and for non-voting representation for the Secretary of Transportation as an ex officio member participating in all Compact affairs.

(2) The provisions of the compact shall establish the financial obligations of each compact member and shall provide for its management of rail services in the Northeast Corridor.

(f) EMPLOYEE INTEREST REQUIREMENTS FOR COMPACT.—The employee provisions of the compact shall, at a minimum, provide the following with regard to employees in the Northeast Corridor if the Compact chooses to replace the successor corporations for operation and maintenance of the physical plant or operation of passenger trains, or both:

(1) Payment of any labor protection payments owed and not paid by the successor corporations established under section 24310(b) of title 49, United States Code.

(2) In the case of an employee who is employed by the National Railroad Passenger Corporation on the date of enactment of the Passenger Rail Investment Reform Act and who accepts employment by a successor corporation, a right of first refusal to accept a substantially similar position with the replacement operator when the successor corporation is replaced.

(g) FEDERAL INTEREST REQUIREMENTS FOR COMPACT.—The provisions of the Compact shall hold the United States Government harmless as to the actions of the Compact under the lease of rights to the Northeast Corridor by the United States Government.

(h) COMPACT BORROWING AUTHORITY.—

(1) The borrowing authority provisions of the Compact may authorize it to issue bonds or other debt instruments from time to time at its discretion for purposes that include paying any part of the cost of rail service improvements, construction, and rehabilitation and the acquisition of real and personal property, including operating equipment, except that debt issued by the Compact may be secured only by revenues to the Compact and may not be a debt of a participating State, the District of Columbia, or the Federal Government.

(2) The debt authorized by this subsection shall under no circumstances be backed by the full faith and credit of the United States, and a grant made under the authority of this Act or under the authority of part C of subtitle V of title 49, United States Code, shall include an express acknowledgement by the grantee that the debt does not constitute an obligation of the United States.

(i) ADOPTION OF COMPACT; TURNOVER.—

(1) The participating States and the District of Columbia shall adopt a final compact agreement not later than the last day of year 2, and the Compact shall thereafter assume responsibility for all Northeast Corridor operations from the successor corporations on a date that is not later than 8 months following adoption of the Compact.

(2) In the event that the participating States and the District of Columbia do not adopt the final compact agreement and make it operational under the schedule set forth in this section, the Secretary of Transportation shall assume control of the corporation described in section 24310(b)(2)(A) of title 49, United States Code, and shall make such legislative recommendations as the President judges necessary and expedient to Congress that address the monetary contributions by Northeast Corridor states and the District of Columbia that would be necessary to provide continued intercity passenger rail service in the Northeast Corridor.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out the purposes of this section.

SEC. 104. ASSISTANCE TO ADDRESS CAPITAL NEEDS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation, for capital expenditures in compliance with capital spending plans developed under section 202 of this Act, including the Secretary's expenses related thereto, the following amounts:

(1) Such sums as may be necessary for year 3.

(2) Such sums as may be necessary for year 4.

(3) Such sums as may be necessary for year 5.

(4) Such sums as may be necessary for year 6.

(b) OBLIGATION OPTIONS.—

(1) Subject to paragraph (2), the Secretary may obligate the funds authorized by this section through grants to or cooperative agreements with States, the Passenger Rail Service Provider, the Northeast Corridor Compact or another qualified Compact, or through contracts with private companies.

(2) Funds appropriated under this section shall not be obligated and not be disbursed from the Treasury for the Northeast Corridor Compact until it has been established and is empowered and qualified to enter into contracts for the expenditure of the funds.

(c) ELIGIBILITY OF EXPENDITURES.—

(1) The Federal share of expenditures for capital improvements under this section may be not more than 100 percent and is solely authorized for the purpose of funding deferred maintenance, safety, and security projects. Expenditures for capacity expansion are not authorized by this section.

(2) Funds appropriated under this section may be obligated for an expenditure only if the Secretary has determined in writing that the expenditure on any railroad infrastructure investments is limited to a route or routes with a useful life of at least 5 years.

SEC. 105. EMPLOYEE TRANSITION ASSISTANCE; AUTHORIZATION.

(a) PROVISION OF FINANCIAL INCENTIVES.—To facilitate the restructuring required by this title, the Secretary is authorized to develop a program under which the Secretary may, at the Secretary's discretion, provide grants for financial incentives to be provided to employees of the National Railroad Passenger Corporation who voluntarily terminate their employment with the Corporation or the successor corporations (as such term is used in section 24310(b)(1) of title 49, United States Code) and relinquish any legal rights to receive termination-related payments under any contractual agreement with the Corporation or the successor corporations.

(b) CONDITIONS FOR FINANCIAL INCENTIVES.—As a condition for receiving financial assistance grants under this section, the Corporation or the successor corporations shall certify that—

(1) the financial assistance results in a net reduction in the total number of employees equal to the number receiving financial incentives;

(2) the financial assistance results in a net reduction in total employment expense equivalent to the total employment expenses associated with the employees receiving financial incentives; and

(3) the total number of employees eligible for termination-related payments will not be increased without the express written consent of the Secretary.

(c) AMOUNT OF FINANCIAL INCENTIVES.—The financial incentives authorized under this section may not exceed $50,000 per employee.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to make grants to the National Railroad Passenger Corporation or the successor corporations to fund termination-related payments to employees under existing contractual agreements from the first day of year 1 through the last day of year 4.

SEC. 106. LIMIT ON OPERATING ASSISTANCE FOR LONG-DISTANCE ROUTES.

(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''§ 24316. Limit on operating assistance for long-distance routes

''(a) GENERAL AUTHORITY.—

''(1) GRANT AUTHORITY.—After the last day of year 1, the Secretary of Transportation may make grants for operating assistance under the authority of this section, and not under any other provision of law, to reimburse operators of long-distance routes and corridor feeder routes for the operating expenses incurred in operating those routes to provide intercity passenger rail transportation.

''(2) CONDITIONS.—A grant under this section shall be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including limitations on what operating expenses are eligible for reimbursement and documentation of eligible operating losses on a quarterly basis.

''(b) FEDERAL SHARE OF OPERATING EXPENSES.—

''(1) IN GENERAL.—No funds appropriated to carry out this section may be used to fund operating expenses of a long-distance route after the last day of year 1, except as provided in paragraph (2).

''(2) REIMBURSABLE AMOUNT FOR YEARS 2, 3, AND 4.—The Secretary may reimburse an operator of a long-distance route or a corridor feeder route for operating expenses on that route that do not exceed the operating losses on that route and are not more than—

''(A) $0.40 per-passenger mile during year 2;

''(B) $0.20 per-passenger mile during year 3; or

''(C) $0.10 per-passenger mile during year 4.

''(3) TERMINATION AFTER YEAR 4.—The Secretary may not reimburse an operator of a long-distance route or a corridor feeder route for operating expenses under this section after year 4.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section, including administrative costs.''.

(b) CONFORMING AMENDMENTS.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

''24316. Limit on operating assistance for long-distance routes''.

SEC. 107. DEFINITIONS.

Section 24102 of title 49, United States Code, is amended—

(1) by redesignating paragraphs (5) through (9) as paragraphs (6) through (10), respectively;

(2) by inserting after paragraph (4) the following:

''(5) 'corridor feeder route' means a portion of a long distance train or route that provides services between regional corridors by connecting to endpoints of the corridors.'';

(3) by redesignating paragraphs (7) through (10), as redesignated, as paragraphs (9) through (12), respectively;

(4) by inserting after paragraph (6), as redesignated, the following:

''(7) 'legacy equipment' means the rolling stock required to provide intercity passenger rail service owned or leased by the National Railroad Passenger Corporation on the date of enactment of the Passenger Rail Investment Reform Act.

''(8) 'long distance train' or 'long distance route' means all or a portion of the following trains or routes operated by the National Railroad Passenger Corporation on the date of enactment of the Passenger Rail Investment Reform Act:

''(A) The Silver Star.

''(B) The Three Rivers.

''(C) The Cardinal.

''(D) The Silver Meteor.

''(E) The Empire Builder.

''(F) The Capitol Limited.

''(G) The California Zephyr.

''(H) The Southwest Chief.

''(I) The City of New Orleans.

''(J) The Texas Eagle.

''(K) The Sunset Limited.

''(L) The Coast Starlight.

''(M) The Lake Shore Limited.

''(N) The Palmetto.

''(O) The Crescent.

''(P) The Pennsylvanian.

''(Q) The Auto Train.; and

(5) by adding at the end the following:

''(13) 'year 1' means the earlier of—

''(A) the fiscal year in which the Passenger Rail Investment Reform Act is enacted if the fiscal year began less than 61 days before such date; or

''(B) the first fiscal year beginning after the date of enactment of that Act.

''(14) 'year 2', 'year 3', 'year 4', 'year 5', and 'year 6', mean, respectively, the first, second, third, fourth, and fifth fiscal years following year 1.''.

SEC. 108. REPEAL OF OBSOLETE AND EXECUTED PROVISIONS OF LAW.

(a) IN GENERAL.—Title 49, United States Code, is amended by repeal of the following sections:

(1) Section 24701.

(2) Section 24706.

(3) Section 24901.

(4) Section 24902.

(5) Section 24904.

(6) Section 24906.

(7) Section 24909.

(b) AMENDMENT OF SECTION 24305.—Section 24305 of title 49, United States Code, is amended—

(1) by striking paragraph (2) of subsection (a) and redesignating paragraph (3) as paragraph (2);

(2) by striking paragraph (4) of subsection (b) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(3) by inserting ''With regard to items acquired with funds provided by the Federal Government,'' before ''Amtrak'' in subsection (f)(2).

(c) CONFORMING AMENDMENTS.—The chapter analyses for chapters 243, 247, and 249 or title 49, United States Code, are amended, as appropriate, by striking the items relating to sections 24307, 24701, 24706, 24901, 24902, 24904, 24906, 24908, and 24909.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of year 1.

TITLE II—FINANCIAL REFORMS

SEC. 201. LIMITATIONS ON AVAILABILITY OF GRANTS.

(a) IN GENERAL.—Chapter 43 of title 49, United States Code, is amended by inserting after section 24313 the following:

"§ 24314. Transitional limitations on availability of grants

''(a) REQUIREMENTS PRIOR TO RESTRUCTURING.—A grant made to the National Railroad Passenger Corporation under the authority of this part between the first day of year 1, and the establishment and commencement of operations by the successor corporations under section 24310 of this title may only be made subject to the following limitations:

''(1) The Secretary of Transportation shall not disburse funding to cover operating losses on a long-distance train route without first receiving and approving a grant request for that specific train route.

''(2) Each such grant request shall be accompanied by a detailed financial analysis and revenue projection justifying the Federal support to the Secretary's satisfaction.

''(3) The Secretary of Transportation and the board of directors of the Corporation shall ensure that, of the amount made available by appropriations for capital and operating assistance to the Corporation in a fiscal year, sufficient sums are reserved to satisfy the contractual obligations of the Corporation to provide commuter and intrastate passenger rail service.

''(4) Not later than December 31 prior to each fiscal year in which grants are made to the Corporation, the Corporation shall transmit to the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the House of Representatives and Senate Committees on Appropriations a business plan for operating and capital improvements to be funded in the fiscal year under section 24104(a) of this title 49.

''(5) The business plan shall include a description of the work to be funded, along with cost estimates and an estimated timetable for completion of the projects covered by the business plan.

''(6) Each month of each fiscal year in which grants are made to the Corporation, the Corporation shall submit to the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the House of Representatives and Senate Committees on Appropriations a supplemental report regarding the business plan, which shall describe the work completed to date, any changes to the business plan, and the reasons for such changes.

''(7) A grant that is not approved by the Secretary of Transportation and an element of the Corporation's current fiscal year business plan may not be used for operating expenses or capital projects, and may not be obligated or expended unless the Corporation certifies, as part of the grant agreement, that it has complied with and will abide by the following requirements:

''(A) The Corporation's management will maintain financial controls and accounting transparency to the satisfaction of the Secretary, including developing or enhancing any existing capacity separately to report—

''(i) all revenue and expenses associated with rail operations by route; and

''(ii) budgeted and actual expenditures for all capital investments.

''(B) The Corporation's management will provide a monthly performance report to the board of directors, the Secretary of Transportation, and the committees of Congress described in paragraph (6). The Corporation shall also make available to the Secretary the same details and reports on its financial performance that it makes available to Amtrak management, at the same time that it provides those reports and details to Amtrak management.

''(C) The Corporation shall expend funds only for the continuation of existing plants and services. With the exception of expenditures for which it obtains written approval from the Secretary of Transportation, the Corporation will not use of any of its funds for expansion or planning for expansion of rail service, including high speed rail service.

''(D) The Corporation has negotiated with its employees substantial operating cost reductions needed to make its operations competitive with private-sector service providers.

''(b) REQUIREMENTS FOLLOWING RESTRUCTURING.—Any grant made directly to a successor corporation (as such term is used in section 24310(b)(1)) under the authority of this part may only be made subject to the following limitations:

''(1) The Secretary of Transportation shall not disburse funding to cover operating losses on a long-distance train route without first receiving and approving a grant request for that specific train route.

''(2) Each such grant request shall be accompanied by a detailed financial analysis and revenue projection justifying the Federal support to the Secretary's satisfaction.

''(3) The Secretary shall ensure that, of the amount made available by appropriations for capital and operating assistance in a fiscal year, sufficient sums are reserved to satisfy the successor corporation's contractual obligations, if any, with respect to commuter and intrastate passenger rail service.

''(4) Not later than December 31 prior to each fiscal year in which grants are made, the successor corporations shall each transmit to the Secretary of Transportation a business plan for operating and capital improvements to be funded in the fiscal year.

''(5) The business plan shall include a description of the work to be funded, along with cost estimates and an estimated timetable for completion of the projects covered by the business plan.

''(6) Each month of each fiscal year in which grants are made, the successor corporations shall each submit to the Secretary a supplemental report regarding the business plan, which shall describe the work completed to date, any changes to the business plan, and the reasons for such changes.

''(7) A grant that is not approved by the Secretary of Transportation and an element of the Corporation's current fiscal year business plan may not be used for operating expenses or capital projects, and may not be obligated or expended unless the Corporation certifies, as part of the grant agreement, that it has complied with and will abide by the following requirements:

''(A) Management will maintain financial controls and accounting transparency to the satisfaction of the Secretary, including developing or enhancing any existing capacity separately to report—

''(i) all revenue and expenses associated with rail operations by route; and

''(ii) budgeted and actual expenditures for all capital investments.

''(B) Management of each successor corporation shall make available to the Secretary the same details and reports on its financial performance that it makes available internally, at the same time that it provides those reports and details internally.

''(C) Funds will be spent only on existing plants and services.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by inserting after the item relating to section 24313 the following:

''24314. Transitional limitations on availability of grants''.

SEC. 202. SPENDING PLANS FOR CAPITAL BACKLOG REDUCTION.

(a) IN GENERAL.—Within 6 months after year 1 begins, and as a condition of grants to the National Railroad Passenger Corporation between that date and the implementation of the restructuring required under section 24310 of title 49, United States Code, the Corporation shall prepare a capital spending plan that addresses capital needs, consistent with the funding levels authorized to be provided for year 1 and each fiscal year thereafter through year 6, for—

(1) Northeast Corridor capital assets;

(2) capital assets on long-distance routes other than on the Northeast Corridor; and

(3) capital assets on short-distance routes other than the NortheastCorridor.

(b) APPROVAL BY THE SECRETARY AND THE COMPACT.—

(1) IN GENERAL.—The Corporation shall submit the capital spending plan prepared under subsection (a) to the Secretary of Transportation for review and approval. The plan shall be implemented only after approval by the Secretary, and with any modifications specified by the Secretary.

(2) ANNUAL UPDATES.—The plan shall be updated and resubmitted at least annually.

(3) NO PLAN NO GRANT.—After creation of Northeast Corridor Compact, the Secretary may not make a grant to the Compact for capital investments except in accordance with a capital spending plan prepared by the Compact and approved by both the Compact and the Secretary. The same requirements shall apply to grants made to States and other Compacts under this section.

SEC. 203. REDEMPTION OF COMMON STOCK.

(a) VALUATION.—The Secretary of Transportation shall arrange, at the National Railroad Passenger Corporation's expense, for a valuation of all assets and liabilities of the Corporation to be performed by the Secretary of the Treasury, or by a contractor selected by the Secretary of the Treasury. The valuation shall be conducted in accordance with criteria and requirements to be determined by the Secretary in the Secretary's discretion and shall be completed within 6 months after year 1 begins.

(b) REDEMPTION.—

(1) Prior to the transfer of assets to the Secretary directed by section 204 of this Act, and within 9 months after year 1 begins, the Corporation shall redeem all common stock in the Corporation issued prior to the date of enactment of this Act at the value of such stock, based on the valuation performed under subsection (a).

(2) No provision of this Act, or amendments made by this Act, provide to the owners of the common stock a priority over holders of indebtedness or other stock of the Corporation.

(c) ACQUISITION THROUGH EMINENT DOMAIN.—In the event that the Corporation and the owners of its common stock have not completed the redemption of such stock by a date that is within 9 months after year 1 begins, the Corporation shall exercise its right of eminent domain under section 24311 of title 49, United States Code, to acquire that stock. The valuation performed under subsection (a) shall be deemed to constitute just compensation except to the extent that the owners of the common stock demonstrate

that the valuation is less than the constitutional minimum value of the stock.

(d) AMENDMENT OF SECTION 24311.—Section 24311(a)(1) of title 49, United States Code, is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by striking ''Amtrak.'' in subparagraph (B) and inserting ''Amtrak; or''; and

(3) by adding at the end the following:

''(C) necessary to redeem the Corporation's common stock from any holder thereof, including a rail carrier.''.

(e) CONVERSION OF PREFERRED STOCK TO COMMON.—

(1) Subsequent to the redemption of the common stock in the corporation issued prior to the date of enactment of this Act, the Secretary of Transportation shall convert the one share of the preferred stock of the Corporation retained under section 204 of this Act for 10 shares of common stock in the Corporation.

(2) The Corporation shall not issue any other common stock without the express written consent of the Secretary.

SEC. 204. RETIREMENT OF PREFERRED STOCK; TRANSFER OF ASSETS.

(a) TRANSFER.— Not later than 30 days after the redemption or acquisition of stock under section 203 of this Act, the Corporation shall, in return for the consideration specified in subsection (c), transfer to the Secretary of Transportation title to the following assets:

(1) The portions of the Northeast Corridor currently owned or leased by the Corporation as well as any improvements made to these assets, including the rail right-of-way, stations, track, signal equipment, electric traction facilities, bridges, tunnels and all other improvements owned by Amtrak between Boston, Massachusetts, and Washington, District of Columbia (including the route through Springfield, Massachusetts, and the routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor mainline).

(2) Chicago Union Station and rail-related assets in the Chicago metropolitan area.

(3) All other track and right-of-way, stations, repair facilities, and other real property owned or leased by the Corporation.

(b) EXISTING ENCUMBRANCES.—(1) With regard to any assets described in subsection (a) that the Corporation has provided as security or collateral for a debt entered into prior to the date of enactment of this Act, the Corporation shall transfer its underlying legal interest in such asset to the Secretary, but the Corporation shall remain liable for the debt secured by the asset.

(2) The obligation of the National Railroad Passenger Corporation to repay in full any indebtedness to the United States incurred since January 1, 1990, is not affected by this Act or an amendment made by this Act.

(c) CONSIDERATION.—In consideration for the assets transferred to the United States under subsection (b), the Secretary shall—

(1) deliver to the Corporation all but 1 share of the preferred stock of the Corporation held by the Secretary and forgive the Corporation's legal obligation to pay any dividends, including accrued but unpaid dividends as of the date of transfer, evidenced by the preferred stock certificates; and

(2) Release the Corporation from all mortgages and liens held by the Secretary that were in existence on January 1, 1990.

(d) AGREEMENT.—Prior to accepting title to the assets transferred under this section, the Secretary shall enter into an agreement with the Corporation under which the Corporation will exercise on behalf of the Secretary care, custody, and control of the assets to be transferred. The agreement shall identify in detail the specific functions of the Corporation's employees and equipment, and the specific numbers and locations of the employees and equipment associated with each function, that would be needed for continuation of commuter and freight rail service in the event that the Corporation were to cease operation, and identify those actions that would be required to ensure that such functions can be continued on an interim basis to avoid any interruption in commuter or freight rail service on the Northeast Corridor.

(e) FURTHER TRANSFERS.—

(1) The Secretary may, for appropriate consideration, transfer title to all or part of Chicago Union Station and rail-related assets in the Chicago metropolitan area acquired under this section to a regional public transportation agency that has significant operations in Chicago Union Station on the date of enactment of this Act.

(2) The Secretary may, for appropriate consideration, transfer to the underlying States title to real estate properties owned by the Corporation between Boston, Massachusetts, and Washington, District of Columbia, that constitute the route through Springfield, Massachusetts, and the routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor mainline.

(3) The Secretary may, for appropriate consideration, transfer title to all or part of the assets acquired under subsection (a)(3) to a State, a public agency, a railroad, or other entity deemed appropriate by the Secretary.

(4) All financial consideration determined by the Secretary to be appropriate consideration for the transfer of the assets described in paragraphs (1) through (3) shall be used exclusively to reduce the Corporation's long-term debt that exists on the date of enactment.

SEC. 205. REAL ESTATE AND ASSET SALES; OTHER.

(a) IN GENERAL.—The Amtrak board of directors shall undertake and complete not later than the last day of year 3, the disposition of all stations, track, and other facilities outside the Northeast Corridor mainline, including property conveyed to the Secretary of Transportation under section 204 of this Act.

(b) PROCEEDS OF LIQUIDATION.—Notwithstanding section 3302 of title 31, United States Code, any proceeds from the liquidation of assets under this section shall—

(1) be credited as an offsetting collection to the account that finances grants for debt and interest payments under section 206 of this Act to the Passenger Rail Service Provider established under section 24310 of title 49, United States Code; and

(2) remain available until expended.

SEC. 206. MANAGEMENT AND TRANSFER OF SECURED DEBT.

(a) NEW DEBT PROHIBITION.—Except as approved by the Secretary of Transportation to refinance existing secured debt, the Corporation shall not enter into any obligation secured by assets of the Corporation after the date of enactment of this Act. This section does not prohibit unsecured lines of credit used by the Corporation or any subsidiary for working capital purposes.

(b) SECURED DEBT TRANSFER.—

(1) Upon establishment of the Passenger Rail Service Provider established under section 24310 of title 49, United States Code, and the transfer of ownership of the existing rolling stock, all debt secured by the rolling stock shall be transferred to and become a liability solely of, the Passenger Rail Service Provider.

(2) Upon establishment of the Northeast Corridor Compact under section 103 of this Act, the secured debt associated with fixed assets in the Northeast Corridor shall be transferred to, and become a liability solely of, the Northeast Corridor Compact.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for grants to the Passenger Rail Service Provider established under section 24310 of title 49, United States Code, to pay principal and interest payments on secured debt existing on the date of enactment of this Act the following amounts:

(A) Such sums as may be necessary in year 2.

(B) Such sums as may be necessary in year 3.

(C) Such sums as may be necessary in year 4.

(D) Such sums as may be necessary in year 5.

(E) Such sums as may be necessary in year 6.

(2) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest secured debt with the proceeds of grants under paragraph (1) on funding authorized by this section shall not—

(A) modify the extent or nature of any indebtedness of the National Railroad Passenger Corporation to the United States in existence of the date of enactment of this Act;

(B) change the private nature of Amtrak's or its successors' liabilities; or

(C) imply any Federal guarantee or commitment to amortize Amtrak's outstanding indebtedness.

SEC. 207. TRANSITION ASSISTANCE.

(a) YEAR 1 ASSISTANCE.—There are authorized to be appropriated to the Secretary of Transportation for grants to the National Railroad Passenger Corporation for operating and capital expenses such sums as may be necessary in year 1.

(b) YEAR 2 SUCCESSOR CORPORATION OPERATING ASSISTANCE.—There are authorized to be appropriated to the Secretary such sums as may be necessary for grants to—

(1) the Passenger Rail Service Provider established under section 24310 of title 49, United States Code, for operating expenses of all services except long-distance trains and routes in year 2; and

(2) the Passenger Rail Infrastructure Manager established under that section for capital expenses in year 2.

(c) ADMINISTRATIVE EXPENSES OF COMPACTS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for grants for the administrative expenses of interstate compacts in years 1 through 3.

(d) EXPENSES OF AMTRAK.— There are authorized to be appropriated to the Secretary such sums as may be necessary for grants for the administrative expenses of Amtrak in years 2 through 6.

(e) GRANTS MADE AFTER YEAR 2.—After the last day of year 2, the Secretary may not enter into a grant agreement under this Act, other than section 206(c), or part C of title V of title 49, United States Code, unless each other party to the grant agreement is a State, regional compact, or other public entity.

TITLE III—GRANTS AND OTHER ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE

SEC. 301. CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE.

(a) IN GENERAL.—Part C of subtitle V of title 49, United States Code, is amended by inserting after chapter 243 the following:

''CHAPTER 244—INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE

''Sec.
''24401. Definitions; effective date
''24402. Capital investment grants to support intercity passenger rail service
''24403. Project management oversight
''24404. Use of capital grants to finance first-dollar liability of grant project
''24405. Authorization of appropriations

''§ 24401. Definitions; effective date.

''(a) DEFINITIONS.—In this chapter:

''(1) APPLICANT.—The term 'applicant' means a State, an Interstate Compact (including the Northeast Corridor Compact as specified in section 103 of the Passenger Rail Investment Reform Act), or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

''(2) CAPITAL PROJECT.—The term 'capital project' means a project within a corridor plan or program for—

''(A) acquiring, constructing, supervising or inspecting equipment or a facility for use in intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, passenger rail-related intelligent transportation systems, highway-rail grade crossing improvements on routes used for intercity passenger rail service, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

''(B) rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service; or

''(C) the first-dollar liability costs for insurance related to the provision of intercity passenger rail service.

''(3) INTERCITY PASSENGER RAIL SERVICE.—The term 'intercity passenger rail service' means transportation services with the primary purpose of passenger transportation between towns, cities, and metropolitan areas by rail, including high-speed rail.

''(b) EFFECTIVE DATE.—This chapter is effective on the first day of year 2.

''§ 24402. Capital investment grants to support intercity passenger rail service

''(a) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities and equipment necessary to provide intercity passenger rail transportation.

''(2) TERMS AND CONDITIONS.—The Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section.

''(3) LIMITATION.—A grant under this section may not be made for a project or program of projects that qualifies for financial assistance under chapter 53 of this title.

''(b) PROJECT AS PART OF APPROVED PROGRAM.—

''(1) IN GENERAL.—The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of an approved corridor plan and program developed under section 5303 of this title and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project (including safety and security aspects of the project), satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

''(2) ELIGIBILITY INFORMATION.—An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

''(3) PROPOSED OPERATOR JUSTIFICATION.—If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not increase the capital cost of the project.

''(4) RAIL AGREEMENT.—An applicant shall demonstrate that it has agreed with the railroad over which the intercity passenger rail service will operate concerning the applicant's operating and capital plans.

''(c) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

''(1) LETTER OF INTENT.—

''(A) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

''(B) At least 30 days before issuing a letter under subparagraph (A) of this paragraph or entering into a full funding grant agreement, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the House of Representatives and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

''(C) The issuance of a letter is deemed not to be an obligation under sections 1108(c) and (d), 1501, and 1502(a) of title 31, or an administrative commitment.

''(D) An obligation or administrative commitment may be made only when amounts are appropriated.

''(2) FULL FUNDING AGREEMENT.—

''(A) The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

''(i) establish the terms of participation by the United States Government in a project under this section;

''(ii) establish the maximum amount of Government financial assistance for the project;

''(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

''(iv) make timely and efficient management of the project easier according to the law of the United States.

''(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government and is subject to subject to the availability of appropriations made by Federal law and to Federal laws in force on or enacted after the date of the contingent commitment. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(3) EARLY SYSTEMS WORK AGREEMENT.—

''(A) The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

''(i) a full funding grant agreement for the project will be made; and

''(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

''(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

''(4) LIMIT ON TOTAL OBLIGATIONS AND COMMITMENTS.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements may be not more than the amount authorized under section 24405 of this title, less an amount the Secretary reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements and

early systems work agreements may be not more than a limitation specified in law.

''(d) FEDERAL SHARE OF NET PROJECT COST.—

''(1) IN GENERAL.—

''(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

''(B) A grant for the project shall not exceed the specified percentage of the project net capital cost established for the year the grant is approved, as follows:

''(i) 100 percent in the case of approval for year 2.

''(ii) 80 percent in the case of approval for year 3.

''(iii) 60 percent in the case of approval for year 4.

''(iii) 50 percent in the case of approval for year 5, and thereafter.

''(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower federal share of the project net capital cost.

''(2) ADDITIONAL FUNDING.—Up to an additional 30 percent of project net capital cost may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

''(e) UNDERTAKING PROJECTS IN ADVANCE.—

''(1) IN GENERAL.—The Secretary may pay the Federal share of the net capital project cost to an applicant that carries out any part of a project described in this section according to all applicable procedures and requirements if—

''(A) the applicant applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out a part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

''(2) INTEREST COSTS.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the applicant to the extent proceeds of the bonds are expended in carrying out the part. The amount of interest includable as cost under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

''(3) USE OF COST INDICES.—The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

''§ 24403. Project management oversight

''(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this chapter, an applicant shall prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

''(1) adequate recipient staff organization with well-defined reportingrelationships, statements of functional responsibilities, job descriptions, and job qualifications;

''(2) a budget covering the project management organization, appropriateconsultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

''(3) a construction schedule for the project;

''(4) a document control procedure and recordkeeping system;

''(5) a change order procedure that includes a documented, systematicapproach to handling the construction change orders;

''(6) organizational structures, management skills, and staffing levelsrequired throughout the construction phase;

''(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

''(8) material testing policies and procedures;

''(9) internal plan implementation and reporting requirements;

''(10) criteria and procedures to be used for testing the operationalsystem or its major components;

''(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

''(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month.

''(b) SECRETARIAL OVERSIGHT.—

''(1) IN GENERAL.—The Secretary may use no more than 0.5 percent of amounts made available in a fiscal year for capital projects under this chapter to enter into contracts to oversee the construction of such projects.

''(2) USE OF FUNDS.—The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

''(3) FEDERAL SHARE.—The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

''(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter shall provide the Secretary and a contractor the Secretary chooses under subsection (b) of this section with access to the construction sites and records of the recipient when reasonably necessary.

''(d) REGULATIONS.— The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

''(1) a definition of 'major capital project' for this section;

''(2) a requirement that oversight begin during the preliminary engineering stage of a project, unless the Secretary finds it more appropriate to begin oversight during another stage of a project, to maximize the transportation benefits and cost savings associated with project management oversight;

''(3) a deadline by which all grant applications for a fiscal year shall be submitted that is early enough to permit the Secretary to evaluate all timely applications thoroughly before making grants;

''(4) a formula based on population, track miles of railroad, and passenger miles traveled in the prior fiscal year by which one-half of the funds appropriated for capital grants for each fiscal year are to be allocated among the States;

''(5) a requirement that, if a State does not timely apply for its share of formula grant funds under paragraph (4) of this subsection, those funds will be made available to other States under paragraph (6) of this subsection; and

''(6) criteria by which the Secretary will allocate one-half of the funds appropriated for capital grants for each fiscal year, including at least projected ridership, passenger rail and intermodal connections, congestion and air quality mitigation, underserved communities, and the effect of the grant on whether existing service will continue.

''§ 24404. Use of capital grants to finance first-dollar liability of grant project.

''Notwithstanding the requirements of section 24402 of this title, the Secretary of Transportation may approve the use of capital assistance under this chapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the capital assistance grant, but the coverage may not exceed $20,000,000 per occurrence or $20,000,000 in aggregate per year.

''§ 24405. Authorization of appropriations.

''There are authorized to be appropriated to the Secretary of Transportation to make capital financial assistance grants under this chapter, including administrative expenses, the following amounts:

''(1) Such sums as may be necessary in year 2.

''(2) Such sums as may be necessary in year 3.

''(3) Such sums as may be necessary in year 4.

''(4) Such sums as may be necessary in year 5.

''(5) Such sums as may be necessary in year 6.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of chapters for title 49, United States Code, is amended by inserting the following after the item relating to chapter 243:

''244. INTERCITY PASSENGER RAIL SERVICE CAPITAL ASSISTANCE ..... 24401''.

(2) The chapter analysis for subtitle V of title 49, United States Code, is amended by inserting the following after the item relating to chapter 243:

''244. Intercity Passenger Rail Service Capital Assistance ..... 24401''.

SEC. 302. FINAL REGULATIONS ON APPLICATIONS BY STATES FOR DEVELOPMENT GRANTS.

Not later than June 1 of year 1, the Administrator of the Federal Railroad Administration shall issue final regulations setting forth procedures for application and minimum requirements for the award of grants on and after the first day of year 2, under chapter 244 of title 49, United States Code.

SEC. 303. AUTHORITY FOR INTERSTATE COMPACTS FOR CORRIDOR DEVELOPMENT.

(a) CONSENT TO COMPACTS—

(1) 2 or more States with an interest in a specific form, route, or corridor of intercity passenger rail service (including high speed rail service) may enter into interstate compacts to implement the service, including—

(A) retaining an existing service or commencing a new service;

(B) assembling rights-of-way; and

(C) performing capital improvements, including-

(i) the construction and rehabilitation of maintenance facilities;

(ii) the purchase of rolling stock; and

(iii) operational improvements, including communications, signals, and other systems.

(2) A compact entered into under the authority of this section shall be submitted to Congress for its consent. It is the sense of Congress that rapid consent to the Compact is a priority for the Congress.

(b) FINANCING.—

(1) An interstate compact established by States under subsection (a) may provide that, in order to carry out the compact, the States may—

(A) accept contributions from a unit of State or local government or a person;

(B) use any Federal or State funds made available for intercity passenger rail service (except funds made available for Amtrak);

(C) on such terms and conditions as the States consider advisable—

(i) borrow money on a short-term basis and issue notes for the borrowing; and

(ii) issue bonds; and

(D) obtain financing by other means permitted under Federal or State law.

(2) Bonds and other indebtedness incurred under the authority of this subsection shall under no circumstances be backed by the full faith and credit of the United States.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1502. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1503. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing two bills today with Senator DOMENICI to address a technical problem with H.R. 2854 that potentially causes problems for the State of New Mexico. We continue to believe that New Mexico meets the definition of a ''qualifying state'' under the legislative language but introduce these two bills to clarify that New Mexico is such a State. I ask unanimous consent that the text of both bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1502

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

SECTION 1. TECHNICAL CORRECTION RELATING TO THE DEFINITION OF QUALIFYING STATE UNDER TITLE XXI OF THE SOCIAL SECURITY ACT.

Effective as if included in the enactment of H.R. 2854, 108th Congress, section 2105(g)(2) of the Social Security Act, as added by section 1(b) of H.R. 2854, 108th Congress, as passed by the House of Representatives on July 25, 2003, is amended by inserting before the period '', and includes New Mexico''.

S. 1503

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

SECTION 1. TECHNICAL CORRECTION RELATING TO THE DEFINITION OF QUALIFYING STATE UNDER TITLE XXI OF THE SOCIAL SECURITY ACT.

Effective as if included in the enactment of H.R. 2854, 108th Congress, section 2105(g)(2) of the Social Security Act, as added by section 1(b) of H.R. 2854, 108th Congress, as passed by the House of Representatives on July 25, 2003, is amended by inserting ''(as determined by rounding to nearest whole percentage)'' after ''percent'' the first place it appears.

By Mrs. HUTCHISON (for herself, Mr. LOTT Mr. BURNS, and Ms. SNOWE):

S. 1505. A bill to establish a National Passenger Rail Office, and for other purposes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I support Amtrak and believe we can have a viable national passenger rail system. Unfortunately, we are far from realizing that goal. Outside the Northeast Corridor (NEC), trains seldom run on time, and service is abysmal. Lateness is often measured in days, not hours. Several years ago, when the airlines on-time rate fell below 75 percent it was considered a national emergency. At Amtrak, on-time records under 50 percent are business as usual. Rail critics point to low ridership as the reason why we starve the national system. I contend that starvation is the reason for low ridership.

In the Northeast, a passenger can board a train here at Union Station and reasonably expect to be in New York City, about 225 miles away, in less than three hours. If one of my constituents buy a ticket from Austin to Fort Worth, a trip thirty-eight miles shorter than DC to New York, the best he can expect is that it will take four and one-half hours. Of course, the Texas Eagle makes its schedule only 35 percent of the time, so my constituent will likely waste even more time on this short trip. An Austin businessman may prefer not to deal with airport hassles for such a short flight, and he may want to avoid the traffic on I–35, but the train is not a reasonable option if he has a meeting in fort worth at a time certain.

This inequity cannot continue. Either we commit to building a rail transportation alternative for the entire Nation, or we abandon the pretense of Amtrak and turn it over to the States and private companies. Our motto for Amtrak is ''National or Nothing!''

Improving service on the national system will require creative thinking and innovative financing. We cannot continue to fund Amtrak just enough to keep it going until the next crisis. That is a road map for failure. Private investment, State participation, and the cooperation of the freight railroads are all essential to achieving service upgrades.

In Texas, most passenger trains are forced to operate at less than thirty miles per hour due to track conditions and freight operations. The national system needs at least $38 billion in capital improvements to allow trains to meet a reasonable schedule. Safety improvements alone will cost $13.8 billion. The Northeast Corridor needs roughly $10 billion to avoid an increased risk of accidents and a systemwide slowdown. Postponing these upgrades and repairs will only make them more expensive.

In the 1950s, President Eisenhower convinced the Nation to pay for the construction of the National Highway System. Fiscal realities have changed since then, and we must find a way to creatively finance the rail infrastructure needs of the nation without draining resources from alternative modes of transportation and other federal priorities. Municipal bonding and private investment are necessary components of any plan to restore and improve rail infrastructure.

Making this investment will not only improve passenger service, but also upgrade freight operations throughout the country. Outside the NEC, freight and passenger trains must run on the same tracks. In exchange for an investment in upgrading those tracks, the freight must agree to allow Amtrak to meet its schedule. I realize the critical role played by freight railroads in the American economy, and I know this industry has seen better days. That is why I urge them to work with us to achieve a mutually beneficial agreement. If we cooperate, freight railroads will enjoy capital improvements they could not otherwise hope to afford, as we secure the future of passenger rail in this country. It can be a win-win situation.

I was deeply disappointed to see Amtrak's proposed 5-year capital plan call for $9.1 billion in Federal funding, with more than $8 billion spent in the Northeast Corridor. The national system must receive more than the crumbs left over after the needs of the NEC have been met.

We will never have a better opportunity to accomplish this goal than right now. That is why I am introducing legislation along with Senators LOTT, BURNS, SNOWE and SMITH to begin to bring the national system up to Northeast Corridor standards. My bill will strengthen the Federal role by creating a National Passenger Rail Office at DOT, responsible for coordinating with States and the railroads to assure the national system receive the improvements necessary to operate an effective inter-city passenger rail system. The legislation authorizes $12 billion for Amtrak in operating assistance. Amtrak will be required to bring the national system up to an 80 percent on-time arrival rate. Once a route has enjoyed reasonable on-time performance, it can be fairly evaluated from a cost-benefit perspective. 80 percent is a modest goal, but it is not going to be easy to attain. If Amtrak is unable to meet performance requirements on a route, that route should be opened for bidding by other operators.

If we fail to enact real change in this reauthorization bill, we may run out of chances to obtain the elusive intermodal transportation system we profess to seek. We must decide whether we want to create a viable national

system, or settle for a single rail corridor providing ever-deteriorating service to only one sector of the country. I will not support any proposal that does not put the national system on par with the Northeast Corridor. Today marks a new beginning, or the beginning of the end. It's national or nothing.

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. 1505

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 ''American Rail Equity Act of 2003''.

SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—NATIONAL PASSENGER RAIL OFFICE

SEC. 101. ESTABLISHMENT OF NATIONAL PASSENGER RAIL OFFICE.

(a) ESTABLISHMENT.—(1) Chapter 1 of title 49, United States Code, is amended by inserting after section 107 the following new section:

''§ 107A. National Passenger Rail Office

''(a) IN GENERAL.—The National Passenger Rail Office is an office in the Department of Transportation.

''(b) HEAD OF OFFICE.—The head of the Office is the Director of the National Passenger Rail Office who is appointed by the President, by and with the advice and consent of the Senate.

''(c) ADMINISTRATIVE MATTERS.—

''(1) ADMINISTRATIVE LOCATION.—The Office is located within the Federal Transit Administration for administrative purposes.

''(2) SUPERVISION.—The Director of the National Passenger Rail Office reports directly to the Administrator of the Federal Transit Administration.

''(d) DUTIES.—The duties of the Office are as follows:

''(1) To carry out the responsibilities of the Office with respect to the national passenger railroad system under chapter 251 of this title, including—

''(A) the allocation of funds to the National Passenger Rail Corporation for the operations of the Corporation under section 25005 of this title;

''(B) the responsibilities for the national passenger railroad system set forth under section 25006 of this title;

''(C) the responsibilities for the national passenger railroad system route map set forth under section 25007 of this title; and

''(D) the quarterly identification of infrastructure improvement projects for the national passenger railroad system under section 25008 of this title.

''(2) To carry out such other responsibilities as may be provided by the Secretary of Transportation or by law.

''(e) FUNDING OF ADMINISTRATIVE EXPENSES.—The amount available under section 25010(c)(1) of this title each fiscal year shall be available for the administrative costs of the Office in such fiscal year.''.

(2) The table of section at the beginning of such chapter is amended by inserting after the item relating to section 107 the following new item:

''107A. National Passenger Rail Office.''.

(b) RATE OF PAY OF DIRECTOR OF OFFICE.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Director, National Passenger Rail Office.''.

TITLE II—NATIONAL PASSENGER RAIL SYSTEM

Subtitle A—National Passenger Rail System

SEC. 201. NATIONAL PASSENGER RAIL SYSTEM.

(a) IN GENERAL.—Part C of subtitle V of title 49, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 251—NATIONAL PASSENGER RAIL SYSTEM

''§ 25001. Purpose

''The purpose of this chapter is to improve rail passenger service in the United States by—

''(1) redesignating Amtrak as the National Passenger Rail Corporation; and

''(2) reallocating the responsibilities of Amtrak for intercity and commuter rail passenger transportation (and related transportation) among the National Passenger Rail Corporation and the National Rail Passenger Office so that—

''(A) the National Passenger Rail Corporation retains the responsibilities of Amtrak for the provision of such transportation; and

''(B) the National Rail Passenger Office assumes the responsibilities of Amtrak for the equipment and facilities of Amtrak and for the route map of the national passenger rail system.

''§ 25002. National passenger rail system

''(a) IN GENERAL.—The system of intercity rail passenger transportation (and related transportation), known as the national passenger rail system, includes—

''(1) the segment of the Northeast Corridor between Boston, Massachusetts, and Washington, D.C.;

''(2) rail corridors that have been designated by the Secretary of Transportation as high-speed corridors, but only after they have been improved to permit operation of high-speed service;

''(3) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the American Rail Equity Act of 2003; and

''(4) short-distance corridors or routes operated by Amtrak.

''(b) TRANSPORTATION REQUESTED BY STATES, AUTHORITIES, AND OTHER PERSONS.—

''(1) CONTRACTS FOR TRANSPORTATION.—Amtrak and a State, a regional or local authority, or another person may enter into a contract for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

''(2) DISCONTINUANCE.—Upon termination of a contract entered into under this subsection, or the cessation of financial support under such a contract, Amtrak may discontinue such service or route, notwithstanding any other provision of law.

''§ 25003. Designation of Amtrak as National Passenger Rail Corporation

''Effective as of the date of the enactment of the American Rail Equity Act of 2003, the

portion of Amtrak that is responsible for the operations relating to intercity rail passenger transportation and commuter rail passenger transportation (and related transportation) specified in section 25004(b) of this title is hereby redesignated as the National Passenger Rail Corporation.

''§ 25004. National Passenger Rail Corporation: responsibility for national passenger rail system; status

''(a) TERMINATION OF FOR-PROFIT STATUS.—The National Passenger Rail Corporation shall not be required to be operated or managed as a for-profit corporation.

''(b) LIMITATION OF RESPONSIBILITIES TO TRANSPORTATION AND CERTAIN MAINTENANCE FACILITIES.—The Corporation shall have responsibility only for the following:

''(1) Operations relating to the provision of intercity rail passenger transportation.

''(2) Operations relating to the provision of commuter rail passenger transportation.

''(3) Operations relating to the transportation of mail and express.

''(4) Operations relating to auto-ferry transportation.

''(5) Marketing relating to transportation provided under paragraphs (1) through (4).

''(6) Facilities for the maintenance of the rolling stock necessary to provide transportation under paragraphs (1) through (4).

''(c) TRANSFER OF OTHER ASSETS AND RESPONSIBILITIES TO NATIONAL PASSENGER RAIL OFFICE.—The Corporation shall transfer to the National Passenger Rail Office jurisdiction of all equipment and facilities of the Corporation as of the date of the enactment of the American Rail Equity Act of 2003 that are not the responsibility of the Corporation under subsection (b).

''§ 25005. National Passenger Rail Office: allocation of operating funds to National Passenger Rail Corporation

''(a) IN GENERAL.—The National Passenger Rail Office shall, from amounts available for a fiscal year under section 25010(c)(2)(A) of this title, allocate amounts to the National Passenger Rail Corporation in order to permit the Corporation carry out operations for the provision of transportation under section 25004(b) of this title.

''(b) ALLOCATION ON ROUTE-BY-ROUTE BASIS.—The Office shall allocate amounts to the Corporation under subsection (a) on a route-by-route basis.

''(c) OVERSIGHT OF EXPENDITURES.—The Office shall oversee and review expenditures of amounts allocated to the Corporation under subsection (a) in order to ensure that the Corporation is utilizing amounts so allocated in an appropriate manner.

''§ 25006. National Passenger Rail Office: responsibility for national passenger rail system

''(a) NORTHEAST CORRIDOR EQUIPMENT AND FACILITIES.—The National Passenger Rail Office shall have responsibility for all equipment and facilities relating to the Northeast Corridor route that are transferred to the Office under section 25003(c) of this title.

''(b) PENNSYLVANIA STATION, NEW YORK.—The Office shall treat Pennsylvania Station, New York, and the electric power generation facilities at Pennsylvania Station for the Northeast Corridor route, as a part of the Northeast Corridor route under subsection (a).

''(c) OTHER EQUIPMENT AND FACILITIES.—

''(1) OPERATION THROUGH LEASE REQUIRED.—The Office shall provide for the operation of any equipment and facilities transferred to the Office under section 25004(c) of this title that are not the responsibility of the Office under subsections (a) and (b) through the lease of such equipment and facilities to 1 or more appropriate persons or entities.

''(2) FULL AND OPEN COMPETITION.—The Office shall identify any lessee of equipment and facilities under paragraph (1) utilizing procedures for full and open competition.

''§ 25007. National Passenger Rail Office: responsibility for national passenger rail system route map

''(a) IN GENERAL.—The National Passenger Rail Office shall have responsibility for the modification of routes of the National Passenger Rail Corporation.

''(b) FAILURE OF ON-TIME PERFORMANCE.—

''(1) SURVEYS OF ON-TIME PERFORMANCE.—Not later than 12 months after the date of the enactment of this American Rail Equity Act of 2003 and every year thereafter, the Office shall determine for each route of the Corporation whether the Corporation met the on-time performance goal for such route during the most recent performance period.

''(2) CONTINGENT REQUIREMENT TO PRESERVE ROUTES.—The Office may not discontinue a route of the Corporation as in effect on the date of the enactment of that Act unless the Office determines under paragraph (1) in any year that the Corporation did not meet the on-time performance goal for such route in 3 out of the 5 years immediately preceding the year in which the determination is made.

''(3) TRANSPORTATION RIGHTS FOLLOWING FAILURE ON ON-TIME PERFORMANCE.—

''(A) FORFEITURE OF RIGHTS.—If the Office determines (in the determination under paragraph (2) that is required to be completed 5 years after the date of the enactment of the American Rail Equity Act of 2003) that the Corporation did not meet the on-time performance goal for a route of the Corporation during the most recent performance period, the Corporation shall forfeit to the Office the right to provide passenger rail transportation on such route (including the right to use the tracks of such route to provide such transportation).

''(B) LEASE OF FORFEITED RIGHTS.—The Office shall lease to an appropriate person or entity the right to provide passenger rail transportation on a route (including the right to use the tracks of such route to provide such transportation) that is forfeited under subparagraph (A). The Office shall identify any lessee of such right to provide rail passenger transportation on a route utilizing procedures for full and open competition.

''(C) TRANSPORTATION.—A person or entity leasing the right to provide rail passenger transportation on a route under subparagraph (B) shall provide such rail passenger transportation on the route as is specified by the Office in the lease under subparagraph (B). The rail passenger transportation so specified for a route shall be equivalent to the rail passenger transportation scheduled to provided by the Corporation on the route before the forfeiture of the right to provide transportation on the route under subparagraph (A).

''(D) ASSISTANCE.—A person or entity providing rail passenger transportation on a route under subparagraph (B) shall be entitled to such assistance under this part, and under any other provision of law, for the provision of such rail passenger transportation as would otherwise have been provided to the Corporation if the Corporation had provided such rail passenger transportation on such route.

''(E) BONUS.—If the Office determines that a person or entity providing rail passenger transportation on a route under subparagraph (B) has met the on-time performance goal for that route during the most recent performance period, the Office may pay such person or entity a bonus in an amount determined appropriate by the Office.

''(4) FAILURE OF ON-TIME PERFORMANCE BASED ON LACK OF ACCESS.—

''(A) NOTICE.—The Corporation shall notify the Office of each allegation of the Corporation that the failure of the Corporation to meet the on-time performance goal for a route is due to the denial of access to the tracks of the route by the rail carrier owning the route.

''(B) TRANSMITTAL.—Amtrak shall transmit to the Surface Transportation Board each allegation received by the Office under subparagraph (A).

''(C) INVESTIGATION.—The Board shall investigate each allegation transmitted under subparagraph (B).

''(D CIVIL PENALTIES.—If as a result of an investigation under subparagraph (C) the Board verifies an allegation under subparagraph (A), the Board may impose a civil penalty on the rail carrier that is the subject of the allegation in such amount as the Board considers appropriate.

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

''(A) ON-TIME PERFORMANCE GOAL.—Within 12 months after the date of enactment of the American Rail Equity Act of 2003, the National Rail Office, after consulation with Amtrak, shall establish criteria for determining what attributes characterize an 'on-time performance goal'. In the case of a route, the criteria shall be based upon at least 80 percent of the trains scheduled to provide passenger rail transportation on the route during the most recent performance period arriving not later than their scheduled arrival time.

''(B) PERFORMANCE PERIOD.—The term 'performance period' means the 12-month period ending on the date a determination is made regarding whether the trains scheduled to provide passenger rail transportation on a route met their on-time performance goal.

''(c) ADDITIONAL ROUTES.—

''(1) ADDITIONAL ROUTES.—The Office may establish 1 or more additional routes for the national rail passenger system if the Office determines pursuant to the study under section 502 of the American Rail Equity Act of 2003 that the establishment of such route or routes is feasible and advisable.

''(2) CORRIDORS FOR HIGH-SPEED RAIL SERVICE.—The Office may add to the national passenger rail system any corridor for high-speed rail service established pursuant to section 26104 of this title.

''§ 25008. National Passenger Rail Office: identification of rail infrastructure improvement projects for national passenger rail system

''(a) IDENTIFICATION OF RAIL INFRASTRUCTURE IMPROVEMENT PROJECTS.—

''(1) IN GENERAL.—The National Passenger Rail Office shall, on a quarterly basis, identify the rail infrastructure improvement projects that are advisable to improve or enhance the operations of the national passenger rail system, including operations in the Northeast Corridor.

''(2) NATURE OF IMPROVEMENTS.—The infrastructure improvements covered by rail infrastructure improvement projects under paragraph (1) may include—

''(A) track and other capital improvements;

''(B) the acquisition of rights-of-way; and

''(C) such other improvements as the Office considers advisable to improve or enhance

the operations of the national passenger rail system.

''(3) STATE INPUT.—Recommendations of States for projects for identification under paragraph (1) shall be submitted to the National Passenger Rail Office in accordance with such requirements as the Director of the Office may prescribe.

''(b) INFORMATION ON POTENTIAL PROJECTS.—A rail carrier seeking to carry out a rail infrastructure improvement project for purposes of subsection (a) shall submit to the Office such information on the project as the Director of the Office shall require, including—

''(1) the nature of the infrastructure improvements under the project;

''(2) the cost of the infrastructure improvements; and

''(3) an assessment of the extent to which the infrastructure improvements will improve or enhance the operations of the national passenger rail system.

''(c) REPORTS TO NATIONAL RAIL TRANSPORTATION FINANCING CORPORATION.—

''(1) IN GENERAL.—The Director of the Office shall, on a quarterly basis, submit to the National Rail Transportation Financing Corporation a report setting forth the rail infrastructure improvement projects identified under subsection (a) during the preceding quarter.

''(2) REPORT ELEMENTS.—Each report under paragraph (1) shall contain such information as the Director of the Office and the Corporation jointly consider appropriate in order—

''(A) to fully inform the Corporation of the nature, cost, benefits, and priority of each rail infrastructure improvement project identified in such report; and

''(B) to permit the Corporation to evaluate the advisability of making a grant for each such rail infrastructure improvement project under 306 of the American Rail Equity Act of 2003.

''§ 25009. Rail infrastructure improvements grant program

''The National Passenger Rail Office may make grants for rail infrastructure improvement projects identified under section 25008 of this title.

''§ 25010. Construction with other law; preservation and allocation of authorities

''(a) CONSTRUCTION.—The provisions of this chapter supersede any provisions of this part, and any other provisions of law, that are inconsistent with the provisions of this chapter.

''(b) PRESERVATION OF AUTHORITIES.—

''(1) NATIONAL PASSENGER RAIL OFFICE.—For purposes of carrying out its responsibility under this chapter, including the operation and maintenance of facilities under section 25005(c) of this title, the National Passenger Rail Office may utilize any power or authority of Amtrak under this part, or under any other provision of law, to the extent that such power or authority is not inconsistent with a provision of this chapter, as if the Office were Amtrak.

''(2) NATIONAL PASSENGER RAIL AUTHORITY.—For purposes of carrying out its responsibilities under section 25004(b) of this title, the National Passenger Rail Corporation may utilize any power or authority of Amtrak under this part, or under any other provision of law, to the extent that such power or authority is not inconsistent with a provision of this chapter, as if the Corporation were Amtrak.

''(c) MEMORANDUM OF UNDERSTANDING.—The Office and the Corporation shall, subject to the supervision and concurrence of the Administrator of the Federal Transit Administration, enter into a memorandum of understanding allocating among the Office and the Corporation the authorities, powers, and responsibilities of Amtrak under this part, and under any other provision of law, in a manner consistent with the provisions of this chapter.

''(d) REFERENCES.—

''(1) NATIONAL PASSENGER RAIL AUTHORITY.—Any reference to Amtrak in any law, regulation, map, document, record, or other paper of the United States with respect to the performance of any function or activity that is retained by the National Passenger Rail Corporation under this chapter shall be considered to be a reference to the National Passenger Rail Corporation.

''(2) NATIONAL PASSENGER RAIL OFFICE.—Any reference to Amtrak in any law, regulation, map, document, record, or other paper of the United States with respect to the performance of any function or activity that is assumed by the National Passenger Rail Office under this chapter shall be considered to be a reference to the National Passenger Rail Office.

''§ 25011. Authorizations

''(a) IN GENERAL.—There are authorized to be appropriated $2,000,000,000 for each of fiscal years 2004 through 2009 for the operations of the National Passenger Rail Corporation under this chapter.

''(b) ALLOCATIONS.—To the extent provided in appropriations Acts, $3,000,000 of the amount appropriated pursuant to the authorization of appropriations in subsection (a) in any fiscal year shall be available for the National Passenger Rail Office for the administrative expenses of the Office in such fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle V of title 49, United States Code, is amended by inserting after the item relating to chapter 249 the following new item:

''251. NATIONAL PASSENGER RAILROAD SYSTEM ..... 25001''.

Subtitle B—High-Speed Corridors for Passenger Rail

SEC. 211. INTERSTATE RAILROAD PASSENGER HIGH-SPEED TRANSPORTATION POLICY.

(a) IN GENERAL.—Chapter 261 is amended by inserting before section 26101 the following:

''§ 26100. Policy.

''The Congress declares that it is the policy of the United States that designated high-speed railroad passenger transportation corridors are the building blocks of an interconnected interstate railroad passenger system that serves the entire Nation.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 261 is amended by inserting before the item relating to section 26101 the following:

''26100. Policy''.

SEC. 212. HIGH-SPEED RAIL CORRIDOR PLANNING.

(a) IN GENERAL.—Section 26101(a) is amended to read as follows:

''(a) PLANNING.—

''(1) IN GENERAL.—The Secretary of Transportation shall provide planning assistance to States or group of States and other public agencies promoting the development of high-speed rail corridors designated by the Secretary under section 104(d) of title 23.

''(2) SECRETARY MAY PROVIDE DIRECT OR FINANCIAL ASSISTANCE.—The Secretary may provide planning assistance under paragraph (1) directly or by providing financial assistance to a public agency or group of public agencies to undertake planning activities approved by the Secretary. Not less than 20 percent of the publicly financed planning costs associated with projects assisted under this chapter shall come from non-Federal sources. State matching contributions may not be derived, directly or indirectly, from Federal funds.''.

(b) CONFORMING AND OTHER AMENDMENTS TO SECTION 26101.—Section 26101 is further amended—

(1) by striking subsection (c)(2) and inserting the following:

''(2) the extent to which the proposed planning focuses on high-speed rail systems, giving a priority to systems which will achieve sustained speeds of 125 miles per hour or greater and projects involving dedicated rail passenger rights-of-way;'';

(2) by inserting ''and'' after the semicolon in subsection (c)(12);

(3) by striking ''completed; and'' in subsection (c)(13) and inserting ''completed.''; and

(4) by striking subsection (c)(14).

(c) CONFORMING AMENDMENT.—Section 26105(2)(A) is amended by striking ''more than 125 miles per hour;'' and inserting ''90 miles per hour or more;''.

(d) FINANCIAL ASSISTANCE TO INCLUDE LOANS AND LOAN GUARANTEES.—Section 26105(1) is amended by inserting ''loans, loan guarantees,'' after ''contracts,''.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for each of fiscal years 2004 through 2008 to provide planning assistance under section 26101(a) of title 49, United States Code, as amended by subsection (a).

SEC. 213. ASSISTANCE FOR ESTABLISHMENT OF CORRIDORS FOR HIGH-SPEED RAIL SERVICE.

(a) IN GENERAL.—Chapter 261 of title 49, United States Code, is amended—

(1) by redesignating sections 26104 and 26105 as sections 26105 and 26106, respectively; and

(2) by inserting after section 26103 the following new section 26104:

''§ 26104. Additional support for establishment of high-speed rail corridors

''(a) PURPOSE.—The purpose of this section is to facilitate the establishment of a national network of corridors for high-speed rail service.

''(b) CORPORATION TO MAKE GRANTS.—The National Rail Transportation Financing Corporation under title III of the American Rail Equity Act of 2003 may make grants of financial assistance to individual States or compacts of States for the establishment of corridors for high-speed rail service.

''(c) APPLICATION.—A State or compact of States seeking a grant under this section shall submit to the Corporation an application therefor in such form, and including such information, as the Corporation shall require.

''(d) MATCHING REQUIREMENT.—A State or compact of States receiving a grant under this section for activities relating to the establishment of a corridor for high-speed rail service shall bear not less than 80 percent of the costs of the activities funded by the grant.

''(e) USE OF GRANT.—A State or compact of States receiving a grant under this section shall use the grant amount for purposes of the establishment of 1 or more corridors for high-speed rail service, including the purchase of rights-of-way for the provision of such service.

''(f) TREATMENT OF CORRIDORS.—The National Passenger Rail Office may treat a corridor established pursuant to this section as part of the national passenger rail system under chapter 251 of this title.

''(g) CONSTRUCTION WITH OTHER ASSISTANCE CORPORATION.—The authority to make grants under this section for the establishment of corridors for high-speed rail service is in addition to any other authority in this chapter, or under any other provision of law, relating to the provision of assistance for the establishment of corridors for high-speed rail service.

''(h) FUNDING.—Amounts derived from the issuance of qualified rail transportation bonds under title III of the American Rail Equity Act of 2003 and section 54 of the Internal Revenue Code of 1986 shall be available for grants under this section.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 261 of such title is amended by striking the items relating to section 26104 and 26105 and inserting the following new items:

''26104. Additional support for establishment of high-speed rail corridors.
''26105. Authorization of appropriations.
''26106. Definitions.''.

TITLE III—RAIL INFRASTRUCTURE IMPROVEMENT

Subtitle A—Rail Infrastructure Finance Corporation

SEC. 301. ESTABLISHMENT OF CORPORATION.

There is established a nonprofit corporation, to be known as the ''Rail Infrastructure Finance Corporation''. The Rail Infrastructure Finance Corporation is not an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this subtitle, and, to the extent consistent with this section, to the laws of the State of Delaware applicable to corporations not for profit.

SEC. 302. BOARD OF DIRECTORS.

(a) APPOINTMENT.— The Rail Infrastructure Finance Corporation shall have a Board of Directors consisting of 9 members appointed by the President, by and with the advice and consent of the Senate. Not more than 5 members of the Board may be members of the same political party.

(b) MEMBERSHIP QUALIFICATIONS.—

(1) IN GENERAL.—The 9 members of the Board shall be appointed from among citizens of the United States (not regular full-time employees of the United States) who are eminent in the fields of rail transportation, rail financing, and intermodal transportation planning, and the financing and management of large-scale, long-term public-private cooperative projects.

(2) REPRESENTATION OF SPECIFIC INTERESTS.—Of the 9 members of the Board, 8 of the members shall be selected as follows:

(A) Two members from among individuals who represent the interests of freight rail transportation.

(B) One member from among individuals who represent the interests of passenger rail transportation.

(C) One member from among individuals who represent the interests of the States.

(D) One member from among individuals who represent the interests of intercity passenger rail users.

(E) One member from among individuals who represent the interests of organized labor.

(F) Two members from among persons who are involved in finance.

(c) INCORPORATION.—The members initially appointed to the Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the laws of Delaware.

(d) TERMS OF OFFICE.—Members of the Board shall be appointed for terms of 6 years, except that of the members first appointed, the President shall designate 2 to serve a term of 1 year and 2 to serve a term of 3 years. No member of the Board shall be eligible to serve in excess of 2 consecutive full terms.

(e) VACANCIES.—A member of the Board appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall serve only for the remainder of the term. Upon the expiration of a member's term, the member shall continue to serve until a successor is appointed.

(f) ATTENDANCE REQUIRED.—Members of the Board shall attend not less than 50 percent of all duly convened meetings of the Board in any calendar year. A member who fails to meet the requirement of the preceding sentence shall forfeit membership and the President shall appoint a new member to fill the resulting vacancy not later than 30 days after such vacancy is determined by the Chairman of the Board.

(g) ELECTION OF CHAIRMAN AND VICE CHAIRMAN.—Members of the Board shall annually elect 1 of their members to be Chairman and elect 1 or more of their members as a Vice Chairman or Vice Chairmen.

(h) COMPENSATION.—The members of the Board shall not, by reason of such membership, be considered to be officers or employees of the United States. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this title, be entitled to receive compensation at the rate of $150 per day, including travel-time. No Board member shall receive compensation of more than $10,000 in any fiscal year. While away from their homes or regular places of business, Board members shall be allowed travel and actual, reasonable, and necessary expenses.

(i) MEETINGS OPEN TO PUBLIC.—All meetings of the Board of Directors of the Corporation, including any committee of the Board, shall be open to the public under such terms, conditions, and exceptions as the Board may establish.

SEC. 303. OFFICERS AND EMPLOYEES.

(a) IN GENERAL.—The Rail Infrastructure Finance Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay that exceeds the rate of basic pay for level I of the Executive Schedule under section 5312 of title 5, United States Code. No individual other than a citizen of the United States may be an officer of the Corporation. Subject to section 302(h), no officer of the Corporation may receive any salary or other compensation (except for compensation for services on boards of directors of other organizations that do not receive funds from the Corporation, on committees of such boards, and in similar activities for such organizations) from any sources other than the Corporation for services rendered during the period of his or her employment by the Corporation. Service by any officer on boards of directors of other organizations, on committees of such boards, and in similar activities for such organizations shall be subject to annual advance approval by the Board and subject to the provisions of the Corporation's Statement of Ethical Conduct. All officers shall serve at the pleasure of the Board.

(b) NONPARTISAN NATURE OF APPOINTMENTS.—Except as provided in the second sentence of section 302(a), no political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

SEC. 304. NONPROFIT AND NONPOLITICAL NATURE OF THE CORPORATION.

(a) STOCK.—The Rail Infrastructure Finance Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(b) NO PRIVATE BENEFIT.—No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(c) POLITICAL ACTIVITY PROHIBITED.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(d) CONFLICTS OF INTEREST.—No director, officer, or employee of the Corporation shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is directly or indirectly interested. Board members shall recuse themselves from Board decisions that directly affect either them or entities they represent regarding grants and other assistance provided to States by the Board.

SEC. 305. PURPOSE AND ACTIVITIES OF CORPORATION.

(a) PURPOSE.—The Rail Infrastructure Finance Corporation shall, through the issuance of qualified rail infrastructure bonds in accordance with section 54 of the Internal Revenue Code of 1986 and this title, provide financial support for rail transportation capital projects under subtitle B.

(b) BOND ISSUANCE CORPORATION.—

(1) IN GENERAL.—In order to carry out its purposes, the Corporation is authorized to issue qualified rail infrastructure bonds (as defined in section 54(e) of the Internal Revenue Code of 1986) during the 6-year period beginning October 1, 2003.

(2) LIMITATION.—The total face amount of the bonds outstanding under paragraph (1) at any time may not exceed $48,000,000,000.

(3) NO FEDERAL GUARANTEE.—

(A) OBLIGATIONS INSURED BY THE CORPORATION.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the full faith and credit of the United States.

(B) SPECIAL RULE.—This paragraph shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

(C) SECURITIES OFFERED BY THE CORPORATION.—No debt or equity securities of the Corporation shall be deemed to be guaranteed by the full faith and credit of the United States.

(4) AUTHORITY.—To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation under the laws of the State of Delaware.

(c) FEDERAL ASSISTANCE.—The Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only

to the extent permitted by law and to the extent necessary to carry out the purpose set forth in subsection (a) and the activities described in subsection (b).

SEC. 306. REPORT TO CONGRESS.

(a) IN GENERAL.—On or before May 15 of each year, the Rail Infrastructure Finance Corporation shall submit an annual report for the fiscal year ending on September 30 of the preceding year to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The report shall include a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this title and such recommendations as the Corporation deems appropriate.

(b) AVAILABILITY FOR TESTIMONY.—The officers and directors of the Corporation shall be available to testify before those committees with respect to such report, the report of any audit made by the Comptroller General pursuant to section 307(d)(3), or any other matter which such committees may determine.

SEC. 307. ADMINISTRATIVE MATTERS.

(a) BUDGET.—The Rail Infrastructure Finance Corporation shall establish an annual budget for the Corporation, including the Rail Infrastructure Investment Account under subsection (c).

(b) IMPLEMENTATION PLAN.—

(1) REQUIREMENT FOR PLAN.—The Corporation shall conduct a study and prepare a plan on how the Corporation can best achieve the purposes and fulfill the requirements of this title.

(2) CONSULTATION.—In preparing the plan, the Corporation may consult with the Secretary of Transportation, the Secretary of the Treasury, and representatives of State and local governments.

(3) OTHER REQUIREMENTS.—The plan, which shall be based on the conclusions resulting from the study conducted under paragraph (1), shall be submitted by the Corporation to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than January 31, 2004. Unless directed otherwise by law, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.

(c) RAIL INFRASTRUCTURE INVESTMENT ACCOUNT.—

(1) ESTABLISHMENT.—The Board of Directors for the Corporation shall establish an account to be known as the Rail Infrastructure Investment Account.

(2) DEPOSIT OF BOND PROCEEDS.—The Corporation shall deposit the proceeds of sales of any bonds issued under section 54 of the Internal Revenue Code of 1986 into the Account.

(3) DEPOSIT OF NON-FEDERAL CONTRIBUTIONS.—The Board shall deposit all contributions received under section 304(a) into the Account.

(4) DISBURSEMENTS.—The Board shall make available and may disburse, at the beginning of fiscal year 2004 and of each succeeding fiscal year thereafter, such funds as may be available for obligation and expenditure from the Account.

(5) USE OF ACCOUNT FUNDS.—Funds in the Account—

(A) shall be used by the Corporation for investment purposes through the trust established under section 308 to generate an amount sufficient—

(i) to repay the principal of the bonds at their maturity; and

(ii) to pay the administrative costs of the Corporation and the Rail Infrastructure Finance Trust under section 308; and

(B) shall, to the extent of the net spendable proceeds in the account, be held in the Rail Infrastructure Finance Trust established under section 308 and be available for distribution as grants of financial assistance under subtitle B.

(6) NET SPENDABLE PROCEEDS DEFINED.—In this subsection, the term ''net spendable proceeds'', with respect to the Rail Infrastructure Investment Account, means the amount equal to the excess of—

(A) the total amount in such Account, over

(B) the amount in such Account that is needed for uses under paragraph (5)(A).

(d) RECORDS AND AUDIT.—

(1) IN GENERAL.—The account of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such person or persons.

(2) AUDIT REPORT.—The report of each such independent audit shall be included in the annual report required by section 306. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor's opinion of those statements.

(3) AUDIT BY COMPTROLLER GENERAL.—The financial transactions of the Corporation may be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers and property of the Corporation shall remain in possession and custody of the Corporation.

(4) GAO REPORT TO CONGRESS.—A report of each audit under paragraph (3) shall be made by the Comptroller General to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The report shall contain such comments and information as the Comptroller General considers necessary to inform the committees of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress.

(5) ACCOUNTING PRINCIPLES.—

(A) APPLICABLE PRINCIPLES.—Not later than 1 year after the date of the enactment of this Act, the Corporation shall develop accounting principles which shall be used uniformly by all entities receiving funds under this title, taking into account organizational differences among various categories of such entities. Such principles shall be designed to account fully for all funds received and expended for purposes of this title by such entities.

(B) CONSULTATION.—The Corporation may consult with the Comptroller General and, as appropriate, with others in the development of the accounting principles under subparagraph (A).

(6) REQUIREMENTS FOR RECIPIENTS.—Each entity receiving funds under this title shall—

(A) keep its books, records, and accounts in such form as may be required by the Corporation;

(B) either—

(i) undergo a biennial audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; or

(ii) submit a financial statement in lieu of the audit required by subparagraph (A) if the Corporation determines that the cost burden of such audit on such entity is excessive in light of the financial condition of such entity; and

(C) furnish biennially to the Corporation a copy of the audit report required pursuant to the subparagraph (B), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

(7) ADDITIONAL RECORDKEEPING.—Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, that total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the projects or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(8) ACCESS TO RECORDS.—The Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records of any recipient of assistance for the purpose of auditing and examining all funds received from the Corporation. The Comptroller General of the United States or any of his duly authorized representatives also shall have access to such books, documents, papers, and records for the purpose of auditing and examining all funds received from the Corporations during any fiscal year for which Federal funds are available to the Corporation.

(9) PUBLIC INSPECTION.—The Corporation shall maintain the information described in paragraphs (6), (7), and (8) at its offices for public inspection and copying for at least 3 years, according to such reasonable guidelines as the Corporation may issue. This public file shall be updated regularly.

SEC. 308. RAIL INFRASTRUCTURE FINANCE TRUST.

(a) ESTABLISHMENT.—The Board of Directors of the Rail Infrastructure Finance Corporation shall establish the Rail Infrastructure Finance Trust (hereafter in this section referred to as the ''Trust'') as a trust domiciled in the State of Delaware. The Trust shall, to the extent not inconsistent with this Act, be subject to the laws of the State of Delaware that are applicable to trusts. The Trust shall manage and invest the assets of the Rail Infrastructure Account described in section 307(c) that are transferred to it by the Board in the manner set forth in this section.

(b) NOT A FEDERAL AGENCY OR INSTRUMENTALITY.—The Trust is not a department, agency, or other instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.

(c) BOARD OF TRUSTEES.—

(1) ESTABLISHMENT.—The Trust shall have a Board of Trustees.

(2) COMPOSITION.—

(A) APPOINTMENT.—The Board of Trustees shall consist of 5 members each of whom (hereafter in this title referred to as a ''Trustee'') is appointed by a unanimous vote of the Board of Directors of the Rail Infrastructure Finance Corporation. The Board of Directors, by unanimous vote, may remove any member of the Board of Trustees.

(B) REPRESENTATION OF PARTICULAR INTERESTS.—The 5 members of the Board of Trustees shall be selected as follows:

(i) One from among persons who represent the interests of the States.

(ii) One from among persons who represent the interests of freight railroads.

(iii) One from among persons who represent the interests of passenger railroads.

(iv) One from among persons who represent the interests of holders of qualified rail infrastructure bonds issued by the Rail Infrastructure Finance Corporation.

(v) One from among persons whose interests are independent of interests referred to in the other clauses of this subparagraph.

(3) MEMBERS NOT UNITED STATES OFFICIALS.—The members of the Board of Trustees may not be considered officers or employees of the Government of the United States.

(4) QUALIFICATIONS.—The Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments. No member of the Board of Directors of the Rail Infrastructure Finance Corporation is eligible to be a Trustee.

(5) TERMS.—Each member of the Board of Trustees shall be appointed for a 3-year term. Any member whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the member whose departure caused the vacancy. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

(d) POWERS.—The Board of Trustees shall—

(1) establish investment policies, including guidelines, and retain independent advisers to assist in the formulation and adoption of the investment guidelines;

(2) retain independent investment managers to invest the assets of the Trust in a manner consistent with such investment guidelines;

(3) invest assets in the Trust, pursuant to the policies adopted in paragraph (1);

(4) pay administrative expenses of the Trust from the assets in the Trust; and

(5) transfer money to the Rail Infrastructure Investment Account, upon request of the Board of Directors of the Rail Infrastructure Finance Corporation, for bond repayment and administrative expenses, and for grants under subtitle B.

(e) REPORTING REQUIREMENTS AND FIDUCIARY STANDARDS.—The following reporting requirements and fiduciary standards shall apply with respect to the Trust:

(1) DUTIES OF THE BOARD OF TRUSTEES.—The Trust and each member of the Board of Trustees shall discharge the duties of the Trust and the duties of the Trustee, respectively (including the voting of proxies), with respect to the assets of the Trust solely in the interests of the Rail Infrastructure Finance Corporation and the programs funded under this title—

(A) for the exclusive purposes of—

(i) providing sufficient funds to repay qualified rail infrastructure bonds issued by the Rail Infrastructure Finance Corporation, to fund the administrative costs of the Rail Infrastructure Finance Corporation and to provide grants for rail capital projects under subtitle B; and

(ii) defraying reasonable expenses of administering the Trust;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying investments so as to minimize the risk of large losses and to avoid disproportionate influence over a particular industry or firm, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this Act.

(2) PROHIBITIONS WITH RESPECT TO MEMBERS OF THE BOARD OF TRUSTEES.—A member of the Board of Trustees may not—

(A) deal with the assets of the Trust in the Trustee's own interest or for the Trustee's own account;

(B) in an individual or in any other capacity, act in any transaction involving the assets of the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust and the Rail Infrastructure Finance Corporation; or

(C) receive any consideration for the Trustee's own personal account from any party dealing with the assets of the Trust.

(3) EXCULPATORY PROVISIONS AND INSURANCE.—Any provision in an agreement or instrument that purports to relieve a Trustee from responsibility or liability for any responsibility, obligation, or duty under this Act shall be void. Nothing in this paragraph shall be construed to preclude—

(A) the Trust from purchasing insurance for its Trustees or for itself to cover liability or losses occurring by reason of the act or omission of a Trustee, if such insurance permits recourse by the insurer against the Trustee in the case of a breach of a fiduciary obligation by such Trustee;

(B) a Trustee from purchasing insurance to cover liability under this section from and for his own account; or

(C) an employer or an employee organization from purchasing insurance to cover potential liability of 1 or more Trustees with respect to their fiduciary responsibilities, obligations, and duties under this section.

(4) TRUSTEES BONDS.—

(A) REQUIREMENT.—Each Trustee and every person who handles funds or other property of the Trust (hereafter in this section referred to as ''Trust official'') shall be bonded. The bond shall provide protection to the Trust against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others.

(B) AMOUNT.—The amount of a bond for a Trustee under this paragraph shall be fixed at the beginning of each fiscal year of the Trust by the Board of Directors of the Rail Infrastructure Finance Corporation. The amount may not be less than 10 percent of the amount of the funds administered by the Trust. In no case may such bond be less than $1,000 nor more than $500,000, except that the Board of Directors, after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 percent minimum requirement in the preceding sentence.

(C) UNLAWFUL CONDUCT.—It shall be unlawful for—

(i) any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Trust without being bonded as required by this subsection;

(ii) any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements of this subsection have not been met; and

(iii) any person to procure any bond required by this subsection from any surety or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

(f) AUDIT AND REPORT.—

(1) REQUIREMENT FOR ANNUAL AUDIT.—The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Trust.

(2) ANNUAL MANAGEMENT REPORT.—The Trust shall submit an annual management report to be included in the annual report of the Corporation required under section 306. The management report under this paragraph shall include the following matters:

(A) A statement of financial position.

(B) A statement of operations.

(C) A statement of cash flows.

(D) A statement on internal accounting and administrative control systems.

(E) The report resulting from an audit of the financial statements of the Trust conducted under paragraph (1).

(F) Any other comments and information necessary to inform Congress about the operations and financial condition of the Trust.

(3) ADDITIONAL COPIES.—The Trust shall provide the President and the Director of the Office of Management and Budget a copy of the management report when it is submitted to Congress.

(g) ENFORCEMENT.—The Rail Infrastructure Finance Corporation may commence a civil action—

(1) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this Act; or

(2) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this Act.

(h) ADMINISTRATIVE MATTERS.—

(1) AUTHORITY.—The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisers (including the Rail Infrastructure Finance Corporation) to provide legal, accounting, investment advisory, or other services necessary for the proper administration of this section. In the case of a contract for investment advisory services, compensation for such services may be provided on a fixed fee basis or on such other terms and conditions as are customary for such services.

(2) QUORUM AND PROCEEDINGS.—Three members of the Board of Trustees shall constitute a quorum for the Board to conduct business. Investment guidelines shall be adopted by a unanimous vote of the entire Board of Trustees. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.

(3) COMPENSATION OF TRUSTEES AND EMPLOYEES.—The salaries of the Trustees and the employees of the Trust are subject to the limitations in section 303.

(4) FUNDING.—The expenses of the Trust and the Board of Trustees that are incurred under this section shall be paid from the Trust.

(i) EXEMPTION FROM TAX FOR RAIL INFRASTRUCTURE FINANCE TRUST.—Subsection (c) of section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(29) The Rail Infrastructure Finance Trust established under section 308 of the American Rail Equity Act of 2003.''.

Subtitle B—Rail Development Grant Program

SEC. 311. NATIONAL SYSTEM IMPROVEMENT GRANT PROGRAM.

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation may, by grant, provide financial assistance to a State, group of States, or the National Railroad Passenger Corporation, for, or in connection with, intercity passenger rail capital projects that are—

(1) designated as National System Improvement Projects under section 22506 of title 49, United States Code; and

(2) as determined by the Board, will significantly benefit the National System, as designated under section 25002(a) of title 49, United States Code, of intercity passenger rail infrastructure or services.

(b) PROJECT SELECTION CRITERIA.—The Board, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) give preference to projects that most significantly improve intercity passenger rail service on routes of the National System through increased frequency of on-time performance, reduced trip time, higher ridership, increased service frequency, or other service measures as defined under section 22506 of title 49, United States Code;

(2) give preference to projects that effect multiple routes or the entire National System;

(3) require that each proposed project meet all safety requirements that are applicable to the project under law, and give a preference to any project determined by the Board as having provided for particularly high levels of safety;

(4) encourage intermodal connectivity through projects that provide direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(5) ensure a general balance across geographic regions of the United States in providing such assistance and avoid a concentration of a disproportionate amount of such financial assistance in a single project or region of the country;

(6) favor projects that are expected to have a significant favorable impact on air or highway traffic congestion;

(7) encourage projects that also improve freight or commuter rail operations;

(8) favor projects that either—

(A) have significant environmental benefits; or

(B) are—

(i) at a stage of preparation that all precommencement compliance with environmental protection requirements has already been completed; and

(ii) ready to be commenced;

(9) favor projects with positive economic and employment impacts;

(10) encourage the use of positive train control technologies;

(11) favor projects that have commitments of funding from non-Federal Government sources in a total amount that exceeds the minimum amount of the non-Federal contribution required under section 315(a);

(12) ensure that each project is compatible with, and is operated in conformance with—

(A) plans developed pursuant to the requirements of sections 134 and 135 of title 23, United States Code;

(B) State rail plans under chapter 225 of title 49, United States Code; and

(C) the national rail plan; and

(13) favor projects that enhance national security.

(c) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on an approved State rail plan's ranked list of priority freight and passenger rail capital projects developed under section 22504(5) of title 49, United States Code, or may submit an independent application for a grant for any project designated as a National System Improvement Project under section 22506 of title 49, United States Code. Any such independent grant request shall be subject to the same selection criteria as apply under subsection (b) to projects of States, except the criteria set forth in subparagraphs (A) and (B) of subsection (b)(12).

(e) LIMITATIONS.—

(1) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State or the National Railroad Passenger Corporation under this section is not obligated or expended for the purposes described in subsections (a) and (b) within 2 years, such sums shall be returned to the Board for other national system improvement projects under this section at the discretion of the Board.

(2) SINGLE PROJECT AMOUNT.—In awarding grants to States for eligible projects under this section, the Board shall limit the amount of any grant made for a particular project in a fiscal year to not more than 30 percent of the total amount of the funds available for grants under this section for that fiscal year.

(3) AMTRAK.—The total amount of grants made under this section to the National Railroad Passenger Corporation in a fiscal year may not exceed 50 percent of the total amount available under this section for all grants in that fiscal year.

(4) NORTHEAST CORRIDOR PROJECTS.—The total amount of grants made under this section for the Northeast Corridor in a fiscal year may not exceed 25 percent of the total amount available under this section for all grants under this section in that fiscal year.

(5) OTHER PROJECTS.—The total amount of grants made under this section for projects other than projects for the Northeast Corridor in any fiscal year may not exceed 75 percent of the total amount available under this section for all grants under this section in that fiscal year.

(6) NORTHEAST CORRIDOR DEFINED.—In this section, the term ''Northeast Corridor'' has the meaning given that term in section 24102(6) of title 49, United States Code.

(f) FUNDING.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for fiscal years 2004 through 2009 such sums as may be necessary to carry out subsections (a) through (e) of this section.

(2) NORTHEAST CORRIDOR FREIGHT-ONLY TRACK.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, there are authorized to be appropriated to the Secretary of Transportation for the construction of a freight-only track on the Northeast Corridor for fiscal year 2005 $125,000,000, including capital improvements, improvements to signal systems, high-speed interlockings, track, and bridges, such sum to remain available until expended.

(B) FINANCIAL CONTRIBUTION FROM OTHER USERS.—The Secrtary shall consider the feasibility of seeking a financial contribution to the construction of the track and capital improvements related thereto from other users.

(C) PROJECT CONSTRUCTION.—The Secretary shall coordinate construction of the track with the owner of the freight easement on the Northeast Corridor to ensure that current service commitments for both passenger and freight rail transportation are maintained.

SEC. 312. GRANT PROGRAM REQUIREMENTS AND LIMITATIONS.

(a) AUTHORIZED USES.—The proceeds of a grant made for a project under this subtitle may be used to defray the costs of the project or to reimburse the recipient for costs of the project paid by the recipient.

(b) NON-FEDERAL CONTRIBUTION.—The proceeds of a grant for 1 or more projects under this subtitle may be released upon receipt by the Board of Directors of the Rail Infrastructure Finance Corporation of cash payment by a non-Federal Government source, or 1 or more such sources jointly, in an amount not less than the amount equal to 20 percent of the amount of the grant disbursed. The cash payment may not be derived, directly or indirectly, from Federal funds. Amounts received under this subsection shall be credited to the Rail Infrastructure Investment Account established under section 307(c).

(c) PREFERENCE INVOLVING DONATED PROPERTY INTERESTS AND SERVICES.—In selecting projects for grant funding under this subtitle, the Board may give preference to projects that involve donated right-of-way, property, or in-kind services by a public sector or private sector entity. The value of a donation under subsection (c) may not be counted toward satisfaction of the requirement in subsection (b).

(d) FLEXIBILITY.—Notwithstanding any other provision of this subtitle, amounts

made available under section 316 may be combined and used for projects that significantly benefit both freight rail service and intercity passenger rail service.

(e) SUBALLOCATION; PUBLIC-PRIVATE PARTNERSHIPS.—

(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this subtitle.

(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Board.

(3) SUB-ALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

(f) APPLICATIONS.—To seek a grant under this subtitle, a State or, in the case of a grant under section 311, the National Railroad Passenger Corporation shall submit an application for the grant to the Board. The application shall be submitted at such time and contain such information as the Board requires.

(g) PROCEDURES FOR GRANT AWARD.—The Board shall prescribe procedures for the awarding of grants under this subtitle, including application and qualification procedures and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the applicant and the Board. The Board shall initiate rulemaking for the purpose of this subsection not later than 90 days after the date of the enactment of this Act.

Subtitle C—Rail Infrastructure Tax Credit Bonds

SEC. 321. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended by adding at the end the following new subpart:

"Subpart H—Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds

''Sec. 54. Credit to holders of qualified rail infrastructure bonds.

"SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.

''(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

''(b) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified rail infrastructure bond is 25 percent of the annual credit determined with respect to such bond.

''(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified rail infrastructure bond is the product of—

''(A) the applicable credit rate, multiplied by

''(B) the outstanding face amount of the bond.

''(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

''(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term 'credit allowance date' means—

''(A) March 15,

''(B) June 15,

''(C) September 15, and

''(D) December 15.

Such term includes the last day on which the bond is outstanding.

''(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—

''(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this part (other than this subpart and subpart C).

''(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

''(d) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

''(e) QUALIFIED RAIL INFRASTRUCTURE BOND.—For purposes of this part, the term 'qualified rail infrastructure bond' means any bond issued as part of an issue if—

''(1) the bond is issued by the Rail Infrastructure Finance Corporation and is in registered form,

''(2) the term of each bond which is part of such issue does not exceed 20 years,

''(3) the payment of principal with respect to such bond is the obligation of the Rail Infrastructure Finance Corporation and not an obligation of the United States,

''(4) all proceeds from the sale of the issue are used for the purposes set forth in section 307(c)(5) of the American Rail Equity Act of 2003, and

''(5) 95 percent or more of the net spendable proceeds from the sale of such issue are to be used for expenditures incurred after the date of enactment of the American Rail Equity Act of 2003 for any project described in section 311, 312, 313, or 314 of that Act.

''(f) SPECIAL RULES RELATING TO ARBITRAGE.—

''(1) IN GENERAL.—Subject to paragraph (2), an issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

''(A) to award grants under sections 311, 312, 313, and 314 of the American Rail Equity Act of 2003 in a total amount that is at least 95 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 3-year period beginning on such date,

''(B) to incur a binding commitment with a third party—

''(i) to spend at least 10 percent of the net spendable proceeds of the issue, or to commence construction, with respect to such projects within the 6-month period beginning on such date, and

''(ii) to proceed with due diligence to complete such projects, and

''(C) to expend the total amount of the net spendable proceeds of the issue.

''(2) RULES REGARDING CONTINUING COMPLIANCE AFTER 3-YEAR DETERMINATION.—If at least 95 percent of the net spendable proceeds of the issue is not awarded as grants to be expended for 1 or more qualified projects within the 3-year period beginning on the date of issuance, but the requirements of paragraph (1) are otherwise met, an issue shall be treated as continuing to meet the requirements of paragraph (1) if either the requirement under subparagraph (A) or the requirements under subparagraph (B) are met, as follows:

''(A) The issuer uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of such 3-year period and disburses any remaining net spendable proceeds to the Secretary of Transportation within 30 days after the end of such 3-year period.

''(B) The issuer—

''(i) awards in grants under sections 311, 312, 313, and 314 of the American Rail Equity Act of 2003 at least 75 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 3-year period beginning on the date of issuance, and

''(ii) either—

''(I) awards in grants under sections 311, 312, 313, and 314 of the American Rail Equity Act of 2003 at least 95 percent of the net spendable proceeds of the issue for 1 or more qualified projects within the 4-year period beginning on the date of issuance, or

''(II) pays to the Federal Government any earnings on the proceeds from the sale of the issue that accrue after the end of the 3-year period beginning on the date of issuance and uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of the 4-year period beginning on the date of issuance.

''(g) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

''(1) IN GENERAL.—If any bond which when issued purported to be a qualified rail infrastructure bond ceases to be such a qualified bond, the issuer shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

''(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the 2 preceding calendar years, and

''(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

''(2) FAILURE TO PAY.—If the issuer fails to timely pay the amount required by paragraph (1) with respect to such bond, the tax

imposed by this chapter on each holder of any such bond which is part of such issue shall be increased (for the taxable year of the holder in which such cessation occurs) by the aggregate decrease in the credits allowed under this section to such holder for taxable years beginning in such 3 calendar years which would have resulted solely from denying any credit under this section with respect to such issue for such taxable years.

''(3) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (2) 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 paragraph (2) shall not be treated as a tax imposed by this chapter for purposes of determining—

''(i) the amount of any credit allowable under this part, or

''(ii) the amount of the tax imposed by section 55(19).

''(h) RAIL INFRASTRUCTURE FINANCE TRUST.—

''(1) IN GENERAL.—The following amounts shall be held in a trust account by the Rail Infrastructure Finance Corporation:

''(A) An amount of the proceeds from the sale of all bonds designated for purposes of this section that, when combined with amounts described in subparagraphs (B), (C), and (D), is sufficient—

''(i) to ensure the Corporation's ability to redeem all bonds upon maturity; and

''(ii) to pay the administrative expenses of the Corporation and the Rail Infrastructure Finance Trust.

''(B) The amount of any non-Federal contributions required under section 304(a) of the American Rail Equity Act of 2003.

''(C) The temporary period investment earnings on proceeds from the sale of such bonds.

''(D) Any earnings on any amounts described in subparagraph (A), (B), or (C).

''(2) USE OF FUNDS.—Amounts in the trust account may be used only for investment purposes to generate sufficient funds to redeem qualified rail infrastructure bonds at maturity and pay the administrative expenses of the Corporation and the Trust, and for funding grants as provided for in section 307(c)(5)(B) of the American Rail Equity Act of 2003.

''(3) USE OF REMAINING FUNDS IN TRUST ACCOUNT.—If the Corporation determines that the amount in the trust account exceeds the amount required to comply with paragraph (2), the Corporation shall transfer the excess to the Rail Infrastructure Finance Trust.

''(i) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BOND.—The term 'bond' includes any obligation.

''(2) NET SPENDABLE PROCEEDS.—The term 'net spendable proceeds' has the meaning give such term in section 307(c)(6) of the American Rail Equity Act of 2003.

''(3) QUALIFIED PROJECT.—The term 'qualified project' means any project that is eligible for grant funding under section 311, 312, 313, or 314 of the American Rail Equity Act of 2003.

''(4) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

''(5) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified rail infrastructure bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

''(6) REPORTING.—Issuers of qualified rail infrastructure bonds shall submit reports similar to the reports required under section 149(e).''.

(b) AMENDMENTS TO OTHER CODE SECTIONS.—

(1) REPORTING.—Subsection (d) of section 6049 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

''(8) REPORTING OF CREDIT ON QUALIFIED RAIL INFRASTRUCTURE BONDS.—

''(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(d) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

''(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

''(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.''.

(2) TREATMENT FOR ESTIMATED TAX PURPOSES.—

(A) INDIVIDUAL.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(B) CORPORATE.—Section 6655 of such Code (relating to failure by corporation to pay estimated income tax) is amended by adding at the end of subsection (g) the following new paragraph:

''(5) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Subpart H. Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds.''.

(2) Section 6401(b)(1) is amended by striking ''and G'' and inserting ''G, and H''.

SEC. 322. ANNUAL REPORT BY TREASURY ON RAIL INFRASTRUCTURE TRUST ACCOUNT.

The Secretary of the Treasury shall annually report to Congress as to whether the amount deposited in the trust account established by the Rail Infrastructure Finance Corporation under section 54(i) of the Internal Revenue Code of 1986, as added by section 321, is sufficient to fully repay at maturity the principal of any outstanding qualified rail infrastructure bonds issued pursuant to section 54 of such Code (as so added), together with amounts expected to be deposited into such account, as certified by the Rail Infrastructure Finance Corporation in accordance with procedures prescribed by the Secretary of the Treasury.

SEC. 323. ISSUANCE OF REGULATIONS.

The Secretary of the Treasury shall issue regulations required under section 54 of the Internal Revenue Code of 1986 (as added by this section 321) not later than 90 days after the date of the enactment of this Act.

SEC. 324. EFFECTIVE DATE.

The amendments made by section 321 shall apply to obligations issued after the date of enactment of this Act.

TITLE IV—RAIL INFRASTRUCTURE AND INTERMODAL TRANSPORTATION

SEC. 401. INTERMODAL TRANSPORTATION POLICY.

Section 302(e) is amended by striking ''system'' and inserting ''system, including freight and passenger rail service and maritime transportation, including such transportation via inland waterways,''.

SEC. 402. STATE RAIL PLANS.

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end the following:

''CHAPTER 225—STATE RAIL PLANS

''§ 22501. Authority

''(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

''(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

''(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

''(2) establish or designate a State rail plan approval authority to approve the plan;

''(3) submit the approved plan to the Secretary of Transportation for approval; and

''(4) revise and resubmit an approved plan no less frequently than once every 7 years for reapproval by the Secretary.

''§ 22502. Purposes and coordination

''(a) PURPOSES.—The purposes of a State rail plan are as follows:

''(1) To set forth State policy for all freight and passenger rail transportation, including commuter rail operations, in the State.

''(2) To establish the period covered by the State rail plan.

''(3) To present priorities and strategies to preserve, enhance, or expand rail service in the State.

''(4) To serve as the basis for Federal and State rail investments within the State.

''(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system.

''§ 22503. Transparency and review

''(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit

authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

''(b) ANNUAL REVIEWS.—Each State shall transmit an annual report on its plan to the Secretary of Transportation. The report shall included, for the year preceding the year in which submitted, the following matters:

''(1) A review of progress made, and actions taken, under the plan during the year.

''(2) A schedule of actions to be taken during the current year.

''(3) Any modifications made in the plan after approval of the plan by the Secretary or after the submission of the most recent annual report on the plan to the Secretary, including any modifications made to the priority freight or passenger rail capital project list required by section 22504(a)(5) of this title.

''(c) APPROVAL OF MODIFIED PLANS.—Each modification of a State rail plan that is determined substantive by the Secretary, including any modification to a priority freight or passenger rail capital project list required by section 22504(a)(5) of this title, is subject to approval (for the purposes of this chapter) by the Secretary.

''§ 22504. Content

''(a) IN GENERAL.—Each State rail plan shall contain the following:

''(1) An evaluation of the existing overall rail transportation system and rail services and facilities within the State, a prioritization of such services and facilities in terms of their contributions to the State's rail and transportation system.

''(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service, containing an analysis of the transportation services provided by those lines, their ownership, operating characteristics, the state of their infrastructure (including capital and maintenance requirements), and the economic and environmental impact of those lines.

''(3) A statement of freight and passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

''(4) A general analysis and quantification of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

''(5) A long-range rail service and investment program for current and future freight and passenger services in the State that meets the requirements of subsection (b).

''(6) A statement of rail financing issues in the State, including a list of current and prospective capital and operating funding resources, public subsidies, State and Federal taxation, and other financial policies relating to rail service and rail infrastructure development.

''(7) A statement of rail service issues within the State, such as congestion and capacity, and current system deficiencies on a regional, intrastate, and interstate basis, that reflects consultation with neighboring States and describes any coordination of regional rail service.

''(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and options to maximize service integration and efficiency between rail and other modes of transportation within the State.

''(9) A description of new technology that relates to rail transportation within the State, including logistics and process improvements.

''(10) A review of plans and projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

''(11) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

''(12) A description of activities by regional planning agencies, regional transportation authorities, and municipalities in the State on freight and passenger rail service within the State, or in the region in which the State is located, including a presentation of any recommendations made by such agencies, authorities, and municipalities.

''(13) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this chapter, and a plan for funding any recommended development of such corridors in the State.

''(14) A statement that the State is in compliance with the requirements of section 22102.

''(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

''(1) PROGRAM CONTENT.—A long-range rail service and investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

''(A) Two ranked lists for rail capital projects, one for priority freight rail capital projects and one for priority passenger rail capital projects.

''(B) A detailed funding plan for the projects.

''(2) PROJECT LIST CONTENT.—The ranked list of priority freight and passenger rail capital projects shall contain—

''(A) a description of the anticipated public and private benefits of each such project; and

''(B) a statement of the correlation between—

''(i) private funding contributions for the projects; and

''(ii) the private benefits.

''(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the ranked list of priority freight and passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

''(A) Contributions made by non-Federal Government and non-State sources through user fees, matching funds, or other private capital involvement.

''(B) Rail capacity and congestion effects.

''(C) Highway and transportation system congestion mitigation.

''(D) Regional balance.

''(E) Environmental impact.

''(F) Competitive and service impact for rail carriers and shippers.

''(G) Preservation of rail service.

''(H) Economic and employment impacts.

''(I) Projected ridership for passenger projects.

''(c) WAIVER.—The Secretary may waive the any requirement of subsection (a), except the requirement in paragraph (5) of such subsection, upon application under circumstances that the Secretary determines appropriate.

''§ 22505. High priority projects

''(a) DESIGNATION OF PROJECTS.—The Secretary of Transportation may designate as a high priority project any project that meets both of the following criteria:

''(1) The project is on a ranked list of priority freight and passenger rail capital projects that is included in a State rail plan under section 22504(5).

''(2) The project focuses on key rail congestion points that are selected by the Secretary—

''(A) on the basis of national benefits to the rail transportation system; and

''(B) coordinated with the national rail plan.

''(b) PREFERRED PROJECTS.—The Secretary, in designating high priority projects, shall give preference to—

''(1) projects that have national significance for—

''(A) improving the national rail network and the Nation's transportation system;

''(B) ensuring particularly high levels of safety;

''(C) increasing intermodal connectivity by providing or improving direct connections between rail facilities and other modes of transportation;

''(D) significantly affecting highway, aviation, or maritime capacity, congestion, or safety;

''(E) improving both intercity passenger rail an freight rail services;

''(F) enhancing rail completion or freight rail service for shippers;

''(G) causing positive economic and employment results;

''(H) producing significant environmental or community benefits;

''(I) having received financial commitments and other support from numerous entities such as States, local governments, or private entities;

''(J) enhancing international trade;

''(K) enhancing national security; or

''(L) employing positive train control technologies; and

''(2) projects that are at the stage of preparation that all precommencement compliance with environmental protection requirements has been completed and the projects are ready to commence.

''(c) REGIONAL BALANCE AND COMPATIBILITY.—The Secretary, in designating high priority projects, shall ensure that—

''(1) the geographic distribution of the projects designated as high priority projects is generally balanced among the geographic regions of the United States and a disproportionate number of such projects is not concentrated in a single region or State; and

''(2) all projects are compatible with, and carried out in conformance with—

''(A) plans developed pursuant to the requirements of sections 134 and 135 of title 23; and

''(B) the national rail plan.

''§ 22506. Approval

''(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

''(1) the plan meets all of the requirements applicable to State plans under this chapter;

''(2) for each project listed on the ranked list of priority freight and passenger rail capital projects under the plan—

''(A) the project meets all safety requirements that are applicable to the project under law; and

''(B) the State has entered into an agreement with any owner of rail infrastructure directly affected by the project that provides for the State to proceed with the project; and

''(3) the content of the plan is coordinated with—

''(A) plans developed pursuant to the requirements of sections 134 and 135 of title 23; and

''(B) the national rail plan and any other transportation plan of the Federal Government that is required by law.

''(b) PROCEDURES FOR STATE RAIL PLAN SUBMISSION AND APPROVAL.—The Secretary shall prescribe procedures for States to submit State rail plans for review under this subtitle, including application and qualification procedures. The procedures shall provide for the Secretary to review a State rail plan and issue a record of decision of approval or disapproval, with comment, on such plan within 180 days after the plan is submitted.

''§ 22507. Definitions

''In this chapter:

''(1) PRIVATE BENEFIT.—The term 'private benefit' means a benefit accrued to a person or private entity that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary.

''(2) PUBLIC BENEFIT.—The term 'public benefit' means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary.

''(3) STATE.—The term 'State' means any of the 50 States and the District of Columbia.

''(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term 'State rail transportation authority' means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.''.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle V is amended by inserting after the item relating to chapter 223 the following:

''225. STATE RAIL PLANS .....22501.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 205—EXPRESSING THE SENSE OF THE SENATE THAT A COMMEMORATIVE POSTAGE STAMP SHOULD BE ISSUED ON THE SUBJECT OF AUTISM AWARENESS

Mr. COLEMAN submitted the following resolution; which was referred to the Committee on Governmental Affairs:

S. RES. 205

Resolved, That it is the sense of the Senate that—

(1) a commemorative postage stamp should be issued by the United States Postal Service on the subject of autism awareness; and

(2) the Citizens' Stamp Advisory Committee should recommend to the Postmaster General that such a postage stamp be issued.

Mr. BURNS. Mr. President, I would like to show my support for the autism awareness resolution submitted today by my colleague, Senator COLEMAN. Autism is a developmental disability which typically appears during the first 3 years of life and impairs the communication and social skills in those affected. The result of a neurological disorder affecting the functioning of the brain, autism and its associated behaviors occur in as many as 1 in 500 individuals, in a rate of 5 boys to every girl. Because autism is difficult to recognize and diagnose, it is important that families seek an evaluation by a medical professional experienced in diagnosing and treating the disorder.

This disability is about 10 times more prevalent today than it was in the 1980s, with over 500,000 people in the U.S. today with some form of this pervasive developmental disorder. Its frequency rate makes autism one of the most common developmental disabilities. However, most of the public, including many medical, educational, and vocational professionals, are still unaware of how autism affects people and how they can effectively work with individuals with this diagnosis. I encourage my colleagues to join me in my efforts to increase autism awareness, and support this resolution.

SENATE RESOLUTION 206—HONORING THE MEMORY OF DR. WILLIAM R. (''BILL'') BRIGHT AND COMMENDING HIS LIFE AS AN EXAMPLE TO SUCCEEDING GENERATIONS

Mr. BROWNBACK (for himself and Mrs. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 206

Whereas Dr. Bright died on July 19, 2003, at age 81 in Orlando, Florida from complications related to pulmonary fibrosis, a lung disease for which there is no known cure or effective treatment;

Whereas Dr. Bright was an agnostic humanist and materialist, and successful Hollywood businessman, until he became ''overcome by the love of our great Creator God and Savior'' in 1945, whereupon he spent 5 years in theological studies at Princeton and Fuller Theological Seminaries;

Whereas Dr. Bright, with his wife Vonette, in 1951 founded Campus Crusade for Christ International, which now serves people in 191 countries through a staff of 27,000 full-time employees and up to 500,000 trained volunteers;

Whereas his life focus was on students and laypersons, and from the first he emphasized the role of women as full partners in leadership in the various ministries;

Whereas Dr. Billy Graham, a long-time friend of the Brights, has said: ''He is a man whose sincerity and integrity and devotion to our Lord have been an inspiration and a blessing to me ever since the early days of my ministry'';

Whereas Dr. Bright lived simply, owning neither houses nor land, and receiving no honoraria or donations for his thousands of appearances across the world, and the scores of writings and video presentations he developed;

Whereas when the Berlin Wall came down in 1989, he fulfilled a dream of more than 40 years of praying for Russia by donating his entire pension to establish a ministry to the students of Moscow State University;

Whereas Campus Crusade for Christ International operates more than 70 ministries and projects which offer hope and spiritual enlightenment across the globe to students on hundreds of campuses, urban residents, including minorities, the well-known Athletes-in-Action ministry, leaders of governments, inmates of prisons, aid to families, aid to health and education programs, aid to families of military personnel, executives, entertainers and musicians, and many others;

Whereas in 1979, Dr. Bright commissioned the JESUS film, a feature-length documentary on the life of Christ, directed by John Heyman, which has since been viewed by more than 5,100,000,000 people in 234 countries and has become the most widely viewed, as well as most widely translated, in 786 languages, film in history;

Whereas Dr. Bright is author of more than 100 books and booklets, as well as thousands of articles and pamphlets that have been distributed by the millions in most major languages, including the widely regarded Four Spiritual Laws of which 2,500,000,000 copies have been distributed;

Whereas Dr. Bright received 8 honorary degrees from universities in the United States and other nations, and numerous awards and honors from higher education, his home state of Oklahoma, and his peers in religious, radio, and television broadcasting;

Whereas, Dr. Bright was awarded the unique and prestigious Templeton Prize for Progress in Religion in 1996, presented by Prince Phillip at Buckingham Palace in London, and was received by Pope John Paul II in Rome where he addressed world spiritual leaders in accepting its $1,100,000 prize, which he directed be given to worldwide fasting for peace and spiritual enlightenment;

Whereas Dr. Bright sought ecumenical and trans-denominational cooperation throughout the world by building more than 1,000 partnerships with other ministries, and in 1983, he and former President Ronald Reagan, along with Jewish, Catholic, and Protestant members of the clergy, informed Congress which voted to establish The Year of the Bible to help focus on timeless truths for the Nation;

Whereas he helped create what media reports describe as the largest non-denominational Christian ministry in the world, and he rejected appeals to establish a single religious denomination and would not allow his name to be attached to any single denominational enterprise;

Whereas he urged followers to be ''salt and light,'' to seek civility in society, and to be active in ministry to prisons, hospitals, orphanages, and he declared the duties of citizenship to be reliably informed, active in the study of issues, voter registration and get-out-the-vote drives, and personal voting;

Whereas he never endorsed individual candidates or parties, and encouraged laypersons to seek public service and often called upon people in all lands to study American History, declaring President George Washington as his secular hero after Jesus of Nazareth and the Apostle Paul;

Whereas in response to a suggestion from a Member of the United States Senate, he helped establish the Evangelical Council for Financial Accountability to set high standards and monitor their compliance, setting an example for all charitable organizations;

Whereas Money magazine has often cited Campus Crusade for Christ International as best or one of the top 5 non-profit ministries for effective stewardship of donor dollars; and

Whereas in his last months he co-founded the Global Pastors Network, a separate ministry to pastors worldwide with helpful resources and a goal to start 5,000,000 home-based studies of the attributes of God: Now, therefore, be it

Resolved, That the Senate—

(1) sends its condolences to Mrs. Vonette Zachary Bright, their grandchildren, their sons, Zac and Brad, and their wives, Terry and Katherine, all of whom are also in full-time Christian ministry; and

(2) does hereby honor the memory of Dr. William R. (''Bill'') Bright, an ambassador of spiritual goodwill, whose 58 years of dedicated and effective service stand as an outstanding example of selfless leadership to all humankind.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1419. Ms. CANTWELL (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. WYDEN, Mrs. BOXER, Mrs. MURRAY, Mr. HARKIN, and Mr. ROCKEFELLER) proposed an amendment to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes.

SA 1420. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1421. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1422. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1423. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1424. Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1425. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1426. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1427. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 1424 submitted by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) and intended to be proposed to the bill S. 14, supra; which was ordered to lie on the table.

SA 1428. Mr. INHOFE (for himself and Mr. REID) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1429. Mr. BREAUX submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1430. Mr. BREAUX submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1431. Mr. GRASSLEY (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1432. Mr. FRIST proposed an amendment to the bill S. 14, supra.

SA 1433. Mr. FRIST proposed an amendment to the bill S. 14, supra.

SA 1434. Mr. FRIST proposed an amendment to amendment SA 1433 proposed by Mr. FRIST to the bill S. 14, supra.

SA 1435. Mr. FRIST (for Mr. CAMPBELL) proposed an amendment to the bill S. 523, to make technical corrections to law relating to Native Americans, and for other purposes.

TEXT OF AMENDMENTS

SA 1419. Ms. CANTWELL (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. WYDEN, Mrs. BOXER, Mrs. MURRAY, Mr. HARKIN, and Mr. ROCKEFELLER) proposed an amendment to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

In the pending amendment,

Strike section 1172 and insert the following:

SEC. 1172. MARKET MANIPULATION.

(a) PROHIBITION.—Part II of the Federal Power Act (as amended by section 1171) is amended by adding at the end the following:

''SEC. 219. PROHIBITION ON MARKET MANIPULATION.

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219''.

(c) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219, the Commission shall, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates.''.

SA 1420. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 19 strike line 6 through line 18 and insert:

(a) NET METERING.—

(1) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

(2) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

SA 1421. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security 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:

Subtitle I—System Benefits

SEC. 1192. SYSTEM BENEFITS FUND.

(a) DEFINITIONS.—For purposes of this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BOARD.—The term ''Board'' means the Board established under this section.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) FUND.—The term ''Fund'' means the System Benefits Trust Fund established by this section.

(5) RENEWABLE ENERGY.—The term ''renewable energy'' means electricity generated from wind, organic waste (excluding incinerated municipal solid waste), or biomass (including anaerobic digestion from farm systems and landfill gas recovery) or a geothermal, solar thermal, or photovoltaic source. For purposes of this paragraph, a farm system is an electric generating facility that generates electric energy from the anaerobic digestion of agricultural waste

produced by farming that is located on the farm where substantially all of the waste used is produced.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) BOARD.—

(1) ESTABLISHMENT.—The Secretary shall establish a System Benefits Trust Fund Board to carry out the functions and responsibilities described in this section.

(2) MEMBERSHIP.—The Board shall be composed of—

(A) 1 representative of the Federal Energy Regulatory Commission appointed by the Federal Energy Regulatory Commission;

(B) 2 representatives of the Secretary of Energy appointed by the Secretary of Energy;

(C) 2 persons nominated by the National Association of Regulatory Utility Commissioners and appointed by the Secretary;

(D) 1 person nominated by the National Association of State Utility Consumer advocates and appointed by the Secretary;

(E) 1 person nominated by the National Association of State Energy Officials and appointed by the Secretary;

(F) 1 person nominated by the National Energy Assistance Directors' Association and appointed by the Secretary; and

(G) 1 representative of the Environmental Protection Agency appointed by the Administrator.

(3) CHAIRPERSON.—The Secretary shall select a member of the Board to serve as Chairperson of the Board.

(c) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—The Board shall establish an account or accounts at one or more financial institutions, which account or accounts shall be known as the System Benefits Trust Fund consisting of amounts deposited in the fund under subsection (d).

(2) STATUS OF FUND.—The wires charges collected under subsection (e) and deposited in the Fund—

(A) shall not constitute funds of the United States;

(B) shall be held in trust by the Board solely for the purposes stated in subsection (d); and

(C) shall not be available to meet any obligations of the United States.

(d) USE OF FUNDS.—

(1) FUNDING OF STATE PROGRAMS.—Amounts in the Fund shall be used by the Board to provide matching funds to States and Indian tribes for the support of State or tribal public benefits programs relating to—

(A) energy conservation and efficiency;

(B) renewable energy sources;

(C) assisting low-income households in meeting their home energy needs; or

(D) research and development in areas described in subparagraphs (A) through (C).

(2) DISTRIBUTION.—

(A) In general.—Except for amounts needed to pay costs of the Board in carrying out its duties under this section, the Board shall distribute all amounts in the Fund to States or Indian tribes to fund public benefits programs under paragraph (1).

(B) FUNDS SHARE.—

(i) IN GENERAL.—Subject to clause (iii), the Fund share of a public benefits program funded under paragraph (1) shall be 50 percent.

(ii) PROPORTIONATE REDUCTION.—To the extent that the amount of matching funds requested by States and Indian tribes exceeds the maximum projected revenues of the Fund, the matching funds distributed to the States and Indian tribes shall be reduced by an amount that is proportionate to each State's annual consumption of electricity compared to the Nation's aggregate annual consumption of electricity.

(iii) ADDITIONAL STATE OR INDIAN TRIBE FUNDING.—A State or Indian tribe may apply funds to public benefits programs in addition to the amount of funds applied for the purpose of matching the Fund share.

(3) PROGRAM CRITERIA.—The Board shall recommend eligibility criteria for public benefits programs funded under this section for approval by the Secretary of Energy.

(4) APPLICATION.—Not later than August 1 of each year beginning in 2002, a State or Indian tribe seeking matching funds for the following fiscal year shall file with the Board, in such form as the Board may require, an application—

(A) certifying that the funds will be used for an eligible public benefits program;

(B) stating the amount of State or Indian tribe funds earmarked for the program; and

(C) summarizing how System Benefit Trust Fund funds from the previous calendar year (if any) were spent by the State and what the State accomplished as a result of these expenditures.

(e) WIRES CHARGE.—

(1) DETERMINATION OF NEEDED FUNDING.—Not later than August 1 of each year, the Board shall determine and inform the Federal Energy Regulatory Commission of the aggregate amount of wires charges that will be necessary to be paid into the Fund to pay matching funds to States and Indian tribes and pay the operating costs of the Board in the following fiscal year.

(2) IMPOSITION OF WIRES CHARGE.—

(A) IN GENERAL.—Not later than December 15 of each year, the Federal Energy Regulatory Commission shall impose a nonbypassable, competitively neutral wires charge, to be paid directly into the Fund by the operator of the wire, on electricity carried through the wire (measured as it exits the busbar at a generation facility, or, for electricity generated outside the United States, at the point of delivery to the wire operator's system) in interstate commerce.

(B) AMOUNT.—The wires charge shall be set at a rate equal to the lesser of

(i) 2.0 mills per kilowatt hour; or

(ii) a rate that is estimated to result in the collection of an amount of wires charges that is as nearly as possible equal to the amount of needed funding determined under paragraph (1).

(3) DEPOSIT IN THE FUND.—The wires charge shall be paid by the operator of the wire directly into the Fund at the end of each month during the calendar year for distribution by the Board under subsection (c).

(4) PENALTIES.—The Federal Energy Regulatory Commission may assess against a wire operator that fails to pay a wires charge as required by this subsection a civil penalty in an amount equal to not more than the amount of the unpaid wires charge.

(e) AUDITING.—

(1) IN GENERAL.—The Fund shall be audited annually by a firm of independent certified public accountants in accordance with generally accepted auditing standards.

(2) ACCESS TO RECORDS.—Representatives of the Secretary of Energy and the Federal Energy Regulatory Commission shall have access to all books, accounts, reports, files, and other records pertaining to the Fund as necessary to facilitate and verify the audit.

(3) REPORTS.—

(A) IN GENERAL.—A report on each audit shall be submitted to the Secretary of Energy, the Federal Energy Regulatory Commission, and the Secretary of the Treasury, who shall submit the report to the President and Congress not later than 180 days after the close of the fiscal year.

(B) REQUIREMENTS.—An audit report shall—

(i) set for the scope of the audit; and

(ii) include—

(I) a statement of assets and liabilities, capital, and surplus or deficit;

(II) a surplus or deficit analysis;

(III) a statement of income and expenses;

(IV) any other information that may be considered necessary to keep the President and Congress informed of the operations and financial condition of the Fund; and

(V) any recommendations with respect to the Fund that the Secretary of Energy or the Federal Energy Regulatory Commission may have.

SA 1422. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security 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:

''(6) ELECTRIC UTILITY.—The term 'electric utility' does not include—

''(A) the United States;

''(B) a State or political subdivision of a State;

''(C) an agency, authority, or instrumentality of the United States, a State, or political subdivision of a State; or

''(D) an electric cooperative.

SA 1423. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 145, between lines 18 and 19, insert the following:

Subtitle D—Growth of Nuclear Energy

SEC. 4___. COMBINED LICENSE PERIODS.

Section 103c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended—

(1) by striking ''c. Each such'' and inserting the following:

''c. LICENSE PERIOD.—

''(1) IN GENERAL.—Each such''; and

(2) by adding at the end the following:

''(2) COMBINED LICENSES.—In the case of a combined construction and operating license issued under section 185(b), the duration of the operating phase of the license period shall not be less than the duration of the operating license if application had been made for separate construction and operating licenses.''.

Subtitle E—NRC Regulatory Reform

SEC. 4___. ANTITRUST REVIEW.

(a) IN GENERAL.—Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by adding at the end the following:

''d. ANTITRUST LAWS.—

''(1) NOTIFICATION.—Except as provided in paragraph (4), when the Commission proposes to issue a license under section 103 or 104b., the Commission shall notify the Attorney General of the proposed license and the proposed terms and conditions of the license.

''(2) ACTION BY THE ATTORNEY GENERAL.—Within a reasonable time (but not more than 90 days) after receiving notification under paragraph (1), the Attorney General shall submit to the Commission and publish in the Federal Register a determination whether, insofar as the Attorney General is able to determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws.

''(3) INFORMATION.—On the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate or necessary to enable the Attorney General to make the determination under paragraph (2).

''(4) APPLICABILITY.—This subsection shall not apply to such classes or type of licenses as the Commission, with the approval of the Attorney General, determines would not significantly affect the activities of a licensee under the antitrust laws.''.

(b) CONFORMING AMENDMENT.—Section 105c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

''(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility under section 103 or 104b. that is filed on or after the date of enactment of subsection d.''.

SEC. 4___. DECOMMISSIONING.

(a) AUTHORITY OVER FORMER LICENSEES FOR DECOMMISSIONING FUNDING.—Section 161i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by inserting before the semicolon at the end the following: '', and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility''.

(b) TREATMENT OF NUCLEAR REACTOR FINANCIAL OBLIGATIONS.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) TREATMENT OF NUCLEAR REACTOR FINANCIAL OBLIGATIONS.—Notwithstanding any other provision of this title—

''(1) any funds or other assets held by a licensee or former licensee of the Nuclear Regulatory Commission, or by any other person, to satisfy the responsibility of the licensee, former licensee, or any other person to comply with a regulation or order of the Nuclear Regulatory Commission governing the decontamination and decommissioning of a nuclear power reactor licensed under section 103 or 104b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, other than a claim resulting from an activity undertaken to satisfy that responsibility, until the decontamination and decommissioning of the nuclear power reactor is completed to the satisfaction of the Nuclear Regulatory Commission;

''(2) obligations of licensees, former licensees, or any other person to use funds or other assets to satisfy a responsibility described in paragraph (1) may not be rejected, avoided, or discharged in any proceeding under this title or in any liquidation, reorganization, receivership, or other insolvency proceeding under Federal or State law; and

''(3) private insurance premiums and standard deferred premiums held and maintained in accordance with section 170b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) shall not be used to satisfy the claim of any creditor in any proceeding under this title, until the indemnification agreement executed in accordance with section 170c. of that Act (42 U.S.C. 2210(c)) is terminated.''.

Subtitle F—NRC Personnel Crisis

SEC. 4___. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

''y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.''.

SEC. 4___. NRC TRAINING PROGRAM.

(a) IN GENERAL.—In order to maintain the human resource investment and infrastructure of the United States in the nuclear sciences, health physics, and engineering fields, in accordance with the statutory authorities of the Commission relating to the civilian nuclear energy program, the Nuclear Regulatory Commission shall carry out a training and fellowship program to address shortages of individuals with critical safety skills.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2004 through 2007.

(2) AVAILABILITY.—Funds made available under paragraph (1) shall remain available until expended.

SA 1424. Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end add the following:

DIVISION B—ENERGY TAX INCENTIVES

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This division may be cited as the ''Energy Tax Incentives Act of 2003''.

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

(c) TABLE OF CONTENTS.—The table of contents for this division is as follows:

TITLE I—RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

SEC. 101. 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) 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 the date of the enactment of the Energy Tax Incentives Act of 2003,

''(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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of such Act—

''(i) subsection (a)(1) shall be applied by substituting '1.2 cents' for '1.5 cents', and

''(ii) the 5-year period beginning on January 1, 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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of the Energy Tax Incentives Act of 2003 and before January 1, 2007.

''(B) SPECIAL RULE.—In the case of any facility or unit described in subparagraph (A), the 5-year period beginning on the date the facility or unit was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any qualified facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.''.

(2) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(e) (relating to definitions and special rules), as redesignated by paragraph (1), is amended by striking paragraph (6) and inserting the following new paragraph:

''(6) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (d)(6)(A), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted to operate in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).''.

(3) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking ''subsection (c)(3)(A)'' in paragraph (7)(A)(i) and inserting ''subsection (d)(1)''.

(c) CREDIT RATE FOR ELECTRICITY PRODUCED FROM NEW FACILITIES.—

(1) IN GENERAL.—Section 45(a) is amended by adding at the end the following new flush sentence:

''In the case of electricity produced after 2003 at any qualified facility originally placed in service after the date of the enactment of the Energy Tax Incentives Act of 2003, paragraph (1) shall be applied by substituting '1.8 cents' for '1.5 cents'.''.

(2) NEW RATE NOT SUBJECT TO INFLATION ADJUSTMENT.—Section 45(b)(2) (relating to credit and phaseout adjustment based on inflation) is amended by adding at the end the following new sentence: ''This paragraph shall not apply to any amount which is substituted for the 1.5 cent amount in subsection (a) by reason of any provision of this section.''.

(d) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act 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''.

(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 of 2003.

''(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) 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 the date of the enactment of this Act, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(3) CREDIT RATE FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2003, 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 on or before such date of enactment.

TITLE II—ALTERNATIVE MOTOR VEHICLES AND FUELS INCENTIVES

SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

''(2) the new qualified hybrid motor vehicle credit determined under subsection (c), and

''(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d).

''(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

''(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(2) INCREASE FOR FUEL EFFICIENCY.—

''(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a

passenger automobile or light truck shall be increased by—

''(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

''(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

''(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

''(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

''(B) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

''(ii) In the case of a light truck:

"If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

''(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

''(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—

''(A) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

''(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile, medium duty passenger vehicle, or light truck and which provides the following percentage of the maximum available power:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 4 percent but less than 10 percent.	$250
At least 10 percent but less than 20 percent.	$500
At least 20 percent but less than 30 percent.	$750
At least 30 percent	$1,000.

''(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

''(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 20 percent but less than 30 percent.	$1,000
At least 30 percent but less than 40 percent.	$1,750
At least 40 percent but less than 50 percent.	$2,000
At least 50 percent but less than 60 percent.	$2,250
At least 60 percent	$2,500.

''(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 20 percent but less than 30 percent.	$4,000
At least 30 percent but less than 40 percent.	$4,500
At least 40 percent but less than 50 percent.	$5,000
At least 50 percent but less than 60 percent.	$5,500
At least 60 percent	$6,000.

''(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 20 percent but less than 30 percent.	$6,000
At least 30 percent but less than 40 percent.	$7,000
At least 40 percent but less than 50 percent.	$8,000
At least 50 percent but less than 60 percent.	$9,000
At least 60 percent	$10,000.

''(B) INCREASE FOR FUEL EFFICIENCY.—

''(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a new qualified hybrid motor vehicle which is a passenger automobile or light truck shall be increased by—

''(I) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2002 model year city fuel economy,

''(II) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(III) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(IV) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(V) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy, and

''(VI) $3,000, if such vehicle achieves at least 250 percent of the 2002 model year city fuel economy.

''(ii) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

''(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increased credit amount determined in accordance with the following tables:

''(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

"If the model year is:	**The increased credit amount is:**
2003	$3,000
2004	$2,500
2005	$2,000
2006	$1,500.

''(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

"If the model year is:	**The increased credit amount is:**
2003	$7,750
2004	$6,500
2005	$5,250
2006	$4,000.

''(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

"If the model year is:	**The increased credit amount is:**
2003	$12,000
2004	$10,000
2005	$8,000
2006	$6,000.

''(D) DEFINITIONS RELATING TO CREDIT AMOUNT.—

''(i) APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (C), the term 'applicable heavy duty hybrid

motor vehicle' means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines, or for 2008 and later model year ottocycle heavy duty engines, as applicable.

''(ii) MAXIMUM AVAILABLE POWER.—

''(I) PASSENGER AUTOMOBILE, MEDIUM DUTY PASSENGER VEHICLE, OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

''(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. The term 'total traction power' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

''(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified hybrid motor vehicle' means a motor vehicle—

''(i) which draws propulsion energy from onboard sources of stored energy which are both—

''(I) an internal combustion or heat engine using consumable fuel, and

''(II) a rechargeable energy storage system,

''(ii) which, in the case of a passenger automobile, medium duty passenger vehicle, or light truck—

''(I) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(II) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(iii) which, in the case of a heavy duty hybrid motor vehicle, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

''(iv) the original use of which commences with the taxpayer,

''(v) which is acquired for use or lease by the taxpayer and not for resale, and

''(vi) which is made by a manufacturer.

''(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

''(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term 'heavy duty hybrid motor vehicle' means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 8,500 pounds. Such term does not include a medium duty passenger vehicle.

''(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

''(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

''(A) 40 percent, plus

''(B) 30 percent, if such vehicle—

''(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

''(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act of 2003.

''(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

''(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified alternative fuel motor vehicle' means any motor vehicle—

''(i) which is only capable of operating on an alternative fuel,

''(ii) the original use of which commences with the taxpayer,

''(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

''(iv) which is made by a manufacturer.

''(B) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

''(5) CREDIT FOR MIXED-FUEL VEHICLES.—

''(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

''(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

''(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

''(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term 'mixed-fuel vehicle' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

''(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

''(ii) either—

''(I) has received a certificate of conformity under the Clean Air Act, or

''(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

''(iii) the original use of which commences with the taxpayer,

''(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

''(v) which is made by a manufacturer.

''(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '75/25 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

''(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '90/10 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

''(3) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'medium duty passenger vehicle', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the

Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (e)).

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

''(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

''(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(10) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before the date of the enactment of this paragraph.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(11) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

''(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

''(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(g) REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

''(h) TERMINATION.—This section shall not apply to any property purchased after—

''(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

''(2) in the case of any other property, December 31, 2006.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 30B(f)(4).''.

(2) Section 55(c)(2) is amended by inserting ''30B(e),'' after ''30(b)(3),''.

(3) Section 6501(m) is amended by inserting ''30B(f)(9),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Alternative motor vehicle credit.''.

(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, in taxable years ending after such date.

SEC. 202. MODIFICATION OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Section 30(a) (relating to allowance of credit) is amended by striking ''10 percent of''.

(2) LIMITATION OF CREDIT ACCORDING TO TYPE OF VEHICLE.—Section 30(b) (relating to limitations) is amended—

(A) by striking paragraphs (1) and (2) and inserting the following new paragraph:

''(1) LIMITATION ACCORDING TO TYPE OF VEHICLE.—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

''(A) In the case of a vehicle with a gross vehicle weight rating not exceeding 8,500 pounds—

''(i) except as provided in clause (ii) or (iii), $3,500,

''(ii) $6,000, if such vehicle is—

''(I) capable of a driving range of at least 100 miles on a single charge of the vehicle's rechargeable batteries as measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

''(II) capable of a payload capacity of at least 1,000 pounds, and

''(iii) if such vehicle is a low-speed vehicle which conforms to Standard 500 prescribed by the Secretary of Transportation (49 C.F.R. 571.500), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003, the lesser of—

''(I) 10 percent of the manufacturer's suggested retail price of the vehicle, or

''(II) $1,500.

''(B) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 but not exceeding 14,000 pounds, $10,000.

''(C) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 but not exceeding 26,000 pounds, $20,000.

''(D) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, $40,000.'', and

(B) by redesignating paragraph (3) as paragraph (2).

(3) CONFORMING AMENDMENTS.—

(A) Section 53(d)(1)(B)(iii) is amended by striking ''section 30(b)(3)(B)'' and inserting ''section 30(b)(2)(B)''.

(B) Section 55(c)(2), as amended by this Act, is amended by striking ''30(b)(3)'' and inserting ''30(b)(2)''.

(b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

(1) IN GENERAL.—Section 30(c)(1)(A) (defining qualified electric vehicle) is amended to read as follows:

''(A) which is—

''(i) operated solely by use of a battery or battery pack, or

''(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation,''.

(2) LEASED VEHICLES.—Section 30(c)(1)(C) is amended by inserting ''or lease'' after ''use''.

(3) CONFORMING AMENDMENTS.—

(A) Subsections (a), (b)(2), and (c) of section 30 are each amended by inserting ''battery'' after ''qualified'' each place it appears.

(B) The heading of subsection (c) of section 30 is amended by inserting ''BATTERY'' after ''QUALIFIED''.

(C) The heading of section 30 is amended by inserting ''battery'' after ''qualified''.

(D) The item relating to section 30 in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting ''battery'' after ''qualified''.

(E) Section 179A(c)(3) is amended by inserting ''battery'' before ''electric''.

(F) The heading of paragraph (3) of section 179A(c) is amended by inserting ''BATTERY'' before ''ELECTRIC''.

(c) ADDITIONAL SPECIAL RULES.—Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(2) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before the date of the enactment of this paragraph.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 203. CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified clean-fuel vehicle refueling property.

''(b) LIMITATION.—The credit allowed under subsection (a)—

''(1) with respect to any retail clean-fuel vehicle refueling property, shall not exceed $30,000, and

''(2) with respect to any residential clean-fuel vehicle refueling property, shall not exceed $1,000.

''(c) YEAR CREDIT ALLOWED.—Notwithstanding subsection (a), no credit shall be allowed under subsection (a) with respect to any qualified clean-fuel vehicle refueling property before the taxable year in which the property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified clean-fuel vehicle refueling property' has the same meaning given such term by section 179A(d).

''(2) RESIDENTIAL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'residential clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'retail clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30B, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—

''(1) COORDINATION WITH OTHER DEDUCTIONS AND CREDITS.—Except as provided in paragraph (2), the amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(2) NO DEDUCTION ALLOWED UNDER SECTION 179A.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified clean-fuel vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail clean-fuel vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year, such excess shall be a credit carryforward to each of the 20 taxable years following such taxable year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(b) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen)'',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) to the extent provided in section 30C(f).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30C(e),'' after ''30B(e),''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

''Sec. 30C. Clean-fuel vehicle refueling property credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 204. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

''SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the alternative fuel retail sales credit for any taxable year is the applicable amount for each gasoline gallon equivalent of alternative fuel sold at retail by the taxpayer during such year as a fuel to propel any qualified motor vehicle.

''(b) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE AMOUNT.—The term 'applicable amount' means the amount determined in accordance with the following table:

''In the case of any taxable year ending in—	**The applicable amount is—**
2003	30 cents
2004	40 cents
2005 and 2006	50 cents

''(2) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, or any liquid at least 85 percent of the volume of which consists of methanol or ethanol.

''(3) GASOLINE GALLON EQUIVALENT.—The term 'gasoline gallon equivalent' means, with respect to any alternative fuel, the amount (determined by the Secretary) of such fuel having a Btu content of 114,000.

''(4) QUALIFIED MOTOR VEHICLE.—The term 'qualified motor vehicle' means any motor vehicle (as defined in section 30(c)(2)) which meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled.

''(5) SOLD AT RETAIL.—

''(A) IN GENERAL.—The term 'sold at retail' means the sale, for a purpose other than resale, after manufacture, production, or importation.

''(B) USE TREATED AS SALE.—If any person uses alternative fuel (including any use after importation) as a fuel to propel any new qualified alternative fuel motor vehicle (as defined in section 30B(d)(4)) before such fuel is sold at retail, then such use shall be treated in the same manner as if such fuel were sold at retail as a fuel to propel such a vehicle by such person.

''(c) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any fuel taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such fuel.

''(d) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold at retail after December 31, 2006.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the alternative fuel retail sales credit determined under section 40A(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 40A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the alternative fuel retail sales credit determined under section 40A(a) may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 40 the following new item:

''Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold at retail after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 205. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

''(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking ''30,000,000'' each place it appears and inserting ''60,000,000''.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking ''subpart D'' and inserting ''subpart D, other than section 40(a)(3),''.

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

(A) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SMALL ETHANOL PRODUCER CREDIT.—

''(A) IN GENERAL.—In the case of the small ethanol producer credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the small ethanol producer credit).

''(B) SMALL ETHANOL PRODUCER CREDIT.—For purposes of this subsection, the term 'small ethanol producer credit' means the credit allowable under subsection (a) by reason of section 40(a)(3).''.

(B) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii) and subclause (II) of section 38(c)(3)(A)(ii) are each amended by inserting ''or the small ethanol producer credit'' after ''employee credit''.

(4) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 (relating to income inclusion of alcohol fuel credit) is amended to read as follows:

''SEC. 87. ALCOHOL FUEL CREDIT.

''Gross income includes an amount equal to the sum of—

''(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1), and

''(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2).''.

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

''(k) CROSS REFERENCE.—For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).''.

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

SEC. 206. INCREASED FLEXIBILITY IN ALCOHOL FUELS TAX CREDIT.

(a) ALCOHOL FUELS CREDIT MAY BE TRANSFERRED.—Section 40 (relating to alcohol used as fuel) is amended by adding at the end the following new subsection:

''(i) CREDIT MAY BE TRANSFERRED.—

''(1) IN GENERAL.—A taxpayer may transfer any credit allowable under paragraph (1) or (2) of subsection (a) with respect to alcohol used in the production of ethyl tertiary butyl ether through an assignment to a qualified assignee. Such transfer may be revoked only with the consent of the Secretary.

''(2) QUALIFIED ASSIGNEE.—For purposes of this subsection, the term 'qualified assignee' means any person who—

''(A) is liable for taxes imposed under section 4081,

''(B) is registered under section 4101, and

''(C) obtains a certificate from the taxpayer described in paragraph (1) which identifies the amount of alcohol used in such production.

''(3) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to insure that any credit described in paragraph (1) is claimed once and not reassigned by a qualified assignee.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on and after the date of the enactment of this Act.

SEC. 207. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the biodiesel mixture credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is the sum of the products of the biodiesel mixture rate for each qualified biodiesel mixture and the number of gallons of such mixture of the taxpayer for the taxable year.

''(B) BIODIESEL MIXTURE RATE.—For purposes of subparagraph (A), the biodiesel mixture rate for each qualified biodiesel mixture shall be—

''(i) in the case of a mixture with only agri-biodiesel, 1 cent for each whole percentage point (not exceeding 20 percentage points) of agri-biodiesel in such mixture, and

''(ii) in the case of a mixture with recycled biodiesel, or a combination of agri-biodiesel and recycled biodiesel, 0.5 cent for each whole percentage point (not exceeding 20

percentage points) of such biodiesel in such mixture.

''(2) QUALIFIED BIODIESEL MIXTURE.—

''(A) IN GENERAL.—The term 'qualified biodiesel mixture' means a mixture of diesel fuel and biodiesel which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel in a diesel-powered engine, or

''(ii) is used as a fuel in a diesel-powered engine by the taxpayer producing such mixture.

''(B) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—

''(i) IN GENERAL.—The production of a qualified biodiesel mixture shall be taken into account—

''(I) only if the sale or use described in subparagraph (A) is in a trade or business of the taxpayer, and

''(II) for the taxable year in which such sale or use occurs.

''(ii) CERTIFICATION FOR AGRI-BIODIESEL.—Agri-biodiesel used in the production of a qualified biodiesel mixture shall be taken into account only if the taxpayer described in subparagraph (A) obtains a certification from the producer of the agri-biodiesel which identifies the product produced.

''(C) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any agri-biodiesel shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such agri-biodiesel solely by reason of the application of section 6426 or 6427(e).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids for use in diesel-powered engines which meet—

''(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(B) the requirements of the American Society of Testing and Materials D6751.

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

''(3) RECYCLED BIODIESEL.—The term 'recycled biodiesel' means biodiesel derived from nonvirgin vegetable oils or nonvirgin animal fats.

''(4) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the biodiesel mixture rate applicable under subsection (b)(1)(B) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(5) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year ending on or before the date of the enactment of section 40B.''.

(2) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting '', and'', and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 208. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

''SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the applicable amount for each gallon of alcohol used by the taxpayer in producing an alcohol fuel mixture.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

''(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

''(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' is a mixture which—

''(A) consists of alcohol and a taxable fuel, and

''(B) is sold for use or used as a fuel by the taxpayer producing the mixture.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

''(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

''(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

''(5) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2010.

''(c) BIODIESEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of agri-biodiesel used by the taxpayer in producing any qualified biodiesel mixture containing only agri-biodiesel, except that the number of gallons of agri-biodiesel taken into account in determining the credit shall not exceed 1 gallon for each 5 gallons of qualified biodiesel mixture produced.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection, the applicable amount is $1.00.

''(3) DEFINITIONS.—Any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2005.

''(d) MIXTURE NOT USED AS A FUEL, ETC.—

''(1) IMPOSITION OF TAX.—If—

''(A) any credit was determined under this section with respect to alcohol or agri-biodiesel used in the production of any alcohol fuel mixture or qualified biodiesel mixture, respectively, and

''(B) any person—

''(i) separates such alcohol or agri-biodiesel from the mixture, or

''(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or agri-biodiesel.

''(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 40(c) is amended by striking ''section 4081(c), or section 4091(c)'' and inserting ''section 4091(c), section 6426, section 6427(e), or section 6427(f)''.

(2) Section 40(d)(4)(B) is amended by striking ''or 4081(c)''.

(3) Section 40(e)(1) is amended—

(A) by striking ''2007'' in subparagraph (A) and inserting ''2010'', and

(B) by striking ''2008'' in subparagraph (B) and inserting ''2011''.

(4) Section 40(h) is amended—

(A) by striking ''2007'' in paragraph (1) and inserting ''2010'', and

(B) by striking '', 2006, or 2007'' in the table contained in paragraph (2) and inserting ''through 2010''.

(5) Section 4041(b)(2)(B) is amended by striking ''a substance other than petroleum or natural gas'' and inserting ''coal (including peat)''.

(6) Paragraph (1) of section 4041(k) is amended to read as follows:

''(1) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 6426(b)(4)(A)), the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c).''.

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

''(2) GASOLINE.—The term 'gasoline'—

''(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)) or a denaturant of alcohol (as defined in section 6426(b)(4)(A)), and

''(B) includes, to the extent prescribed in regulations—

''(i) any gasoline blend stock, and

''(ii) any product commonly used as an additive in gasoline.

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.''.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

''(e) GASOLINE, DIESEL FUEL, AND KEROSENE USED TO PRODUCE CERTAIN ALCOHOL FUEL AND BIODIESEL MIXTURES.—

''(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, or kerosene on which tax was imposed by section 4081 is used by any person in producing a mixture described in section 6426 which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such gasoline, diesel fuel, or kerosene.

''(2) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, or kerosene with respect to which an amount is payable under subsection (b), (d), or (l) or under section 6416(b)(2), 6420, 6421, or 6426.

''(3) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) sold or used after December 31, 2010, and

''(B) any qualified biodiesel mixture (within the meaning of section 6426(c)(1)) sold or used after December 31, 2005.''.

(10) Subsection (f) of section 6427 is amended to read as follows:

''(f) AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

''(1) IN GENERAL.—Except as provided in subsection (k), if any aviation fuel on which tax was imposed by section 4091 at the regular tax rate is used by any person in producing a mixture described in section 4091(c)(1)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

''(2) DEFINITIONS.—For purposes of paragraph (1)—

''(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

''(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(2) thereof.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any aviation fuel with respect to which an amount is payable under subsection (d) or (l).

''(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.''.

(11) Paragraphs (1) and (2) of section 6427(i) are amended by inserting ''(f),'' after ''(d),''.

(12) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)'',

(B) by striking ''gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))'' in subparagraph (A) and inserting ''a mixture described in section 6426'',

(C) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

(D) by striking ''20 days of the date of the filing of such claim'' in subparagraph (B) and inserting ''45 days of the date of the filing of such claim (20 days in the case of an electronic claim)'', and

(E) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

(13) Section 6427(o) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) any tax is imposed by section 4081, and'',

(B) by striking ''such gasohol'' in paragraph (2) and inserting ''the alcohol fuel mixture (as defined in section 6426(b)(3))'',

(C) by striking ''gasohol'' both places it appears in the matter following paragraph (2) and inserting ''alcohol fuel mixture'', and

(D) by striking ''GASOHOL'' in the heading and inserting ''ALCOHOL FUEL MIXTURE''.

(14) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.''.

(15) Section 9503(b)(4) is amended—

(A) by adding ''or'' at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(16) Section 9503(c)(2)(A)(i)(III) is amended by inserting ''(other than subsection (e) thereof)'' after ''section 6427''.

(17) Section 9503(e)(2) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(18) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2003.

(d) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (b)(12)(D)) not later than September 30, 2003.

SEC. 209. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES.

(a) PROHIBITION.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended—

(1) by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) Any gasoline or diesel fuel sold at a duty-free sales enterprise shall be considered to be entered for consumption into the customs territory of the United States.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

TITLE III—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

SEC. 301. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualifying new home during construction of such home.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—

''(A) IN GENERAL.—The credit allowed by this section with respect to a qualifying new home shall not exceed—

''(i) in the case of a 30-percent home, $1,000, and

''(ii) in the case of a 50-percent home, $2,000.

''(B) 30- OR 50-PERCENT HOME.—For purposes of subparagraph (A)—

''(i) 30-PERCENT HOME.—The term '30-percent home' means—

''(I) a qualifying new home which is certified to have a projected level of annual heating and cooling energy consumption, measured in terms of average annual energy cost to the homeowner, which is at least 30 percent less than the annual level of heating and cooling energy consumption of a qualifying new home constructed in accordance with the standards of chapter 4 of the 2000 International Energy Conservation Code, or

''(II) in the case of a qualifying new home which is a manufactured home, a home which meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(ii) 50-PERCENT HOME.—The term '50-percent home' means a qualifying new home which would be described in clause (i)(I) if 50 percent were substituted for 30 percent.

''(C) PRIOR CREDIT AMOUNTS ON SAME HOME TAKEN INTO ACCOUNT.—The amount of the credit otherwise allowable for the taxable year with respect to a qualifying new home under clause (i) or (ii) of subparagraph (A) shall be reduced by the sum of the credits allowed under subsection (a) to any taxpayer with respect to the home for all preceding taxable years.

''(2) COORDINATION WITH CERTAIN CREDITS.—For purposes of this section—

''(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to the rehabilitation credit (as determined under section 47(a)) or to the energy credit (as determined under section 48(a)), and

''(B) expenditures taken into account under section 25D, 47, or 48(a) shall not be taken into account under this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means—

''(A) the person who constructed the qualifying new home, or

''(B) in the case of a qualifying new home which is a manufactured home, the manufactured home producer of such home.

If more than 1 person is described in subparagraph (A) or (B) with respect to any qualifying new home, such term means the person designated as such by the owner of such home.

''(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling equipment which can, individually or in combination with other components, meet the requirements of this section.

''(3) QUALIFYING NEW HOME.—

''(A) IN GENERAL.—The term 'qualifying new home' means a dwelling—

''(i) located in the United States,

''(ii) the construction of which is substantially completed after the date of the enactment of this section, and

''(iii) the first use of which after construction is as a principal residence (within the meaning of section 121).

''(B) MANUFACTURED HOME INCLUDED.—The term 'qualifying new home' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

''(5) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a qualifying new home when installed in or on such home,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(d) CERTIFICATION.—

''(1) METHOD OF CERTIFICATION.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be determined either by a component-based method or a performance-based method, or, in the case of a qualifying new home which is a manufactured home, by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) COMPONENT-BASED METHOD.—A component-based method is a method which uses the applicable technical energy efficiency specifications or ratings (including product labeling requirements) for the energy efficient building envelope component or energy efficient heating or cooling equipment. The Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, develop prescriptive component-based packages which are equivalent in energy performance to properties which qualify under subparagraph (C).

''(C) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—A performance-based method is a method which calculates projected energy usage and cost reductions in the qualifying new home in relation to a new home—

''(I) heated by the same fuel type, and

''(II) constructed in accordance with the standards of chapter 4 of the 2000 International Energy Conservation Code.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy. Such regulations on the specifications for software and verification protocols shall be based on the 2001 California Residential Alternative Calculation Method Approval Manual.

''(2) PROVIDER.—A certification described in subsection (b)(1)(B) shall be provided by—

''(A) in the case of a component-based method, a local building regulatory authority, a utility, or a home energy rating organization,

''(B) in the case of a performance-based method, an individual recognized by an organization designated by the Secretary for such purposes, or

''(C) in the case of a qualifying new home which is a manufactured home, a manufactured home primary inspection agency.

''(3) FORM.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and

''(i) in the case of a performance-based method, accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such qualifying new home, and

''(ii) in the case of a qualifying new home which is a manufactured home, accompanied by such documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) FORM PROVIDED TO BUYER.—A form documenting the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their rated energy efficiency performance shall be provided to the buyer of the qualifying new home. The form shall include labeled R-value for insulation products, NFRC-labeled U-factor and solar heat gain coefficient for windows, skylights, and doors, labeled annual fuel utilization efficiency (AFUE) ratings for furnaces and boilers, labeled heating seasonal performance factor (HSPF) ratings for electric heat pumps, and labeled seasonal energy efficiency ratio (SEER) ratings for air conditioners.

''(C) RATINGS LABEL AFFIXED IN DWELLING.—A permanent label documenting the ratings in subparagraph (B) shall be affixed to the front of the electrical distribution panel of the qualifying new home, or shall be otherwise permanently displayed in a readily inspectable location in such home.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for performance-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the homebuyer.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(e) APPLICATION.—Subsection (a) shall apply to qualifying new homes the construction of which is substantially completed after the date of the enactment of this section and purchased during the period beginning on such date and ending on—

''(1) in the case of any 30-percent home, December 31, 2005, and

''(2) in the case of any 50-percent home, December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', plus'', and by adding at the end the following new paragraph:

''(18) the new energy efficient home credit determined under section 45G(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

''(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a qualifying new home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45G(a).''.

(d) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(13) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to any taxable year ending on or before the date of the enactment of such section.''.

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by adding after paragraph (11) the following new paragraph:

''(12) the new energy efficient home credit determined under section 45G(a).''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45G. New energy efficient home credit.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to homes the construction of which is substantially completed after the date of the enactment of this Act.

SEC. 302. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of the amounts determined under paragraph (2) for qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(2) AMOUNT.—The amount determined under this paragraph for any category described in subsection (b)(2)(B) shall be the product of the applicable amount for appliances in the category and the eligible production for the category.

''(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

''(1) APPLICABLE AMOUNT.—The applicable amount is—

''(A) $50, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.42 MEF, or

''(ii) a refrigerator which consumes at least 10 percent less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001,

''(B) $100, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.50 MEF, or

''(ii) a refrigerator which consumes at least 15 percent (20 percent in the case of a refrigerator manufactured after 2006) less kilowatt hours per year than such energy conservation standards, and

''(C) $150, in the case of a refrigerator manufactured before 2007 which consumes at least 20 percent less kilowatt hours per year than such energy conservation standards.

''(2) ELIGIBLE PRODUCTION.—

''(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

''(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

''(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 2000, 2001, and 2002.

''(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

''(i) clothes washers described in paragraph (1)(A)(i),

''(ii) clothes washers described in paragraph (1)(B)(i),

''(iii) refrigerators described in paragraph (1)(A)(ii),

''(iv) refrigerators described in paragraph (1)(B)(ii), and

''(v) refrigerators described in paragraph (1)(C).

''(c) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall not exceed $60,000,000, of which not more than $30,000,000 may be allowed with respect to the credit determined by using the applicable amount under subsection (b)(1)(A).

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) a clothes washer described in subparagraph (A)(i) or (B)(i) of subsection (b)(1), or

''(B) a refrigerator described in subparagraph (A)(ii), (B)(ii), or (C) of subsection (b)(1).

''(2) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(3) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(4) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(e) SPECIAL RULES.—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

''(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

''(g) TERMINATION.—This section shall not apply—

''(1) with respect to refrigerators described in subsection (b)(1)(A)(ii) produced after December 31, 2004, and

''(2) with respect to all other qualified energy efficient appliances produced after December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', plus'', and by adding at the end the following new paragraph:

''(19) the energy efficient appliance credit determined under section 45H(a).''.

(c) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(14) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45H may be carried to a taxable year ending on or before the date of the enactment of such section.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45H. Energy efficient appliance credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 303. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year,

''(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

''(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

''(4) 30 percent of the qualified wind energy property expenditures made by the taxpayer during such year, and

''(5) the sum of the qualified Tier 2 energy efficient building property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

''(A) $2,000 for property described in paragraph (1), (2), or (5) of subsection (d),

''(B) $500 for each 0.5 kilowatt of capacity of property described in subsection (d)(4), and

''(C) for property described in subsection (d)(6)—

''(i) $75 for each electric heat pump water heater,

''(ii) $250 for each electric heat pump,

''(iii) $250 for each advanced natural gas, oil, or propane furnace,

''(iv) $250 for each central air conditioner,

''(v) $75 for each natural gas, oil, or propane water heater, and

''(vi) $250 for each geothermal heat pump.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

''(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

''(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

''(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

''(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

''(ii) in the case of the energy efficiency ratio (EER)—

''(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

''(iii) are in effect at the time of the acquisition of the property.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)

for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

''(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

''(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified Tier 2 energy efficient building property expenditure' means an expenditure for any Tier 2 energy efficient building property.

''(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy efficient building property' means—

''(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

''(ii) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 12.5,

''(iii) an advanced natural gas, oil, or propane furnace which achieves at least 95 percent annual fuel utilization efficiency (AFUE),

''(iv) a central air conditioner which has a seasonal energy efficiency ratio (SEER) of at least 15 and an energy efficiency ratio (EER) of at least 12.5,

''(v) a natural gas, oil, or propane water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure, and

''(vi) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21.

''(7) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1), (2), (4), (5), or (6) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

''(8) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—Except in the case of qualified wind energy property expenditures, if less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(g) TERMINATION.—The credit allowed under this section shall not apply to expenditures after December 31, 2007.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(h) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, is amended by striking ''section 1400C'' and inserting ''sections 25C and 1400C''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, is amended by inserting '', 25C,'' after ''sections 23''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, is

amended by inserting ''and section 25C'' after ''this section''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential energy efficient property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SEC. 304. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property or qualified microturbine property,''.

(b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—Section 48(a) (relating to energy credit) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

''(A) QUALIFIED FUEL CELL PROPERTY.—

''(i) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant which—

''(I) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(II) has an electricity-only generation efficiency greater than 30 percent.

''(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to $500 for each 0.5 kilowatt of capacity of such property.

''(iii) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

''(iv) TERMINATION.—The term 'qualified fuel cell property' shall not include any property placed in service after December 31, 2007.

''(B) QUALIFIED MICROTURBINE PROPERTY.—

''(i) IN GENERAL.—The term 'qualified microturbine property' means a stationary microturbine power plant which—

''(I) has a capacity of less than 2,000 kilowatts, and

''(II) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

''(ii) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal $200 for each kilowatt of capacity of such property.

''(iii) STATIONARY MICROTURBINE POWER PLANT.—The term 'stationary microturbine power plant' means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

''(iv) TERMINATION.—The term 'qualified microturbine property' shall not include any property placed in service after December 31, 2006.''.

(c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) is amended by inserting ''except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),'' before ''the energy''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 305. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

''SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction for the taxable year in which a building is placed in service by a taxpayer, an amount equal to the energy efficient commercial building property expenditures made by such taxpayer with respect to the construction or reconstruction of such building for the taxable year or any preceding taxable year.

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under subsection (a) shall not exceed an amount equal to the product of—

''(1) $2.25, and

''(2) the square footage of the building with respect to which the expenditures are made.

''(c) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'energy efficient commercial building property expenditures' means amounts paid or incurred for energy efficient property installed on or in connection with the construction or reconstruction of a building—

''(A) for which depreciation is allowable under section 167,

''(B) which is located in the United States, and

''(C) which is the type of structure to which the Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America is applicable.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) ENERGY EFFICIENT PROPERTY.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'energy efficient property' means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a building which meets the minimum requirements of Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America, using methods of calculation described in subparagraph (B) and certified by qualified individuals as provided under paragraph (5).

''(B) METHODS OF CALCULATION.—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power costs.

''(C) COMPUTER SOFTWARE.—

''(i) IN GENERAL.—Any calculation described in subparagraph (B) shall be prepared by qualified computer software.

''(ii) QUALIFIED COMPUTER SOFTWARE.—For purposes of this subparagraph, the term 'qualified computer software' means software—

''(I) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power costs as required by the Secretary,

''(II) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

''(III) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

''(3) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property expenditures made by a public entity with respect to the construction or reconstruction of a public building, the Secretary shall promulgate regulations under which the value of the deduction with respect to such expenditures which would be allowable to the public entity under this section (determined without regard to the tax-exempt status of such entity) may be allocated to the person primarily responsible for designing the energy efficient property. Such person shall be treated as the taxpayer for purposes of this section.

''(4) NOTICE TO OWNER.—Any qualified individual providing a certification under paragraph (5) shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (2)(C)(ii)(III).

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings by qualified individuals described in subparagraph (B). Such procedures shall be—

''(i) comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards, and

''(ii) fuel neutral such that the same energy efficiency measures allow a building to be eligible for the credit under this section regardless of whether such building uses a

gas or oil furnace or boiler or an electric heat pump.

''(B) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes. The Secretary may qualify a home energy ratings organization, a local building regulatory authority, a State or local energy office, a utility, or any other organization which meets the requirements prescribed under this paragraph.

''(C) PROFICIENCY OF QUALIFIED INDIVIDUALS.—The Secretary shall consult with nonprofit organizations and State agencies with expertise in energy efficiency calculations and inspections to develop proficiency tests and training programs to qualify individuals to determine compliance.

''(d) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient property, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(e) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(f) TERMINATION.—This section shall not apply with respect to any energy efficient commercial building property expenditures in connection with a building the construction of which is not completed on or before December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 179B(d).''.

(2) Section 1245(a) is amended by inserting ''179B,'' after ''179A,'' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence ''or by section 179B''.

(4) Section 263(a)(1) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by inserting after subparagraph (H) the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 179B.''.

(5) Section 312(k)(3)(B) is amended by striking ''or 179A'' each place it appears in the heading and text and inserting '', 179A, or 179B''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new item:

''Sec. 179B. Energy efficient commercial buildings deduction.''.

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

SEC. 306. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

''(15) QUALIFIED ENERGY MANAGEMENT DEVICE.—

''(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any meter or metering device which is used by the taxpayer—

''(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 307. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) any qualified water submetering device.''.

(b) DEFINITION OF QUALIFIED WATER SUBMETERING DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(16) QUALIFIED WATER SUBMETERING DEVICE.—

''(A) IN GENERAL.—The term 'qualified water submetering device' means any water submetering device which is placed in service before January 1, 2008, by a taxpayer who is an eligible resupplier with respect to the unit for which the device is placed in service.

''(B) WATER SUBMETERING DEVICE.—For purposes of this paragraph, the term 'water submetering device' means any submetering device which is used by the taxpayer—

''(i) to measure and record water usage data, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.

''(C) ELIGIBLE RESUPPLIER.—For purposes of subparagraph (A), the term 'eligible resupplier' means any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 308. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property), as amended by this Act, is amended by striking ''or'' at the end of clause (ii), by adding ''or'' at the end of clause (iii), and by inserting after clause (iii) the following new clause:

''(iv) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48(a) (relating to energy credit), as amended by this Act, is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

''(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

''(iii) which produces—

''(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

''(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

''(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

''(v) which is placed in service before January 1, 2007.

''(B) SPECIAL RULES.—

''(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

''(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

''(II) the denominator of which is the lower heating value of the primary fuel source for the system.

''(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

''(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(iv) PUBLIC UTILITY PROPERTY.—

''(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under this subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

''(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter following paragraph (3)(D) shall not apply to combined heat and power system property.

''(v) NONAPPLICATION OF CERTAIN RULES.—For purposes of determining if the term 'combined heat and power system property'

includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves or which make use of waste heat from industrial processes such as by using organic rankin, stirling, or kalina heat engine systems, subparagraph (A) shall be applied without regard to clauses (i), (iii), and (iv) thereof.

''(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed a credit under this section for a combined heat and power system property which has a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.''.

(c) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(15) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(6), as added by this Act, is amended by striking ''section 48(a)(5)(C)'' and inserting ''section 48(a)(6)(C)''.

(B) Section 29(b)(3)(A)(i)(III), as amended by this Act, is amended by striking ''section 48(a)(5)(C)'' and inserting ''section 48(a)(6)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 309. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25C the following new section:

''SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

''(b) LIMITATION.—The credit allowed by this section with respect to a dwelling for any taxable year shall not exceed $300, reduced (but not below zero) by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all preceding taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which is certified to meet or exceed the prescriptive criteria for such component in the 2000 International Energy Conservation Code, or any combination of energy efficiency measures which are certified as achieving at least a 30 percent reduction in heating and cooling energy usage for the dwelling (as measured in terms of energy cost to the taxpayer), if—

''(1) such component or combination of measures is installed in or on a dwelling which—

''(A) is located in the United States,

''(B) has not been treated as a qualifying new home for purposes of any credit allowed under section 45G, and

''(C) is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

''(2) the original use of such component or combination of measures commences with the taxpayer, and

''(3) such component or combination of measures reasonably can be expected to remain in use for at least 5 years.

''(e) CERTIFICATION.—

''(1) METHODS OF CERTIFICATION.—

''(A) COMPONENT-BASED METHOD.—The certification described in subsection (d) for any component described in such subsection shall be determined on the basis of applicable energy efficiency ratings (including product labeling requirements) for affected building envelope components.

''(B) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—The certification described in subsection (d) for any combination of measures described in such subsection shall be—

''(I) determined by comparing the projected heating and cooling energy usage for the dwelling to such usage for such dwelling in its original condition, and

''(II) accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such dwelling.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy. Such regulations on the specifications for software and verification protocols shall be based on the 2001 California Residential Alternative Calculation Method Approval Manual.

''(2) PROVIDER.—A certification described in subsection (d) shall be provided by—

''(A) in the case of the method described in paragraph (1)(A), by a third party, such as a local building regulatory authority, a utility, a manufactured home primary inspection agency, or a home energy rating organization, or

''(B) in the case of the method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

''(3) FORM.—A certification described in subsection (d) shall be made in writing on forms which specify in readily inspectable fashion the energy efficient components and other measures and their respective efficiency ratings, and which include a permanent label affixed to the electrical distribution panel of the dwelling.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for certification methods described in paragraph (1)(B), the Secretary, after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Home Energy Rating Standards, shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a dwelling to be eligible for the credit under this section regardless of whether such dwelling uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the owner of the dwelling.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures for the qualified energy efficiency improvements made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified energy efficiency improvements made by such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed

to reduce the heat loss or gain or a dwelling when installed in or on such dwelling,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(5) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(h) TERMINATION.—Subsection (a) shall not apply to qualified energy efficiency improvements installed after December 31, 2006.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25D(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25D(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23 and 25C'' and inserting ''23, 25C, and 25D''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(G) Section 904(h), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting '', 25D,'' after ''sections 25C''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting ''; and'', and by adding at the end the following new paragraph:

''(33) to the extent provided in section 25D(g), in the case of amounts with respect to which a credit has been allowed under section 25D.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25C the following new item:

''Sec. 25D. Energy efficiency improvements to existing homes.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property installed after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

TITLE IV—CLEAN COAL INCENTIVES

Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-Based Electricity Generation Facilities

SEC. 401. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

(a) CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of clean coal technology production credit, multiplied by

''(2) the applicable percentage of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was returned to service after becoming a qualifying clean coal technology unit.

''(b) APPLICABLE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable amount of clean coal technology production credit is equal to $0.0034.

''(2) INFLATION ADJUSTMENT.—For calendar years after 2004, the applicable amount of clean coal technology production credit shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (e) bears to the total megawatt capacity of such unit.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—The term 'qualifying clean coal technology unit' means a clean coal technology unit of the taxpayer which—

''(A) on the date of the enactment of this section—

''(i) was a coal-based electricity generating steam generator-turbine unit which was not a clean coal technology unit, and

''(ii) had a nameplate capacity rating of not more than 300 megawatts,

''(B) becomes a clean coal technology unit as the result of the retrofitting, repowering, or replacement of the unit with clean coal technology during the 10-year period beginning on the date of the enactment of this section,

''(C) is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy, and

''(D) receives an allocation of a portion of the national megawatt capacity limitation under subsection (e).

''(2) CLEAN COAL TECHNOLOGY UNIT.—The term 'clean coal technology unit' means a unit which—

''(A) uses clean coal technology, including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle, or any other technology, for the production of electricity,

''(B) uses coal to produce 75 percent or more of its thermal output as electricity,

''(C) has a design net heat rate of at least 500 less than that of such unit as described in paragraph (1)(A),

''(D) has a maximum design net heat rate of not more than 9,500, and

''(E) meets the pollution control requirements of paragraph (3).

''(3) POLLUTION CONTROL REQUIREMENTS.—

''(A) IN GENERAL.—A unit meets the requirements of this paragraph if—

''(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

''(I) subparagraph (B), or

''(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the retrofitting, repowering, or replacement of the unit, and

''(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) in effect at the time of the retrofitting, repowering, or replacement.

''(B) SPECIFIC LEVELS.—The levels specified in this subparagraph are—

''(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

''(ii) in the case of nitrogen oxide emissions—

''(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

''(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

''(iii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

''(4) DESIGN NET HEAT RATE.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

''(A) shall be based on the design annual heat input to and the design annual net electrical power, fuels, and chemicals output from such unit (determined without regard to such unit's co-generation of steam),

''(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate [1 − {((12,000-design coal heat content, Btu per pound)/1,000) 0.013}],

''(C) shall be corrected for the site reference conditions of—

''(i) elevation above sea level of 500 feet,

''(ii) air pressure of 14.4 pounds per square inch absolute (psia),

''(iii) temperature, dry bulb of 63°F,

''(iv) temperature, wet bulb of 54°F, and

''(v) relative humidity of 55 percent, and

''(D) if carbon capture controls have been installed with respect to any qualifying unit and such controls remove at least 50 percent of the unit's carbon dioxide emissions, shall be adjusted up to the design heat rate level which would have resulted without the installation of such controls.

''(5) HHV.—The term 'HHV' means higher heating value.

''(6) APPLICATION OF CERTAIN RULES.—The rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.

''(7) INFLATION ADJUSTMENT FACTOR.—

''(A) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2003.

''(B) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(8) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this section, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying clean coal technology unit during such period.

''(e) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF QUALIFYING CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of this section, the national megawatt capacity limitation for qualifying clean coal technology units is 4,000 megawatts.

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection,

''(B) to limit the capacity of any qualifying clean coal technology unit to which this section applies so that the megawatt capacity allocated to any unit under this subsection does not exceed 300 megawatts and the combined megawatt capacity allocated to all such units when all such units are placed in service during the 10-year period described in subsection (d)(1)(B), does not exceed 4,000 megawatts,

''(C) to provide a certification process under which the Secretary, in consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation—

''(i) to encourage that units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions described in subsection (d)(4)(C), and environmental performance, be placed in service as soon as possible, and

''(ii) to allocate capacity to taxpayers which have a definite and credible plan for placing into commercial operation a qualifying clean coal technology unit, including—

''(I) a site,

''(II) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

''(III) filings for all necessary preconstruction approvals,

''(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

''(V) such other factors that the Secretary determines are appropriate,

''(D) to allocate the national megawatt capacity limitation to a portion of the capacity of a qualifying clean coal technology unit if the Secretary determines that such an allocation would maximize the amount of efficient production encouraged with the available tax credits,

''(E) to set progress requirements and conditional approvals so that capacity allocations for clean coal technology units which become unlikely to meet the necessary conditions for qualifying can be reallocated by the Secretary to other clean coal technology units, and

''(F) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the qualifying clean coal technology production credit determined under section 45I(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(16) NO CARRYBACK OF SECTION 45I CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying clean coal technology production credit determined under section 45I may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45I. Credit for production from a qualifying clean coal technology unit.''.

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

Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

SEC. 411. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to amount of credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the qualifying advanced clean coal technology unit credit.''.

(b) AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

''SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced clean coal technology unit credit for any taxable year is an amount equal to 10 percent of the applicable percentage of the qualified investment in a qualifying advanced clean coal technology unit for such taxable year.

''(b) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'qualifying advanced clean coal technology unit' means an advanced clean coal technology unit of the taxpayer—

''(A)(i) in the case of a unit first placed in service after the date of the enactment of this section, the original use of which commences with the taxpayer, or

''(ii) in the case of the retrofitting or repowering of a unit first placed in service before such date of enactment, the retrofitting or repowering of which is completed by the taxpayer after such date, or

''(B) which is depreciable under section 167,

''(C) which has a useful life of not less than 4 years,

''(D) which is located in the United States,

''(E) which is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy,

''(F) which is not a qualifying clean coal technology unit, and

''(G) which receives an allocation of a portion of the national megawatt capacity limitation under subsection (f).

''(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of subparagraph (A) of paragraph (1), in the case of a unit which—

''(A) is originally placed in service by a person, and

''(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such unit was originally placed in service, for a period of not less than 12 years,

such unit shall be treated as originally placed in service not earlier than the date on which such unit is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this subsection, a

unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying advanced clean coal technology unit during such period.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying advanced clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (f) bears to the total megawatt capacity of such unit.

''(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of this section—

''(1) IN GENERAL.—The term 'advanced clean coal technology unit' means a new, retrofit, or repowering unit of the taxpayer which—

''(A) is—

''(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

''(ii) an eligible pressurized fluidized bed combustion technology unit,

''(iii) an eligible integrated gasification combined cycle technology unit, or

''(iv) an eligible other technology unit, and

''(B) meets the carbon emission rate requirements of paragraph (6).

''(2) ELIGIBLE ADVANCED PULVERIZED COAL OR ATMOSPHERIC FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit' means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2013, and

''(B) has a design net heat rate of not more than 8,500 (8,900 in the case of units placed in service before 2009).

''(3) ELIGIBLE PRESSURIZED FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible pressurized fluidized bed combustion technology unit' means a clean coal technology unit using pressurized fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2017, and

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013).

''(4) ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT.—The term 'eligible integrated gasification combined cycle technology unit' means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2017,

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013), and

''(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 44.2 percent (38.4 percent in the case of units placed in service before 2009, and 40.2 percent in the case of units placed in service after 2008 and before 2013).

''(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—The term 'eligible other technology unit' means a clean coal technology unit using any other technology for the production of electricity which is placed in service after the date of the enactment of this section and before January 1, 2017.

''(6) CARBON EMISSION RATE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

''(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

''(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

''(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting '0.51' and '0.459' for '0.60' and '0.54', respectively.

''(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45I shall have the meaning given such term in section 45I.

''(f) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (b)(1)(G), the national megawatt capacity limitation is—

''(A) for qualifying advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,000 megawatts (not more than 500 megawatts in the case of units placed in service before 2009),

''(B) for such units using pressurized fluidized bed combustion technology, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009),

''(C) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 2,000 megawatts (not more than 750 megawatts in the case of units placed in service before 2009), and

''(D) for such units using other technology for the production of electricity, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009).

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying advanced clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection and section 45J,

''(B) to limit the capacity of any qualifying advanced clean coal technology unit to which this section applies so that the combined megawatt capacity of all such units to which this section applies does not exceed 4,000 megawatts,

''(C) to provide a certification process described in section 45I(e)(3)(C),

''(D) to carry out the purposes described in subparagraphs (D), (E), and (F) of section 45I(e)(3), and

''(E) to reallocate capacity which is not allocated to any technology described in subparagraphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

''(4) SELECTION CRITERIA.—For purposes of this subsection, the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

''(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

''(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government, and

''(C) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

''(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term 'qualified investment' means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit described in subsection (b)(1)(A)(ii), only that portion of the basis of such unit which is properly attributable to the retrofitting or repowering of such unit).

''(h) QUALIFIED PROGRESS EXPENDITURES.—

''(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (g) without regard to this subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

''(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term 'progress expenditure property' means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

''(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term 'qualified progress expenditures' means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

''(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term 'qualified progress expenditures' means the amount paid during the taxable year to another person for the construction of such property.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—The term 'self-constructed property' means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

''(B) NONSELF-CONSTRUCTED PROPERTY.—The term 'nonself-constructed property' means property which is not self-constructed property.

''(C) CONSTRUCTION, ETC.—The term 'construction' includes reconstruction and erection, and the term 'constructed' includes reconstructed and erected.

''(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT TO BE

TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

''(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

''(i) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.''.

(c) RECAPTURE.—Section 50(a) (relating to other special rules) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following rules shall apply:

''(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology unit (as defined by section 48A(b)(1)) multiplied by a fraction the numerator of which is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology unit disposed of, and the denominator of which is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

''(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

''(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.''.

(d) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(17) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology unit credit determined under section 48A may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(e) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).''.

(2) Section 50(a)(4) is amended by striking ''and (2)'' and inserting ''(2), and (6)''.

(3) Section 50(c) is amended by adding at the end the following new paragraph:

''(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.''.

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Qualifying advanced clean coal technology unit credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 412. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of advanced clean coal technology production credit, multiplied by

''(2) the applicable percentage (as determined under section 48A(c)) of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was originally placed in service (or returned to service after becoming a qualifying advanced clean coal technology unit).

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

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology unit shall be determined as follows:

''(A) If the qualifying advanced clean coal technology unit is producing electricity only:

''(i) In the case of a unit originally placed in service before 2009, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not more than 8,500	$.0060	$.0038
More than 8,500 but not more than 8,750	$.0025	$.0010
More than 8,750 but less than 8,900	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not more than 7,770	$.0105	$.0090
More than 7,770 but not more than 8,125	$.0085	$.0068
More than 8,125 but less than 8,500	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The design net heat rate is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not more than 7,380	$.0140	$.0115
More than 7,380 but not more than 7,720	$.0120	$.0090.

''(B) If the qualifying advanced clean coal technology unit is producing fuel or chemicals:

''(i) In the case of a unit originally placed in service before 2009, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not less than 40.6 percent	$.0060	$.0038
Less than 40.6 but not less than 40 percent	$.0025	$.0010
Less than 40 but not less than 38.4 percent	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not less than 43.6 percent	$.0105	$.0090
Less than 43.6 but not less than 42 percent	$.0085	$.0068
Less than 42 but not less than 40.2 percent	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is: For 1st 5 years of such service	The applicable amount is: For 2d 5 years of such service
Not less than 44.2 percent	$.0140	$.0115
Less than 44.2 but not less than 43.9 percent	$.0120	$.0090.

''(2) SPECIAL RULE FOR UNITS QUALIFYING FOR GREATER APPLICABLE AMOUNT WHEN

PLACED IN SERVICE.—If, at the time a qualifying advanced clean coal technology unit is placed in service, production from the unit would be entitled to a greater applicable amount if such unit had been placed in service at a later date, the applicable amount for such unit shall be such greater amount.

''(c) INFLATION ADJUSTMENT.—For calendar years after 2004, each dollar amount in subsection (b)(1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 45I or 48A shall have the meaning given such term in such section.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45(d) shall apply.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting '', plus'', and by adding at the end the following new paragraph:

''(21) the qualifying advanced clean coal technology production credit determined under section 45J(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) NO CARRYBACK OF SECTION 45J CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology production credit determined under section 45J may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) DENIAL OF DOUBLE BENEFIT.—Section 29(d) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DOUBLE BENEFIT.—This section shall not apply with respect to any qualified fuel the production of which may be taken into account for purposes of determining the credit under section 45J.''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45J. Credit for production from a qualifying advanced clean coal technology unit.''.

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

Subtitle C—Treatment of Persons Not Able To Use Entire Credit

SEC. 421. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45I, as added by this Act, is amended by adding at the end the following new subsection:

''(f) TREATMENT OF PERSON NOT ABLE TO USE ENTIRE CREDIT.—

''(1) ALLOWANCE OF CREDITS.—

''(A) IN GENERAL.—Any credit allowable under this section, section 45J, or section 48A with respect to a facility owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection, and the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C),

''(iii) a public utility (as defined in section 136(c)(2)(B)),

''(iv) any State or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing,

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(vi) the Tennessee Valley Authority.

''(2) TRANSFER OF CREDIT.—

''(A) IN GENERAL.—A person described in clause (i), (ii), (iii), (iv), or (v) of paragraph (1)(B) may transfer any credit to which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in subparagraph (A) is claimed once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in the case of a person described in clause (i), (ii), or (v) of paragraph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of this section.

''(4) USE BY TVA.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(C) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described paragraph (1)(A) with respect to such person exceeds the aggregate amount of payment obligations described in subparagraph (A), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this paragraph.

''(5) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of section 501(c)(12).

''(6) TREATMENT OF UNRELATED PERSONS.—For purposes of this subsection, transfers among and between persons described in clauses (i), (ii), (iii), (iv), and (v) of paragraph (1)(B) shall be treated as transfers between unrelated parties.''.

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

TITLE V—OIL AND GAS PROVISIONS

SEC. 501. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

''(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

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

''(1) IN GENERAL.—The credit amount is—

''(A) $3 per barrel of qualified crude oil production, and

''(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

''(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

''(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

''(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

''(B) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2002.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

''(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

''(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

''(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or domestic natural gas which is produced from a qualified marginal well.

''(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

''(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

''(B) PROPORTIONATE REDUCTIONS.—

''(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

''(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—Production from any well during any period in which such well is not in compliance with applicable Federal pollution prevention, control, and permit requirements shall not be treated as qualified crude oil production or qualified natural gas production.

''(4) DEFINITIONS.—

''(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

''(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

''(ii) which, during the taxable year—

''(I) has average daily production of not more than 25 barrel equivalents, and

''(II) produces water at a rate not less than 95 percent of total well effluent.

''(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

''(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

''(D) DOMESTIC NATURAL GAS.—The term 'domestic natural gas' does not include Alaska natural gas (as defined in section 45M(c)(1)).

''(d) OTHER RULES.—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than 1 owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

''(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

''(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting '', plus'', and by adding at the end the following new paragraph:

''(22) the marginal oil and gas well production credit determined under section 45K(a).''.

(c) NO CARRYBACK OF MARGINAL OIL AND GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) NO CARRYBACK OF MARGINAL OIL AND GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the marginal oil and gas well production credit determined under section 45K may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) COORDINATION WITH SECTION 29.—Section 29(a) (relating to allowance of credit) is amended by striking ''There'' and inserting ''At the election of the taxpayer, there''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45K. Credit for producing oil and gas from marginal wells.''.

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

SEC. 502. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property) 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) any natural gas gathering line, and''.

(b) NATURAL GAS GATHERING LINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(17) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

''(A) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

''(i) a gas processing plant,

''(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

''(iii) an interconnection with an intrastate transmission pipeline, or

''(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer, or

''(B) any other pipe, equipment, or appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (C)(i) the following new item:

''(C)(ii) ..... 10''.

(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, in taxable years ending after such date.

SEC. 503. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179B the following new section:

''SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

''(a) TREATMENT AS EXPENSE.—

''(1) IN GENERAL.—A small business refiner may elect to treat any qualified capital costs as an expense which is not chargeable to capital account. Any qualified cost which is so treated shall be allowed as a deduction for the taxable year in which the cost is paid or incurred.

''(2) LIMITATION.—

''(A) IN GENERAL.—The aggregate costs which may be taken into account under this subsection for any taxable year may not exceed the applicable percentage of the qualified capital costs paid or incurred for the taxable year.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—Except as provided in clause (ii), the applicable percentage is 75 percent.

''(ii) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily refinery runs or average retained production for the period described in subsection (b)(2) in excess of 155,000 barrels, the percentage described in clause (i) shall be reduced (but not below zero) by the product of—

''(I) such percentage (before the application of this clause), and

''(II) the ratio of such excess to 50,000 barrels.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means any costs which—

''(A) are otherwise chargeable to capital account, and

''(B) are paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency, as in effect on the date of the enactment of this section, with respect to a facility placed in service by the taxpayer before such date.

''(2) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil—

''(A) which, within the refinery operations of the business, employs not more than 1,500 employees on any day during such taxable year, and

''(B) the average daily refinery run or average retained production of which for the 1-year period ending on the date of the enactment of this section did not exceed 205,000 barrels.

''(c) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.

''(d) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by inserting after subparagraph (I) the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 179C.''.

(2) Section 263A(c)(3) is amended by inserting ''179C,'' after ''section''.

(3) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179B'' each place it appears in the heading and text and inserting ''179B, or 179C''.

(4) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting '', and'', and by adding at the end the following new paragraph:

''(34) to the extent provided in section 179C(d).''.

(5) Section 1245(a), as amended by this Act, is amended by inserting ''179C,'' after ''179B,'' both places it appears in paragraphs (2)(C) and (3)(C).

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179B the following new item:

''Sec. 179C. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 504. ENVIRONMENTAL TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45L. ENVIRONMENTAL TAX CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the amount of the environmental tax credit determined under this section with respect to any small business refiner for any taxable year is an amount equal to 5 cents for every gallon of low-sulfur diesel fuel produced at a facility by such small business refiner during such taxable year.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—For any small business refiner, the aggregate amount determined under subsection (a) for any taxable year with respect to any facility shall not exceed the applicable percentage of the qualified capital costs paid or incurred by such small business refiner with respect to such facility during the applicable period, reduced by the credit allowed under subsection (a) with respect to such facility for any preceding year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable percentage is 25 percent.

''(B) REDUCED PERCENTAGE.—The percentage described in subparagraph (A) shall be reduced in the same manner as under section 179C(a)(2)(B)(ii).

''(c) DEFINITIONS.—For purposes of this section—

''(1) IN GENERAL.—The terms 'small business refiner' and 'qualified capital costs' have the same meaning as given in section 179C.

''(2) LOW-SULFUR DIESEL FUEL.—The term 'low-sulfur diesel fuel' means diesel fuel containing not more than 15 parts per million of sulfur.

''(3) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on the day after the date of the enactment of this section and ending with the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

''(4) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency, as in effect on the date of the enactment of this section.

''(d) CERTIFICATION.—

''(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which a credit is allowed under this section with respect to a facility, the small business refiner shall obtain a certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

''(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

''(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

''(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

''(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the period described in paragraph (3) ends with respect to the taxpayer, and

''(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(f) COOPERATIVE ORGANIZATIONS.—

''(1) APPORTIONMENT OF CREDIT.—

''(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

''(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

''(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

''(3) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(A) such reduction, over

''(B) the amount not apportioned to such patrons under paragraph (1) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting '', plus'', and by adding at the end the following new paragraph:

''(23) in the case of a small business refiner, the environmental tax credit determined under section 45L(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable), as amended by this Act, is amended by adding at the end the following new subsection:

''(e) ENVIRONMENTAL TAX CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45L(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45L. Environmental tax credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 505. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to limitations on application of subsection (c)) is amended to read as follows:

''(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 60,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.''.

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

SEC. 506. MARGINAL PRODUCTION INCOME LIMIT EXTENSION.

Section 613A(c)(6)(H) (relating to temporary suspension of taxable income limit with respect to marginal production) is amended by striking ''2004'' and inserting ''2007''.

SEC. 507. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

''(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

''(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

''(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

''(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

''(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act.

SEC. 508. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation), as amended by this Act, is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

''(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

''(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.''.

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) is amended by inserting ''167(h), 167(i),'' after ''under section''.

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

SEC. 509. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

''(h) EXTENSION FOR OTHER FACILITIES.—

''(1) OIL AND GAS.—In the case of a well or facility for producing qualified fuels described in subparagraph (A) or (B) of subsection (c)(1) which was drilled or placed in service after the date of the enactment of this subsection and before January 1, 2007, notwithstanding subsection (f), this section shall apply with respect to such fuels produced at such well or facility before the close of the 3-year period beginning on the date that such well is drilled or such facility is placed in service.

''(2) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

''(A) IN GENERAL.—In the case of facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 3-year period beginning on the date such facility is placed in service.

''(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

''(3) WELLS PRODUCING VISCOUS OIL.—

''(A) IN GENERAL.—In the case of a well for producing viscous oil which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such well before the close of the 3-year period beginning on the date such well is placed in service.

''(B) VISCOUS OIL.—The term 'viscous oil' means heavy oil, as defined in section 613A(c)(6), except that—

''(i) '22 degrees' shall be substituted for '20 degrees' in applying subparagraph (F) thereof, and

''(ii) in all cases, the oil gravity shall be measured from the initial well-head samples, drill cuttings, or down hole samples.

''(C) WAIVER OF UNRELATED PERSON REQUIREMENT.—In the case of viscous oil, the requirement under subsection (a)(2)(A) of a sale to an unrelated person shall not apply to any sale to the extent that the viscous oil is not consumed in the immediate vicinity of the wellhead.

''(4) FACILITIES PRODUCING REFINED COAL.—

''(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing refined coal which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 5-year period beginning on the date such facility is placed in service.

''(B) REFINED COAL.—For purposes of this paragraph, the term 'refined coal' means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

''(C) COVERED FACILITIES.—

''(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology which results in—

''(I) a qualified emission reduction, and

''(II) a qualified enhanced value.

''(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

''(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term 'qualified enhanced value' means an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

''(iv) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNITS EXCLUDED.—A facility described in this subparagraph shall not include a qualifying advanced clean coal technology unit (as defined in section 48A(b)).

''(5) COALMINE GAS.—

''(A) IN GENERAL.—This section shall apply to coalmine gas—

''(i) captured or extracted by the taxpayer during the period beginning after the date of the enactment of this subsection and ending before January 1, 2007, and

''(ii) utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person during such period.

''(B) COALMINE GAS.—For purposes of this paragraph, the term 'coalmine gas' means any methane gas which is—

''(i) liberated during or as a result of coal mining operations, or

''(ii) extracted up to 10 years in advance of coal mining operations as part of a specific plan to mine a coal deposit.

''(C) SPECIAL RULE FOR ADVANCED EXTRACTION.—In the case of coalmine gas which is captured in advance of coal mining operations, the credit under subsection (a) shall be allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed.

''(D) NONCOMPLIANCE WITH POLLUTION LAWS.—This paragraph shall not apply to the capture or extraction of coalmine gas from coal mining operations with respect to any period in which such coal mining operations are not in compliance with applicable State and Federal pollution prevention, control, and permit requirements.

''(6) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

''(A) FUELS TREATED AS QUALIFIED FUELS.—Any fuel described in paragraph (2), (3), (4),

or (5) shall be treated as a qualified fuel for purposes of this section.

''(B) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

''(C) CREDIT AMOUNT.—The dollar amount applicable under subsection (a)(1) shall be $3 (and the inflation adjustment under subsection (b)(2) shall not apply to such amount).''.

(b) CLARIFICATION OF PLACED IN SERVICE DATE FOR CERTAIN LANDFILL GAS FACILITIES.—Section 29(d) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) CLARIFICATION OF PLACED IN SERVICE DATE FOR CERTAIN LANDFILL GAS FACILITIES.—

''(A) IN GENERAL.—In the case of a landfill placed in service on or before the date of the enactment of this paragraph—

''(i) a facility for producing qualified fuel from such landfill shall include all wells, pipes, and related components used to collect landfill gas, and

''(ii) production of landfill gas from such landfill attributable to wells, pipes, and related components placed in service after such date of enactment shall be treated as produced from a facility placed in service on the date such wells, pipes, and related components were placed in service.

''(B) LANDFILL GAS.—The term 'landfill gas' means gas described in subsection (c)(1)(B)(ii) and derived from the biodegradation of municipal solid waste.''.

(c) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—Section 29(f)(2) (relating to application of section) is amended by inserting ''(January 1, 2006, in the case of any coke, coke gas, or natural gas and byproducts produced by coal gasification from lignite in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

(d) STUDY OF COALBED METHANE.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study regarding the effect of section 29 of the Internal Revenue Code of 1986 on the production of coalbed methane.

(2) CONTENTS OF STUDY.—The study under paragraph (1) shall estimate the total amount of credits under section 29 of the Internal Revenue Code of 1986 claimed annually and in the aggregate which are related to the production of coalbed methane since the date of the enactment of such section 29. Such study shall report the annual value of such credits allowable for coalbed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). Such study shall also estimate the incremental increase in production of coalbed methane which has resulted from the enactment of such section 29, and the cost to the Federal Government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coalbed methane produced annually and in the aggregate since such enactment.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 510. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—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 by inserting '', and'', and by adding at the end the following new clause:

''(iv) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by adding after the item relating to subparagraph (E)(iii) the following new item:

''(E)(iv) ..... 20''.

(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, in taxable years ending after such date.

SEC. 511. CREDIT FOR ALASKA NATURAL GAS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45M. ALASKA NATURAL GAS.

''(a) IN GENERAL.—For purposes of section 38, the Alaska natural gas credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) Alaska natural gas the production of which is attributable to the taxpayer.

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

''(1) IN GENERAL.—The credit amount is $0.52 per 1,000,000 Btu of Alaska natural gas.

''(2) REDUCTION AS GAS PRICES INCREASE.—

''(A) IN GENERAL.—The dollar amount under paragraph (1) shall be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $0.83, bears to

''(ii) $0.52.

''(B) APPLICABLE REFERENCE PRICE.—For purposes of this paragraph—

''(i) IN GENERAL.—The applicable reference price for any calendar month in a taxable year is the reference price for the calendar month in which production occurs.

''(ii) REFERENCE PRICE.—The term 'reference price' means, with respect to any calendar month, a published market price for natural gas in United States dollars per 1,000,000 Btu (reduced by any gas transportation costs and gas processing costs as determined by the appropriate national regulatory body for natural gas transportation) as determined under regulations by the Secretary.

''(C) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in paragraph (1) and subparagraph (A) of this paragraph shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2002.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(c) ALASKA NATURAL GAS.—For purposes of this section—

''(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(18) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

''(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

''(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

''(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).

''(d) SPECIAL RULES.—For purposes of this section—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—

''(A) IN GENERAL.—In the case of a well in which there is more than 1 person or entity—

''(i) entitled to production of Alaska natural gas, or

''(ii) at the election of the taxpayer, entitled to the value of production as either an operating interest owner or a royalty interest owner,

the portion of such production attributable to such person or entity shall be determined on the basis of the ratio which the person's or entity's interest in the production or the value of production bears to the aggregate of the interests of all operating interest owners and royalty interest owners in the production or the value of production.

''(B) PARTNERSHIP PROPERTIES.—In the case of a partnership, for purposes of applying subparagraph (A), production shall be attributable to its partners based on each partner's distributive share of Alaska natural gas which is produced from partnership properties and attributable to the partnership or its partners under subparagraph (A).

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) APPLICATION OF SECTION.—This section shall apply to Alaska natural gas during the period—

''(1) beginning with the later of—

''(A) January 1, 2010, or

''(B) the initial date for the interstate transportation of such Alaska natural gas, and

''(2) ending with the date which is 15 years after the date described in paragraph (1).''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) The Alaska natural gas credit determined under section 45M(a).''.

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

(1) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax), as amended by this Act, is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) SPECIAL RULES FOR ALASKA NATURAL GAS CREDIT.—

''(A) IN GENERAL.—In the case of the Alaska natural gas credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the Alaska natural gas credit).

''(B) ALASKA NATURAL GAS CREDIT.—For purposes of this subsection, the term 'Alaska natural gas credit' means the credit allowable under subsection (a) by reason of section 45M(a).''.

(2) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, and subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, are each amended by inserting ''or the Alaska natural gas credit'' after ''producer credit''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45M. Alaska natural gas.''.

SEC. 512. CERTAIN ALASKA NATURAL GAS PIPELINE PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

''(iii) any Alaska natural gas pipeline, and''.

(b) ALASKA NATURAL GAS PIPELINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) ALASKA NATURAL GAS PIPELINE.—The term 'Alaska natural gas pipeline' means the natural gas pipeline system located in the State of Alaska which—

''(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

''(B) is placed in service after December 31, 2014.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by inserting after the item relating to subparagraph (C)(ii) the following new item:

''(C)(iii) ..... 10''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2014, in taxable years ending after such date.

SEC. 513. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Section 148(b) (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

''(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

''(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

''(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by or for a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract for the utility during any year does not exceed the sum of—

''(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

''(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

''(i) only if the electricity is generated by a utility owned by a governmental unit, and

''(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

''(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

''(i) NEW BUSINESS CUSTOMERS.—If—

''(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for use by a business at a property within the service area of such utility, and

''(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

''(ii) OVERALL LIMITATION.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

''(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

''(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

''(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

''(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

''(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

''(ii) APPLICABLE SHARE.—For purposes of clause (i), the term 'applicable share' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

''(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

''(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas used to transport such natural gas to the utility.

''(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

''(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

''(i) any area throughout which such utility provided at all times during the testing period—

''(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

''(II) in the case of an electric utility, electricity distribution services,

''(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

''(iii) any area recognized as the service area of such utility under State or Federal law.''.

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Section 141(c)(2) (providing exceptions to the private loan financing test) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by adding at the end the following new subparagraph:

''(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

TITLE VI—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

SEC. 601. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

''(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.''.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Section 468A(e) (relating to Nuclear Decommissioning Reserve Fund) is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

''(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

''(B) no amount shall be treated as distributed from such Fund, or be includable in gross income, by reason of such transfer.''.

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

''(f) TRANSFERS INTO QUALIFIED FUNDS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

''(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

''(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

''(C) TRANSFERS OF QUALIFIED FUNDS.—If—

''(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

''(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferee and not the transferor. The preceding sentence shall not apply if the transferor is an entity exempt from tax under this chapter.

''(D) SPECIAL RULES.—

''(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

''(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall not exceed the adjusted basis of such property.

''(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

''(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.''.

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) (defining ruling amount) is amended to read as follows:

''(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and''.

(d) TECHNICAL AMENDMENT.—Section 468A(e)(2) (relating to taxation of Fund) is amended—

(1) by striking ''rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''rate of 20 percent'',

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

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

SEC. 602. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Section 501(c)(12)(C) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

''(ii) from any open access transaction (other than income received or accrued directly or indirectly from a member),

''(iii) from any nuclear decommissioning transaction,

''(iv) from any asset exchange or conversion transaction, or

''(v) from the prepayment of any loan, debt, or obligation made, insured, or guaranteed under the Rural Electrification Act of 1936.''.

(2) DEFINITIONS AND SPECIAL RULES.—Section 501(c)(12) is amended by adding at the end the following new subparagraphs:

''(E) For purposes of subparagraph (C)(ii)—

''(i) The term 'open access transaction' means any transaction meeting the open access requirements of any of the following subclauses with respect to a mutual or cooperative electric company:

''(I) The provision or sale of electric transmission service or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or under a regional transmission organization agreement approved by FERC.

''(II) The provision or sale of electric energy distribution services or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the mutual or cooperative electric company (or its members).

''(III) The delivery or sale of electric energy generated by a generation facility meets the open access requirements of this subclause only if such facility is directly connected to distribution facilities owned by the mutual or cooperative electric company (or its members) which owns the generation facility, and such distribution facilities meet the open access requirements of subclause (II).

''(ii) Clause (i)(I) shall apply in the case of a voluntarily filed tariff only if the mutual or cooperative electric company files a report with FERC within 90 days after the date of the enactment of this subparagraph relating to whether or not such company will join a regional transmission organization.

''(iii) A mutual or cooperative electric company shall be treated as meeting the open access requirements of clause (i)(I) if a regional transmission organization controls the transmission facilities.

''(iv) References to FERC in this subparagraph shall be treated as including references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))) or references to the Rural Utilities Service with respect to any other facility not subject to FERC jurisdiction.

''(v) For purposes of this subparagraph—

''(I) The term 'transmission facility' means an electric output facility (other than a generation facility) which operates at an electric voltage of 69 kilovolts or greater. To the extent provided in regulations, such term includes any output facility which FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003).

''(II) The term 'regional transmission organization' includes an independent system operator.

''(III) The term 'FERC' means the Federal Energy Regulatory Commission.

''(F) The term 'nuclear decommissioning transaction' means—

''(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

''(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

''(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

''(G) The term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

''(i) generating, transmitting, distributing, or selling electric energy, or

''(ii) producing, transmitting, distributing, or selling natural gas.''.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS.—Section 501(c)(12), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

''(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

''(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

''(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

''(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

''(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

''(II) the megawatt hours of electric energy sold during the base year to such members.

''(v) For purposes of clause (iv)(II), the term 'base year' means—

''(I) the calendar year preceding the start-up year, or

''(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

''(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

''(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes the date of the enactment of this subparagraph or, if later, at the election of the mutual or cooperative electric company—

''(I) the first year that such electric company offers nondiscriminatory open access, or

''(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

''(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

''(ix) In the case of a mutual or cooperative electric company, income from any open access transaction received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.''.

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Section 512(b) (relating to modifications) is amended by adding at the end the following new paragraph:

''(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.''.

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

''(c) CROSS REFERENCE.—

''For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).''.

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

SEC. 603. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

''(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

''(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year (determined without regard to this subsection),

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

''(2) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2008, of—

''(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

''(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

''(3) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

''(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

''(B) a person—

''(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

''(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than January 1, 2008, or

''(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

''(4) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.

''(5) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions occurring after the date of the enactment of this Act.

TITLE VII—ADDITIONAL PROVISIONS

SEC. 701. EXTENSION OF ACCELERATED DEPRECIATION AND WAGE CREDIT BENEFITS ON INDIAN RESERVATIONS.

(a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON INDIAN RESERVATIONS.—Section 168(j)(8) (relating to termination) is amended by striking ''2004'' and inserting ''2005''.

(b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f) (relating to termination) is amended by striking ''2004'' and inserting ''2005''.

SEC. 702. STUDY OF EFFECTIVENESS OF CERTAIN PROVISIONS BY GAO.

(a) STUDY.—The Comptroller General of the United States shall undertake an ongoing analysis of—

(1) the effectiveness of the alternative motor vehicles and fuel incentives provisions under title II and the conservation and energy efficiency provisions under title III, and

(2) the recipients of the tax benefits contained in such provisions, including an identification of such recipients by income and other appropriate measurements.

Such analysis shall quantify the effectiveness of such provisions by examining and comparing the Federal Government's forgone revenue to the aggregate amount of energy actually conserved and tangible environmental benefits gained as a result of such provisions.

(b) REPORTS.—The Comptroller General of the United States shall report the analysis required under subsection (a) to Congress not later than December 31, 2004, and annually thereafter.

SEC. 703. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking ''or a diesel-powered train'' each place it appears and by striking ''or train''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows ''section 6421(e)(2)'' and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

''(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.''

(D) Subsection (f) of section 4082 is amended by striking ''section 4041(a)(1)'' and inserting ''subsections (d)(3) and (a)(1) of section 4041, respectively''.

(E) Paragraph (3) of section 4083(a) is amended by striking ''or a diesel-powered train''.

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

''(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.''

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

''(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.''

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 704. EXPANSION OF RESEARCH CREDIT.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE ENERGY RESEARCH CONSORTIA.—

(1) IN GENERAL.—Section 41(a) (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium.''.

(2) ENERGY RESEARCH CONSORTIUM DEFINED.—Section 41(f) (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) ENERGY RESEARCH CONSORTIUM.—

''(A) IN GENERAL.—The term 'energy research consortium' means any organization—

''(i) which is—

''(I) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct energy research, or

''(II) organized and operated primarily to conduct energy research in the public interest (within the meaning of section 501(c)(3)),

''(ii) which is not a private foundation,

''(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for energy research, and

''(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for energy research.

''(B) TREATMENT OF PERSONS.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).''.

(3) CONFORMING AMENDMENT.—Section 41(b)(3)(C) is amended by inserting ''(other than an energy research consortium)'' after ''organization''.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) (relating to contract research expenses) is amended by adding at the end the following new subparagraph:

''(D) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to—

''(I) an eligible small business,

''(II) an institution of higher education (as defined in section 3304(f)), or

''(III) an organization which is a Federal laboratory,

for qualified research which is energy research, subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

''(iv) FEDERAL LABORATORY.—For purposes of this subparagraph, the term 'Federal laboratory' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

TITLE VIII—REVENUE PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 801. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction, or

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 802. 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 COMPROMISE OF PENALTY.—

''(A) 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 paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a continuing 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) is amended—

(A) by striking subparagraphs (C) and (D) of paragraph (2), and

(B) by adding at the end the following:

''(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.''.

(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. 803. 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. 804. 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, 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) EFFECTIVE DATE.—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.

SEC. 805. 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) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) 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. 806. 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. 807. 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.

Subtitle B—Provisions to Discourage Corporate Expatriation

SEC. 821. 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 RELATED PARTY TRANSACTIONS.—

''(1) ANNUAL APPLICATION FOR AGREEMENTS ON RETURN POSITIONS.—

''(A) IN GENERAL.—Each acquired entity to which subsection (b) applies shall file with the Secretary an application for an approval agreement under subparagraph (D) for each taxable year which includes a portion of the applicable period. Such application shall be filed at such time and manner, and shall contain such information, as the Secretary may prescribe.

''(B) SECRETARIAL ACTION.—Within 90 days of receipt of an application under subparagraph (A) (or such longer period as the Secretary and entity may agree upon), the Secretary shall—

''(i) enter into an agreement described in subparagraph (D) for the taxable year covered by the application,

''(ii) notify the entity that the Secretary has determined that the application was filed in good faith and substantially complies with the requirements for the application under subparagraph (A), or

''(iii) notify the entity that the Secretary has determined that the application was not filed in good faith or does not substantially comply with such requirements.

If the Secretary fails to act within the time prescribed under the preceding sentence, the entity shall be treated for purposes of this paragraph as having received notice under clause (ii).

''(C) FAILURES TO COMPLY.—If an acquired entity fails to file an application under subparagraph (A), or the acquired entity receives a notice under subparagraph (B)(iii), for any taxable year, then for such taxable year—

''(i) there shall not be allowed any deduction, or addition to basis or cost of goods sold, for amounts paid or incurred, or losses incurred, by reason of a transaction between the acquired entity and a foreign related person,

''(ii) any transfer or license of intangible property (as defined in section 936(h)(3)(B)) between the acquired entity and a foreign related person shall be disregarded, and

''(iii) any cost-sharing arrangement between the acquired entity and a foreign related person shall be disregarded.

''(D) APPROVAL AGREEMENT.—For purposes of subparagraph (A), the term 'approval agreement' means a prefiling, advance pricing, or other agreement specified by the Secretary which contains such provisions as the Secretary determines necessary to ensure that the requirements of sections 163(j), 267(a)(3), 482, and 845, and any other provision of this title applicable to transactions between related persons and specified by the Secretary, are met.

''(E) TAX COURT REVIEW.—

''(i) IN GENERAL.—The Tax Court shall have jurisdiction over any action brought by an acquired entity receiving a notice under subparagraph (B)(iii) to determine whether the issuance of the notice was an abuse of discretion, but only if the action is brought within 30 days after the date of the mailing (determined under rules similar to section 6213) of the notice.

''(ii) COURT ACTION.—The Tax Court shall issue its decision within 30 days after the filing of the action under clause (i) and may order the Secretary to issue a notice described in subparagraph (B)(ii).

''(iii) REVIEW.—An order of the Tax Court under this subparagraph shall be reviewable in the same manner as any other decision of the Tax Court.

''(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, passthrough 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) TREATMENT OF AGREEMENTS.—

(1) CONFIDENTIALITY.—

(A) TREATMENT AS RETURN INFORMATION.—Section 6103(b)(2) (relating to return information) is amended by striking ''and'' at the end of subparagraph (C), by inserting ''and'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any approval agreement under section 7874(d)(1) to which any preceding subparagraph does not apply and any background information related to the agreement or any application for the agreement,''.

(B) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—Section 6110(b)(1)(B) is amended by striking ''or (D)'' and inserting '', (D), or (E)''.

(2) REPORTING.—The Secretary of the Treasury shall include with any report on advance pricing agreements required to be submitted after the date of the enactment of this Act under section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) a report regarding approval agreements under section 7874(d)(1) of the Internal Revenue Code of 1986. Such report shall include information similar to the information required with respect to advance pricing agreements and shall be treated for confidentiality purposes in the same manner as the reports on advance pricing agreements are treated under section 521(b)(3) of such Act.

(c) 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.

(d) 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.''.

(e) 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. 822. 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, and

''(2) any specified stock compensation which is sold, exchanged, or distributed 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 any member of the expanded affiliated group which includes such corporation, or

''(B) would be subject to such requirements if such corporation or member 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. 823. 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.

Subtitle C—Other Revenue Provisions

SEC. 831. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

"Category	Average fee
Employee plan ruling and opinion ..	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination.	$275
Chief counsel ruling	$200.

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7528. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7528 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 832. 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 ''April 2, 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. 843. INDIVIDUAL EXPATRIATION TO AVOID TAX.

(a) EXPATRIATION TO AVOID TAX.—

(1) IN GENERAL.—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—

''(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

''(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

''(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $122,000,

''(B) the net worth of the individual as of such date is $2,000,000 or more, or

''(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2003, such $122,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '2002' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.''.

(2) REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

''(2) DUAL CITIZENS.—

''(A) IN GENERAL.—An individual is described in this paragraph if—

''(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

''(ii) the individual has had no substantial contacts with the United States.

''(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

''(i) was never a resident of the United States (as defined in section 7701(b)),

''(ii) has never held a United States passport, and

''(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

''(3) CERTAIN MINORS.—An individual is described in this paragraph if—

''(A) the individual became at birth a citizen of the United States,

''(B) neither parent of such individual was a citizen of the United States at the time of such birth,

''(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

''(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.''.

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).''.

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would not (but for this subsection) be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States until such individual—

''(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

''(2) provides a statement in accordance with section 6039G.''.

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

''(g) PHYSICAL PRESENCE.—This section shall not apply to any individual for any taxable year during the 10-year period referred to in subsection (a) in which such individual is present (within the meaning of section

7701(b)(7) without regard to subparagraphs (B), (C), and (D) thereof) in the United States for more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States for such taxable year.''.

(d) TRANSFERS SUBJECT TO GIFT TAX.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by adding at the end the following:

''(6) TRANSFERS OF CERTAIN STOCK.—

''(A) IN GENERAL.—Paragraph (3) shall not apply to the transfer of stock described in subparagraph (B) by any individual to whom section 877(b) applies, and section 2511(a) shall be applied without regard to whether such stock is property which is situated within the United States.

''(B) VALUATION.—For purposes of subparagraph (A), the value of stock shall be determined as provided in section 2103, except that—

''(i) if the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

''(ii) if such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

''(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

''(II) the total value of the stock of such corporation,

then the portion of the fair market value of the stock of such foreign corporation transferred by such donor which is included for purposes of subparagraph (A) shall be the amount which bears the same ratio to such value as the fair market value of any assets owned by such foreign corporation and situated in the United States at the time of such transfer bears to the total fair market value of all assets owned by such foreign corporation at such time. For purposes of the preceding sentence, a donor shall be treated as owning stock of a foreign corporation at the time of such transfer if, at such time, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.''.

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).''.

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

''(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

''(1) the taxpayer's TIN,

''(2) the mailing address of such individual's principal foreign residence,

''(3) the foreign country in which such individual is residing,

''(4) the foreign country of which such individual is a citizen,

''(5) information detailing the income, assets, and liabilities of such individual,

''(6) the number of days that the individual was present in the United States during the taxable year, and

''(7) such other information as the Secretary may prescribe.''.

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

''(d) PENALTY.—If—

''(1) an individual is required to file a statement under subsection (a) for any taxable year, and

''(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $5,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after February 27, 2003.

SA 1425. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1141 and insert the following:

SEC. 1141. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—

''(A) IN GENERAL.—On the request of any electric consumer served by an electric utility, the electric utility shall make available to the electric consumer net metering as provided in section 115(i).

''(B) CONSIDERATION BY STATE REGULATORY AUTHORITIES.—Notwithstanding subsections (b) and (c) of section 112, not later than 1 year after the date of enactment of this paragraph, a State regulatory authority may consider and make a determination concerning whether it is in the public interest to decline to implement subparagraph (A) in the State.

''(C) INCENTIVES.—Nothing in this paragraph precludes a State from establishing incentives to encourage on-site generating facilities and net metering in addition to the requirement under this subsection.

''(D) REPORTS.—Not later than 1 year after the date of enactment of this paragraph and annually thereafter, the Secretary shall submit to Congress a report that—

''(i) describes the status of implementation by the States of subparagraph (A);

''(ii) contains a list of pre-approved systems and equipment eligible for uniform interconnection treatment; and

''(iii) describes the public benefits that have been derived from net metering and interconnection standards.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(i) NET METERING.—

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

''(A) ELIGIBLE ON-SITE GENERATING FACILITY.—The term 'eligible on-site generating facility' means—

''(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 25 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; and

''(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 1000 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high-efficiency system.

''(B) HIGH EFFICIENCY SYSTEM.—The term 'high efficiency system' means a system that is comprised of—

''(i) fuel cells; or

''(ii) combined heat and power.

''(C) NET METERING SERVICE.—The term 'net metering service' means service to an electric consumer, as provided in section 111(d)(11), under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

''(D) RENEWABLE ENERGY RESOURCE.—The term 'renewable energy resource' means solar, wind, biomass, micro-freeflow-hydro, or geothermal energy.

''(2) NET METERING SERVICE.—For the purposes of undertaking the consideration and making the determination with respect to the standard concerning net metering established by section 111(d)(11), the term 'net metering service' means a service provided in accordance with this subsection.

''(3) CHARGES BY AN ELECTRIC UTILITY.—An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(4) MEASUREMENT OF QUANTITIES.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period with a single bi-directional meter or otherwise in accordance with reasonable metering practices.

''(5) QUANTITY SOLD IN EXCESS OF QUANTITY SUPPLIED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with reasonable metering practices.

''(6) QUANTITY SUPPLIED IN EXCESS OF QUANTITY SOLD.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility

for the appropriate charges for the billing period in accordance with paragraph (5); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period with—

''(i) a kilowatt-hour credit appearing on the bill for the following billing period; or

''(ii) a cash refund.

''(7) COMPLIANCE WITH STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(8) REQUIREMENTS.— The Commission, after consideration of all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories, and consultation with State regulatory authorities and unregulated electric utilities, and after notice and opportunity for comment, shall promulgate additional control, testing, and interconnection requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.''.

SA 1426. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 203, between lines 5 and 6, insert the following:

SEC. 6___. NATIONWIDE MEDIA CAMPAIGN TO DECREASE OIL CONSUMPTION.

(a) IN GENERAL.—The Secretary of Energy, acting through the Assistant Secretary for Energy Efficiency and Renewable Energy (referred to in this section as the ''Secretary''), shall develop and conduct a national media campaign for the purpose of decreasing oil consumption in the United States over the next decade.

(b) CONTRACT WITH ENTITY.—The Secretary shall carry out subsection (a) directly or through—

(1) contracts with 1 or more nationally recognized media firms for the development and distribution of monthly television, radio, and newspaper public service announcements; or

(2) collective agreements with 1 or more nationally recognized institutes, businesses, or nonprofit organizations for the funding, development, and distribution of monthly television, radio, and newspaper public service announcements.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Amounts made available to carry out this section shall be used for the following:

(A) ADVERTISING COSTS.—

(i) The purchase of media time and space.

(ii) Creative and talent costs.

(iii) Testing and evaluation of advertising.

(iv) Evaluation of the effectiveness of the media campaign.

(v) The negotiated fees for the winning bidder on requests from proposals issued either by the Secretary for purposes otherwise authorized in this section.

(vi) Entertainment industry outreach, interactive outreach, media projects and activities, public information, news media outreach, and corporate sponsorship and participation.

(B) ADMINISTRATIVE COSTS.—Operational and management expenses.

(2) LIMITATIONS.—In carrying out this section, the Secretary shall allocate not less than 85 percent of funds made available under subsection (e) for each fiscal year for the advertising functions specified under paragraph (1)(A).

(d) REPORTS.—The Secretary shall annually submit to Congress a report that describes—

(1) the strategy of the national media campaign and whether specific objectives of the campaign were accomplished, including—

(A) determinations concerning the rate of change of oil consumption, in both absolute and per capita terms; and

(B) an evaluation that enables consideration whether the media campaign contributed to reduction of oil consumption;

(2) steps taken to ensure that the national media campaign operates in an effective and efficient manner consistent with the overall strategy and focus of the campaign;

(3) plans to purchase advertising time and space;

(4) policies and practices implemented to ensure that Federal funds are used responsibly to purchase advertising time and space and eliminate the potential for waste, fraud, and abuse; and

(5) all contracts or cooperative agreements entered into with a corporation, partnership, or individual working on behalf of the national media campaign.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 2004 through 2008.

SA 1427. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 1424 submitted by Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) and intended to be proposed to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 263, after line 18, insert:

SEC. ___. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following new sentence: ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SA 1428. Mr. INHOFE (for himself and Mr. REID) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 145, between lines 18 and 19, insert the following:

Subtitle D—Nuclear Infrastructure Security

SEC. 436. DEFINITIONS.

Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended—

(1) by redesignating subsection jj. as subsection ii.; and

(2) by adding at the end the following:

''jj. DESIGNATED NUCLEAR FACILITY.—The term 'designated nuclear facility' means a facility that the Commission classifies as a designated nuclear facility under section 170C(b).

''kk. PRIVATE SECURITY FORCE.—The term 'private security force', with respect to a designated nuclear facility, means personnel hired or contracted by the licensee or certificate holder of the designated nuclear facility to provide security at the designated nuclear facility.''.

SEC. 436A. DESIGNATED NUCLEAR FACILITY SECURITY.

(a) IN GENERAL.—Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following:

''SEC. 170C. PROTECTION OF DESIGNATED NUCLEAR FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) CERTIFICATE HOLDER.—The term 'certificate holder' means the holder of a certificate of compliance issued by the Commission under this Act.

''(2) FEDERAL SECURITY COORDINATOR.—The term 'Federal security coordinator' means a Federal security coordinator as assigned under this Act.

''(3) DESIGN BASIS THREAT.—The term 'design basis threat' means the threat components or capability of an adversary against which a nuclear facility is responsible for defending under regulations, orders, or other directives of the Commission.

''(4) LICENSEE.—The term 'licensee' means the holder of a license issued by the Commission.

''(b) CLASSES OF DESIGNATED NUCLEAR FACILITY.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Commission shall, by regulation, establish classes of designated nuclear facility.

''(2) CLASSIFICATION.—The Commission shall classify facilities licensed by the Commission or issued a certificate by the Commission, including—

''(A) commercial nuclear power plants;

''(B) independent spent fuel storage installations;

''(C) decommissioned nuclear power plants;

''(D) fuel processing facilities;

''(E) gaseous diffusion facilities; and

''(F) any other facility that the Commission determines should be classified as a designated nuclear facility.

''(3) FACTORS.—In determining whether to classify a facility as a designated nuclear facility, the Commission shall consider—

''(A) the nature or type of facility;

''(B) the nature or type of potential radiological release from the facility; and

''(C) other factors relating to protecting public health and safety, the environment, and the common defense and security.

''(c) SECURITY EXAMINATION.—

''(1) IN GENERAL.—The Commission and the Secretary of Homeland Security, in consultation with other agencies and State and local governments as appropriate, shall examine—

''(A) potential threats to nuclear facilities, as appropriate, including consideration of—

''(i) threats comparable to the events of September 11, 2001;

''(ii) cyber threats, chemical threats, and biological threats;

''(iii) attacks on nuclear facilities by multiple coordinated teams of a large number of individuals;

''(iv) attacks by several persons, including persons employed at the nuclear facility, some of whom may have sophisticated knowledge of the operations of the nuclear facility;

''(v) attacks by individuals willing to commit suicide to carry out the attacks;

''(vi) intrusions originating from water or from the air; and

''(vii) fire, especially fire of a long duration;

''(B) classification of threats against nuclear facilities, as appropriate, as—

''(i) a type of threat falling under the responsibilities of the Federal Government, including an act by an enemy of the United States, whether a foreign government or any other person;

''(ii) a type of threat falling under the responsibility of a State or local government; or

''(iii) a type of threat the defense against which should be the responsibility of a licensee or certificate holder;

''(C) the national security response capability, including—

''(i) identification of the obligations and authorities of the United States for protection of areas (including waterways, ports, roadways, airspace, or facilities in the vicinity of a nuclear facility) in the event of a terrorist threat or a terrorist attack against a nuclear facility, as appropriate;

''(ii) identification of the Federal, State, and local agencies responsible for carrying out the obligations and authorities of the United States identified under clause (i); and

''(iii) coordination between the Federal, State and local agencies identified under clause (ii), the Commission, and licensees or certificate holders of nuclear facilities, for protection of nuclear facilities and adjacent areas in the event of a terrorist threat or a terrorist attack;

''(D) coordination of Federal, State, and local security efforts to protect against terrorist or other criminal attacks at nuclear facilities, as appropriate;

''(E) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility, including—

''(i) matters relating to the adequacy of emergency planning zones;

''(ii) matters relating to the adequacy and coordination of Federal, State, and local emergency planning and other measures; and

''(iii) matters relating to the adequacy of security plans for those nuclear facilities;

''(F) the system of threat levels, consistent with the Homeland Security Advisory System, used to categorize the threats pertinent to nuclear facilities, as appropriate, including—

''(i) procedures to ensure coordinated Federal, State, and local responses to changing threat levels for those nuclear facilities;

''(ii) monitoring of threats against those nuclear facilities; and

''(iii) procedures to notify licensees and certificate holders of those nuclear facilities of changes in threat levels;

''(H) the hiring and training standards for members of private security forces at nuclear facilities, as appropriate;

''(I) the coordination of Federal resources to expedite and improve the process of conducting background checks under section 149;

''(J) the establishment by the Secretary of Homeland Security of a program to provide technical assistance and training for the National Guard, State law enforcement agencies, and local law enforcement agencies to respond, as appropriate, to threats against nuclear facilities, as appropriate, including recommendations for the establishment of a grant program to assist State and local governments in carrying out any recommendations under paragraph (3); and

''(K) options for protecting spent fuel storage areas, such as dry cask storage, and associated infrastructure.

''(2) COMPLETION.—The Commission and the Secretary of Homeland Security shall complete the security examination under paragraph (1) not later than 1 year after the date of enactment of this section.

''(3) REPORT.—Not later than 180 days after completion of the security examination under paragraph (1), the Commission and the Secretary of Homeland Security shall submit to the President and Congress, in classified and unclassified form, a report with recommendations and findings.

''(d) REVISION OF DESIGN BASIS THREATS.—

''(1) IN GENERAL.—Not later than 180 days after completion of the report under subsection (c)(3), the Commission shall by regulation revise the design basis threats promulgated before the date of enactment of this section as the Commission determines to be appropriate based on the security examination.

''(2) APPLICABILITY.—A revised design basis threat under paragraph (1) shall apply to such classes of designated nuclear facility as the Commission determines to be appropriate.

''(3) PROTECTION OF SAFEGUARDS INFORMATION.—

''(A) IN GENERAL.—In promulgating any regulations under this subsection, the Commission shall ensure protection of information in accordance with chapter 12, section 181, and any other applicable law.

''(B) EFFECT OF SECTION.—Nothing in this section supersedes any law governing the disclosure of classified information or safeguards information.

''(C) REPORTS TO CONGRESS ON WITHHELD INFORMATION.—

''(i) REPORT.—Not later than 60 days after the effective date of the regulations required by this subsection, the Commission shall submit to Congress a report, in classified and unclassified form, describing any classified information, safeguards information, or other information that the Commission considered in promulgating the regulations but did not make available to the public because of the sensitive nature of the information.

''(ii) ORDERS TO LICENSEES OR CERTIFICATE HOLDERS.—Periodically, but not less than once every 6 months, the Commission shall submit to Congress a report, in classified and unclassified form, identifying any orders or instructions to operators, licensees, or certificate holders issued under the regulations required by this subsection that were not made public because of their classified content, safeguards content, or sensitive content.

''(e) THREAT LEVELS.—Not later than 150 days after the date of submission of the report under subsection (c)(3), the Commission shall establish a system for the determination of threat levels pertinent to—

''(1) such classes of designated nuclear facility as the Commission determines to be appropriate; and

''(2) materials subject to this Act as designated by the Commission.

''(f) SECURITY PLANS.—

''(1) IN GENERAL.—Pursuant to any action taken by the Commission under subsection (d)(1) to revise a design basis threat, not later than 30 days after the revised design basis threat under subsection (d) becomes effective, the Commission shall require each licensee or certificate holder of a designated nuclear facility that is subject to the revised design basis threat to—

''(A) revise the security plan of that designated nuclear facility to ensure that that designated nuclear facility protects against the appropriate design basis threats; and

''(B) submit the security plan to the Commission for review.

''(2) REVIEW SCHEDULE.—The Commission shall establish a priority schedule for conducting reviews of security plans based on—

''(A) the proximity of the designated nuclear facility to large population areas; and

''(B) other critical factors identified by the Commission.

''(3) UPGRADES TO SECURITY.—The Commission shall ensure that the licensee or certificate holder of each designated nuclear facility that is subject to the revised design basis threat makes any changes to security and the security plan required from the Commission review on a schedule established by the Commission, but not to exceed 18 months after completion of the review.

''(g) EMERGENCY RESPONSE PLANS AND PREPAREDNESS.—

''(1) IN GENERAL.—The Commission and the Secretary of Homeland Security, in consultation with other Federal, State, and local government agencies, as appropriate, shall review and update the requirements in effect on the date of enactment of this section for on-site and off-site emergency response plans and preparedness for response to an emergency involving a designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate to ensure that the requirements—

''(A) are adequate to protect public health and safety;

''(B) provide reasonable assurance that the plans can and will be implemented; and

''(C) provide reasonable assurance that adequate protective measures can and will be taken in the event of such an emergency.

''(2) REQUIREMENTS.—At a minimum, the updated requirements applicable to a designated nuclear facility under paragraph (1) shall provide for—

''(A) the establishment of, clear definition of, assignment of, and assurance of the ability to carry out, responsibilities of emergency response organizations and personnel among the licensee or certificate holder, State and local organizations, and other supporting organizations;

''(B) methods and procedures for the clear and prompt notification of State and local response organizations and the public by the licensee or certificate holder;

''(C) methods and procedures for prompt communication and coordination among emergency response organizations and personnel and the public;

''(D) dissemination of information to the public, including pre-emergency education on a periodic basis and in the event of an actual emergency;

''(E) adequate emergency facilities and equipment at and around the designated nuclear facility;

''(F) the use of appropriate methods, systems, and equipment for assessing and monitoring actual and potential impacts of an

emergency, including a radiological emergency;

''(G) a range of protective actions for the public, including appropriate evacuation and sheltering and the prophylactic use of potassium iodide;

''(H) means for controlling radiological exposures and other hazardous exposures;

''(I) appropriate medical services;

''(J) recovery and reentry plans; and

''(K) radiological emergency response training.

''(3) FACTORS.—The updated requirements under paragraph (1) shall address relevant factors, including—

''(A) population density, topography, land characteristics, access routes, and jurisdictional boundaries;

''(B) unique aspects of an emergency resulting from a terrorist attack;

''(C) available technology and technical innovations; and

''(D) other factors, as determined by the Commission or the Secretary of Homeland Security.

''(4) STAKEHOLDER INVOLVEMENT.—In updating requirements under paragraph (1), the Commission and the Secretary of Homeland Security shall include requirements for appropriate stakeholder involvement in the planning and exercise process, including the involvement of—

''(A) local governments;

''(B) large employers;

''(C) facilities such as schools, hospitals, nursing homes, and prisons;

''(D) advocacy groups; and

''(E) other interested groups and individuals near a designated nuclear facility.

''(5) REGULATIONS.—

''(A) IN GENERAL.—The Commission and the Secretary of Homeland Security shall promulgate regulations implementing this subsection not later than 180 days following the completion of the report under subsection (c)(3).

''(B) EFFECTIVE DATE.—The regulations shall take effect not later than 90 days after the date of promulgation.

''(6) REVIEWS.—

''(A) IN GENERAL.—Not later than 60 days after the effective date of the regulations under paragraph (5), the Commission, in coordination with the Secretary of Homeland Security and, as appropriate, in consultation with other Federal, State, and local government agencies, shall begin reviewing on-site and off-site emergency response plans and preparedness capabilities for compliance with the regulations.

''(B) REVIEW SCHEDULE.—The Commission, in coordination with the Secretary of Homeland Security, shall establish a priority schedule for conducting reviews of emergency response plans and preparedness capabilities under subparagraph (A) based on the relative vulnerability of the designated nuclear facilities that are subject to the regulations and the proximity of the designated nuclear facilities to high population density areas.

''(C) REPORT.—The Commission, in coordination with the Secretary of Homeland Security, shall submit to Congress a report, in classified and unclassified form, describing the results of each review conducted under subparagraph (A).

''(7) EFFECT OF SUBSECTION.—Nothing in this subsection limits the authority of the Commission or the Secretary of Homeland Security to take other actions for protection of the public health and safety, the environment, or the common defense and security under any other authority of the Commission or the Secretary of Homeland Security.

''(h) EMPLOYEE SECURITY.—

''(1) REVIEW.—Not later than 180 days after the date of enactment of this section, the Commission shall review and update as appropriate the access and training standards for employees of nuclear facilities.

''(2) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Commission shall establish qualifications and procedures, in addition to fingerprinting for criminal history record checks conducted under section 149, to ensure that no individual who presents a threat to national security is employed at a designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate.

''(i) FEDERAL SECURITY COORDINATORS.—

''(1) REGIONAL OFFICES.—Not later than 18 months after the date of enactment of this section, the Commission shall assign a Federal security coordinator, under the employment of the Commission, to each region of the Commission.

''(2) RESPONSIBILITIES.—The Federal security coordinator shall be responsible for—

''(A) communicating with the Commission and other Federal, State, and local authorities concerning threats, including threats against a designated nuclear facility in such classes of designated nuclear facilities as the Commission determines to be appropriate;

''(B) ensuring that a designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate maintains security consistent with the security plan in accordance with the appropriate threat level; and

''(C) assisting in the coordination of security measures among—

''(i) the private security force at a designated nuclear facility in such classes of designated nuclear facilities as the Commission determines to be appropriate; and

''(ii) Federal, State, and local authorities, as appropriate.

''(3) ADDITIONAL FEDERAL SECURITY COORDINATORS.—

''(A) IN GENERAL.—The Commission may assign an additional Federal security coordinator, as the Commission considers appropriate, to a Commission office on the site of a designated nuclear facility.

''(B) REQUEST BY GOVERNOR.—The Governor of any State that contains a designated nuclear facility may request the assignment of an additional Federal security coordinator to 1 or more designated nuclear facilities in that State.

''(j) NATIONAL SECURITY CAPABILITY.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the President shall identify the national security support capability to protect designated nuclear facilities against terrorist threats and attacks.

''(2) ELEMENTS.—The national security support capability shall use capabilities of such Federal agencies identified in the report under subsection (c)(3), or of other Federal, State, and local agencies, as the President determines to be appropriate.

''(3) CAPABILITIES.—

''(A) IN GENERAL.—The national security support capability shall provide assistance to the private security force at each designated nuclear facility in such classes of designated nuclear facilities as the Commission determines to be appropriate, appropriate State and local agencies including emergency response and law enforcement agencies, and where appropriate, the National Guard, in accordance with the obligations and authorities of the United States, as identified in the report to Congress required under subsection (c)(3).

''(B) COORDINATION.—The President shall ensure that effective coordination exists between Federal agencies, the Commission, and State and local governments in planning and deployment for prevention, deterrence, and response to actual or potential terrorist attacks against such classes of designated nuclear facility as the Commission considers appropriate.

''(4) TRAINING PROGRAM.—

''(A) IN GENERAL.—The President shall establish a program to provide technical assistance and training to Federal agencies, the National Guard, and State and local law enforcement and emergency response agencies in responding to threats against a designated nuclear facility.

''(B) GRANTS.—The President may provide grants to State and local governments to assist in carrying out subparagraph (A).

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

''(k) CLASSIFIED INFORMATION.—Nothing in this section supersedes any law governing the disclosure of classified information or safeguards information.''.

(b) FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—Section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) is amended—

(1) in subsection a.—

(A) by striking ''a. The Nuclear'' and all that follows through ''section 147.'' and inserting the following:

''a. IN GENERAL.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The Commission shall require—

''(i) each licensee, certificate holder, or applicant for a license or certificate to operate a utilization facility under section 103 or 104(b); and

''(ii) each licensee or applicant for a license to possess or use radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks;

to fingerprint each individual described in subparagraph (B).

''(B) INDIVIDUALS REQUIRED TO BE FINGERPRINTED.—The Commission shall require to be fingerprinted each individual who—

''(i) is permitted unescorted access to—

''(I) a utilization facility; or

''(II) radioactive material or other property identified by the Commission under subparagraph (A)(ii); or

''(ii) is permitted access to safeguards information under section 147.'';

(B) by striking ''All fingerprints'' and inserting the following:

''(2) SUBMISSION TO THE ATTORNEY GENERAL.—All fingerprints'';

(C) by striking ''The costs'' and inserting the following;

''(3) COSTS.—The costs'';

(D) by striking ''Notwithstanding'' and inserting the following:

''(4) PROVISION TO LICENSEE, CERTIFICATE HOLDER, OR APPLICANT.—Notwithstanding''; and

(E) by striking ''licensee or applicant'' each place it appears and inserting ''licensee, certificate holder, or applicant for a license or certificate'';

(2) by redesignating subsection d. as subsection e.; and

(3) by inserting after subsection c. the following:

''d. USE OF OTHER BIOMETRIC METHODS.—Any requirement for a person to conduct fingerprinting under this section may be satisfied by using any other biometric method for identification approved for use by the Attorney General.''.

SEC. 436B. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE.

(a) IN GENERAL.—Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) is amended by adding at the end the following:

''SEC. 212. OFFICE OF NUCLEAR SECURITY AND INCIDENT RESPONSE.

''(a) DEFINITIONS.—In this section:

''(1) CERTIFICATE HOLDER.—The term 'certificate holder' has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.

''(2) DESIGNATED NUCLEAR FACILITY.—The term 'designated nuclear facility' has the meaning given the term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

''(3) DIRECTOR.—The term 'Director' means the Director of Nuclear Security and Incident Response appointed under subsection (c) to head the Office.

''(4) LICENSEE.—The term 'licensee' has the meaning given the term in section 170C(a) of the Atomic Energy Act of 1954.

''(5) OFFICE.—The term 'Office' means the Office of Nuclear Security and Incident Response established by subsection (b).

''(b) ESTABLISHMENT OF OFFICE.—There is established in the Commission the Office of Nuclear Security and Incident Response.

''(c) DIRECTOR.—

''(1) APPOINTMENT.—The Commission may appoint and remove from office a Director of Nuclear Security and Incident Response.

''(2) DUTIES.—

''(A) IN GENERAL.—The Director shall perform such functions as the Commission delegates to the Director.

''(B) FUNCTIONS.—The functions delegated to the Director may include—

''(i) carrying out security, safeguards, and incident responses relating to—

''(I) any facility subject to the jurisdiction of the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

''(II) any property subject to the jurisdiction of the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) that—

''(aa) is significant to the common defense and security; or

''(bb) is being transported to or from a facility described in clause (i); and

''(III) any other activity of a licensee or certificate holder, subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), that is significant to the common defense and security;

''(ii) for a facility or material licensed or certified under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)—

''(I) developing contingency plans for dealing with threats, thefts, and sabotage; and

''(II) monitoring, reviewing, and evaluating security and safeguards;

''(iii) recommending upgrades to internal accounting systems for special nuclear and other materials licensed or certified under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

''(iv) developing and recommending standards and amendments to the standards of the Commission relating to the duties described in clauses (i) through (iii); and

''(E) carrying out such other duties of the Commission regarding safeguards and physical security functions and incident response functions as the Commission determines to be appropriate.

''(3) CONSULTATION.—In carrying out the duties under paragraph (2), the Director shall, to the extent practicable, consult and coordinate with other Federal agencies.

''(d) SECURITY RESPONSE EVALUATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Commission shall establish a security response evaluation program to assess the ability of each designated nuclear facility that is part of a class of designated nuclear facilities that the Commission considers appropriate to defend against threats in accordance with the security plan for the designated nuclear facility.

''(2) FREQUENCY OF EVALUATIONS.—Not less than once every 3 years, the Commission shall conduct and document security response evaluations at each designated nuclear facility that is part of a class of designated nuclear facilities that the Commission considers appropriate to assess the ability of the private security force of the designated nuclear facility to defend against applicable design basis threats.

''(3) SECURITY EXEMPTION.—The Commission may suspend activities under this section if the Commission determines that the security response evaluations would compromise security at any designated nuclear facility in accordance with a heightened threat level.

''(4) ACTIVITIES.—The security response evaluation shall include force-on-force exercises that simulate the security threats consistent with the design basis threats applicable to the designated nuclear facility.

''(5) PERFORMANCE CRITERIA.—The Commission shall establish performance criteria for judging the security response evaluations.

''(6) CORRECTIVE ACTION.—

''(A) IN GENERAL.—When any of the performance criteria established under paragraph (5) are not satisfied—

''(i) the licensee or certificate holder shall promptly correct any defects in performance identified by the Commission in the security response evaluation; and

''(ii) the Commission shall conduct an additional security response evaluation within 9 months to confirm that the licensee or certificate holder satisfies the performance criteria established under paragraph (5).

''(B) 2 CONSECUTIVE FAILURES TO SATISFY PERFORMANCE CRITERIA.—

''(i) IN GENERAL.—If a designated nuclear facility fails to satisfy the performance criteria established under paragraph (5) in 2 consecutive security response evaluations, the Commission shall issue an order specifying the corrective actions that must be taken by the licensee or certificate holder of the designated nuclear facility.

''(ii) FAILURE TO TAKE CORRECTIVE ACTION.—If the licensee or certificate holder of a designated nuclear facility does not take the corrective action specified by the Commission within 30 days after the date of issuance of an order under clause (i), the Commission shall assess a civil penalty under section 234 of the Atomic Energy Act of 1954 (42 U.S.C. 2282).

''(C) EFFECT.—Nothing in this paragraph limits any enforcement authority of the Commission to take action in response to deficiencies identified through security evaluations.

''(7) REPORTS.—Not less often than once every year, the Commission shall submit to Congress and the President a report, in classified form and unclassified form, that describes the results of each security response evaluation under this paragraph for the previous year.

''(e) EMERGENCY RESPONSE EXERCISES.—

''(1) IN GENERAL.—Not less than once every 2 years, the Commission, in coordination with the Secretary of Homeland Security and, as appropriate, in consultation with other Federal, State, and local response agencies and stakeholders, shall observe and evaluate emergency response exercises to determine whether—

''(A) on-site and off-site emergency response plans for, and capabilities for response to an emergency involving, each designated nuclear facility in such classes of designated nuclear facility as the Commission determines to be appropriate are adequate to protect public health and safety; and

''(B) there is reasonable assurance that—

''(i) those plans and capabilities can and will be implemented; and

''(ii) adequate protective measures can and will be taken in the event of an emergency.

''(2) ASSESSMENT OF ABILITY TO RESPOND.—Exercises under paragraph (1) shall assess the ability of Federal, State, and local emergency response agencies and emergency response personnel of a licensee or certificate holder to respond adequately to an emergency involving the designated nuclear facility.

''(3) HIGH POPULATION DENSITY AREAS.—The Commission, in coordination with the Secretary of Homeland Security and, as appropriate, in consultation with other Federal, State, and local agencies and stakeholders, may observe and evaluate exercises more frequently at designated nuclear facilities located in high population density areas.

''(4) PERFORMANCE-BASED APPROACH.—The Commission, in cooperation with the Secretary of Homeland Security, shall promptly establish performance criteria for use in evaluating the results of the exercises under paragraph (1), including criteria relating to—

''(A) response times and capabilities;

''(B) coordination and communication among response personnel and organizations;

''(C) emergency equipment, public notification systems, and communications networks;

''(D) feasible evacuation of individuals; and

''(E) other matters determined by the Commission or the Secretary of Homeland Security.

''(5) SCENARIOS.—The evaluations under paragraph (1) shall assess the ability of the emergency response plans to protect public health and safety and provide reasonable assurance that adequate protective measures can and will be taken in responding to a broad range of accident scenarios, including—

''(A) fast-breaking events that occur with little or no warning;

''(B) radiological releases of significant magnitude;

''(C) significant spontaneous evacuations;

''(D) significant shadow evacuations;

''(E) terrorist attacks; and

''(F) other scenarios determined by the Commission or the Secretary of Homeland Security.

''(6) DEFICIENCIES.—

''(A) NOTIFICATION.—The Commission, in coordination with the Secretary of Homeland Security, shall promptly notify licensees or certificate holders, the Governor of any State that may be affected, and any other appropriate Federal, State, or local agencies or stakeholders of any weaknesses or deficiencies in an emergency response

plan or in emergency preparedness capabilities identified as the result of an evaluation under paragraph (1).

''(B) FAILURE TO CORRECT.—If weaknesses or deficiencies in emergency response plans or in preparedness capabilities are not promptly corrected, the Commission shall take appropriate action under section 107 or other enforcement authorities available to the Commission to—

''(i) ensure adequate protection of public health and safety; and

''(ii) provide reasonable assurance that plans can and will be implemented and that adequate protective measures can and will be taken in the event of an emergency.

''(7) REPORT.—Not less than once annually, the Commission and the Secretary of Homeland Security shall submit to the President and Congress a report, in classified and unclassified form, that describes—

''(A) the results of each exercise evaluated in the previous year; and

''(B) each revision of an emergency response plan or emergency preparedness capabilities made under paragraph (6) in the previous year that is substantive in nature.

''(8) MAINTENANCE.—The Commission shall take such action as is necessary to ensure that adequate emergency response plans and capabilities are maintained during the intervals between exercises.

''(9) EFFECT OF SUBSECTION.—Nothing in this subsection limits the authority of the Commission or the Secretary of Homeland Security to take other actions for protection of the public health and safety, the environment, or the common defense and security under any other authority of the Commission or the Secretary of Homeland Security.

''(f) EFFECT.—Nothing in this section limits any authority of the Secretary of Energy relating to the security and safeguarding of special nuclear materials, high-level radioactive waste, and nuclear facilities resulting from all activities under the jurisdiction of the Secretary.''.

(b) CONFORMING AMENDMENTS.—Title II of the Energy Reorganization Act of 1974 is amended—

(1) in section 203(b) (42 U.S.C. 5843(b))—

(A) in paragraph (1), by striking ''licensing and regulation involving'' and inserting ''licensing, regulation, and, except as otherwise provided under section 212, carrying out safety reviews, safeguards, and physical security of''; and

(B) in paragraph (2), by striking ''and safeguards''; and

(2) in section 204(b) (42 U.S.C. 5844(b))—

(A) in paragraph (1)—

(i) by striking ''including'' and inserting ''not including''; and

(ii) by striking ''and materials.'' and inserting ''and materials, to the extent that the safeguards and security functions are delegated to the Office of Nuclear Security and Incident Response under section 212.'';

(B) in paragraph (2)—

(i) by striking ''and safeguards''; and

(ii) by striking '', as amended,'' and all that follows through the period and inserting ''(42 U.S.C. 2011 et seq.)''.

SEC. 436C. GUARDING OF NUCLEAR FACILITIES, EQUIPMENT, AND MATERIAL.

(a) TRANSPORTING OF SHORT-BARRELED SHOTGUN OR RIFLE.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (a)(4), by striking ''or licensed collector,'' and inserting the following: ''licensed collector, or a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or an employee or contractor of such a licensee or certificate holder, that holds the license or certificate for the purpose of establishing and maintaining an on-site physical protection system and security organization required by Federal law or for the purpose of licensee-authorized or certificate holder-authorized training or transportation of nuclear material or equipment authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.),''; and

(2) in subsection (o)(2)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(C) a transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of the licensee or certificate holder on-site for such purposes or off-site for purposes of licensee-authorized or certificate holder-authorized training or transportation of nuclear materials or equipment authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).''.

(b) AUTHORIZATION FOR IMPORTATION OF FIREARM OR AMMUNITION.—Section 925(d)(1) of title 18, United States Code, is amended—

(1) by inserting ''(A)'' before ''is being''; and

(2) by inserting after the semicolon the following: ''or

''(B) is being imported or brought in for transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law;''.

(c) INTERSTATE TRANSPORTATION OF FIREARMS.—Section 926A of title 18, United States Code, is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) LICENSEES AND CERTIFICATE HOLDERS OF THE NUCLEAR REGULATORY COMMISSION.—Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision of a State, a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or an employee or contractor of such a licensee or certificate holder, that is not otherwise prohibited by this chapter from transporting, shipping, receiving, or possessing a firearm shall be entitled to transport and possess a firearm for purposes of establishing and maintaining an onsite physical protection system and security organization required by Federal law, and for purposes of licensee-authorized or certificate holder-authorized training or transportation of nuclear material or equipment authorized under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).''.

(d) IMPORTATION OF FIREARMS.—Section 5844 of the Internal Revenue Code of 1986 (26 U.S.C. 5844) is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by inserting ''or'' after the semicolon; and

(3) by inserting after paragraph (3) the following:

''(4) a machinegun or short-barreled shotgun being imported or brought in for transfer to a licensee or certificate holder under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law;''.

(e) SEMIAUTOMATIC ASSAULT WEAPONS; LARGE CAPACITY AMMUNITION FEEDING DEVICES.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (v)(4)(B)—

(A) by inserting ''or certificate holder'' after ''licensee'' each place that term appears;

(B) by inserting ''or certificate holder-authorized'' after ''licensee-authorized''; and

(C) by inserting ''or equipment'' after ''materials''; and

(2) in subsection (w)(3)(B)—

(A) by inserting ''or certificate holder'' after ''licensee'' each place that term appears;

(B) by inserting ''or certificate holder-authorized'' after ''licensee-authorized''; and

(C) by inserting ''or equipment'' after ''materials''.

SEC. 436D. SENSITIVE RADIOACTIVE MATERIAL SECURITY.

Chapter 14 of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) (as amended by section 436A) is amended by adding at the end the following:

''SEC. 170D. SENSITIVE RADIOACTIVE MATERIAL SECURITY.

''(a) DEFINITIONS.—In this section:

''(1) SENSITIVE RADIOACTIVE MATERIAL.—

''(A) IN GENERAL.—The term 'sensitive radioactive material' means—

''(i) a material—

''(I) that is a source material, by-product material, or special nuclear material; or

''(II) that is any other radioactive material (regardless of whether the material is or has been licensed or otherwise regulated under this Act) produced or made radioactive before or after the date of enactment of this section; and

''(ii) that is in such a form or quantity or concentration that the Commission determines should be classified as 'sensitive radioactive material' that warrants improved security and protection against loss, theft, or sabotage.

''(B) EXCLUSION.—The term 'sensitive radioactive material' does not include nuclear fuel or spent nuclear fuel.

''(2) SECURITY THREAT.—The term 'security threat' means—

''(A) a threat of sabotage or theft of sensitive radioactive material;

''(B) a threat of use of sensitive radioactive material in a radiological dispersal device; and

''(C) any other threat of terrorist or other criminal activity involving sensitive radioactive material that could harm the health or safety of the public due primarily to radiological properties of the sensitive radioactive material, as determined by the Commission.

''(b) DUTIES.—

''(1) IN GENERAL.—The Commission, in consultation with Secretary of Homeland Security, Secretary of Energy, Director of Central Intelligence, Director of the Federal Bureau of Investigation, Director of the Customs Service, and Administrator of the Environmental Protection Agency, shall—

''(A) evaluate the security of sensitive radioactive material against security threats; and

''(B) recommend administrative and legislative actions to be taken to provide an acceptable level of security against security threats.

''(2) CONSIDERATIONS.—In carrying out paragraph (1), the Commission shall consider actions, as appropriate to—

''(A) determine the radioactive materials that should be classified as sensitive radioactive materials;

''(B) develop a classification system for sensitive radioactive materials that—

''(i) is based on the potential for use by terrorists of sensitive radioactive material and the extent of the threat to public health and safety posed by that potential; and

''(ii) takes into account—

''(I) radioactivity levels of sensitive radioactive material;

''(II) the dispersibility of sensitive radioactive material;

''(III) the chemical and material form of sensitive radioactive material;

''(IV) the need to maintain access by physicians and other medical professionals to sensitive radioactive material and pharmaceuticals containing sensitive radioactive material for use in connection with medical diagnosis or treatment; and

''(V) other appropriate factors;

''(C) develop a national system for recovery of sensitive radioactive material that is lost or stolen, taking into account the classification system established under subparagraph (B);

''(D) provide for the storage of sensitive radioactive material that is not currently in use in a safe and secure manner;

''(E) develop a national tracking system for sensitive radioactive material, taking into account the classification system established under subparagraph (B);

''(F) develop methods to ensure the return or proper disposal of sensitive radioactive material;

''(G) consider export controls on sensitive radioactive materials so that, to the extent feasible, exports from the United States of sensitive radioactive materials are made to foreign recipients that are willing and able to control the sensitive radioactive materials in a manner that is not inimical to the common defense and security of the United States; and

''(H) establish procedures to improve the security of sensitive radioactive material in use, transportation, and storage.

''(3) PROCEDURES TO IMPROVE SECURITY.—The procedures to improve the security of sensitive radioactive material under paragraph (2)(H) may include—

''(A) periodic audits or inspections by the Commission to ensure that sensitive radioactive material is properly secured and can be fully accounted for;

''(B) evaluation by the Commission of security measures taken by persons that possess sensitive radioactive material;

''(C) imposition of increased fines for violations of regulations relating to security and safety measures applicable to persons that possess sensitive radioactive material;

''(D) conduct of background checks on individuals with access to sensitive radioactive material;

''(E) measures to ensure the physical security of facilities in which sensitive radioactive material is stored; and

''(F) screening of shipments of sensitive radioactive material to facilities that are particularly at risk for sabotage to ensure that the shipments do not contain explosives.

''(c) REPORT.—Not later than 1 year after the date of enactment of this section, and not less frequently than once every 3 years thereafter, the Commission shall submit to the President and Congress a report in unclassified form (with a classified annex, if necessary) describing the administrative and legislative actions recommended under subsection (b)(1).

''(d) ADMINISTRATIVE ACTION.—Not later than 60 days after the date of submission of the report under subsection (c), the Commission shall take such actions as are appropriate to—

''(1) revise the system for licensing sensitive radioactive materials; and

''(2) delegate the authority of the Commission to implement regulatory programs and requirements to States that enter into agreements with the Commission to perform inspections and other functions on a cooperative basis as the Commission considers appropriate.''.

SEC. 436E. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended in the first sentence by inserting ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act'' before the period at the end.

SEC. 436F. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended—

(1) in the first sentence, by striking ''or who intentionally and willfully attempts'' and inserting ''or who attempts or conspires'';

(2) in paragraph (2), by striking ''storage facility'' and inserting ''storage, treatment, or disposal facility'';

(3) in paragraph (3)—

(A) by striking ''such a utilization facility'' and inserting ''a utilization facility licensed under this Act''; and

(B) by striking ''or'' at the end;

(4) in paragraph (4)—

(A) by striking ''facility licensed'' and inserting ''uranium conversion or nuclear fuel fabrication facility licensed or certified''; and

(B) by striking the period at the end and inserting a semicolon; and

(5) by inserting after paragraph (4) the following:

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

''(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

''(7) any radioactive material or other property subject to regulation by the Nuclear Regulatory Commission that, before the date of the offense, the Nuclear Regulatory Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security;''.

SEC. 436G. EVALUATION OF ADEQUACY OF ENFORCEMENT PROVISIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General and the Nuclear Regulatory Commission shall submit to Congress a report that assesses the adequacy of the criminal enforcement provisions in chapter 18 of the Atomic Energy Act of 1954 (42 U.S.C. 221 et seq.).

SEC. 436H. PROTECTION OF WHISTLEBLOWERS.

Section 211(a)(2) of the Energy Reorganization Act (42 U.S.C. 5851) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(E) a contractor or subcontractor of the Commission.''.

SEC. 436I. TECHNICAL AND CONFORMING AMENDMENT.

The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by adding at the end of the items relating to chapter 14 the following:

''Sec.

''170B. Uranium supply.

''170C. Protection of designated nuclear facilities.102. Section 102 head.

''170D. Sensitive radioactive material security.''.

SEC. 436J. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out the amendments made by this title.

(b) AGGREGATE AMOUNT OF CHARGES.—Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii), by striking the period at the end and inserting ''; and'' and

(3) by adding at the end the following:

''(iii) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections.''.

SA 1429. Mr. BREAUX submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, line 24, insert ''(including roofing)'' after ''system''.

On page 91, line 11, strike ''and''.

On page 91, line 15, strike the period and insert '', and''.

On page 91, between lines 15 and 16, insert the following:

''(III) which has a roof which meets the requirements for reflective roofs under the Energy Star program of the Environmental Protection Agency.

On page 104, line 19, strike ''and''.

On page 104, between lines 19 and 20, insert the following:

''(5) 30 percent of the qualified energy efficient reflective metal roof expenditures made by the taxpayer during such year, and

On page 104, line 20, strike ''(5)'' and insert ''(6)''.

On page 106, line 5, strike ''or a wind energy property'' and insert ''a wind energy property, or a reflective metal roof''.

On page 106, line 9, strike ''(d)(6)'' and insert ''(d)(7)''.

On page 108, between lines 22 and 23, insert the following:

''(6) QUALIFIED ENERGY EFFICIENT REFLECTIVE METAL ROOF EXPENDITURE.—The term 'qualified energy efficient reflective metal roof expenditure' means an expenditure for pigmented coated metal roofs which meet or exceed solar reflectivity standards established for reflective roof products under the Energy Star program of the Environmental

Protection Agency and which are installed on a dwelling unit located in the United States and used as a residence by the taxpayer.

On page 108, line 23, strike ''(6)'' and insert ''(7)''.

On page 110, line 8, strike ''(7)'' and insert ''(8)''.

On page 110, line 11, strike ''or (6)'' and insert ''(6), or (7)''.

On page 110, line 15, strike ''(8)'' and insert ''(9)''.

On page 139, line 8, insert '', or, in the case of roofs, in accordance with the requirements for reflective roof products under the Energy Star program of the Environmental Protection Agency'' before the comma.

On page 145, line 19, insert ''(including roofing)'' after ''system''.

SA 1430. Mr. BREAUX submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII of Division B, insert the following:

SEC. ___. CREDIT FOR ELECTRICITY PRODUCED FROM WIND ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax), as amended by this Act, is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

''(6) SPECIAL RULES FOR CREDIT FOR ELECTRICITY PRODUCED FROM WIND.—

''(A) IN GENERAL.—In the case of the wind electricity 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 wind electricity credit).

''(B) WIND ELECTRICITY CREDIT.—For purposes of this subsection, the term 'wind electricity credit' means the credit determined under sections 45 to the extent that such credit is attributable to electricity produced—

''(i) at a facility using wind to produce electricity which is originally placed in service after the date of the enactment of this paragraph, and

''(ii) during the 4-year period beginning on the date that such facility was originally placed in service.''.

(b) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, and subclause (II) of section 38(c)(5)(A)(ii), as added by this Act, are each amended by inserting ''or the wind electricity credit'' after ''Alaska natural gas credit''.

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

SA 1431. Mr. GRASSLEY (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In division B, beginning on page 66, line 4, strike all through page 67, line 9.

Beginning on page 67, line 16, strike all through page 69, line 25, and insert the following:

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

''(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

''(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

''(ii) for the taxable year in which such sale or use occurs.

''(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(2) BIODIESEL CREDIT.—

''(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

''(i) is used by the taxpayer as a fuel in a trade or business, or

''(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

''(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

''(3) CREDIT FOR AGRI-BIODIESEL.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

''(B) CERTIFICATION FOR AGRI-BIODIESEL.—Subparagraph (A) shall apply only if the taxpayer described in paragraph (1)(A) or (2)(A) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

On page 70, line 11, insert ''derived from plant or animal matter'' after ''acids''.

On page 71, strike lines 1 through 3.

On page 71, line 4, strike ''(4)'' and insert ''(3)''.

On page 71, lines 17 through 19, strike ''biodiesel mixture rate applicable under subsection (b)(1)(B)'' and insert ''rate applicable under subsection (b)(1)(A)''.

On page 72, line 3, strike ''(5)'' and insert ''(4)''.

On page 73, between lines 3 and 4, insert the following:

(2)(A) Section 87, as amended by this Act, is amended—

(i) by striking ''and'' at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting '', and'',

(iii) by adding at the end the following new paragraph:

''(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).'', and

(iv) by striking ''fuel credit'' in the heading and inserting ''and biodiesel fuels credits''.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking ''fuel credit'' and inserting ''and biodiesel fuels credits''.

On page 73, line 4, strike ''(2)'' and insert ''(3)''.

On page 73, line 11, strike ''(3)'' and insert ''(4)''.

On page 76, strike lines 1 through 11 and insert the following:

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any qualified biodiesel mixture.

''(2) APPLICABLE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

''(B) AMOUNT FOR AGRI-BIODIESEL.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

''(ii) CERTIFICATION FOR AGRI-BIODIESEL.—Clause (i) shall apply only if the taxpayer described in paragraph (1) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

On page 76, line 21, strike ''agri-biodiesel'' and insert ''biodiesel''.

On page 77, lines 1 and 2, strike ''agri-biodiesel'' and insert ''biodiesel''.

On page 77, line 8, strike ''agri-biodiesel'' and insert ''biodiesel''.

On page 77, between lines 14 and 15, insert the following:

(b) REGISTRATION REQUIREMENT.—Section 4101(a) (relating to registration) is amended by inserting ''and every person producing biodiesel (as defined in section 40B(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4091''.

On page 77, line 15, strike ''(b)'' and insert ''(c)''.

Beginning on page 79, line 16, strike all through page 80, line 17, and insert the following:

''(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

''(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

''(2) USED AS FUEL.—If alcohol (as defined in section 40(d)(1)) or biodiesel (as defined in section 40B(d)(1)) or agri-biodiesel (as defined in section 40B(d)(2)) which is not in a mixture with a taxable fuel (as defined in section 4083(a)(1))—

''(A) is used by any person as a fuel in a trade or business, or

''(B) is sold by any person at retail to another person and placed in the fuel tank of such person's vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40B(b)(2)) with respect to such fuel.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

''(4) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

''(B) any qualified biodiesel mixture (within the meaning of section 6426(c)(1)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2005.''.

On page 82, line 4, strike ''(e)'' and insert ''(e)(1)''.

On page 84, line 8, strike ''(c)'' and insert ''(d)''.

On page 84, line 11, strike ''(d)'' and insert ''(e)''.

Beginning on page 86, line 25, strike ''with the'' and all that follows through page 87, line 2, and insert the following: ''with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment,''.

On page 88, between lines 11 and 12, insert the following:

''(3) PROVIDER LIMITATION.—Any eligible contractor who directly or indirectly provides the guarantee of energy savings under a guarantee-based method of certification described in subsection (d)(1)(D) shall not be eligible to receive the credit allowed by this section.

On page 89, line 2, insert ''or system'' after ''cooling equipment''.

On page 90, line 10, strike ''or'' and insert a comma.

On page 90, line 11, insert ''or a guarantee-based method,'' after ''method,''.

On page 91, strike lines 12 through 15 and insert the following:

''(II) constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment.

On page 91, line 22, strike ''Such'' and all that follows through page 92, line 2.

On page 92, between lines 2 and 3, insert the following:

''(D) GUARANTEE-BASED METHOD.—

''(i) IN GENERAL.—A guarantee-based method is a method which guarantees in writing to the homeowner energy savings of either 30 percent or 50 percent over the 2000 International Energy Conservation Code for heating and cooling costs. The guarantee shall be provided for a minimum of 2 years and shall fully reimburse the homeowner any heating and cooling costs in excess of the guaranteed amount.

''(ii) COMPUTER SOFTWARE.—Computer software shall be selected by the provider to support the guarantee-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

On page 92, line 9, insert ''or a guarantee-based method'' after ''method''.

On page 94, line 13, insert ''and guarantee-based'' after ''based''.

On page 105, strike lines 6 through 19 and insert the following:

''(C) for property described in subsection (d)(6)—

''(i) $150 for each electric heat pump water heater,

''(ii) $125 for each advanced natural gas, oil, propane furnace, or hot water boiler,

''(iii) $150 for each advanced natural gas, oil, or propane water heater,

''(iv) $50 for each natural gas, oil, or propane water heater,

''(v) $50 for an advanced main air circulating fan,

''(vi) $150 for each advanced combination space and water heating system,

''(vii) $50 for each combination space and water heating system, and

''(viii) $250 for each geothermal heat pump.

On page 106, line 18, insert ''for property described in subsection (d)(6)(B)(viii)'' after ''(EER)''.

On page 109, strike lines 12 through 17.

On page 109, line 18, strike ''(iii)'' and insert ''(ii)''.

On page 109, lines 18 and 19, strike ''or propane furnace'' and insert ''propane furnace, or hot water boiler''.

On page 109, strike lines 22 through 25.

On page 110, strike lines 1 through 7 and insert the following:

''(iii) an advanced natural gas, oil, or propane water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure,

''(iv) a natural gas, oil, or propane water heater which has an energy factor of at least 0.65 but less than 0.80 in the standard Department of Energy test procedure,

''(v) an advanced main air circulating fan used in a new natural gas, propane, or oil-fired furnace, including main air circulating fans that use a brushless permanent magnet motor or another type of motor which achieves similar or higher efficiency at half and full speed, as determined by the Secretary,

''(vi) an advanced combination space and water heating system which has a combined energy factor of at least 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure,

''(vii) a combination space and water heating system which has a combined energy factor of at least 0.65 but less than 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure, and

''(viii) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21.

On page 139, strike lines 7 and 8 and insert the following: ''meet or exceed the latest prescriptive criteria for such component in the International Energy Conservation Code approved by the Department of Energy before the installation of such component,''.

On page 141, line 10, strike ''Such'' and all that follows through line 15.

On page 141, line 19, strike ''by''.

On page 146, strike lines 17 through 19 and insert the following:

(1) IN GENERAL.—Section 25D(b), as added by subsection (a), is amended—

(A) by striking ''The credit'' and inserting the following:

''(1) DOLLAR AMOUNT.—The credit'', and

(B) by adding at the end the following new paragraph:

On page 146, line 20, strike ''(3)'' and insert ''(2)''.

On page 147, line 9, strike ''(b)(3)'' and insert ''(b)(2)''.

On page 153, strike lines 13 and 14 and insert the following:

''(B) uses an input of at least 75 percent coal to produce at least 50 percent of its thermal output as electricity,

On page 157, line 2, strike ''section 45(d)'' and insert ''section 45(e)''.

On page 177, line 21, strike ''(2), and (6)'' and insert '', (2), and (6)''.

On page 180, after line 10, strike ''40.6'' both places it appears and insert ''40.2''.

On page 180, after line 10, strike ''40'' both places it appears and insert ''39''.

On page 181, between lines 3 and 4, strike ''43.6'' both places it appears and insert ''43.9''.

On page 181, between lines 6 and 7, strike ''44.2'' both places it appears and insert ''46.3''.

On page 181, between lines 6 and 7, strike ''43.9'' and insert ''44.2''.

On page 182, line 11, strike ''section 45(d)'' and insert ''section 45(e)''.

On page 198, line 25, insert ''with respect to any facility'' after ''taxable year''.

On page 199, line 2, insert ''with respect to such facility'' after ''taxable year''.

On page 199, line 9, strike ''a small business refiner'' and insert ''any facility''.

On page 200, line 16, insert ''for all facilities of the taxpayer'' after ''of which ''.

On page 200, line 18, strike ''205,000'' and insert ''410,000''.

On page 219, line 24, insert '', as amended by this Act,'' after ''rules)''.

On page 220, line 1, strike ''(9)'' and insert ''(10)''.

On page 222, strike lines 1 through 4 and insert the following:

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

(2) EXISTING FACILITIES.—The amendments made by subsection (c) shall apply to fuel sold after December 31, 2002, in taxable years ending after such date.

On page 227, line 1, strike ''the taxpayer'' and insert ''such person or entity''.

On page 227, beginning on line 10, strike ''operating'' and all that follows through ''production.'' on line 12, and insert the following: ''such persons or entities. Production otherwise attributable to a United States tax-exempt person or entity by reason of a royalty interest shall be attributable to such person or entity with respect to whom royalty-in-value production remains or to whom royalty-in-kind production is sold.''.

On page 228, line 7, strike ''15 years'' and insert ''25 years''.

On page 231, strike lines 4 and 5 and insert the following:

''(B) is—

''(i) placed in service after December 31, 2012, or

''(ii) treated as placed in service on January 1, 2013, if the taxpayer who places such system in service before January 1, 2013, elects such treatment.

On page 231, strike lines 14 through 17 and insert the following:

''(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on or after the date of the enactment of this Act.

On page 237, between lines 18 and 19, insert the following:

SEC. 514. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO CERTAIN ALASKA FACILITIES.

(a) IN GENERAL.—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

''(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

''(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

''(ii) prepares Alaska natural gas (as defined in section 45M(c)(1)) for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

''(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2003.

SA 1432. Mr. FRIST proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; (instructions on pending motion to commit) as follows:

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as ''The Energy Policy Act of 2003''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

(a) AMENDMENT TO TITLE I OF THE ENERGY POLICY AND CONSERVATION ACT.—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) by striking section 166 (42 U.S.C. 6246) and inserting—

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 166. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part and part D, to remain available until expended.'';

(2) by striking section 186 (42 U.S.C. 6250(e)); and

(3) by striking part E (42 U.S.C. 6251); relating to the expiration of title I of the Act).

(b) AMENDMENT TO TITLE II OF THE ENERGY POLICY AND CONSERVATION ACT.—Title II of the Energy Policy and Conservation Act (42 U.S.C. 6271 et seq.) is amended—

(1) by striking section 256(h) (42 U.S.C. 6276(h)) and inserting—

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this part, to remain available until expended.'';

(2) by inserting before section 273 (42 U.S.C. 6283) the following:

''PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS'';

(3) by striking section 273(e) (42 U.S.C. 6283(e)); relating to the expiration of summer fill and fuel budgeting programs); and

(4) by striking part D (42 U.S.C. 6285); relating to the expiration of title II of the Act).

(c) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by amending the items relating to part D of title I to read as follows:

''PART D—NORTHEAST HOME HEATING OIL RESERVE

''Sec. 181. Establishment.
''Sec. 182. Authority.
''Sec. 183. Conditions for release; plan.
''Sec. 184. Northeast Home Heating Oil Reserve Account.
''Sec. 185. Exemptions.'';

(2) by amending the items relating to part C of title II to read as follows:

''PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

''Sec. 273. Summer fill and fuel budgeting programs.'';

and

(3) by striking the items relating to part D of title II.

(d) NORTHEAST HOME HEATING OIL.—Section 183(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6250(b)(1)) is amended by striking all after ''increases'' through to ''mid-October through March'' and inserting ''by more than 60 percent over its 5–year rolling average for the months of mid-October through March (considered as a heating season average)''.

SEC. 102. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.

(a) DEFINITION.—For purposes of this section ''petroleum'' means crude oil, motor gasoline, jet fuel, distillates and propane.

(b) STUDY.—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) CONTENTS.—The study shall address—

(1) historical normal ranges for petroleum and natural gas inventory levels;

(2) historical and projected storage capacity trends;

(3) estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service or other indicators of shortage begin to appear;

(4) explanations for inventory levels dropping below normal ranges; and

(5) the ability of industry to meet U.S. demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.

(d) REPORT TO CONGRESS.—Not later than one year from enactment of this Act, the Secretary of Energy shall submit a report to Congress on the results of the study, including findings and any recommendations for preventing future supply shortages.

SEC. 103. PROGRAM ON OIL AND GAS ROYALTIES IN KIND.

(a) APPLICABILITY OF SECTION.—Notwithstanding any other provision of law, the provisions of this section shall apply to all royalties-in-kind accepted by the Secretary (referred to in this section as ''Secretary'') under any Federal oil or gas lease or permit under section 36 of the Mineral Leasing Act (30 U.S.C. 192), section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353), or any other mineral leasing law beginning on the date of the enactment of this Act through September 30, 2013.

(b) TERMS AND CONDITIONS.—All royalty accruing to the United States under any Federal oil or gas lease or permit under the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) shall, on the demand of the Secretary, be paid in oil or gas. If the Secretary makes such a demand, the following provisions apply to such payment:

(1) Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies the lessee's royalty obligation for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

(2) Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

(3) The Secretary may—

(A) sell or otherwise dispose of any royalty production taken in kind (other than oil or gas transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)) for not less than the market price; and

(B) transport or process (or both) any royalty production taken in kind.

(4) The Secretary may, notwithstanding section 3302 of title 31, United States Code, retain and use a portion of the revenues from the sale of oil and gas royalties taken in kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use royalty production, to pay the cost of—

(A) transporting the royalty production;

(B) processing the royalty production;

(C) disposing of the royalty production; or

(D) any combination of transporting, processing, and disposing of the royalty production.

(5) The Secretary may not use revenues from the sale of oil and gas royalties taken in kind to pay for personnel, travel, or other administrative costs of the Federal Government.

(6) Notwithstanding the provisions of paragraph 5, the Secretary may use a portion of the revenues from the sale of oil royalties taken in kind, without fiscal year limitation, to pay transportation costs, salaries, and other administrative costs directly related to filling the Strategic Petroleum Reserve.

(c) REIMBURSEMENT OF COST.—If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary shall—

(1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or

(2) allow the lessee to deduct such transportation or processing costs in reporting and paying royalties in value for other Federal oil and gas leases.

(d) BENEFIT TO THE UNITED STATES REQUIRED.—The Secretary may receive oil or gas royalties in kind only if the Secretary determines that receiving such royalties provides benefits to the United States greater than or equal to those likely to have been received had royalties been taken in value.

(e) REPORT TO CONGRESS.—

(1) No later than September 30, 2005, the Secretary shall provide a report to Congress that addresses—

(A) actions taken to develop business processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal oil and gas revenue; and

(B) future royalty-in-kind business operation plans and objectives.

(2) For each of the fiscal years 2004 through 2013 in which the United States takes oil or gas royalties in kind from production in any State or from the Outer Continental Shelf, excluding royalties taken in kind and sold to refineries under subsections (h), the Secretary shall provide a report to Congress describing—

(A) the methodology or methodologies used by the Secretary to determine compliance with subsection (d) , including performance standard for comparing amounts received by the United States derived from such royalties-in-kind to amount likely to have been received had royalties been taken in value;

(B) an explanation of the evaluation that led the Secretary to take royalties-in-kind from a lease or group of leases, including the

expected revenue effect of taking royalties-in-kind;

(C) actual amounts received by the United States derived from taking royalties-in-kind and cost and savings incurred by the United States associated with taking royalties-in-kind, including but not limited to administrative savings and any new or increased administrative costs; and

(D) an evaluation of other relevant public benefits or detriments associated with taking royalties-in-kind.

(f) DEDUCTION OF EXPENSES.—

(1) Before making payments under section 35 of the Mineral Leasing Act (30 U.S.C. 191) or section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) of revenues derived from the sale of royalty production taken in kind from a lease, the Secretary of the Interior shall deduct amounts paid or deducted under subsections (b)(4) and (c), and shall deposit such amounts to miscellaneous receipts.

(2) If the Secretary allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

(g) CONSULTATION WITH STATES.—The Secretary shall consult—

(1) with a State before conducting a royalty-in-kind program under this section within the State, and may delegate management of any portion of the Federal royalty in-kind program to such State except as otherwise prohibited by Federal law; and

(2) annually with any State from which Federal oil or gas royalty is being taken in kind to ensure to the maximum extent practicable that the royalty-in-kind program provides revenues to the State greater than or equal to those likely to have been received had royalties been taken in value.

(h) PROVISIONS FOR SMALL REFINERIES.—

(1) If the Secretary determines that sufficient supplies of crude oil are not available in the open market to refineries not having their own source of supply for crude oil, the Secretary may grant preference to such refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in such refineries at private sale at not less than the market price.

(2) In disposing of oil under this subsection, the Secretary may prorate such oil among such refineries in the area in which the oil is produced.

(i) DISPOSITION TO FEDERAL AGENCIES.—

(1) Any royalty oil or gas taken by the Secretary in kind from onshore oil and gas leases may be sold at not less than market price to any department or agency of the United States.

(2) Any royalty oil or gas taken in kind from Federal oil and gas leases on the outer Continental Shelf may be disposed of only under section 27 of the Outer Continental Shelf Lands Act (43 U.S.C. 1353).

(j) PREFERENCE FOR FEDERAL LOW-INCOME ENERGY ASSISTANCE PROGRAMS.—In disposing of royalty oil or gas taken in kind under this section, the Secretary may grant a preference to any person, including any State or Federal agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

SEC. 104. MARGINAL PROPERTY PRODUCTION INCENTIVES.

(a) MARGINAL PROPERTY DEFINED.—Until such time as the Secretary of the Interior issues rules under subsection (e) that prescribe a different definition, for purposes of this section, the term ''marginal property'' means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 million British thermal units of gas per well per day calculated based on the average over the three most recent production months, including only those wells that produce more than half the days in the three most recent production months.

(b) CONDITIONS FOR REDUCTION OF ROYALTY RATE.—Until such time as the Secretary of the Interior promulgates rules under subsection (e) that prescribe different thresholds or standards, the Secretary shall reduce the royalty rate on—

(1) oil production from marginal properties as prescribed in subsection (c) when the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than $15 per barrel for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) when the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than $2.00 per million British thermal units for 90 consecutive trading days.

(c) REDUCED ROYALTY RATE.—

(1) When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) The reduced royalty rate under this subsection shall be effective on the first day of the production month following the date on which the applicable price standard prescribed in subsection (b) is met.

(d) TERMINATION OF REDUCED ROYALTY RATE.—A royalty rate prescribed in subsection (d)(1)(A) shall terminate—

(1) on oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $15 per barrel for 90 consecutive trading days, or

(B) the property no longer qualifies as a marginal property under subsection (a); and

(2) on gas production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $2.00 per million British thermal units for 90 consecutive trading days, or

(B) the property no longer qualifies as a marginal property under subsection (a).

(e) RULES PRESCRIBING DIFFERENT RELIEF.—

(1) The Secretary of the Interior, after consultation with the Secretary of Energy, may by rule prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) The Secretary of the Interior, after consultation with the Secretary of Energy, and within 1 year after the date of enactment of this Act, shall, by rule,—

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) In promulgating rules under this subsection, the Secretary of the Interior may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and their effects on production economics;

(E) other royalty relief programs; and

(F) other relevant matters.

(f) SAVINGS PROVISION.—Nothing in this section shall prevent a lessee from receiving royalty relief or a royalty reduction pursuant to any other law or regulation that provides more relief than the amounts provided by this section.

SEC. 105. COMPREHENSIVE INVENTORY OF OCS OIL AND NATURAL GAS RESOURCES.

(a) IN GENERAL.—The Secretary of the Interior shall conduct an inventory and analysis of oil and natural gas resources beneath all of the waters of the United States Outer Continental Shelf (''OCS''). The inventory and analysis shall—

(1) use available data on oil and gas resources in areas offshore of Mexico and Canada that will provide information on trends of oil and gas accumulation in areas of the OCS;

(2) use any available technology, except drilling, but including 3–D seismic technology to obtain accurate resource estimates;

(3) analyze how resource estimates in OCS areas have changed over time in regards to gathering geological and geophysical data, initial exploration, or full field development, including areas such as the deepwater and subsalt areas in the Gulf of Mexico;

(4) estimate the effect that understated oil and gas resource inventories have on domestic energy investments; and

(5) identify and explain how legislative, regulatory, and administrative programs or processes restrict or impede the development of identified resources and the extent that they affect domestic supply, such as moratoria, lease terms and conditions, operational stipulations and requirements, approval delays by the federal government and coastal states, and local zoning restrictions for onshore processing facilities and pipeline landings.

(b) REPORTS.—The Secretary of Interior shall submit a report to the Congress on the inventory of estimates and the analysis of restrictions or impediments, together with any recommendations, within six months of the date of enactment of the section. The report shall be publically available and updated at least every five years.

SEC. 106. ROYALTY RELIEF FOR DEEP WATER PRODUCTION.

(a) IN GENERAL.—For all tracts located in water depths of greater than 400 meters in the Western and Central Planning Area of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, any oil or gas lease sale under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) occurring within 5 years after the date of the enactment of this Act shall use the bidding system authorized in section 8(a)(1)(H) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), except that the suspension of royalties shall be set at a volume of not less than—

(1) 5 million barrels of oil equivalent for each lease in water depths of 400 to 800 meters;

(2) 9 million barrels of oil equivalent for each lease in water depths of 800 to 1,600 meters; and

(3) 12 million barrels of oil equivalent for each lease in water depths greater than 1,600 meters.

SEC. 107. ALASKA OFFSHORE ROYALTY SUSPENSION.

Section 8(a)(3)(B) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337), is amended with the following: add ''and in the Planning Areas offshore Alaska'' after ''West longitude'' and before ''the Secretary''.

SEC. 108. ORPHANED, ABANDONED OR IDLED WELLS ON FEDERAL LANDS.

(a) IN GENERAL.—The Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall establish a program within 1 year after the date of enactment of this Act to remediate, reclaim, and close orphaned, abandoned, or idled oil and gas wells located on lands administered by the land management agencies within the Department of the Interior and Agriculture. The program shall—

(1) include a means of ranking orphaned, abandoned, or idled well sites for priority in remediation, reclamation and closure, based on public health and safety, potential environmental harm, and other land use priorities;

(2) provide for identification and recovery of the costs of remediation, reclamation and closure from persons or other entities currently providing a bond or other financial assurance required under State or Federal law for an oil or gas well that is orphaned, abandoned or idled; and

(3) provide for recovery from the persons or entities identified under paragraph (2), or their sureties or guarantors, of the costs of remediation, reclamation, and closure of such wells.

(b) COOPERATION AND CONSULTATIONS.—In carrying out this program, the Secretary of the Interior shall work cooperatively with the Secretary of Agriculture and the States within which the Federal lands are located and consult with the Secretary of Energy and the Interstate Oil and Gas Compact Commission.

(c) PLAN.—Within 1 year after the date of enactment of the section, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall prepare a plan for carrying out the program established under subsection (a) and transmit copies of the plan to the Congress.

(d) TECHNICAL ASSISTANCE PROGRAM FOR NON-FEDERAL LANDS.—

(1) The Secretary of Energy shall establish a program to provide technical assistance to the various oil and gas producing States to facilitate State efforts over a 10-year period to ensure a practical and economical remedy for environmental problems caused by orphaned or abandoned oil and gas exploration or production well sites on State or private lands.

(2) The Secretary shall work with the States, through the Interstate Oil and Gas Compact Commission, to assist the States in quantifying and mitigating environmental risks of onshore orphaned abandoned oil or gas wells on State and private lands.

(3) The program shall include—

(A) mechanisms to facilitate identification, if possible, of the persons or other entities currently providing a bond or other form of financial assurance required under State or Federal law for an oil or gas well that is orphaned or abandoned;

(B) criteria for ranking orphaned or abandoned well sites based on factors such as public health and safety, potential environmental harm, and other land use priorities; and

(C) information and training programs on best practices for remediation of different types of sites.

(e) DEFINITION.—For purposes of this section, a well is idled if it has been non-operational for 7 years and there is no anticipated beneficial use of the well.

(f) AUTHORIZATION.—To carry out this section there is authorized to be appropriated to the Secretary of the Interior $25,000,000 for each of the fiscal years 2004 through 2008. Of the amounts authorized, $5,000,000 is authorized for activities under subsection (d).

SEC. 109. INCENTIVES FOR NATURAL GAS PRODUCTION FROM DEEP WELLS IN THE SHALLOW WATERS OF THE GULF OF MEXICO.

(a) ROYALTY INCENTIVE REGULATIONS.—Not later than 90 days after enactment, the Secretary of the Interior shall promulgate final regulations providing royalty incentives for natural gas produced from deep wells, as defined by the Secretary, on oil and gas leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and issued prior to January 1, 2001, in shallow waters of the Gulf of Mexico, wholly west of 87 degrees, 30 minutes West longitude that are less than 200 meters deep.

(b) ROYALTY INCENTIVE REGULATIONS FOR ULTRA-DEEP GAS WELLS.—

(1) No later than 90 days after the date of enactment of this Act, in addition to any other regulations that may provide royalty incentives for natural gas produced from deep wells on oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the Secretary of the Interior shall promulgate new regulations granting royalty relief suspension volumes of not less than 35 billion cubic feet with respect to the production of natural gas from 'ultra deep wells' on leases issued prior to January 1, 2001, in shallow waters less than 200 meters deep located in the Gulf of Mexico wholly west of 87 degrees, 30 minutes West longitude. For purposes of this subsection, the term 'ultra deep wells' means wells drilled with a perforated interval, the top of which is at least 20,000 feet true vertical depth below the datum at mean sea level.

(2) The Secretary shall not grant the royalty incentives outlined in this subsection if the average annual NYMEX natural gas price exceeds for one full calendar year the threshold price of $5 per million Btu, adjusted from the year 2000 for inflation.

(3) This subsection shall have no force or effect after the end of the 5-year period beginning on the date of the enactment of this Act.

SEC. 110. ALTERNATE ENERGY-RELATED USES ON THE OUTER CONTINENTAL SHELF.

(a) AMENDMENT TO OUTER CONTINENTAL SHELF LANDS ACT.—Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following new subsection:

''(p) EASEMENTS OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES.—

''(1) The Secretary may grant an easement or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law when such activities—

''(A) support exploration, development, or production of oil or natural gas, except that such easements or rights-of-way shall not be granted in areas where oil and gas preleasing, leasing and related activities are prohibited by a Congressional moratorium or a withdrawal pursuant to section 12 of this Act;

''(B) support transportation of oil or natural gas;

''(C) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

''(D) use facilities currently or previously used for activities authorized under this Act.

''(2) The Secretary shall promulgate regulations to ensure that activities authorized under this subsection are conducted in a manner that provides for safety, protection of the environment, conservation of the natural resources of the outer Continental Shelf, appropriate coordination with other Federal agencies, and a fair return to the Federal government for any easement or right-of-way granted under this subsection. Such regulations shall establish procedures for—

(A) public notice and comment on proposals to be permitted pursuant to this subsection;

(B) consultation and review by State and local governments that may be impacted by activities to be permitted pursuant to this subsection;

(C) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 305 or section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454, 1455); and

(D) consultation with the Secretary of Defense and other appropriate agencies prior to the issuance of an easement or right-of-way under this subsection concerning issues related to national security and navigational obstruction.

(3) The Secretary shall require the holder of an easement or right-of-way granted under this subsection to furnish a surety bond or other form of security, as prescribed by the Secretary, and to comply with such other requirements as the Secretary may deem necessary to protect the interests of the United States.

''(4) This subsection shall not apply to any area within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.

''(5) Nothing in this subsection shall be construed to amend or repeal, expressly by implication, the applicability of any other law, including but not limited to, the Coastal Zone Management Act (16 U.S.C. 1455 et seq.) or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

(b) CONFORMING AMENDMENT.—The text of the heading for section 8 of the Outer Continental Shelf Lands Act is amended to read as follows: ''Leases, Easements, and Rights-of-Way on the Outer Continental Shelf.''.

SEC. 111. COASTAL IMPACT ASSISTANCE.

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end:

''SEC. 32. COASTAL IMPACT ASSISTANCE FAIRNESS PROGRAM.

''(a) DEFINITIONS.—When used in this section:

''(1) The term 'coastal political subdivision' means a county, parish, or any equivalent subdivision of a Producing Coastal State in all or part of which subdivision lies within the coastal zone (as defined in section 304(1) of the Coastal Zone Management Act (16 U.S.C. 1453(1))) and within a distance of 200 miles from the geographic center of any leased tract.

''(2) The term 'coastal population' means the population of all political subdivisions, as determined by the most recent official data of the Census Bureau, contained in whole or in part within the designated coastal boundary of a State as defined in a State's coastal zone management program under the Coastal Zone Management Act (16 U.S.C. 1451 et seq.).

''(3) The term 'Coastal State' has the same meaning as provided by subsection 304(4) of the Coastal Zone Management Act (16 U.S.C. 1453(4)).

''(4) The term 'coastline' has the same meaning as the term 'coast line' as defined in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

''(5) The term 'distance' means the minimum great circle distance, measured in statute miles.

''(6) The term 'leased tract' means a tract maintained under section 6 or leased under section 8 for the purpose of drilling for, developing, and producing oil and natural gas resources.

''(7) The term 'Producing Coastal State' means a Coastal State with a coastal seaward boundary within 200 miles from the geographic center of a leased tract other than a leased tract within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2002 unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2002.

''(8) The term 'qualified Outer Continental Shelf revenues' means all amounts received by the United States from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g) of this Act, or lying within such zone but to which section 8(g) does not apply, the geographic center of which lies within a distance of 200 miles from any part of the coastline of any Producing Coastal State, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related late payment interest. Such term shall only apply to leases issued after January 1, 2003 and revenues from existing leases that occurs after January 1, 2003. Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2002, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2002.

''(9) The term 'Secretary' means the Secretary of Interior.''

''(b) AUTHORIZATION.—For fiscal years 2004 through 2009, an amount equal to not more than 12.5 percent of qualified Outer Continental Shelf revenues is authorized to be appropriated for the purposes of this section.

''(c) IMPACT ASSISTANCE PAYMENTS TO STATES AND POLITICAL SUBDIVISIONS.—The Secretary shall make payments from the amounts available under this section to Producing Coastal States with an approved Coastal Impact Assistance Plan, and to coastal political subdivisions as follows:

''(1) Of the amounts appropriated, the allocation for each Producing Coastal State shall be calculated based on the ratio of qualified Outer Continental Shelf revenues generated off the coastline of the Producing Coastal State to the qualified Outer Continental Shelf revenues generated off the coastlines of all Producing Coastal States for each fiscal year. Where there is more than one Producing Coastal State within 200 miles of a leased tract, the amount of each Producing Coastal State's allocation for such leased tract shall be inversely proportional to the distance between the nearest point on the coastline of such State and the geographic center of each leased tract or portion of the leased tract (to the nearest whole mile) that is within 200 miles of that coastline, as determined by the Secretary.

''(2) Thirty-five percent of each Producing Coastal State's allocable share as determined under paragraph (1) shall be paid directly to the coastal political subdivisions by the Secretary based on the following formula:

''(A) Twenty-five percent shall be allocated based on the ratio of such coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions in the Producing Coastal State.

''(B) Twenty-five percent shall be allocated based on the ratio of such coastal political subdivision's coastline miles to the coastline miles of a coastal political subdivision in the Producing Coastal State except that for those coastal political subdivisions in the State of Louisiana without a coastline, the coastline for purposes of this element of the formula shall be the average length of the coastline of the remaining coastal subdivisions in the state.

''(C) Fifty percent shall be allocated based on the relative distance of such coastal political subdivision from any leased tract used to calculate the Producing Coastal State's allocation using ratios that are inversely proportional to the distance between the point in the coastal political subdivision closest to the geographic center of each leased tract or portion, as determined by the Secretary, except that in the State of Alaska, the funds for this element of the formula shall be divided equally among the two closest coastal political subdivisions. For purposes of the calculations under this subparagraph, a leased tract or portion of a leased tract shall be excluded if the leased tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2002, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2002.

''(3) Any amount allocated to a Producing Coastal State or coastal political subdivision but not disbursed because of a failure to have an approved Coastal Impact Assistance Plan under this section shall be allocated equally by the Secretary among all other Producing Coastal States in a manner consistent with this subsection except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the disapproval of a plan submitted under this section. The Secretary may waive the provisions of this paragraph and hold a Producing Coastal State's allocable share in escrow if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Coastal Impact Assistance Plan.

''(4) For purposes of this subsection, calculations of payments for fiscal years 2004 through 2006 shall be made using qualified Outer Continental Shelf revenues received in fiscal year 2003, and calculations of payments for fiscal years 2007 through 2009 shall be made using qualified Outer Continental Shelf revenues received in fiscal year 2006.

''(d) COASTAL IMPACT ASSISTANCE PLAN.—

''(1) The Governor of each Producing Coastal State shall prepare, and submit to the Secretary, a Coastal Impact Assistance Plan. The Governor shall solicit local input and shall provide for public participation in the development of the plan. The plan shall be submitted to the Secretary by July 1, 2004. Amounts received by Producing Coastal States and coastal political subdivisions may be used only for the purposes specified in the Producing Coastal State's Coastal Impact Assistance Plan.

''(2) The Secretary shall approve a plan under paragraph (1) prior to disbursement of amounts under this section. The Secretary shall approve the plan if the Secretary determines that the plan is consistent with the uses set forth in subsection (f) of this section and if the plan contains—

''(A) the name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section;

''(B) a program for the implementation of the plan which describes how the amounts provided under this section will be used;

''(C) a contact for each political subdivision and description of how coastal political subdivisions will use amounts provided under this section, including a certification by the Governor that such uses are consistent with the requirements of this section;

''(D) certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan; and

''(E) measures for taking into account other relevant Federal resources and programs.

''(3) The Secretary shall approve or disapprove each plan or amendment within 90 days of its submission.

''(4) Any amendment to the plan shall be prepared in accordance with the requirements of this subsection and shall be submitted to the Secretary for approval or disapproval.

''(e) AUTHORIZED USES.—Producing Coastal States and coastal political subdivisions shall use amounts provided under this section, including any such amounts deposited in a State or coastal political subdivision administered trust fund dedicated to uses consistent with this subsection, in compliance with Federal and State law and only for one or more of the following purposes—

''(1) projects and activities for the conservation, protection or restoration of coastal areas including wetlands;

''(2) mitigating damage to fish, wildlife or natural resources;

''(3) planning assistance and administrative costs of complying with the provisions of this section;

''(4) implementation of federally approved marine, coastal, or comprehensive conservation management plans; and

''(5) mitigating impacts of Outer Continental Shelf activities through funding onshore infrastructure and public service needs.

(f) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that any expenditure made by a Producing Coastal State or coastal political subdivision is not consistent with the uses authorized in subsection (e) of this section, the Secretary shall not disburse any further amounts under this section to that Producing Coastal State or coastal political subdivision until the amounts used for the inconsistent expenditure have been repaid or obligated for authorized uses.

SEC. 112. NATIONAL ENERGY RESOURCE DATABASE.

(a) SHORT TITLE.—This section may be cited as the ''National Energy Data Preservation Program Act of 2003''.

(b) PROGRAM.—The Secretary of the Interior (in this section, referred to as ''Secretary'') shall carry out a National Energy Data Preservation Program in accordance with this section—

(1) to archive geologic, geophysical, and engineering data and samples related to energy resources including oil, gas, coal, and geothermal resources;

(2) to provide a national catalog of such archival material; and

(3) to provide technical assistance related to the archival material.

(c) ENERGY DATA ARCHIVE SYSTEM.—

(1) The Secretary shall establish, as a component of the Program, an energy data archive system, which shall provide for the storage, preservation, and archiving of subsurface, and in limited cases surface, geological, geophysical and engineering data and samples. The Secretary, in consultation with the Association of American State Geologists and interested members of the public, shall develop guidelines relating to the energy data archive system, including the types of data and samples to be preserved.

(2) The system shall be comprised of State agencies and agencies within the Department of the Interior that maintain geological and geophysical data and samples regarding energy resources and that are designated by the Secretary in accordance with this subsection. The Program shall provide for the storage of data and samples through data repositories operated by such agencies.

(3) The Secretary may not designate a State agency as a component of the energy data archive system unless it is the agency that acts as the geological survey in the State.

(4) The energy data archive system shall provide for the archiving of relevant subsurface data and samples obtained during energy exploration and production operations on Federal lands—

(A) in the most appropriate repository designated under paragraph (2), with preference being given to archiving data in the State in which the data was collected; and

(B) consistent with all applicable law and requirements relating to confidentiality and proprietary data.

(5)(A) Subject to the availability of appropriations, the Secretary shall provide financial assistance to a State agency that is designated under paragraph (2) for providing facilities to archive energy material.

(B) The Secretary, in consultation with the Association of American State Geologists and interested members of the public, shall establish procedures for providing assistance under this paragraph. The procedures shall be designed to ensure that such assistance primarily supports the expansion of data and material archives and the collection and preservation of new data and samples.

(d) NATIONAL CATALOG.—

(1) As soon as practicable after the date of the enactment of this section, the Secretary shall develop and maintain, as a component of the Program, a national catalog that identifies—

(A) energy data and samples available in the energy data archive system established under subsection (c);

(B) the repository for particular material in such system; and (C) the means of accessing the material.

(2) The Secretary shall make the national catalog accessible to the public on the site of the Survey on the World Wide Web, consistent with all applicable requirements related to confidentiality and proprietary data.

(3) The Secretary may carry out the requirements of this subsection by contract or agreement with appropriate persons.

(e) TECHNICAL ASSISTANCE.—

(1) Subject to the availability of appropriations, as a component of the Program, the Secretary shall provide financial assistance to any State agency designated under subsection (c)(2) to provide technical assistance to enhance understanding, interpretation, and use of materials archived in the energy data archive system established under subsection (c).

(2) The Secretary, in consultation with the Association of American State Geologists and interested members of the public, shall develop a process, which shall involve the participation of representatives of relevant Federal and State agencies, for the approval of financial assistance to State agencies under this subsection.

(f) COSTS.—

(1) The Federal share of the cost of an activity carried out with assistance under subsections (c) or (e) shall be no more than 50 percent of the total cost of that activity.

(2) The Secretary—

(A) may accept private contributions of property and services for technical assistance and archive activities conducted under this section; and (B) may apply the value of such contributions to the non-Federal share of the costs of such technical assistance and archive activities.

(g) REPORTS.—

(1) Within year after the date of the enactment of this Act, the Secretary shall submit an initial report to the Congress setting forth a plan for the implementation of the Program.

(2) Not later than 90 days after the end of the first fiscal year beginning after the submission of the report under paragraph (1) and after the end of each fiscal year thereafter, the Secretary shall submit a report to the Congress describing the status of the Program and evaluating progress achieved during the preceding fiscal year in developing and carrying out the Program.

(3) The Secretary shall consult with the Association of American State Geologists and interested members of the public in preparing the reports required by this subsection.

(h) DEFINITIONS.—As used in this section, the term:

(1) ''Association of American State Geologists'' means the organization of the chief executives of the State geological surveys.

(2) ''Secretary'' means the Secretary of the Interior acting through the Director of the United States Geological Survey.

(3) ''Program'' means the National Energy Data Preservation Program carried out under this section.

(4) ''Survey'' means the United States Geological Survey.

(i) MAINTENANCE OF STATE EFFORT.—It is the intent of the Congress that the States not use this section as an opportunity to reduce State resources applied to the activities that are the subject of the Program.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $30,000,000 for each of fiscal years 2003 through 2007 for carrying out this section.

SEC. 113. OIL AND GAS LEASE ACREAGE LIMITATION.

Section 27(d)(1) of the Mineral Leasing Act (30 U.S.C. 184(d)(1)) is amended by inserting after ''acreage held in special tar sands area'' the following: ''as well as acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement, or for which royalty, including compensatory royalty or royalty-in-kind, was paid in the preceding calendar year,''.

SEC. 114. ASSESSMENT OF DEPENDENCE OF STATE OF HAWAII ON OIL.

(a) ASSESSMENT. The Secretary of Energy shall assess the economic implication of the dependence of the State of Hawaii on oil as the principal source of energy for the State, including—

(1) the short- and long-term prospects for crude oil supply disruption and price volatility and potential impacts on the economy of Hawaii;

(2) the economic relationship between oil-fired generation of electricity from residual fuel and refined petroleum products consumed for ground, marine, and air transportation;

(3) the technical and economic feasibility of increasing the contribution of renewable energy resources for generation of electricity, on an island-by-island basis, including—

(A) siting and facility configuration;

(B) environmental, operational, and safety considerations;

(C) the availability of technology;

(D) effects on the utility system including reliability;

(E) infrastructure and transport requirements;

(F) community support; and

(G) other factors affecting the economic impact of such an increase and any effect on the economic relationship described in paragraph (2);

(4) the technical and economic feasibility of using liquefied natural gas to displace residual fuel oil for electric generation, including neighbor island opportunities, and the effect of such displacement on the economic relationship described in paragraph (2) including—

(A) the availability of supply;

(B) siting and facility configuration for onshore and offshore liquefied natural gas receiving terminals;

(C) the factors described in subparagraphs (B) through (F) of paragraph (3); and

(D) other economic factors;

(5) the technical and economic feasibility of using renewable energy sources (including hydrogen) for ground, marine, and air transportation energy applications to displace the use of refined petroleum products, on an island-by-island basis, and the economic impact of such displacement on the relationship described in (2); and

(6) an island-by-island approach to—

(A) the development of hydrogen from renewable resources; and

(B) the application of hydrogen to the energy needs of Hawaii.

(b) CONTRACTING AUTHORITY.—The Secretary of Energy may carry out the assessment under subsection (a) directly or, in whole or in part, through one or more contracts with qualified public or private entities.

(c) REPORT.—Not later than 300 days after the date of enactment of this Act, the Secretary of Energy shall prepare, in consultation with agencies of the State of Hawaii and other stakeholders, as appropriate, and submit to Congress, a report detailing the findings, conclusions, and recommendations resulting from the assessment.

(d) APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Subtitle B—Access to Federal Lands

SEC. 121. OFFICE OF FEDERAL ENERGY PERMIT COORDINATION.

(a) ESTABLISHMENT.—The President shall establish the Office of Federal Energy Permit Coordination (in this section, referred to as ''Office'') within the Executive Office of the President in the same manner and mission as the White House Energy Projects Task Force established by Executive Order 13212.

(b) STAFFING.—The Office shall be staffed by functional experts from relevant federal agencies and departments on a nonreimbursable basis to carry out the mission of this office.

(c) REPORTING.—The Office shall provide an annual report to Congress, detailing the activities put in place to coordinate and expedite Federal decisions on energy projects. The report shall list accomplishments in improving the federal decision making process and shall include any additional recommendations or systemic changes needed to establish a more effective and efficient federal permitting process.

SEC. 122. PILOT PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION.

(a) CREATION OF PILOT PROJECT.—The Secretary of the Interior (in this section, referred to as ''Secretary'') shall establish a Federal Permit Streamlining Pilot Project. The Secretary shall enter into a Memorandum of Understanding with the Secretary of Agriculture, Administrator of the Environmental Protection Agency, and the Chief of the Corps of Engineers within 90 days after enactment of this Act. The Secretary may also request that the Governors of Wyoming, Montana, Colorado, and New Mexico be signatories to the Memorandum of Understanding.

(b) DESIGNATION OF QUALIFIED STAFF.—Once the Pilot Project has been established by the Secretary, all Federal signatory parties shall assign an employee on a nonreimbursable basis to each of the field offices identified in section (c), who has expertise in the regulatory issues pertaining to their office, including, as applicable, particular expertise in Endangered Species Act section 7 consultations and the preparation of Biological Opinions, Clean Water Act 404 permits, Clean Air Act regulatory matters, planning under the National Forest Management Act, and the preparation of analyses under the National Environmental Policy Act. Assigned staff shall report to the Bureau of Land Management (BLM) Field Managers in the offices to which they are assigned, and shall be responsible for all issues related to the jurisdiction of their home office or agency, and participate as part of the team of employees working on proposed energy projects, planning, and environmental analyses.

(c) FIELD OFFICES.—The following BLM Field Offices shall serve as the Federal Permit Streamlining Pilot Project offices:

(1) Rawlins, Wyoming;
(2) Buffalo, Wyoming;
(3) Miles City, Montana;
(4) Farmington, New Mexico;
(5) Carlsbad, New Mexico; and
(6) Glenwood Springs, Colorado.

(d) REPORTS.—The Secretary shall submit a report to the Congress 3 years following the date of enactment of this section, outlining the results of the Pilot Project to date and including a recommendation to the President as to whether the Pilot Project should be implemented nationwide.

(e) ADDITIONAL PERSONNEL.—The Secretary shall assign to each of the BLM Field Offices listed in subsection (c) such additional personnel as is necessary to ensure the effective implementation of—

(1) the Pilot Project; and

(2) other programs administered by such offices, including inspection and enforcement related to energy development on federal lands, pursuant to the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(f) SAVINGS PROVISION.—Nothing in this section shall affect the operation of any federal or state law or any delegation of authority made by a Secretary or head of an Agency whose employees are participating in the program provided for by this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to implement this section.

SEC. 123. FEDERAL ONSHORE LEASING PROGRAMS FOR OIL AND GAS.

(a) TIMELY ACTION ON LEASES AND PERMITS.—To ensure timely action on oil and gas leases and applications for permits to drill on lands otherwise available for leasing, the Secretary of the Interior shall—

(1) ensure expeditious compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(2) improve consultation and coordination with the States; and

(3) improve the collection, storage, and retrieval of information related to such leasing activities.

(b) IMPROVED ENFORCEMENT.—The Secretary shall improve inspection and enforcement of oil and gas activities, including enforcement of terms and conditions in permits to drill.

(c) AUTHORIZATION OF APPROPRIATIONS.—For each of the fiscal years 2004 through 2007, in addition to amounts otherwise authorized to be appropriated for the purpose of carrying out section 17 of the Mineral Leasing Act (30 U.S.C. 226), there are authorized to be appropriated to the Secretary of the Interior—

(1) $40,000,000 for the purpose of carrying out paragraphs (1) through (3) of subsection (a); and

(2) $20,000,000 for the purpose of carrying out subsection (b).

SEC. 124. ESTIMATES OF OIL AND GAS RESOURCES UNDERLYING ONSHORE FEDERAL LANDS.

Section 604 of the Energy Act of 2000 (42 U.S.C. 6217) is amended by striking ''(a) IN GENERAL'' and all thereafter and inserting:

''(a) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, shall conduct an inventory of all onshore Federal lands and take measures necessary to update and revise this inventory. The inventory shall identify for all federal lands—

''(1) the United States Geological Survey estimates of the oil and gas resources underlying these lands;

''(2) the extent and nature of any restrictions or impediments to the exploration, production and transportation of such resources, including—

''(A) existing land withdrawals and the underlying purpose for each withdrawal;

''(B) restrictions or impediments affecting timeliness of granting leases;

''(C) post-lease restrictions or impediments such as conditions of approval, applications for permits to drill, applicable environmental permits;

''(D) permits or restrictions associated with transporting the resources; and

''(E) identification of the authority for each restriction or impediment together with the impact on additional processing or review time and potential remedies; and

''(3) the estimates of oil and gas resources not available for exploration and production by virtue of the restrictions identified above.

''(b) REPORTS.—The Secretary shall provide a progress report to the Congress by October 1, 2006 and shall complete the inventory by October 1, 2010.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to implement this section.

SEC. 125. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING AND DEVELOPMENT PRACTICES.

(a) REVIEW.—In consultation with affected private surface owners, oil and gas industry and other interested parties, the Secretary of the Interior shall undertake a review of the current policies and practices with respect to management of Federal subsurface oil and gas development activities and their effects on the privately owned surface. This review shall include—

(1) a comparison of the rights and responsibilities under existing mineral and land law for the owner of a Federal mineral lease, the private surface owners and the Department;

(2) a comparison of the surface owner consent provisions in section 714 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1304) concerning surface mining of federal coal deposits and the surface owner consent provisions for oil and gas development, including coalbed methane production; and

(3) recommendations for administrative or legislative action necessary to facilitate reasonable access for Federal oil and gas activities while addressing surface owner concerns and minimizing impacts to private surface.

(b) REPORT.—The Secretary of the Interior shall report the results of such review to the Congress no later than 180 days after enactment of this section.

SEC. 126. COORDINATION OF FEDERAL AGENCIES TO ESTABLISH PRIORITY ENERGY TRANSMISSION RIGHTS-OF-WAY.

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''utility corridor'' means any linear strip of land across Federal lands of approved width, but limited by technological, environmental, and topographical factors for use by a utility facility.

(2) The term ''Federal authorization'' means any authorization required under Federal law in order to site a utility facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, issued by a Federal agency.

(3) The term ''Federal lands'' means all lands owned by the United States, except—

(A) lands in the National Park System;

(B) lands held in trust for an Indian or Indian tribe; and

(C) lands on the Outer Continental Shelf.

(4) The term ''Secretary'' means the Secretary of Energy.

(5) The term ''utility facility'' means any privately, publicly, or cooperatively owned line, facility, or system (A) for the transportation of oil and natural gas, synthetic liquid or gaseous fuels, any refined product produced therefrom, or for transportation of products in support of production, or for storage and terminal facilities in connection therewith; or (B) for the generation, transmission and distribution of electric energy.

(b) UTILITY CORRIDORS.—

(1) No later than 24 months after the date of enactment of this section, the Secretary of the Interior, with respect to public lands, and the Secretary of Agriculture, with respect to National Forest System lands, in consultation with the Secretary, shall—

(A) designate utility corridors pursuant to section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) in the eleven contiguous Western States, as identified in section 103(o) of such Act (43 U.S.C. 1702(o)); and

(B) incorporate the utility corridors designated under paragraph (A) into the relevant departmental and agency land use and resource management plans or their equivalent.

(2) The Secretary shall coordinate with the affected Federal agencies to jointly identify potential utility corridors on Federal lands in the other States and jointly develop a schedule for the designation, environmental review and incorporation of such utility corridors into relevant departmental and agency land use and resource management plans or their equivalent.

(c) FEDERAL PERMIT COORDINATION.—The Secretary, in consultation with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense, shall develop a memorandum of understanding (''MOU'') for the purpose of coordinating all applicable Federal authorizations and environmental reviews related to a proposed or existing utility facility. To the maximum extent practicable under applicable law, the Secretary shall coordinate the process developed in the MOU with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the affected utility facility to ensure timely review and permit decisions. The MOU shall provide for—

(1) the coordination among affected Federal agencies to ensure that the necessary Federal authorizations are conducted concurrently with applicable State siting processes and are considered within a specific time frame to be identified in the MOU;

(2) an agreement among the affected Federal agencies to prepare a single environmental review document to be used as the basis for all Federal authorization decisions; and

(3) a process to expedite applications to construct or modify utility facilities within utility corridors.

Subtitle C—Alaska Natural Gas Pipeline

SEC. 131. SHORT TITLE.

This subtitle may be cited as the ''Alaska Natural Gas Pipeline Act''.

SEC. 132. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) The term ''Alaska natural gas'' means natural gas derived from the area of the State of Alaska lying north of 64 degrees North latitude.

(2) The term ''Alaska natural gas transportation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under either—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 133.

(3) The term ''Alaska natural gas transportation system'' means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 and designated and described in section 2 of the President's decision.

(4) The term ''Commission'' means the Federal Energy Regulatory Commission.

(5) The term ''President's decision'' means the decision and report to Congress on the Alaska natural gas transportation system issued by the President on September 22, 1977, pursuant to section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719(e) and approved by Public Law 95 158 (91 Stat. 1268)).

SEC. 133. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the provisions of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through such project to markets in the contiguous United States.

(c) EXPEDITED APPROVAL PROCESS.—The Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section not more than 60 days after the issuance of the final environmental impact statement for that project pursuant to section 134.

(d) PROHIBITION ON CERTAIN PIPELINE ROUTES.—No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from lands within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that traverses—

(1) the submerged lands (as defined by the Submerged Lands Act) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees North latitude.

(e) OPEN SEASON.—Except where an expansion is ordered pursuant to section 135, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations governing the conduct of open seasons for such project. Such procedures shall include the criteria for and timing of any open seasons; promote competition in the exploration, development, and production of Alaska natural gas; and, for any open season for capacity beyond the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thompson units. The Commission shall issue such regulations not later than 120 days after the date of enactment of this Act.

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—Applications for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made pursuant to the Natural Gas Act. To the extent such pipeline facilities include the expansion of any facility constructed pursuant to the Alaska Natural Gas Transportation Act of 1976, the provisions of that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that it has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) ALASKA ROYALTY GAS.—The Commission, upon the request of the State of Alaska and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project for the State of Alaska or its designee for the transportation of the State's royalty gas for local consumption needs within the State; except that the rates of existing shippers of subscribed capacity on such project shall not be increased as a result of such access.

(i) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 134. ENVIRONMENTAL REVIEWS.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 133 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

(b) DESIGNATION OF LEAD AGENCY.—The Commission shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969, and shall be responsible for preparing the statement required by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 133. The Commission shall prepare a single environmental statement under this section, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the project.

(c) OTHER AGENCIES.—All Federal agencies considering aspects of the construction and operation of an Alaska natural gas transportation project under section 133 shall cooperate with the Commission, and shall comply with deadlines established by the Commission in the preparation of the statement under this section. The statement prepared under this section shall be used by all such agencies to satisfy their responsibilities under section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) with respect to such project.

(d) EXPEDITED PROCESS.—The Commission shall issue a draft statement under this section not later than 12 months after the Commission determines the application to be complete and shall issue the final statement not later than 6 months after the Commission issues the draft statement, unless the Commission for good cause finds that additional time is needed.

SEC. 135. PIPELINE EXPANSION.

(a) AUTHORITY.—With respect to any Alaska natural gas transportation project, upon the request of one or more persons and after

giving notice and an opportunity for a hearing, the Commission may order the expansion of such project if it determines that such expansion is required by the present and future public convenience and necessity.

(b) REQUIREMENTS.—Before ordering an expansion, the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates as established do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that the proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the then-effective tariff of the Alaska natural gas transportation project;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.—Any order of the Commission issued pursuant to this section shall be null and void unless the person or persons requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within a reasonable period of time as specified in such order.

(d) LIMITATION.—Nothing in this section shall be construed to expand or otherwise affect any authorities of the Commission with respect to any natural gas pipeline located outside the State of Alaska.

(e) REGULATIONS.—The Commission may issue regulations to carry out the provisions of this section.

SEC. 136. FEDERAL COORDINATOR.

(a) ESTABLISHMENT.—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) FEDERAL COORDINATOR.—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall—

(1) be appointed by the President, by and with the advice and consent of the Senate;

(2) for a term equal to the period required to design, permit and construction the project plus one year; and

(3) be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) DUTIES.—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this subtitle.

(d) REVIEWS AND ACTIONS OF OTHER FEDERAL AGENCIES.—

(1) All reviews conducted and actions taken by any Federal officer or agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines set forth in this subtitle.

(2) No Federal officer or agency shall have the authority to include terms and conditions that are permitted, but not required, by law on any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the terms and conditions would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the project.

(3) Unless required by law, no Federal officer or agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that such action would prevent or impair in any significant respect the expeditious construction and operation of, or an expansion of, the project.

(4) The Federal Coordinator's authority shall not include the ability to override—

(A) the implementation or enforcement of regulations issued by the Commission pursuant to Section 133(e); or

(B) an order by the Commission to expand the project pursuant to Section 135.

(5) Nothing in this section shall give the Federal Coordinator the authority to impose additional terms, conditions or requirements beyond those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) STATE COORDINATION.—The Federal Coordinator shall enter into a Joint Surveillance and Monitoring Agreement, approved by the President and the Governor of Alaska, with the State of Alaska similar to that in effect during construction of the Trans-Alaska Oil Pipeline to monitor the construction of the Alaska natural gas transportation project. The Federal Government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses Federal lands and private lands, and the State government shall have primary surveillance and monitoring responsibility where the Alaska natural gas transportation project crosses State lands.

(f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS AND AUTHORITY.—Upon appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary of Energy pursuant to section 3012(b) of Public Law 102–486 (15 U.S.C. 719e(b)), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36,927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

SEC. 137. JUDICIAL REVIEW.

(a) EXCLUSIVE JURISDICTION.—Except for review by the Supreme Court of the United States on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this subtitle;

(2) the constitutionality of any provision of this subtitle, or any decision made or action taken under this subtitle; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 with respect to any action under this subtitle.

(b) DEADLINE FOR FILING CLAIM.—Claims arising under this subtitle may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) EXPEDITED CONSIDERATION.—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(d) AMENDMENT TO ANGTA.—Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended by inserting after paragraph (1) the following:

''(2) The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.''.

SEC. 138. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) LOCAL DISTRIBUTION.—Any facility receiving natural gas from the Alaska natural gas transportation project for delivery to consumers within the State of Alaska shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)), and therefore not subject to the jurisdiction of the Commission.

(b) ADDITIONAL PIPELINES.—Nothing in this subtitle, except as provided in section 133(d), shall preclude or affect a future gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State of Alaska for consumption within or distribution outside the State of Alaska.

(c) RATE COORDINATION.—Pursuant to the Natural Gas Act, the Commission shall establish rates for the transportation of natural gas on the Alaska natural gas transportation project. In exercising such authority, the Commission, pursuant to section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall confer with the State of Alaska regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State of Alaska.

SEC. 139. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) REQUIREMENT OF STUDY.—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission not later than 18 months after the date of enactment of this Act, the Secretary of Energy shall conduct a study of alternative approaches to the construction and operation of the project.

(b) SCOPE OF STUDY.—The study shall consider the feasibility of establishing a Government corporation to construct an Alaska natural gas transportation project, and alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the project.

(c) CONSULTATION.—In conducting the study, the Secretary of Energy shall consult

with the Secretary of the Treasury and the Secretary of the Army (acting through the Commanding General of the Corps of Engineers).

(d) REPORT.—If the Secretary of Energy is required to conduct a study under subsection (a), the Secretary shall submit a report containing the results of the study, the Secretary's recommendations, and any proposals for legislation to implement the Secretary's recommendations to Congress.

SEC. 140. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) SAVINGS CLAUSE.—Nothing in this subtitle affects any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719(g)) or any Presidential findings or waivers issued in accordance with that Act.

(b) CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.—Any Federal officer or agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719(g)) may add to, amend, or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), so long as such action does not compel a change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision, or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(c) UPDATED ENVIRONMENTAL REVIEWS.—The Secretary of Energy shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 141. SENSE OF CONGRESS.

It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to make every effort to use steel that is manufactured or produced in North America and to negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 142. PARTICIPATION OF SMALL BUSINESS CONCERNS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(b) STUDY.—

(1) The Comptroller General shall conduct a study on the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of the study.

(3) The Comptroller General shall update the study at least once every 5 years and transmit to Congress a report containing the results of the update.

(4) After the date of completion of the construction of an Alaska natural gas transportation project, this subsection shall no longer apply.

(c) SMALL BUSINESS CONCERN DEFINED.—In this section, the term ''small business concern'' has the meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

SEC. 143. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Labor (in this section referred to as the ''Secretary'') may make grants to the Alaska Department of Labor and Workforce Development to—

(1) develop a plan to train, through the workforce investment system established in the State of Alaska under the Workforce Investment Act of 1998 (112 Stat. 936 et seq.), adult and dislocated workers, including Alaska Natives, in urban and rural Alaska in the skills required to construct and operate an Alaska gas pipeline system; and

(2) implement the plan developed pursuant to paragraph (1).

(b) REQUIREMENTS FOR PLANNING GRANTS.—The Secretary may make a grant under subsection (a)(1) only if—

(1) the Governor of Alaska certifies in writing to the Secretary that there is a reasonable expectation that construction of an Alaska gas pipeline will commence within 3 years after the date of such certification; and

(2) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (1).

(c) REQUIREMENTS FOR IMPLEMENTATION GRANTS.—The Secretary may make a grant under subsection (a)(2) only if—

(1) the Secretary has approved a plan developed pursuant to subsection (a)(1);

(2) the Governor of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of an Alaska gas pipeline system will commence within 2 years after the date of such certification; and

(3) the Secretary of the Interior concurs in writing to the Secretary with the certification made under paragraph (2) after considering—

(A) the status of necessary State and Federal permits;

(B) the availability of financing for the pipeline project; and

(C) other relevant factors and circumstances.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary such sums as may be necessary, but not to exceed $20,000,000, to carry out this section.

SEC. 144. LOAN GUARANTEES.

(a) AUTHORITY.—

(1) The Secretary may enter agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 133(b) of this Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) CONDITIONS.—

(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 133(b) of this Act or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers greater than such guarantees as shall be required by the project owners.

(c) LIMITATIONS ON AMOUNTS.—

(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

(d) LOAN TERMS AND FEES.—

(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) REGULATIONS.—The Secretary may issue regulations to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) DEFINITIONS.—In this section, the following definitions apply:

(1) The term ''Consumer Price Index'' means the Consumer Price Index for all-

urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) The term ''eligible lender'' means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(3) The term ''Federal guarantee instrument'' means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) The term ''qualified infrastructure project'' means an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

(5) The term ''Secretary'' means the Secretary of Energy.

SEC. 145. SENSE OF CONGRESS ON NATURAL GAS DEMAND.

It is the sense of Congress that:

(1) North American demand for natural gas will increase dramatically over the course of the next several decades.

(2) Both the Alaska Natural Gas Pipeline and the McKenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America.

(3) Federal and state officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion.

(4) Federal and state officials should acknowledge that the smaller scope, fewer permitting requirements and lower cost of the McKenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline.

(5) Lower 48 and Canadian natural gas production alone will not be able to meet all domestic demand in the coming decades.

(6) As a result, natural gas delivered from Alaska's North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the McKenzie Delta nor production from the Lower 48.

TITLE II—COAL

Subtitle A—Clean Coal Power Initiative

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

CLEAN COAL POWER INITIATIVE.—There is authorized to be appropriated to the Secretary of Energy (in this subtitle, referred to as ''Secretary'') to carry out the activities authorized by this subtitle $200,000,000 for each of the fiscal years 2003 through 2011, to remain available until expended.

SEC. 202. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this subtitle for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in operation or have been demonstrated as of the date of the enactment of this Act.

(b) TECHNICAL CRITERIA FOR GASIFICATION.—In allocating the funds made available under section 201, the Secretary shall ensure that at least 80 percent of the funds are used for coal-based gasification technologies or coal-based projects that include gasification combined cycle, gasification fuel cells, gasification co-production, or hybrid gasification/combustion. The Secretary shall set technical milestones specifying emissions levels that coal gasification projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2020 coal gasification projects able to—

(1) remove 99 percent of sulfur dioxide;

(2) emit no more than .05 lbs of NOx per million BTU;

(3) achieve substantial reductions in mercury emissions; and

(4) achieve a thermal efficiency of—

(A) 60 percent for coal of more than 9,000 Btu;

(B) 59 percent for coal of 7,000 to 9,000 Btu; and

(C) 57 percent for coal of less than 7,000 Btu.

(c) TECHNICAL CRITERIA FOR OTHER PROJECTS.—For projects not described in subsection (b), the Secretary shall set technical milestones specifying emissions levels that the projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program. The milestones shall be designed to achieve by 2010 projects able to—

(1) remove 97 percent of sulfur dioxide;

(2) emit no more than .08 lbs of NOx per million BTU;

(3) achieve substantial reductions in mercury emissions; and

(4) achieve a thermal efficiency of—

(A) 45 percent for coal of more than 9,000 Btu;

(B) 44 percent for coal of 7,000 to 9,000 Btu; and

(C) 42 percent for coal of less than 7,000 Btu.

(d) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency requirements set forth in paragraphs (b)(4) and (c)(4), the projects shall be designed to achieve an overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(e) PERMITTED USES.—In allocating funds made available in this section, the Secretary may allocate funds to projects that include, as part of the project, the separation and capture of carbon dioxide.

(f) CONSULTATION.—Before setting the technical milestones under subsections (b) and (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency and interested entities, including coal producers, industries using coal, organizations to promote coal or advanced coal technologies, environmental organizations, and organizations representing workers.

(g) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this title unless the recipient has documented to the satisfaction of the Secretary that—

(1) the award recipient is financially viable without the receipt of additional Federal funding;

(2) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the award funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(h) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that meet the requirements of this section and are likely to—

(1) achieve overall cost reductions in the utilization of coal to generate useful forms of energy;

(2) improve the competitiveness of coal among various forms of energy; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities that use coal as the primary feedstock as of the date of the enactment of this Act.

(i) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary shall not exceed 50 percent.

(j) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.

SEC. 203. REPORTS.

(a) TEN-YEAR PLAN.—By September 30, 2004, the Secretary shall transmit to Congress a report, with respect to section 202(a), a 10-year plan containing—

(1) a detailed assessment of whether the aggregate funding levels provided under section 201 are appropriate funding levels for that program;

(2) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(4) a detailed description of how the program will avoid problems enumerated in General Accounting Office reports on the Clean Coal Technology Program, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

(b) TECHNICAL MILESTONES.—Not later than 1 year after the date of the enactment of this Act, and once every 2 years thereafter through 2011, the Secretary, in consultation with other appropriate Federal agencies, shall transmit to the Congress, a report describing—

(1) the technical milestones set forth in section 212 and how those milestones ensure progress toward meeting the requirements of subsections (b) and (c) of section 212; and

(2) the status of projects funded under this title.

SEC. 204. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 211, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities

that can show the greatest potential for advancing new clean coal technologies.

Subtitle B—Federal Coal Leases

SEC. 211. REPEAL OF THE 160-ACRE LIMITATION FOR COAL LEASES.

Section 3 of the Mineral Leasing Act (30 U.S.C. 203) is amended by striking all the text in the first sentence after ''upon'' and inserting the following: ''a finding by the Secretary that it (1) would be in the interest of the United States, (2) would not displace a competitive interest in the lands, and (3) would not include lands or deposits that can be developed as part of another potential or existing operation, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed 320 acres, or add acreage larger than that in the original lease.''.

SEC. 212. MINING PLANS.

Section 2(d)(2) of the Mineral Leasing Act (30 U.S.C. 202a(2)) is amended—

(1) by inserting ''(A)'' after ''(2)''; and

(2) by adding at the end the following:

''(B) The Secretary may establish a period of more than forty years if the Secretary determines that the longer period will ensure the maximum economic recovery of a coal deposit, or the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.''.

SEC. 213. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.

Section 7(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 207(b)) is amended by striking all after ''Secretary).'' through to ''a lease.'' and inserting: ''The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed twenty. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year.''.

SEC. 214. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE OPERATION AND RECLAMATION PLAN.

Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended by striking ''and not later than three years after a lease is issued,''.

SEC. 215. APPLICATION OF AMENDMENTS.

The amendments made by this Act apply with respect to any coal lease issued on or after the date of enactment of this Act, and, with respect to any coal lease issued before the date of enactment of this Act, upon the date of readjustment of the lease as provided for by section 7(a) of the Mineral Leasing Act, or upon request by the lessee, prior to such date.

Subtitle C—Powder River Basin Shared Mineral Estates

SEC. 221. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER RIVER BASIN.

The Secretary of the Interior shall—

(1) undertake a review of existing authorities to resolve conflicts between the development of Federal coal and the development of Federal and non-Federal coalbed methane in the Powder River Basin in Wyoming and Montana; and

(2) not later than 6 months after the enactment of this Act, report to the Congress on alternatives to resolve these conflicts and identification of a preferred alternative with specific legislative language, if any, required to implement the preferred alternative.

TITLE III—INDIAN ENERGY

SEC. 301. SHORT TITLE.

This title may be cited as the ''Indian Tribal Energy Development and Self-Determination Act of 2003''.

SEC. 302. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

(a) IN GENERAL.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.) is amended by adding at the end the following:

''OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

''SEC. 217. (a) ESTABLISHMENT.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office'). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) DUTIES OF DIRECTOR.—The Director shall in accordance with Federal policies promoting Indian self-determination and the purposes of this Act, provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

''(1) promote Indian tribal energy development, efficiency, and use;

''(2) reduce or stabilize energy costs;

''(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

''(4) electrify Indian tribal land and the homes of tribal members.

''COMPREHENSIVE INDIAN ENERGY ACTIVITIES

''SEC. 218. (a) INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE.—

''(1) The Director shall establish programs within the Office of Indian Energy Policy and Programs to assist Indian tribes in meeting energy education, research and development, planning, and management needs.

''(2) In carrying out this section, the Director may provide grants, on a competitive basis, to an Indian tribe or tribal consortium for use in carrying out—

''(A) energy, energy efficiency, and energy conservation programs;

''(B) studies and other activities supporting tribal acquisition of energy supplies, services, and facilities;

''(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

''(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

''(3)(A) The Director may develop, in consultation with Indian tribes, a formula for providing grants under this section.

''(B) In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

''(4) The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(5) There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2004 through 2011.

''(b) LOAN GUARANTEE PROGRAM.—

''(1) Subject to paragraph (3), the Secretary may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) for not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for energy development.

''(2) A loan guaranteed under this subsection shall be made by—

''(A) a financial institution subject to examination by the Secretary; or

''(B) an Indian tribe, from funds of the Indian tribe.

''(3) The aggregate outstanding amount guaranteed by the Secretary at any time under this subsection shall not exceed $2,000,000,000.

''(4) The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(5) There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

''(6) Not later than 1 year from the date of enactment of this section, the Secretary shall report to the Congress on the financing requirements of Indian tribes for energy development on Indian land.

''(c) INDIAN ENERGY PREFERENCE.—

''(1) In purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes.

''(2) In carrying out this subsection, a Federal agency or department shall not—

''(A) pay more than the prevailing market price for an energy product or byproduct; and

''(B) obtain less than prevailing market terms and conditions.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended—

(A) in the item relating to section 209, by striking ''Section'' and inserting ''Sec.''; and

(B) by striking the items relating to sections 213 through 216 and inserting the following:

''Sec. 213. Establishment of policy for National Nuclear Security Administration.
''Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
''Sec. 215. Office of Counterintelligence.
''Sec. 216. Office of Intelligence.
''Sec. 217. Office of Indian Energy Policy and Programs.
''Sec. 218. Comprehensive Indian Energy Activities.''.

(2) Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Indian Energy Policy and Programs, Department of Energy.'' after ''Inspector General, Department of Energy.''.

SEC. 303. INDIAN ENERGY.

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read as follows:

''TITLE XXVI—INDIAN ENERGY

''SEC. 2601. DEFINITIONS.

''For purposes of this title:

''(1) The term 'Director' means the Director of the Office of Indian Energy Policy and Programs.

''(2) The term 'Indian land' means—

''(A) any land located within the boundaries of an Indian reservation, pueblo, or rancheria;

''(B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

''(i) in trust by the United States for the benefit of an Indian tribe;

''(ii) by an Indian tribe, subject to restriction by the United States against alienation; or

''(iii) by a dependent Indian community; and

''(C) land conveyed to a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

''(3) The term 'Indian reservation' includes—

''(A) an Indian reservation in existence in any State or States as of the date of enactment of this paragraph;

''(B) a public domain Indian allotment;

''(C) a former reservation in the State of Oklahoma;

''(D) a parcel of land owned by a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

''(E) a dependent Indian community located within the borders of the United States,

regardless of whether the community is located—

''(i) on original or acquired territory of the community; or

''(ii) within or outside the boundaries of any particular State.

''(4) The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(5) The term 'Native Corporation' has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

''(6) The term 'organization' means a partnership, joint venture, limited liability company, or other unincorporated association or entity that is established to develop Indian energy resources.

''(7) The term 'Program' means the Indian energy resource development program established under section 2602(a).

''(8) The term 'Secretary' means the Secretary of the Interior.

''(9) The term 'tribal consortium' means an organization that consists of 2 or more entities, at least 1 of which is an Indian tribe.

''(10) The term 'tribal land' means any land or interests in land owned by any Indian tribe, band, nation, pueblo, community, rancheria, colony or other group, title to which is held in trust by the United States or which is subject to a restriction against alienation imposed by the United States.

''(11) The term 'vertical integration of energy resources' means any project or activity that promotes the location and operation of a facility (including any pipeline, gathering system, transportation system or facility, or electric transmission facility), on or near Indian land to process, refine, generate electricity from, or otherwise develop energy resources on, Indian land.

''SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOPMENT.

''(a) IN GENERAL.—To assist Indian tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary shall establish and implement an Indian energy resource development program to assist Indian tribes and tribal consortia in achieving the purposes of this title.

''(b) GRANTS AND LOANS.—In carrying out the Program, the Secretary shall

''(1) provide development grants to Indian tribes and tribal consortia for use in developing or obtaining the managerial and technical capacity needed to develop energy resources on Indian land;

''(2) provide grants to Indian tribes and tribal consortia for use in carrying out projects to promote the vertical integration of energy resources, and to process, use, or develop those energy resources, on Indian land; and

''(3) provide low-interest loans to Indian tribes and tribal consortia for use in the promotion of energy resource development and vertical integration or energy resources on Indian land.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2014.

''SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULATION.

''(a) GRANTS.—The Secretary may provide to Indian tribes and tribal consortia, on an annual basis, grants for use in developing, administering, implementing, and enforcing tribal laws (including regulations) governing the development and management of energy resources on Indian land.

''(b) USE OF FUNDS.—Funds from a grant provided under this section may be used by an Indian tribe or tribal consortium for—

''(1) the development of a tribal energy resource inventory or tribal energy resource on Indian land;

''(2) the development of a feasibility study or other report necessary to the development of energy resources on Indian land;

''(3) the development and enforcement of tribal laws and the development of technical infrastructure to protect the environment under applicable law; or

''(4) the training of employees that—

''(A) are engaged in the development of energy resources on Indian land; or

''(B) are responsible for protecting the environment.

''(c) OTHER ASSISTANCE.—To the maximum extent practicable, the Secretary and the Secretary of Energy shall make available to Indian tribes and tribal consortia scientific and technical data for use in the development and management of energy resources on Indian land.

''SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-OF-WAY INVOLVING ENERGY DEVELOPMENT OR TRANSMISSION.

''(a) LEASES AND AGREEMENTS.—Subject to the provisions of this section—

''(1) an Indian tribe may, at its discretion, enter into a lease or business agreement for the purpose of energy development, including a lease or business agreement for—

''(A) exploration for, extraction of, processing of, or other development of energy resources on tribal land; and

''(B) construction or operation of an electric generation, transmission, or distribution facility located on tribal land; or a facility to process or refine energy resources developed on tribal land; and

''(2) a lease or business agreement described in paragraph (1) shall not require the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) or any other provision of law, if—

''(A) the lease or business agreement is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

''(B) the term of the lease or business agreement does not exceed—

''(i) 30 years; or

''(ii) in the case of a lease for the production of oil and gas resources, 10 years and as long thereafter as oil or gas is produced in paying quantities; and

''(C) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including an annual trust asset evaluation of the activities of the Indian tribe conducted in accordance with the agreement).

''(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC TRANSMISSION OR DISTRIBUTION LINES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without specific approval by the Secretary if—

''(1) the right-of-way is executed in accordance with a tribal energy resource agreement approved by the Secretary under subsection (e);

''(2) the term of the right-of-way does not exceed 30 years;

''(3) the pipeline or electric transmission or distribution line serves—

''(A) an electric generation, transmission, or distribution facility located on tribal land; or

''(B) a facility located on tribal land that processes or refines energy resources developed on tribal land; and

''(4) the Indian tribe has entered into a tribal energy resource agreement with the Secretary, as described in subsection (e), relating to the development of energy resources on tribal land (including an annual trust asset evaluation of the activities of the Indian tribe conducted in accordance with the agreement).

''(c) RENEWALS.—A lease or business agreement entered into or a right-of-way granted by an Indian tribe under this section may be renewed at the discretion of the Indian tribe in accordance with this section.

''(d) VALIDITY.—No lease, business agreement, or right-of-way under this section shall be valid unless the lease, business agreement, or right-of-way is authorized in accordance with tribal energy resource agreements approved by the Secretary under subsection (e).

''(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

''(1) On promulgation of regulations under paragraph (9), an Indian tribe may submit to the Secretary for approval a tribal energy resource agreement governing leases, business agreements, and rights-of-way under this section.

''(2)(A) Not later than 180 days after the date on which the Secretary receives a tribal energy resource agreement submitted by an Indian tribe under paragraph (1) (or such later date as may be agreed to by the Secretary and the Indian tribe), the Secretary shall approve or disapprove the tribal energy resource agreement.

''(B) The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if—

''(i) the Secretary determines that the Indian tribe has demonstrated that the Indian tribe has sufficient capacity to regulate the development of energy resources of the Indian tribe; and

''(ii) the tribal energy resource agreement includes provisions that, with respect to a lease, business agreement, or right-of-way under this section—

''(I) ensure the acquisition of necessary information from the applicant for the lease, business agreement, or right-of-way;

''(II) address the term of the lease or business agreement or the term of conveyance of the right-of-way;

''(III) address amendments and renewals;

''(IV) address consideration for the lease, business agreement, or right-of-way;

''(V) address technical or other relevant requirements;

''(VI) establish requirements for environmental review in accordance with subparagraph (C);

''(VII) ensure compliance with all applicable environmental laws;

''(VIII) identify final approval authority;

''(IX) provide for public notification of final approvals;

''(X) establish a process for consultation with any affected States concerning potential off-reservation impacts associated with the lease, business agreement, or right-of-way; and

''(XI) describe the remedies for breach of the lease, agreement, or right-of-way.

''(C) Tribal energy resource agreements submitted under paragraph (1) shall establish, and include provisions to ensure compliance with, an environmental review process that, with respect to a lease, business agreement, or right-of-way under this section, provides for—

''(i) the identification and evaluation of all significant environmental impacts (as compared with a no-action alternative), including effects on cultural resources;

''(ii) the identification of proposed mitigation;

''(iii) a process for ensuring that the public is informed of and has an opportunity to comment on any proposed lease, business agreement, or right-of-way before tribal approval of the lease, business agreement, or right-of-way (or any amendment to or renewal of the lease, business agreement, or right-of-way); and

''(iv) sufficient administrative support and technical capability to carry out the environmental review process.

''(D) A tribal energy resource agreement negotiated between the Secretary and an Indian tribe in accordance with this subsection shall include—

''(i) provisions requiring the Secretary to conduct an annual trust asset evaluation to monitor the performance of the activities of the Indian tribe associated with the development of energy resources on tribal land by the Indian tribe; and

''(ii) in the case of a finding by the Secretary of imminent jeopardy to a physical trust asset, provisions authorizing the Secretary to reassume responsibility for activities associated with the development of energy resources on tribal land.

''(3) The Secretary shall provide notice and opportunity for public comment on tribal energy resource agreements submitted under paragraph (1).

''(4) If the Secretary disapproves a tribal energy resource agreement submitted by an Indian tribe under paragraph (1), the Secretary shall—

''(A) notify the Indian tribe in writing of the basis for the disapproval;

''(B) identify what changes or other actions are required to address the concerns of the Secretary; and

''(C) provide the Indian tribe with an opportunity to revise and resubmit the tribal energy resource agreement.

''(5) If an Indian tribe executes a lease or business agreement or grants a right-of-way in accordance with a tribal energy resource agreement approved under this subsection, the Indian tribe shall, in accordance with the process and requirements set forth in the Secretary's regulations adopted pursuant to subsection (e)(9), provide to the Secretary—

''(A) a copy of the lease, business agreement, or right-of-way document (including all amendments to and renewals of the document); and

''(B) in the case of a tribal energy resource agreement or a lease, business agreement, or right-of-way that permits payment to be made directly to the Indian tribe, documentation of those payments sufficient to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law.

''(6) The Secretary shall continue to have a trust obligation to ensure that the rights of an Indian tribe are protected in the event of a violation of the terms of any lease, business agreement or right-of-way by any other party to the lease, business agreement, or right-of-way.

''(7)(A) The United States shall not be liable for any loss or injury sustained by any party (including an Indian tribe or any member of an Indian tribe) to a lease, business agreement, or right-of-way executed in accordance with tribal energy resource agreements approved under this subsection.

''(B) On approval of a tribal energy resource agreement of an Indian tribe under paragraph (1), the Indian tribe shall be stopped from asserting a claim against the United States on the grounds that the Secretary should not have approved the Tribal energy resource agreement.

''(8)(A) In this paragraph, the term 'interested party' means any person or entity the interests of which have sustained or will sustain a significant adverse impact as a result of the failure of an Indian tribe to comply with a tribal energy resource agreement of the Indian tribe approved by the Secretary under paragraph (2).

''(B) After exhaustion of tribal remedies, and in accordance with the process and requirements set forth in regulations adopted by the Secretary pursuant to subsection (e)(9), an interested party may submit to the Secretary a petition to review compliance of an Indian tribe with a tribal energy resource agreement of the Indian tribe approved under this subsection.

''(C) If the Secretary determines that an Indian tribe is not in compliance with a tribal energy resource agreement approved under this subsection, the Secretary shall take such action as is necessary to compel compliance, including—

''(i) suspending a lease, business agreement, or right-of-way under this section until an Indian tribe is in compliance with the approved tribal energy resource agreement; and

''(ii) rescinding approval of the tribal energy resource agreement and reassuming the responsibility for approval of any future leases, business agreements, or rights-of-way associated with an energy pipeline or distribution line described in subsections (a) and (b).

''(D) If the Secretary seeks to compel compliance of an Indian tribe with an approved tribal energy resource agreement under subparagraph (C)(ii), the Secretary shall—

''(i) make a written determination that describes the manner in which the tribal energy resource agreement has been violated;

''(ii) provide the Indian tribe with a written notice of the violation together with the written determination; and

''(iii) before taking any action described in subparagraph (C)(ii) or seeking any other remedy, provide the Indian tribe with a hearing and a reasonable opportunity to attain compliance with the tribal energy resource agreement.

''(E)(i) An Indian tribe described in subparagraph (D) shall retain all rights to appeal as provided in regulations promulgated by the Secretary.

''(ii) The decision of the Secretary with respect to an appeal described in clause (i), after any agency appeal provided for by regulation, shall constitute a final agency action.

''(9) Not later than 180 days after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall promulgate regulations that implement the provisions of this subsection, including—

''(A) criteria to be used in determining the capacity of an Indian tribe described in paragraph (2)(B)(i), including the experience of the Indian tribe in managing natural resources and financial and administrative resources available for use by the Indian tribe in implementing the approved tribal energy resource agreement of the Indian tribe; and

''(B) a process and requirements in accordance with which an Indian tribe may—

''(i) voluntarily rescind an approved tribal energy resource agreement approved by the Secretary under this subsection; and

''(ii) return to the Secretary the responsibility to approve any future leases, business agreements, and rights-of-way described in this subsection.

''(f) NO EFFECT ON OTHER LAW.—Nothing in this section affects the application of—

''(1) any Federal environmental law;

''(2) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

''(3) except as otherwise provided in this title, the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

''SEC. 2605. FEDERAL POWER MARKETING ADMINISTRATIONS.

''(a) DEFINITIONS.—In this section:

''(1) The term 'Administrator' means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

''(2) The term 'power marketing administration' means

''(A) the Bonneville Power Administration;

''(B) the Western Area Power Administration; and

''(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

''(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY DEVELOPMENT.—Each Administrator shall encourage Indian tribal energy development by taking such actions as are appropriate, including administration of programs of the Bonneville Power Administration and the Western Area Power Administration, in accordance with this section.

''(c) ACTION BY THE ADMINISTRATOR.—In carrying out this section, and in accordance with existing law—

''(1) each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

''(2) power allocations from the Western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

''(3) the Administrator of the Western Area Power Administration may purchase power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

''(4) each Administrator shall not pay more than the prevailing market price for an energy product nor obtain less than prevailing market terms and conditions.

''(d) ASSISTANCE FOR TRANSMISSION SYSTEM USE.—

''(1) An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

''(2) The costs of technical assistance provided under paragraph (1) shall be funded by the Secretary of Energy using nonreimbursable funds appropriated for that purpose, or by the applicable Indian tribes.

''(e) POWER ALLOCATION STUDY.—Not later than 2 years after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary of Energy shall submit to the Congress a report that—

''(1) describes the use by Indian tribes of Federal power allocations of the Western Area Power Administration (or power sold by the Southwestern Power Administration) and the Bonneville Power Administration to or for the benefit of Indian tribes in service areas of those administrations; and

''(2) identifies—

''(A) the quantity of power allocated to Indian tribes by the Western Area Power Administration;

''(B) the quantity of power sold to Indian tribes by other power marketing administrations; and

''(C) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to facilitate the use of Federal power by Indian tribes.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $750,000, which shall remain available until expended and shall not be reimbursable.

''SEC. 2606. INDIAN MINERAL DEVELOPMENT REVIEW.

''(a) IN GENERAL.—The Secretary shall conduct a review of all activities being conducted under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.) as of that date.

''(b) REPORT.—Not later than 1 year after the date of enactment of the Indian Tribal Energy Development and Self-Determination Act of 2003, the Secretary shall submit to the Congress a report that includes—

''(1) the results of the review;

''(2) recommendations to ensure that Indian tribes have the opportunity to develop Indian energy resources; and

''(3) an analysis of the barriers to the development of energy resources on Indian land (including legal, fiscal, market, and other barriers), along with recommendations for the removal of those barriers.

''SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.

''(a) STUDY.—The Secretary, in coordination with the Secretary of the Army and the Secretary of the Interior, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

''(b) SCOPE OF STUDY.—The study shall—

''(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

''(2) review historical purchase requirements and projected purchase requirements for firming and the patterns of availability and use of firming energy;

''(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

''(4) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

''(5) include an independent tribal engineer as a study team member.

''(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

''(1) an analysis of the potential energy cost or benefits to the customers of the Western Area Power Administration through the blend of wind and hydropower;

''(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

''(3) recommendations for a demonstration project that could be carried out by the Western Area Power Administration in partnership with an Indian tribal government or tribal consortium to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

''(4) an identification of—

''(A) the economic and environmental costs or benefits to be realized through such a Federal-tribal partnership; and

''(B) the manner in which such a partnership could contribute to the energy security of the United States.

''(d) FUNDING.—

''(1) There is authorized to be appropriated to carry out this section $500,000, to remain available until expended.

''(2) Costs incurred by the Secretary in carrying out this section shall be nonreimbursable.''.

SEC. 304. FOUR CORNERS TRANSMISSION LINE PROJECT.

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance as authorized by section 302 of this title and section 2602 of the Energy Policy Act of 1992, as amended by this title, for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

SEC. 305. ENERGY EFFICIENCY IN FEDERALLY ASSISTED HOUSING.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall promote energy conservation in housing that is located on Indian land and assisted with Federal resources through—

(1) the use of energy-efficient technologies and innovations (including the procurement of energy-efficient refrigerators and other appliances);

(2) the promotion of shared savings contracts; and

(3) the use and implementation of such other similar technologies and innovations as the Secretary of Housing and Urban Development considers to be appropriate.

(b) AMENDMENT.—Section 202(2) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(2)) is amended by inserting 'improvement to achieve greater energy efficiency,' after 'planning,'.

SEC. 306. CONSULTATION WITH INDIAN TRIBES.

In carrying out this Act and the amendments made by this Act, the Secretary of Energy and the Secretary shall, as appropriate and to the maximum extent practicable, involve and consult with Indian tribes in a manner that is consistent with the Federal trust and the government-to-government relationships between Indian tribes and the United States.

TITLE IV—NUCLEAR MATTERS

Subtitle A—Price-Anderson Act Amendments

SEC. 401. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2003''.

SEC. 402. EXTENSION OF INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES'';

(2) by striking ''licenses issued between August 30, 1954, and December 31, 2003'' and inserting ''licenses issued after August 30, 1954''; and

(3) by striking ''With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2003, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2003.''

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking '', until December 31, 2004,''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended—

(1) by striking ''licenses issued between August 30, 1954, and August 1, 2002'' and replacing it with ''licenses issued after August 30, 1954''; and

(2) by striking ''With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 2002, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 2002.''

SEC. 403. MAXIMUM ASSESSMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended—

(1) in the second proviso of the third sentence of subsection b.(1)—

(A) by striking ''$63,000,000'' and inserting ''$94,000,000''; and

(B) by striking ''$10,000,000 in any 1 year'' and inserting ''$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)''; and

(2) in subsection t.(1)—

(A) by inserting ''total and annual'' after ''amount of the maximum'';

(B) by striking ''the date of the enactment of the Price-Anderson Amendments Act of 1988'' and inserting ''July 1, 2003''; and

(C) by striking ''such date of enactment'' and inserting ''July 1, 2003''.

SEC. 404. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary

shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further amended by striking paragraph (3) and inserting the following—

''(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2003, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.''.

(c) LIABILITY LIMIT.—Section 170e.(1)(B) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is amended by:

(1) striking ''the maximum amount of financial protection required under subsection b. or''; and

(2) striking ''paragraph (3) of subsection d., whichever amount is more'' and inserting ''paragraph (2) of subsection d.''.

SEC. 405. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 406. REPORTS.

Section 170p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''August 1, 2013''.

SEC. 407. INFLATION ADJUSTMENT.

Section 170t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

''(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5–year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date, in the case of the first adjustment under this paragraph; or

''(B) the previous adjustment under this paragraph.''.

SEC. 408. TREATMENT OF MODULAR REACTORS.

Section 170b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended by adding at the end the following:

''(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

''(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.''.

SEC. 409. APPLICABILITY.

The amendments made by sections 403, 404, and 405 do not apply to a nuclear incident that occurs before the date of the enactment of this Act.

SEC. 410. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234Ab.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NOT-FOR-PROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

''d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under the contract under which the violation occurs.

''(2) For purposes of this section, the term ''not-for-profit'' means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall not apply to any violation of the Atomic Energy Act of 1954 occurring under a contract entered into before the date of enactment of this section.

Subtitle B—Deployment of New Nuclear Plants

SEC. 421. SHORT TITLE.

This subtitle may be cited as the ''Nuclear Energy Finance Act of 2003.''

SEC. 422. DEFINITIONS.

For purposes of this subtitle:

(1) The term ''advanced reactor design'' means a nuclear reactor that enhances safety, efficiency, proliferation resistance, or waste reduction compared to commercial nuclear reactors in use in the United States on the date of enactment of this Act.

(2) The term ''eligible project costs'' means all costs incurred by a project developer that are reasonably related to the development and construction of a project under this subtitle, including costs resulting from regulatory or licensing delays.

(3) The term ''financial assistance'' means a loan guarantee, purchase agreement, or any combination of the foregoing.

(4) The term ''loan guarantee'' means any guarantee or other pledge by the Secretary to pay all or part of the principal and interest on a loan or other debt obligation issued by a project developer and funded by a lender.

(5) The term ''project'' means any commercial nuclear power facility for the production of electricity that uses one or more advanced reactor designs.

(6) The term ''project developer'' means an individual, corporation, partnership, joint venture, trust, or other entity that is primarily liable for payment of a project's eligible costs.

(7) The term ''purchase agreement'' means a contract to purchase the electric energy produced by a project under this subtitle.

(8) The term ''Secretary'' means the Secretary of Energy.

SEC. 423. RESPONSIBILITIES OF THE SECRETARY.

(a) FINANCIAL ASSISTANCE.—Subject to the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), the Secretary may, subject to appropriations, make available to project developers for eligible project costs such financial assistance as the Secretary determines is necessary to supplement private-sector financing for projects if he determines that such projects are needed to contribute to energy security, fuel or technology diversity, or clean air attainment goals. The Secretary shall prescribe such terms and conditions for financial assistance as the Secretary deems necessary or appropriate to protect the financial interests of the United States.

(b) REQUIREMENTS.—Approval criteria for financial assistance shall include—

(1) the creditworthiness of the project;

(2) the extent to which financial assistance would encourage public-private partnerships and attract private-sector investment;

(3) the likelihood that financial assistance would hasten commencement of the project; and,

(4) any other criteria the Secretary deems necessary or appropriate.

(c) CONFIDENTIALITY.—The Secretary shall protect the confidentiality of any information that is certified by a project developer to be commercially sensitive.

(d) FULL FAITH AND CREDIT.—All financial assistance provided by the Secretary under this subtitle shall be general obligations of the United States backed by its full faith and credit.

SEC. 424. LIMITATIONS.

(a) FINANCIAL ASSISTANCE.—The total financial assistance per project provided by this subtitle shall not exceed fifty percent of eligible project costs.

(b) GENERATION.—The total electrical generation capacity of all projects provided by this subtitle shall not exceed 8,400 megawatts.

SEC. 425. REGULATIONS.

Not later than 12 months from the date of enactment of this Act, the Secretary shall issue regulations to implement this subtitle.

Subtitle C—Advanced Reactor Hydrogen Co-Generation Project

SEC. 431. PROJECT ESTABLISHMENT.

The Secretary is directed to establish an Advanced Reactor Hydrogen Co-Generation Project.

SEC. 432. PROJECT DEFINITION.

The project shall conduct the research, development, design, construction, and operation of a hydrogen production co-generation testbed that, relative to the current commercial reactors, enhances safety features, reduces waste production, enhances thermal efficiencies, increases proliferation resistance, and has the potential for improved economics and physical security in reactor siting. This testbed shall be constructed so as to enable research and development on advanced reactors of the type selected and on alternative approaches for reactor-based production of hydrogen.

SEC. 433. PROJECT MANAGEMENT.

(a) MANAGEMENT.—The project shall be managed within the Department by the Office of Nuclear Energy Science and Technology.

(b) LEAD LABORATORY.—The lead laboratory for the program, providing the site for the reactor construction, shall be the Idaho National Engineering and Environmental Laboratory (''INEEL'').

(c) STEERING COMMITTEE.—The Secretary shall establish a national steering committee with membership from the national laboratories, universities, and industry to provide advice to the Secretary and the Director of the Office of Nuclear Energy, Science and Technology on technical and program management aspects of the project.

(d) COLLABORATION.—Project activities shall be conducted at INEEL, other national laboratories, universities, domestic industry, and international partners.

SEC. 434. PROJECT REQUIREMENTS.

(a) RESEARCH AND DEVELOPMENT.—The project shall include planning, research and development, design, and construction of an advanced, next-generation, nuclear energy system suitable for enabling further research and development on advanced reactor technologies and alternative approaches for reactor-based generation of hydrogen.

(1) The project shall utilize, where appropriate, extensive reactor test capabilities resident at INEEL.

(2) The project shall be designed to explore technical, environmental, and economic feasibility of alternative approaches for reactor-based hydrogen production.

(3) The industrial lead for the project must be a United States-based company.

(b) INTERNATIONAL COLLABORATION.—The Secretary shall seek international cooperation, participation, and financial contribution in this program.

(1) The project may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners where such specialists or facilities provide access to cost-effective and relevant skills or test capabilities.

(2) International activities shall be coordinated with the Generation IV International Forum.

(3) The Secretary may combine this project with the Generation IV Nuclear Energy Systems Program.

(c) DEMONSTRATION.—The overall project, which may involve demonstration of selected project objectives in a partner nation, must demonstrate both electricity and hydrogen production and may provide flexibility, where technically and economically feasible in the design and construction, to enable tests of alternative reactor core and cooling configurations.

(d) PARTNERSHIPS.—The Secretary shall establish cost-shared partnerships with domestic industry or international participants for the research, development, design, construction and operation of the demonstration facility, and preference in determining the final project structure shall be given to an overall project which retains United States leadership while maximizing cost sharing opportunities and minimizing federal funding responsibilities.

(e) TARGET DATE.—The Secretary shall select technologies and develop the project to provide initial testing of either hydrogen production or electricity generation by 2010 or provide a report to Congress why this date is not feasible.

(f) WAIVER OF CONSTRUCTION TIMELINES.—The Secretary is authorized to conduct the Advanced Reactor Hydrogen Co-Generation Project without the constraints of DOE Order 413.3 as deemed necessary to meet the specified operational date.

(g) COMPETITION.—The Secretary may fund up to two teams for up to one year to develop detailed proposals for competitive evaluation and selection of a single proposal and concept for further progress. The Secretary shall define the format of the competitive evaluation of proposals.

(h) USE OF FACILITIES.—Research facilities in industry, national laboratories, or universities either within the United States or with cooperating international partners may be used to develop the enabling technologies for the demonstration facility. Utilization of domestic university-based testbeds shall be encouraged to provide educational opportunities for student development.

(i) ROLE OF NUCLEAR REGULATORY COMMISSION.—The Secretary shall seek active participation of the Nuclear Regulatory Commission throughout the project to develop risk-based criteria for any future commercial development of a similar reactor architecture.

(j) REPORT.—A comprehensive project plan shall be developed no later than April 30, 2004. The project plan shall be updated annually with each annual budget submission.

SEC. 435. AUTHORIZATION OF APPROPRIATIONS.

(a) RESEARCH, DEVELOPMENT AND DESIGN PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for all activities under this subtitle except for reactor construction:

(1) For fiscal year 2004, $35,000,000;

(2) For each of fiscal years 2005–2008, $150,000,000; and

(3) For fiscal years beyond 2008, such funds as are needed are authorized to be appropriated.

(b) REACTOR CONSTRUCTION.—The following sum is authorized to be appropriated to the Secretary for all project-related construction activities, to be available until expended, $500,000,000.

Subtitle D—Miscellaneous Matters

SEC. 441. URANIUM SALES AND TRANSFERS.

Section 3112 of the USEC Privatization Act (42 U.S.C. 2297h–10) is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1)(A) The aggregate annual deliveries of uranium in any form (including natural uranium concentrates, natural uranium hexafluoride, enriched uranium, and depleted uranium) sold or transferred for commercial nuclear power end uses by the United States Government shall not exceed 3,000,000 pounds U_3O_8 equivalent per year through calendar year 2009. Such aggregate annual deliveries shall not exceed 5,000,000 pounds U_3O_8 equivalent per year in calendar years 2010 and 2011. Such aggregate annual deliveries shall not exceed 7,000,000 pounds U_3O_8 equivalent in calendar year 2012. Such aggregate annual deliveries shall not exceed 10,000,000 pounds U_3O_8 equivalent per year in calendar year 2013 and each year thereafter. Any sales or transfers by the United States Government to commercial end users shall be limited to long-term contracts of no less than 3 years duration.

''(B) The recovery and extraction of the uranium component from contaminated uranium bearing materials from United States Government sites by commercial entities shall be the preferred method of making uranium available under this subsection. The uranium component contained in such contaminated materials shall be counted against the annual maximum deliveries set forth in this section, provided that uranium is sold to end users.

''(C) Sales or transfers of uranium by the United States Government for the following purposes are exempt from the provisions of this paragraph—

''(i) sales or transfers provided for under existing law for use by the Tennessee Valley Authority in relation to the Department of Energy's high-enriched uranium or tritium programs;

''(ii) sales or transfers to the Department of Energy research reactor sales program;

''(iii) the transfer of up to 3,293 metric tons of uranium to the United States Enrichment Corporation to replace uranium that the Secretary transferred, prior to privatization of the United States Enrichment Corporation in July 1998, to the Corporation on or about June 30, 1993, April 20, 1998, and May 18, 1998, and that does not meet commercial specifications;

''(iv) the sale or transfer of any uranium for emergency purposes in the event of a disruption in supply to end users in the United States;

''(v) the sale or transfer of any uranium in fulfillment of the United States Government's obligations to provide security of supply with respect to implementation of the Russian HEU Agreement; and

''(vi) the sale or transfer of any enriched uranium for use in an advanced commercial nuclear power plant in the United States with nonstandard fuel requirements.

''(D) The Secretary may transfer or sell enriched uranium to any person for national security purposes, as determined by the Secretary.

''(2) Except as provided in subsections (b) and (c), and in paragraph (1)(B), clauses (i) through (iii) of paragraph (1)(C), and paragraph (1)(D) of this subsection, no sale or transfer of uranium in any form shall be made by the United States Government unless—

''(A) the President determines that the material is not necessary for national security needs;

''(B) the price paid to the Secretary, if the transaction is a sale, will not be less than the fair market value of the material, as determined at the time that such material is contracted for sale;

''(C) prior to any sale or transfer, the Secretary solicits the written views of the Department of State and the National Security Council with regard to whether such sale or transfer would have any adverse effect on national security interests of the United States, including interests related to the implementation of the Russian HEU Agreement; and

''(D) neither the Department of State nor the National Security Council objects to such sale or transfer.

The Secretary shall endeavor to determine whether a sale or transfer is permitted under this paragraph within 30 days. The Secretary's determinations pursuant to this paragraph shall be made available to interested members of the public prior to authorizing any such sale or transfer.

''(3) Within 1 year after the date of enactment of this subsection and annually thereafter the Secretary shall undertake an assessment for the purpose of reviewing available excess Government uranium inventories, and determining, consistent with the procedures and limitations established in this subsection, the level of inventory to be sold or transferred to end users.

''(4) Within 5 years after the date of enactment of this subsection and biennially thereafter the Secretary shall report to the Congress on the implementation of this subsection. The report shall include a discussion of all sales or transfers made by the United States Government, the impact of such sales or transfers on the domestic uranium industry, the spot market uranium price, and the national security interests of the United States, and any steps taken to remediate any adverse impacts of such sales or transfers.

''(5) For purposes of this subsection, the term 'United States Government' does not include the Tennessee Valley Authority.''.

SEC. 442. DECOMMISSIONING PILOT PROGRAM.

(a) PILOT PROGRAM.—The Secretary shall establish a decommissioning pilot program

to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas in accordance with the decommissioning activities contained in the August 31, 1998 Department of Energy report on the reactor.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $16,000,000.

TITLE V—RENEWABLE ENERGY

Subtitle A—General Provisions

SEC. 501. ASSESSMENT OF RENEWABLE ENERGY RESOURCES.

(a) RESOURCE ASSESSMENT.—Not later than 6 months after the date of enactment of this title, and each year thereafter, the Secretary of Energy shall review the available assessments of renewable energy resources within the United States, including solar, wind, biomass, ocean (tidal and thermal), geothermal, and hydroelectric energy resources, and undertake new assessments as necessary, taking into account changes in market conditions, available technologies, and other relevant factors.

(b) CONTENTS OF REPORTS.—Not later than 1 year after the date of enactment of this title, and each year thereafter, the Secretary shall publish a report based on the assessment under subsection (a). The report shall contain—

(1) a detailed inventory describing the available amount and characteristics of the renewable energy resources; and

(2) such other information as the Secretary believes would be useful in developing such renewable energy resources, including descriptions of surrounding terrain, population and load centers, nearby energy infrastructure, location of energy and water resources, and available estimates of the costs needed to develop each resource, together with an identification of any barriers to providing adequate transmission for remote sources of renewable energy resources to current and emerging markets, recommendations for removing or addressing such barriers, and ways to provide access to the grid that do not unfairly disadvantage renewable or other energy producers.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $10,000,000 for each of fiscal years 2004 through 2008.

SEC. 502. RENEWABLE ENERGY PRODUCTION INCENTIVE.

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended by striking ''and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting ''. If there are insufficient appropriations to make full payments for electric production from all qualified renewable energy facilities in any given year, the Secretary shall assign 60 percent of appropriated funds for that year to facilities that use solar, wind, geothermal, or closed-loop (dedicated energy crops) biomass technologies to generate electricity, and assign the remaining 40 percent to other projects. The Secretary may, after transmitting to the Congress an explanation of the reasons therefor, alter the percentage requirements of the preceding sentence.''.

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting ''a not-for-profit electric cooperative, a public utility described in section 115 of the Internal Revenue Code of 1986, a State, Commonwealth, territory, or possession of the United States or the District of Columbia, or a political subdivision thereof, or an Indian tribal government of subdivision thereof,''; and

(2) by inserting ''landfill gas,'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''after October 1, 2003, and before October 1, 2013''.

(d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended by inserting ''landfill gas,'' after ''wind, biomass,''.

(e) SUNSET.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking ''the expiration of'' and all that follows through ''of this section'' and inserting ''September 30, 2023''.

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 1212(g) of the Energy Policy Act of 1992 (42 U.S.C. 13317(g)) is amended to read as follows:

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2003 through 2023.

''(2) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.''.

SEC. 503. RENEWABLE ENERGY ON FEDERAL LANDS.

(a) REPORT.—Within 24 months after the date of enactment of this Act, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, shall develop and report to the Congress recommendations on opportunities to develop renewable energy on public lands under the jurisdiction of the Secretary of the Interior and National Forest System lands under the jurisdiction of the Secretary of Agriculture. The report shall include—

(1) 5-year plans developed by the Secretary of the Interior and the Secretary of Agriculture, respectively, for encouraging the development of renewable energy consistent with applicable law and management plans; and

(2) an analysis of—

(A) the use of rights-of-way, leases, or other methods to develop renewable energy on such lands;

(B) the anticipated benefits of grants, loans, tax credits, or other provisions to promote renewable energy development on such lands; and

(C) any issues that the Secretary of the Interior or the Secretary of Agriculture have encountered in managing renewable energy projects on such lands, or believe are likely to arise in relation to the development of renewable energy on such lands;

(3) a list, developed in consultation with the Secretary of Energy and the Secretary of Defense, of lands under the jurisdiction of the Department of Energy or Defense that would be suitable for development for renewable energy, and any recommended statutory and regulatory mechanisms for such development; and

(4) any recommendations pertaining to the issues addressed in the report.

(b) NATIONAL ACADEMY OF SCIENCES STUDY.—

(1) Not later than 90 days after the date of the enactment of this section, the Secretary of the Interior shall contract with the National Academy of Sciences to—

(A) study the potential for the development of wind, solar, and ocean (tidal and thermal) energy on the Outer Continental Shelf;

(B) assess existing Federal authorities for the development of such resources; and

(C) recommend statutory and regulatory mechanisms for such development.

(2) The results of the study shall be transmitted to the Congress within 24 months after the date of the enactment of this section.

SEC. 504. FEDERAL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be renewable energy—

(1) not less than 3 percent in fiscal years 2005 through 2007,

(2) not less than 5 percent in fiscal years 2008 through 2010, and

(3) not less than 7.5 percent in fiscal year 2011 and each fiscal year thereafter.

(b) DEFINITION.—For purposes of this section—

(1) the term ''biomass'' means any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or nonmerchantable material;

(B) 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 (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled; or

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) the term ''renewable energy'' means electric energy generated from solar, wind, biomass, geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(c) CALCULATION.—For purposes of determining compliance with the requirement of this section, the amount of renewable energy shall be doubled if—

(1) the renewable energy is produced and used on-site at a Federal facility;

(2) the renewable energy is produced on Federal lands and used at a Federal facility; or

(3) the renewable energy is produced on Indian land as defined in Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) and used at a Federal facility.

(d) REPORT.—Not later than April 15, 2005, and every 2 years thereafter, the Secretary of Energy shall provide a report to the Congress on the progress of the Federal Government in meeting the goals established by this section.

SEC. 505. INSULAR AREA RENEWABLE AND ENERGY EFFICIENCY PLANS.

The Secretary of Energy shall update the energy surveys, estimates, and assessments for the insular areas of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the

Republic of Palau undertaken pursuant to section 604 of Public Law 96–597 (48 U.S.C. 1492) and revise the comprehensive energy plan for the insular areas to reduce reliance on energy imports and increase use of renewable energy resources and energy efficiency opportunities. The update and revision shall by undertaken in consultation with the Secretary of the Interior and the chief executive officer of each insular area and shall be completed and submitted to Congress and to the chief executive officer of each insular area by December 31, 2005.

Subtitle B—Hydroelectric Licensing

SEC. 511. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) FEDERAL RESERVATIONS.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by inserting after ''adequate protection and utilization of such reservation.'' at the end of the first proviso the following: ''The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such conditions.''.

(b) FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by inserting after ''and such fishways as may be prescribed by the Secretary of Commerce.'' the following: ''The license applicant shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of any disputed issues of material fact, with respect to such fishways.''.

(c) ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.—Part I of the Federal Power Act (16 U.S.C. 791a et seq.) is amended by adding the following new section at the end thereof:

''SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

''(a) ALTERNATIVE CONDITIONS.—

''(1) Whenever any person applies for a license for any project works within any reservation of the United States, and the Secretary of the Department under whose supervision such reservation falls (referred to in this subsection as 'the Secretary') deems a condition to such license to be necessary under the first proviso of section 4(e), the license applicant may propose an alternative condition.

''(2) Notwithstanding the first proviso of section 4(e), the Secretary shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary determines, based on substantial evidence provided by the license applicant or otherwise available to the Secretary, that such alternative condition—

''(A) provides for the adequate protection and utilization of the reservation; and

''(B) will either—

''(i) cost less to implement; or

''(ii) result in improved operation of the project works for electricity production, as compared to the condition initially deemed necessary by the Secretary.

''(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative conditions.

''(5) If the Secretary does not accept an applicant's alternative condition under this section, and the Commission finds that the Secretary's condition would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the reservation. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

''(b) ALTERNATIVE PRESCRIPTIONS.—

''(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under section 18, the license applicant or licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway. The alternative may include a fishway or an alternative to a fishway.

''(2) Notwithstanding section 18, the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee or otherwise available to the Secretary, that such alternative—

''(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

''(B) will either—

''(i) cost less to implement; or

''(ii) result in improved operation of the project works for electricity production, as compared to the fishway initially deemed necessary by the Secretary.

''(3) The Secretary concerned shall submit into the public record of the Commission proceeding with any prescription under section 18 or alternative prescription it accepts under this section, a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

''(4) Nothing in this section shall prohibit other interested parties from proposing alternative prescriptions.

''(5) If the Secretary concerned does not accept an applicant's alternative prescription under this section, and the Commission finds that the Secretary's prescription would be inconsistent with the purposes of this part, or other applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.''.

Subtitle C—Geothermal Energy

SEC. 521. COMPETITIVE LEASE SALE REQUIREMENTS.

(a) IN GENERAL.—Section 4 of the Geothermal Steam Act of 1970 (30 U.S.C. 1003) is amended by striking the text and inserting the following:

''(a) NOMINATIONS.—The Secretary shall accept nominations at any time from companies and individuals of lands to be leased under this Act.

''(b) COMPETITIVE LEASE SALE REQUIRED.—The Secretary shall hold a competitive lease sale at least once every 2 years for lands in a State in which there are nominations pending under subsection (a) where such lands are otherwise available for leasing.

''(c) NONCOMPETITIVE LEASING.—The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in the competitive lease sale.''.

(b) PENDING LEASE APPLICATIONS.—It shall be a priority for the Secretary of the Interior and, with respect to National Forest lands, the Secretary of Agriculture, to ensure timely completion of administrative actions necessary to conduct competitive lease sales for lands with pending applications for geothermal leasing as of the date of enactment of this section where such lands are otherwise available for leasing.

SEC. 522. GEOTHERMAL LEASING AND PERMITTING ON FEDERAL LANDS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the Secretary of the Interior and the Secretary of Agriculture shall enter into and submit to the Congress a memorandum of understanding in accordance with this section regarding leasing and permitting for geothermal development of public lands and National Forest System lands under their respective jurisdictions.

(b) LEASE AND PERMIT APPLICATIONS.—The memorandum of understanding shall—

(1) identify known geothermal resources areas on lands included in the National Forest System and, when necessary, require review of management plans to consider leasing under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

(2) establish an administrative procedure for processing geothermal lease applications, including lines of authority, steps in application processing, and time limits for application processing.

(c) DATA RETRIEVAL SYSTEM.—The memorandum of understanding shall establish a joint data retrieval system that is capable of tracking lease and permit applications and providing to the applicant information as to their status within the Departments of the Interior and Agriculture, including an estimate of the time required for administrative action.

SEC. 523. LEASING AND PERMITTING ON FEDERAL LANDS WITHDRAWN FOR MILITARY PURPOSES.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Interior and the Secretary of Defense, in consultation with interested states, counties, representatives of the geothermal industry, and interested members of the public, shall submit to the Congress a joint report concerning leasing and permitting activities for geothermal energy on Federal lands withdrawn for military purposes. Such report shall—

(1) describe any differences, including differences in royalty structure and revenue sharing with states and counties, between—

(A) the implementation of the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and other applicable Federal law by the Secretary of the Interior; and

(B) the administration of geothermal leasing under section 2689 of title 10, United States Code, by the Secretary of Defense;

(2) identify procedures for interagency coordination to ensure efficient processing and administration of leases or contracts for geothermal energy on federal lands withdrawn for military purposes, consistent with the defense purposes of such withdrawals; and

(3) provide recommendations for legislative or administrative actions that could facilitate program administration, including a common royalty structure.

SEC. 524. REINSTATEMENT OF LEASES TERMINATED FOR FAILURE TO PAY RENT.

Section 5(c) of the Geothermal Steam Act of 1970 (30 U.S.C. 1004(c)), is amended in the last sentence by inserting ''or was inadvertent,'' after ''reasonable diligence,''.

SEC. 525. ROYALTY REDUCTION AND RELIEF.

(a) RULEMAKING.—Within one year after the date of enactment of this Act, the Secretary shall promulgate a final regulation providing a methodology for determining the amount or value of the steam for purposes of calculating the royalty due to be paid on such production pursuant to section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004). The final regulation shall provide for a simplified methodology for calculating the royalty. In undertaking the rulemaking, the Secretary shall consider the use of a percent of revenue method and shall ensure that the final rule will result in the same level of royalty revenues as the regulation in effect on the date of enactment of this provision.

(b) LOW TEMPERATURE DIRECT USE.—Notwithstanding the provisions of section 5(a) of the Geothermal Steam Act of 1979 (30 U.S.C. 1004(a)), with respect to the direct use of low temperature geothermal resources for purposes other than the generation of electricity, the Secretary shall establish a schedule of fees and collect fees pursuant to such schedule in lieu of royalties based upon the total amount of geothermal resources used. The schedule of fees shall ensure that there is a fair return to the public for the use of the low temperature geothermal resource. With the consent of the lessee, the Secretary may modify the terms of a lease in existence on the date of enactment of this Act in order to reflect the provisions of this subsection.

Subtitle D—Biomass Energy

SEC. 531. DEFINITIONS.

For the purposes of this subtitle:

(1) The term ''eligible operation'' means a facility that is located within the boundaries of an eligible community and uses biomass from federal or Indian lands as a raw material to produce electric energy, sensible heat, transportation fuels, or substitutes for petroleum-based products.

(2) The term ''biomass'' means pre-commercial thinnings of trees and woody plants, or non-merchantable material, from preventative treatments to reduce hazardous fuels, or reduce or contain disease or insect infestations.

(3) The term ''green ton'' means 2,000 pounds of biomass that has not been mechanically or artificially dried.

(4) The term ''Secretary'' means—

(A) with respect to lands within the National Forest System, the Secretary of Agriculture; or

(B) with respect to Federal lands under the jurisdiction of the Secretary of the Interior and Indian lands, the Secretary of the Interior.

(5) The term ''eligible community'' means any Indian Reservation, or any county, town, township, municipality, or other similar unit of local government that has a population of not more than 50,000 individuals and is determined by the Secretary to be located in an area near federal of Indian lands which is at significant risk of catastrophic wildfire, disease, or insect infestation or which suffers from disease or insect infestation.

(6) The term ''Indian tribe'' has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(7) The term ''person'' includes—

(A) an individual;

(B) a community;

(C) an Indian tribe;

(D) a small business or a corporation that is incorporated in the United States; or

(E) a nonprofit organization.

SEC. 532. BIOMASS COMMERCIAL UTILIZATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary may make grants to any person that owns or operates an eligible operation to offset the costs incurred to purchase biomass for use by such eligible operation with priority given to operations using biomass from the highest risk areas.

(b) LIMITATION.—No grant provided under this subsection shall be paid at a rate that exceeds $20 per green ton of biomass delivered.

(c) RECORDS.—Each grant recipient shall keep such records as the Secretary may require to fully and correctly disclose the use of the grant funds and all transactions involved in the purchase of biomass. Upon notice by the Secretary, the grant recipient shall provide the Secretary reasonable access to examine the inventory and records of any eligible operation receiving grant funds.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated $12,500,000 each to the Secretary of the Interior and the Secretary of Agriculture for each fiscal year from 2004 through 2008, to remain available until expended.

SEC. 533. IMPROVED BIOMASS UTILIZATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary may make grants to persons in eligible communities to offset the costs of developing or researching proposals to improve the use of biomass or add value to biomass utilization.

(b) SELECTION.—Grant recipients shall be selected based on the potential for the proposal to—

(1) develop affordable thermal or electric energy resources for the benefit of an eligible community;

(2) provide opportunities for the creation or expansion of small businesses within an eligible community;

(3) create new job opportunities within an eligible community, and

(4) reduce the hazardous fuels from the highest risk areas.

(c) LIMITATION.—No grant awarded under this subsection shall exceed $500,000.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated $12,500,000 each to the Secretary of the Interior and the Secretary of Agriculture for each fiscal year from 2004 through 2008, to remain available until expended.

SEC. 534. REPORT.

Not later than 3 years after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture shall jointly submit to the Congress a report that describes the interim results of the programs authorized under this subtitle.

Subtitle E.—General Provisions Relating to Renewable Fuels

SEC. 534. RENEWABLE CONTENT OF GASOLINE.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

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

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

''(o) RENEWABLE FUEL PROGRAM.—

''(1) DEFINITIONS.—In this section:

''(A) CELLULOSIC BIOMASS ETHANOL.—The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

''(i) dedicated energy crops and trees;

''(ii) wood and wood residues;

''(iii) plants;

''(iv) grasses;

''(v) agricultural residues;

''(vi) fibers;

''(vii) animal wastes and other waste materials; and

''(viii) municipal solid waste.

''(B) RENEWABLE FUEL.—

''(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

''(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

''(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

''(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

''(ii) INCLUSION.—The term 'renewable fuel' includes—

''(I) cellulosic biomass ethanol; and

''(II) biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f))).

''(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

''(2) RENEWABLE FUEL PROGRAM.—

''(A) REGULATIONS.—

''(i) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in Alaska and Hawaii), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B).

''(ii) PROVISIONS OF REGULATIONS.—Regardless of the date of promulgation, the regulations promulgated under clause (i)—

''(I) shall contain compliance provisions applicable to refiners, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

''(II) shall not—

''(aa) restrict cases in geographic areas in which renewable fuel may be used; or

''(bb) impose any per-gallon obligation for the use of renewable fuel.

''(iii) REQUIREMENT IN CASE OF FAILURE TO PROMULGATE REGULATIONS.—If the Administrator does not promulgate regulations under clause (i), the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 1.8 percent for calendar year 2005.

''(B) APPLICABLE VOLUME.—

''(i) CALENDAR YEARS 2005 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

''Calendar year:	Applicable volume of renewable fuel (in billions of gallons):
2005	2.6
2006	2.9
2007	3.2
2008	3.5
2009	3.9
2010	4.3
2011	4.7
2012	5.0.

''(ii) CALENDAR YEAR 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—

''(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce in the calendar year; and

''(II) the ratio that—

''(aa) 5,000,000,000 gallons of renewable fuel; bears to

''(bb) the number of gallons of gasoline sold or introduced into commerce in calendar year 2012.

''(3) APPLICABLE PERCENTAGES.—

''(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2004 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline sold or introduced into commerce in the United States during the following calendar year.

''(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

''(i) IN GENERAL.—Not later than November 30 of each of calendar years 2005 through 2012, based on the estimate provided under subparagraph (A), the Administrator of the Environmental Protection Agency shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

''(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

''(I) be applicable to refiners, blenders, and importers, as appropriate;

''(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

''(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

''(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

''(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

''(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9).

''(4) CELLULOSIC BIOMASS ETHANOL.—For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol shall be considered to be the equivalent of 1.5 gallons of renewable fuel.

''(5) CREDIT PROGRAM.—

''(A) IN GENERAL.—The regulations promulgated under paragraph (2)(A) shall provide—

''(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

''(ii) for the generation of an appropriate amount of credits for biodiesel; and

''(iii) for the generation of credits by small refineries in accordance with paragraph (9)(C).

''(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

''(C) DURATION OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance—

''(i) subject to clause (ii), for the calendar year in which the credit was generated or the following calendar year; or

''(ii) if the Administrator promulgates regulations under paragraph (6), for the calendar year in which the credit was generated or any of the following 2 calendar years.

''(D) INABILITY TO GENERATE OR PURCHASE SUFFICIENT CREDITS.—The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

''(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

''(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

''(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

''(A) STUDY.—For each of calendar years 2005 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

''(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator of the Environmental Protection Agency shall promulgate regulations to ensure that 35 percent or more of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

''(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

''(i) less than 35 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year; and

''(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years.

''(D) PERIODS.—The 2 periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSION.—Renewable fuel blended or consumed in calendar year 2005 in a State that has received a waiver under section 209(b) shall not be included in the study under subparagraph (A).

''(7) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by 1 or more States by reducing the national quantity of renewable fuel required under paragraph (2)—

''(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

''(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply or distribution capacity to meet the requirement.

''(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

''(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

''(8) STUDY AND WAIVER FOR INITIAL YEAR OF PROGRAM.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary of Energy shall conduct for the Administrator a study assessing whether the renewable fuel requirement under paragraph (2) will likely result in significant adverse impacts on consumers in 2005, on a national, regional, or State basis.

''(B) REQUIRED EVALUATIONS.—The study shall evaluate renewable fuel—

''(i) supplies and prices;

''(ii) blendstock supplies; and

''(iii) supply and distribution system capabilities.

''(C) RECOMMENDATIONS BY THE SECRETARY.—Based on the results of the study, the Secretary of Energy shall make specific recommendations to the Administrator concerning waiver of the requirements of paragraph (2), in whole or in part, to prevent any adverse impacts described in subparagraph (A).

''(D) WAIVER.—

''(i) IN GENERAL.—Not later than 270 days after the date of enactment of this paragraph, the Administrator shall, if and to the extent recommended by the Secretary of Energy under subparagraph (C), waive, in whole

or in part, the renewable fuel requirement under paragraph (2) by reducing the national quantity of renewable fuel required under paragraph (2) in calendar 2005.

''(ii) NO EFFECT ON WAIVER AUTHORITY.—Clause (i) does not limit the authority of the Administrator to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7).

''(9) SMALL REFINERIES.—

''(A) TEMPORARY EXEMPTION.—

''(i) IN GENERAL.—The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011.

''(ii) EXTENSION OF EXEMPTION.—

''(I) STUDY BY SECRETARY OF ENERGY.—Not later than December 31, 2007, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

''(II) EXTENSION OF EXEMPTION.—In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

''(B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC HARDSHIP.—

''(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

''(ii) EVALUATION OF PETITIONS.—In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

''(iii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

''(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

''(D) OPT-IN FOR SMALL REFINERIES.—A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

''(10) ETHANOL MARKET CONCENTRATION ANALYSIS.—

''(A) ANALYSIS.—

''(i) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior.

''(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

''(B) REPORT.—Not later than December 1, 2004, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

''(p) RENEWABLE FUEL SAFE HARBOR.—

''(1) IN GENERAL.—

''(A) SAFE HARBOR.—Notwithstanding any other provision of Federal or State law, no renewable fuel (as defined in subsection (o)(1)) used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing renewable fuel, shall be deemed to be defective in design or manufacture by reason of the fact that the fuel is, or contains, renewable fuel, if—

''(i) the fuel does not violate a control or prohibition imposed by the Administrator under this section; and

''(ii) the manufacturer of the fuel is in compliance with all requests for information under subsection (b).

''(B) SAFE HARBOR NOT APPLICABLE.—In any case in which subparagraph (A) does not apply to a quantity of fuel, the existence of a design defect or manufacturing defect with respect to the fuel shall be determined under otherwise applicable law.

''(2) EXCEPTION.—This subsection does not apply to ethers.

''(3) APPLICABILITY.—This subsection applies with respect to all claims filed on or after the date of enactment of this subsection.''.

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''or (n)'' each place it appears and inserting ''(n), or (o)''; and

(B) in the second sentence, by striking ''or (m)'' and inserting ''(m), or (o)''; and

(2) in the first sentence of paragraph (2), by striking ''and (n)'' each place it appears and inserting ''(n), and (o)''.

(c) EXCLUSION FROM ETHANOL WAIVER.—Section 211(h) of the Clean Air Act (42 U.S.C. 7545(h)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

''(5) EXCLUSION FROM ETHANOL WAIVER.—

''(A) PROMULGATION OF REGULATIONS.—Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

''(B) DEADLINE FOR PROMULGATION.—The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

''(C) EFFECTIVE DATE.—

''(i) IN GENERAL.—With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

''(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

''(II) 1 year after the date of receipt of the notification.

''(ii) EXTENSION OF EFFECTIVE DATE BASED ON DETERMINATION OF INSUFFICIENT SUPPLY.—

''(I) IN GENERAL.—If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

''(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

''(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

''(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.''.

SEC. 535. RENEWABLE FUEL.

(a) IN GENERAL.—The Clean Air Act is amended by inserting after section 211 (42 U.S.C. 7411) the following:

''SEC. 212. RENEWABLE FUEL.

''(a) DEFINITIONS.—In this section:

''(1) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

''(2) RFG STATE.—The term 'RFG State' means a State in which is located 1 or more covered areas (as defined in section 211(k)(10)(D)).

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

''(b) SURVEY OF RENEWABLE FUEL MARKET.—

''(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator shall—

''(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

''(i) conventional gasoline containing ethanol;

''(ii) reformulated gasoline containing ethanol;

''(iii) conventional gasoline containing renewable fuel; and

''(iv) reformulated gasoline containing renewable fuel; and

''(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

''(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—

''(A) IN GENERAL.—The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate.

''(B) RELIANCE ON EXISTING REQUIREMENTS.—To avoid duplicative requirements, in carrying out subparagraph (A), the Administrator shall rely, to the maximum extent practicable, on reporting and recordkeeping requirements in effect on the date of enactment of this section.

''(3) CONFIDENTIALITY.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

''(c) COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE LOAN GUARANTEE PROGRAM.—

''(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol and other commercial byproducts.

''(2) REQUIREMENTS.—The Secretary may provide a loan guarantee under paragraph (1) to an applicant if—

''(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in paragraph (1);

''(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

''(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

''(4) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

''(A) meet all applicable Federal and State permitting requirements;

''(B) are most likely to be successful; and

''(C) are located in local markets that have the greatest need for the facility because of—

''(i) the limited availability of land for waste disposal; or

''(ii) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

''(5) MATURITY.—A loan guaranteed under paragraph (1) shall have a maturity of not more than 20 years.

''(6) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under paragraph (1) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

''(7) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under paragraph (1) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

''(8) GUARANTEE FEE.—The recipient of a loan guarantee under paragraph (1) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

''(9) FULL FAITH AND CREDIT.—

''(A) IN GENERAL.—The full faith and credit the United States is pledged to the payment of all guarantees made under this subsection.

''(B) CONCLUSIVE EVIDENCE.—Any guarantee made by the Secretary under this subsection shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest.

''(C) VALIDITY.—The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

''(10) REPORTS.—Until each guaranteed loan under this subsection has been repaid in full, the Secretary shall annually submit to Congress a report on the activities of the Secretary under this subsection.

''(11) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

''(12) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a new loan guarantee under paragraph (1) terminates on the date that is 10 years after the date of enactment of this section.

''(d) AUTHORIZATION OF APPROPRIATIONS FOR RESOURCE CENTER.—There is authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the University of Mississippi and the University of Oklahoma, $4,000,000 for each of fiscal years 2004 through 2006.

''(e) RENEWABLE FUEL PRODUCTION RESEARCH AND DEVELOPMENT GRANTS.—

''(1) IN GENERAL.—The Administrator shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

''(2) ELIGIBILITY.—

''(A) IN GENERAL.—The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

''(B) APPLICATION.—To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2004 through 2008.

''(f) CELLULOSIC BIOMASS ETHANOL CONVERSION ASSISTANCE—

''(1) IN GENERAL.—The Secretary may provide grants to merchant producers of cellulosic biomass ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of cellulosic biomass ethanol.

''(2) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

''(A) is located in the United States; and

''(B) uses cellulosic biomass feedstocks derived from agricultural residues or municipal solid waste.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection—

''(A) $100,000,000 for fiscal year 2004;

''(B) $250,000,000 for fiscal year 2005; and

''(C) $400,000000 for fiscal year 2006.''.

(b) CONFORMING AMENDMENT.—The table of contents for the Clean Air Act (42 U.S.C. 7401 prec.) is amended by inserting after the item relating to section 211 the following:

''212. Renewable fuels.''.

SEC. 536. SURVEY OF RENEWABLE FUELS CONSUMPTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

''(m) SURVEY OF RENEWABLE FUELS CONSUMPTION.—

''(1) IN GENERAL.—In order to improve the ability to evaluate the effectiveness of the Nation's renewable fuels mandate, the Administrator shall conduct and publish the results of a survey of renewable fuels consumption in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses.

''(2) ELEMENTS OF SURVEY.—In conducting the survey, the Administrator shall collect information retrospectively to 1998, on a national basis and a regional basis, including—

''(A) the quantity of renewable fuels produced;

''(B) the cost of production;

''(C) the cost of blending and marketing;

''(D) the quantity of renewable fuels blended;

''(E) the quantity of renewable fuels imported; and

''(F) market price data.''.

Subtitle F—Federal Reformulated Fuels

SEC. 537. SHORT TITLE.

This subtitle may be cited as the ''Federal Reformulated Fuels Act of 2003''.

SEC. 538. LEAKING UNDERGROUND STORAGE TANKS.

(a) USE OF LUST FUNDS FOR REMEDIATION OF CONTAMINATION FROM ETHER FUEL ADDITIVES.—Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended—

(1) in paragraph (7)(A)—

(A) by striking ''paragraphs (1) and (2) of this subsection'' and inserting ''paragraphs (1), (2), and (12)''; and

(B) by inserting ''and section 9010'' before ''if''; and

(2) by adding at the end the following:

''(12) REMEDIATION OF CONTAMINATION FROM ETHER FUEL ADDITIVES.—

''(A) IN GENERAL.—The Administrator and the States may use funds made available under section 9013(1) to carry out corrective actions with respect to a release of methyl tertiary butyl ether or other ether fuel additive that presents a threat to human health, welfare, or the environment.

''(B) APPLICABLE AUTHORITY.—Subparagraph (A) shall be carried out—

''(i) in accordance with paragraph (2), except that a release with respect to which a corrective action is carried out under subparagraph (A) shall not be required to be from an underground storage tank; and

''(ii) in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).''.

(b) RELEASE PREVENTION AND COMPLIANCE.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended by striking section 9010 and inserting the following:

''SEC. 9010. RELEASE PREVENTION AND COMPLIANCE.

''Funds made available under section 9013(2) from the Leaking Underground Storage Tank Trust Fund may be used for conducting inspections, or for issuing orders or bringing actions under this subtitle—

''(1) by a State (pursuant to section 9003(h)(7)) acting under—

''(A) a program approved under section 9004; or

''(B) State requirements regulating underground storage tanks that are similar or identical to this subtitle, as determined by the Administrator; and

''(2) by the Administrator, acting under this subtitle or a State program approved under section 9004.

''SEC. 9011. AUTHORIZATION OF APPROPRIATIONS.

''In addition to amounts made available under section 2007(f), there are authorized to

be appropriated from the Leaking Underground Storage Tank Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986—

''(1) to carry out section 9003(h)(12), $200,000,000 for fiscal year 2003, to remain available until expended; and

''(2) to carry out section 9010—

''(A) $50,000,000 for fiscal year 2003; and

''(B) $30,000,000 for each of fiscal years 2004 through 2008.''.

(c) TECHNICAL AMENDMENTS.—(1) Section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by striking the item relating to section 9010 and inserting the following:

''Sec. 9010. Release prevention and compliance.
''Sec. 9011. Authorization of appropriations.''.

(2) Section 9001(3)(A) of the Solid Waste Disposal Act (42 U.S.C. 6991(3)(A)) is amended by striking ''sustances'' and inserting ''substances''.

(3) Section 9003(f)(1) of the Solid Waste Disposal Act (42 U.S.C. 6991b(f)(1)) is amended by striking ''subsection (c) and (d) of this section'' and inserting ''subsections (c) and (d)''.

(4) Section 9004(a) of the Solid Waste Disposal Act (42 U.S.C. 6991c(a)) is amended in the second sentence by striking ''referred to'' and all that follows and inserting ''referred to in subparagraph (A) or (B), or both, of section 9001(2).''.

(5) Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended—

(A) in subsection (a), by striking ''study taking'' and inserting ''study, taking'';

(B) in subsection (b)(1), by striking ''relevent'' and inserting ''relevant''; and

(C) in subsection (b)(4), by striking ''Evironmental'' and inserting ''Environmental''.

SEC. 539. RESTRICTIONS ON THE USE OF MTBE.

(a) FINDINGS.—Congress finds that—

(1) since 1979, methyl tertiary butyl ether (referred to in this section as ''MTBE'') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

(2) Public Law 101–549 (commonly known as the ''Clean Air Act Amendments of 1990'') (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;

(3) at the time of the adoption of the fuel oxygenate standard, Congress was aware that—

(A) significant use of MTBE could result from the adoption of that standard; and

(B) the use of MTBE would likely be important to the cost-effective implementation of that standard;

(4) Congress is aware that gasoline and its component additives have leaked from storage tanks, with consequences for water quality;

(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

(A) MTBE production capacity; and

(B) systems to deliver MTBE-containing gasoline to the marketplace;

(6) when leaked or spilled into the environment, MTBE may cause serious problems of drinking water quality;

(7) in recent years, MTBE has been detected in water sources throughout the United States;

(8) MTBE can be detected by smell and taste at low concentrations;

(9) while small quantities of MTBE can render water supplies unpalatable, the precise human health effects of MTBE consumption at low levels are yet unknown as of the date of enactment of this Act;

(10) in the report entitled ''Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline'' and dated September 1999, Congress was urged—

(A) to eliminate the fuel oxygenate standard;

(B) to greatly reduce use of MTBE; and

(C) to maintain the environmental performance of reformulated gasoline;

(11) Congress has—

(A) reconsidered the relative value of MTBE in gasoline; and

(B) decided to eliminate use of MTBE as a fuel additive;

(12) the timeline for elimination of use of MTBE as a fuel additive must be established in a manner that achieves an appropriate balance among the goals of—

(A) environmental protection;

(B) adequate energy supply; and

(C) reasonable fuel prices; and

(13) it is appropriate for Congress to provide some limited transition assistance—

(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act (42 U.S.C. 7401 et seq.); and

(B) for the purpose of mitigating any fuel supply problems that may result from elimination of a widely-used fuel additive.

(b) PURPOSES.—The purposes of this section are—

(1) to eliminate use of MTBE as a fuel oxygenate; and

(2) to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.

(c) AUTHORITY FOR WATER QUALITY PROTECTION FROM FUELS.—Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting ''fuel or fuel additive or'' after ''Administrator any''; and

(B) by striking ''air pollution which'' and inserting ''air pollution, or water pollution, that'';

(2) in paragraph (4)(B), by inserting ''or water quality protection,'' after ''emission control,''; and

(3) by adding at the end the following:

''(5) RESTRICTIONS ON USE OF MTBE.—

''(A) IN GENERAL.—Subject to subparagraph (E), not later than 4 years after the date of enactment of this paragraph, the use of methyl tertiary butyl ether in motor vehicle fuel in any State other than a State described in subparagraph (C) is prohibited.

''(B) REGULATIONS.—The Administrator shall promulgate regulations to effect the prohibition in subparagraph (A).

''(C) STATES THAT AUTHORIZE USE.—A State described in this subparagraph is a State that submits to the Administrator a notice that the State authorizes use of methyl tertiary butyl ether in motor vehicle fuel sold or used in the State.

''(D) PUBLICATION OF NOTICE.—The Administrator shall publish in the Federal Register each notice submitted by a State under subparagraph (C).

''(E) TRACE QUANTITIES.—In carrying out subparagraph (A), the Administrator may allow trace quantities of methyl tertiary butyl ether, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.

''(6) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE.—

''(A) IN GENERAL.—

''(i) GRANTS.—The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of—

''(i) iso-octane or alkylates, unless the Administrator, in consultation with the Secretary of Energy, determines that transition assistance for the production of iso-octane or alkylates is inconsistent with the criteria specified in subparagraph (B); and

''(ii) any other fuel additive that meets the criteria specified in subparagraph (B).

''(B) CRITERIA.—The criteria referred to in subparagraph (A) are that—

''(i) use of the fuel additive is consistent with this subsection;

''(ii) the Administrator has not determined that the fuel additive may reasonably be anticipated to endanger public health or the environment;

''(iii) the fuel additive has been registered and tested, or is being tested, in accordance with the requirements of this section; and

''(iv) the fuel additive will contribute to replacing quantities of motor vehicle fuel rendered unavailable as a result of paragraph (5).

''(C) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this paragraph if the production facility—

''(i) is located in the United States; and

''(ii) produced methyl tertiary butyl ether for consumption in nonattainment areas during the period—

''(I) beginning on the date of enactment of this paragraph; and

''(II) ending on the effective date of the prohibition on the use of methyl tertiary butyl ether under paragraph (5).

''(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $250,000,000 for each of fiscal years 2004 through 2007.''.

(d) NO EFFECT ON LAW CONCERNING STATE AUTHORITY.—The amendments made by subsection (c) have no effect on the law in effect on the day before the date of enactment of this Act concerning the authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.

SEC. 540. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking ''(including the oxygen content requirement contained in subparagraph (B))'';

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(B) in paragraph (3)(A), by striking clause (v); and

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii).

(2) APPLICABILITY.—The amendments made by paragraph (1) apply—

(A) in the case of a State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)), beginning on the date of enactment of this Act; and

(B) in the case of any other State, beginning 270 days after the date of enactment of this Act.

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking ''Within 1 year after the enactment of the Clean Air Act Amendments of 1990,'' and inserting the following:

''(A) IN GENERAL.—Not later than November 15, 1991,''; and

(2) by adding at the end the following:

''(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

''(i) DEFINITION OF PADD.—In this subparagraph the term 'PADD' means a Petroleum Administration for Defense District.

''(ii) REGULATIONS CONCERNING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall establish by regulation, for each refinery or importer (other than a refiner or importer in a State that has received a waiver under section 209(b) with respect to gasoline produced for use in that State), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refiner or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refiner or importer during calendar years 1999 and 2000 (as determined on the basis of data collected by the Administrator with respect to the refiner or importer).

''(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

''(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refiner or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refiner or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refiner or importer during calendar years 1999 and 2000.

''(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refiner or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for emissions of toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

''(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

''(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

''(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

''(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 1999 and 2000; and

''(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

''(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 1999 and 2000, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

''(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

''(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refiner or importer shall meet the standards applicable under clause (iii)(I) beginning not later than April 1 of the calendar year following publication of the report under subclause (I) and in each calendar year thereafter.

''(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2004, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).''.

(c) COMMINGLING.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended by adding at the end the following:

''(11) COMMINGLING.—The regulations under paragraph (1) shall permit the commingling at a retail station of reformulated gasoline containing ethanol and reformulated gasoline that does not contain ethanol if, each time such commingling occurs—

''(A) the retailer notifies the Administrator before the commingling, identifying the exact location of the retail station and the specific tank in which the commingling will take place; and

''(B) the retailer certifies that the reformulated gasoline resulting from the commingling will meet all applicable requirements for reformulated gasoline, including content and emission performance standards.

(d) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations, to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(e) SAVINGS CLAUSE.—

(1) IN GENERAL.—Nothing in this section or any amendment made by this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator before the date of enactment of this Act regarding—

(A) emissions of toxic air pollutants from motor vehicles; or

(B) the adjustment of standards applicable to a specific refinery or importer made under those regulations.

(2) ADJUSTMENT OF STANDARDS.—

(A) APPLICABILITY.—The Administrator may apply any adjustments to the standards applicable to a refinery or importer under subparagraph (B)(iii)(I) of section 211(k)(1) of the Clean Air Act (as added by subsection (b)(2)), except that—

(i) the Administrator shall revise the adjustments to be based only on calendar years 1999 and 2000;

(ii) any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999 and 2000; and

(iii) in the case of an adjustment based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline—

(I) the Administrator may revise the adjustment to take account of the scope of the prohibition on methyl tertiary butyl ether imposed by paragraph (5) of section 211(c) of the Clean Air Act (as added by section 203(c)); and

(II) any such adjustment shall require the refiner or importer, to the maximum extent practicable, to maintain the reduction achieved during calendar years 1999 and 2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refiner or importer.

SEC. 541. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF FUELS AND FUEL ADDITIVES.

Section 211(b) of the Clean Air Act (42 U.S.C. 7545(b)) is amended—

(1) in paragraph (2)—

(A) by striking ''may also'' and inserting ''shall, on a regular basis,''; and

(B) by striking subparagraph (A) and inserting the following:

''(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and''; and

(2) by adding at the end the following:

''(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall—

''(i) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

''(I) ethyl tertiary butyl ether;

''(II) tertiary amyl methyl ether;

''(III) di-isopropyl ether;

''(IV) tertiary butyl alcohol;

''(V) other ethers and heavy alcohols, as determined by then Administrator;

''(VI) ethanol;

''(VII) iso-octane; and

''(VIII) alkylates; and

''(ii) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the volatile organic compounds performance requirements that are applicable under paragraphs (1) and (3) of section 211(k); and

''(iii) submit to the Committee on Environment and Public Works of the Senate and

the Committee on Energy and Commerce of the House of Representatives a report describing the results of the studies under clauses (i) and (ii).

''(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into 1 or more contracts with nongovernmental entities such as—

''(i) the national energy laboratories; and

''(ii) institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).''.

SEC. 542. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) (as amended by section 5__1(a)) is amended by inserting after subsection (p) the following:

''(q) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

''(1) ANTI-BACKSLIDING ANALYSIS.—

''(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this paragraph, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Reliable Fuels Act.

''(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

''(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2006.''.

SEC. 543. ADDITIONAL OPT-IN AREAS UNDER REFORMULATED GASOLINE PROGRAM.

Section 211(k)(6) of the Clean Air Act (42 U.S.C. 7545(k)(6)) is amended—

(1) by striking ''(6) OPT-IN AREAS.—(A) Upon'' and inserting the following:

''(6) OPT-IN AREAS.—

''(A) CLASSIFIED AREAS.—

''(i) IN GENERAL.—Upon'';

(2) in subparagraph (B), by striking ''(B) If'' and inserting the following:

''(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—If'';

(3) in subparagraph (A)(ii) (as redesignated by paragraph (2))—

(A) in the first sentence, by striking ''subparagraph (A)'' and inserting ''clause (i)''; and

(B) in the second sentence, by striking ''this paragraph'' and inserting ''this subparagraph''; and

(4) by adding at the end the following:

''(B) OZONE TRANSPORT REGION.—

''(i) APPLICATION OF PROHIBITION.—

''(I) IN GENERAL.—On application of the Governor of a State in the ozone transport region established by section 184(a), the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of title I) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

''(II) PUBLICATION OF APPLICATION.—As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

''(ii) PERIOD OF APPLICABILITY.—Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

''(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

''(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

''(iii) EXTENSION OF COMMENCEMENT DATE BASED ON INSUFFICIENT CAPACITY.—

''(I) IN GENERAL.—If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

''(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

''(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

''(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.''.

SEC. 544. FEDERAL ENFORCEMENT OF STATE FUELS REQUIREMENTS.

Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended—

(1) by striking ''(C) A State'' and inserting the following:

''(C) AUTHORITY OF STATE TO CONTROL FUELS AND FUEL ADDITIVES FOR REASONS OF NECESSITY.—

''(i) IN GENERAL.—A State''; and

(2) by adding at the end the following:

''(ii) ENFORCEMENT BY THE ADMINISTRATOR.—In any case in which a State prescribes and enforces a control or prohibition under clause (i), the Administrator, at the request of the State, shall enforce the control or prohibition as if the control or prohibition had been adopted under the other provisions of this section.''.

SEC. 545. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to the consumer;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals (including the protection of children, pregnant women, minority or low-income communities, and other sensitive populations);

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refiners;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refiners, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while protecting and improving air quality at the national, regional, and local levels, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply; and

(F) the feasibility of providing incentives, and the need for the development of national standards necessary to promote cleaner burning motor vehicle fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than June 1, 2007, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) State and local air pollution control regulators;

(D) public health experts;

(E) motor vehicle fuel producers and distributors; and

(F) the public.

TITLE VI—ENERGY EFFICIENCY

Subtitle A—Federal Programs

SEC. 601. ENERGY MANAGEMENT REQUIREMENTS.

(a) ENERGY REDUCTION GOALS.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking ''its Federal buildings so that'' and all that follows through the end and inserting ''the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2000, by the percentage specified in the following table:

''Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6

"Fiscal Year	Percentage reduction
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.''.

(b) EFFECTIVE DATE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act, as amended by subsection (a) of this section, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

(c) REVIEW OF ENERGY PERFORMANCE REQUIREMENTS.—Section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)) is further amended by adding at the end the following:

''(3) Not later than December 31, 2011, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2022.''.

(d) EXCLUSIONS.—Section 543(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is amended by striking ''An agency may exclude'' and all that follows through the end and inserting—

''(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

''(i) compliance with those requirements would be impracticable;

''(ii) the agency has completed and submitted all federally required energy management reports;

''(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive Orders, and other Federal law; and

''(iv) the agency has implemented all practicable, life-cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

''(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

''(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

''(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.''.

(e) REVIEW BY SECRETARY.—Section 543(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(2)) is amended—

(1) by striking ''impracticability standards'' and inserting ''standards for exclusion''; and

(2) by striking ''a finding of impracticability'' and inserting ''the exclusion''.

(f) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:

''(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).''.

(g) RETENTION OF ENERGY SAVINGS.—Section 546 of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by adding at the end the following new subsection:

''(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.''.

(h) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in the subsection heading, by inserting ''THE PRESIDENT AND'' before ''CONGRESS''; and

(2) by inserting ''President and'' before ''Congress''.

(i) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking ''the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)).'' and inserting ''each of the energy reduction goals established under section 543(a).''.

SEC. 602. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is further amended by adding at the end the following:

''(e) METERING OF ENERGY USE.—

''(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

''(2) GUIDELINES.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

''(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

''(i) take into consideration—

''(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

''(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

''(III) the measurement and verification protocols of the Department of Energy;

''(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

''(iii) establish priorities for types and locations of buildings to be metered and submetered based on cost effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

''(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

''(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including—

''(A) how the agency will designate personnel primarily responsible for achieving the requirements; and

''(B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.''.

SEC. 603. FEDERAL BUILDING PERFORMANCE STANDARDS.

Section 305(a) of the Energy Conservation and Production Act (42 U.S.C. 6834(a)) is amended—

(1) in paragraph (2)(A), by striking ''CABO Model Energy Code, 1992'' and inserting ''the 2000 International Energy Conservation Code''; and

(2) by adding at the end the following:

''(3) REVISED FEDERAL BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary of Energy shall establish, by rule, revised Federal building energy efficiency performance standards that require that, if cost-effective, for new Federal buildings—

''(i) such buildings be designed so as to achieve energy consumption levels at least 30 percent below those of the most recent version of the International Energy Conservation Code, as appropriate; and

''(ii) sustainable design principles are applied to the siting, design, and construction of all new and replacement buildings.

''(B) ADDITIONAL REVISIONS.—Not later than 1 year after the date of approval of amendments to ASHRAE Standard 90.1 or the 2000 International Energy Conservation Code, the Secretary of Energy shall determine, based on the cost-effectiveness of the requirements under the amendments, whether the revised standards established under this paragraph should be updated to reflect the amendments.

''(C) STATEMENT ON COMPLIANCE OF NEW BUILDINGS.—In the budget request of the Federal agency for each fiscal year and each report submitted by the Federal agency under section 548(a) of the National Energy Conservation Policy Act (42 U.S.C. 8258(a)), the head of each Federal agency shall include

''(i) a list of all new Federal buildings owned, operated, or controlled by the Federal agency; and

''(ii) a statement concerning whether the Federal buildings meet or exceed the revised standards established under this paragraph.''.

SEC. 604. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) PERMANENT EXTENSION.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

(b) REPLACEMENT FACILITIES.—Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following new paragraph:

''(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced life-cycle costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.

''(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.''.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means—

''(A) a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(ii) the increased efficient use of existing energy sources by co-generation or heat recovery, excluding any co-generation process for other than a federally owned building or buildings or other federally owned facilities; or

''(iii) the increased efficient use of existing water sources; or

''(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.''.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

''(A) the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or

''(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities. Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).''.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves water efficiency, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.''.

(f) PILOT PROGRAM FOR NON-BUILDING APPLICATIONS.—

(1) The Secretary of Defense, and the heads of other interested Federal agencies, are authorized to enter into up to 10 energy savings performance contracts under Title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) for the purpose of achieving energy or water savings, secondary savings, and benefits incidental to those purposes, in non-building applications, provided that the aggregate payments to be made by the Federal government under such contracts shall not exceed $100,000,000.

(2) The Secretary of Energy, in consultation with the Secretary of Defense and the heads of other interested Federal agencies, shall select projects that demonstrate the applicability and benefits of energy savings performance contracting to a range of non-building applications.

(3) For the purposes of this subsection:

(A) The term ''non-building application'' means—

(i) any class of vehicles, devices, or equipment that is transportable under its own power by land, sea, or air that consumes energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device, or equipment; or

(ii) any Federally owned equipment used to generate electricity or transport water.

(B) The term ''secondary savings'', means additional energy or cost savings that are a direct consequence of the energy or water savings that result from the financing and implementation of the energy savings performance contract, including, but not limited to, energy or cost savings that result from a reduction in the need for fuel delivery and logistical support, or the increased efficiency in the production of electricity.

(4) Not later than 3 years after the date of enactment of this section, the Secretary of Energy shall report to the Congress on the progress and results of the projects funded pursuant to this section. Such report shall include a description of projects undertaken; the energy, water and cost savings, secondary savings and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized permanently as a part of the program authorized under Title VIII of the National Energy Conservation Policy act (42 U.S.C. 8287 et seq.).

(5) Section 546(c)(3) of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by striking the word ''facilities'', and inserting the words ''facilities, equipment and vehicles'', in lieu thereof.

(g) REVIEW.—Within 180 days after the date of the enactment of this section, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

SEC. 605. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end the following:

''SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

''(a) DEFINITIONS.—In this section:

''(1) The term 'Energy Star product' means a product that is rated for energy efficiency under an Energy Star program.

''(2) The term 'Energy Star program' means the program established by section 324A of the Energy Policy and Conservation Act.

''(3) The term 'executive agency' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(4) The term 'FEMP designated product' means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

''(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

''(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure an Energy Star product or a FEMP designated product.

''(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

''(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or

''(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

''(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

''(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy

Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

''(d) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

''(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note) is amended by inserting after the item relating to the end of the items relating to part 3 of title V the following:

''Sec. 552. Federal procurement of energy efficient products.''.

SEC. 606. CONGRESSIONAL BUILDING EFFICIENCY.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act is further amended by adding at the end:

''SEC. 553. CONGRESSIONAL BUILDING EFFICIENCY.

''(a) IN GENERAL.—The Architect of the Capitol—

''(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the 'plan') for all facilities administered by the Congress (referred to in this section as 'congressional buildings') to meet the energy performance requirements for Federal buildings established under section 543(a)(1); and

''(2) shall submit the plan to Congress, not later than 180 days after the date of enactment of this section.

''(b) PLAN REQUIREMENTS.—The plan shall include—

''(1) a description of the life-cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

''(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

''(3) a strategy for installation of life-cycle cost-effective energy and water conservation measures;

''(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

''(5) information packages and 'how-to' guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

''(c) ANNUAL REPORT.—The Architect shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

''(1) energy expenditures and savings estimates for each facility;

''(2) energy management and conservation projects; and

''(3) future priorities to ensure compliance with this section.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1(b) of the National Energy Conservation Policy Act is amended by adding at the end of the items relating to part 3 of title V the following new item:

''Sec. 553. Energy and water savings measures in congressional buildings.''.

(c) REPEAL.—Section 310 of the Legislative Branch Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.

(d) ENERGY INFRASTRUCTURE.—The Architect of the Capitol, building on the Master Plan Study completed in July 2000, shall commission a study to evaluate the energy infrastructure of the Capital Complex to determine how the infrastructure could be augmented to become more energy efficient, using unconventional and renewable energy resources, in a way that would enable the Complex to have reliable utility service in the event of power fluctuations, shortages, or outages.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Architect of the Capitol to carry out subsection (d), not more than $2,000,000 for fiscal year 2004.

SEC. 607. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY HEAD.—The term 'agency head' means—

''(A) the Secretary of Transportation; and

''(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

''(2) CEMENT OR CONCRETE PROJECT.—The term 'cement or concrete project' means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

''(A) involves the procurement of cement or concrete; and

''(B) is carried out in whole or in part using Federal funds.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' means

''(A) ground granulated blast furnace slag;

''(B) coal combustion fly ash; and

''(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

''(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, and Committee on Transportation and Infrastructure of the House of Representatives a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this section to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section

6002 (including the guidelines and specifications for implementing those requirements).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.''.

SEC. 608. UTILITY ENERGY SERVICE CONTRACTS.

Section 546(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8256(c)) is amended to read as follows:

''(1) Agencies are authorized and encouraged to participate in programs, including utility energy services contracts, conducted by gas, water and electric utilities and generally available to customers of such utilities, for the purposes of increased energy efficiency, water conservation or the management of electricity demand.''.

SEC. 609. STUDY OF ENERGY EFFICIENCY STANDARDS.

The Secretary of Energy shall contract with the National Academy of Sciences for a study, to be completed within one year of enactment of this section, to examine whether the goals of energy efficiency standards are best served by measurement of energy consumed, and efficiency improvements, at the actual site of energy consumption, or through the full fuel cycle, beginning at the source of energy production. The Secretary shall submit the report of the Academy to the Congress.

Subtitle B—State and Local Programs

SEC. 611. LOW INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.

(a) GRANTS.—The Secretary of Energy is authorized to make grants to units of local government, private, non-profit community development organizations, and Indian tribe economic development entities to improve energy efficiency, identify and develop alternative, renewable and distributed energy supplies, and increase energy conservation in low income rural and urban communities.

(b) PURPOSE OF GRANTS.—The Secretary may make grants on a competitive basis for—

(1) investments that develop alternative, renewable and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(c) DEFINITION.—For purposes of this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section there are authorized to be appropriated to the Secretary of Energy $20,000,000 for fiscal year 2004 and each fiscal year thereafter through fiscal year 2006.

SEC. 612. ENERGY EFFICIENT PUBLIC BUILDINGS.

(a) GRANTS.—The Secretary of Energy may make grants to the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322), or, if no such agency exists, a State agency designated by the Governor of the State, to assist units of local government in the State in improving the energy efficiency of public buildings and facilities—

(1) through construction of new energy efficient public buildings that use at least 30 percent less energy than a comparable public building constructed in compliance with standards prescribed in chapter 8 of the 2000 International Energy Conservation Code, or a similar State code intended to achieve substantially equivalent efficiency levels; or

(2) through renovation of existing public buildings to achieve reductions in energy use of at least 30 percent as compared to the baseline energy use in such buildings prior to renovation, assuming a 3-year, weather-normalized average for calculating such baseline.

(b) ADMINISTRATION.—State energy offices receiving grants under this section shall—

(1) maintain such records and evidence of compliance as the Secretary may require; and

(2) develop and distribute information and materials and conduct programs to provide technical services and assistance to encourage planning, financing, and design of energy efficient public buildings by units of local government.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy such sums as may be necessary for each of fiscal years 2003 through 2012. Not more than 30 percent of appropriated funds shall be used for administration.

SEC. 613. ENERGY EFFICIENT APPLIANCE REBATE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) The term ''eligible State'' means a State that meets the requirements of subsection (b).

(2) The term ''Energy Star program'' means the program established by section 324A of the Energy Policy and Conservation Act.

(3) The term ''residential Energy Star product'' means a product for a residence that is rated for energy efficiency under the Energy Star program.

(4) The term ''State energy office'' means the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322).

(5) The term ''State program'' means a State energy efficient appliance rebate program described in subsection (b)(1).

(b) ELIGIBLE STATES.—A State shall be eligible to receive an allocation under subsection (c) if the State—

(1) establishes (or has established) a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require; and

(3) provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

(c) AMOUNT OF ALLOCATIONS.—

(1) Subject to paragraph (2), for each fiscal year, the Secretary shall allocate to the State energy office of each eligible State to carry out subsection (d) an amount equal to the product obtained by multiplying the amount made available under subsection (f) for the fiscal year by the ratio that the population of the State in the most recent calendar year for which data are available bears to the total population of all eligible States in that calendar year.

(2) For each fiscal year, the amounts allocated under this subsection shall be adjusted proportionately so that no eligible State is allocated a sum that is less than an amount determined by the Secretary.

(d) USE OF ALLOCATED FUNDS.—The allocation to a State energy office under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out a State program.

(e) ISSUANCE OF REBATES.—Rebates may be provided to residential consumers that meet the requirements of the State program. The amount of a rebate shall be determined by the State energy office, taking into consideration

(1) the amount of the allocation to the State energy office under subsection (c);

(2) the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and

(3) the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to the residential Energy Star product.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for each of the fiscal years 2004 through 2008.

Subtitle C—Consumer Products

SEC. 621. ENERGY CONSERVATION STANDARDS FOR ADDITIONAL PRODUCTS.

(a) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) is amended—

(1) in subparagraph (30)(S), by striking the period and adding at the end the following: ''but does not include any lamps specifically designed to be used for special purpose applications, and also does not include any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule.''; and

(2) by adding at the end the following:

''(32) The term 'battery charger' means a device that charges batteries for consumer products.

''(33) The term 'commercial refrigerator, freezer and refrigerator-freezer' means a refrigerator, freezer or refrigerator-freezer that—

''(A) is not a consumer product regulated under this Act; and

''(B) incorporates most components involved in the vapor-compression cycle and the refrigerated compartment in a single package.

''(34) The term 'external power supply' means an external power supply circuit that is used to convert household electric current into either DC current or lower-voltage AC current to operate a consumer product.

''(35) The term 'illuminated exit sign' means a sign that—

''(A) is designed to be permanently fixed in place to identify an exit; and

''(B) consists of an electrically powered integral light source that illuminates the legend 'EXIT' and any directional indicators and provides contrast between the legend, any directional indicators, and the background.

''(36)(A) Except as provided in subparagraph (B), the term 'low-voltage dry-type transformer' means a transformer that—

''(i) has an input voltage of 600 volts or less;

''(ii) is air-cooled;

''(iii) does not use oil as a coolant; and

''(iv) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'low-voltage dry-type transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 20 percent more than the lowest voltage tap;

''(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto-transformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application and the application of standards to the transformer would not result in significant energy savings.

''(37)(A) Except as provided in subsection (B), the term 'distribution transformer' means a transformer that—

''(i) has an input voltage of 34.5 kilovolts or less;

''(ii) has an output voltage of 600 volts or less; and

''(iii) is rated for operation at a frequency of 60 Hertz.

''(B) The term 'distribution transformer' does not include—

''(i) transformers with multiple voltage taps, with the highest voltage tap equaling at least 15 percent more than the lowest voltage tap;

''(ii) transformers, such as those commonly known as drive transformers, rectifier transformers, autotransformers, Uninterruptible Power System transformers, impedance transformers, harmonic transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application, and are unlikely to be used in general purpose applications; or

''(iii) any transformer not listed in clause (ii) that is excluded by the Secretary by rule because the transformer is designed for a special application, is unlikely to be used in general purpose applications, and the application of standards to the transformer would not result in significant energy savings.

''(38) The term 'standby mode' means the lowest amount of electric power used by a household appliance when not performing its active functions, as defined on an individual product basis by the Secretary.

''(39) The term 'torchiere' means a portable electric lamp with a reflector bowl that directs light upward so as to give indirect illumination.

''(40) The term 'transformer' means a device consisting of two or more coils of insulated wire that transfers alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.

''(41) The term 'unit heater' means a self-contained fan-type heater designed to be installed within the heated space, except that such term does not include a warm air furnace.

''(42) The term 'traffic signal module' means a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation, that communicates movement messages to drivers through red, amber, and green colors.''

(b) TEST PROCEDURES.—Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended—

(1) in subsection (b), by adding at the end the following:

''(9) Test procedures for illuminated exit signs shall be based on the test method used under Version 2.0 of the Energy Star program of the Environmental Protection Agency for illuminated exit signs.

''(10) Test procedures for low voltage dry-type distribution transformers shall be based on the 'Standard Test Method for Measuring the Energy Consumption of Distribution Transformers' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998). The Secretary may review and revise this test procedure.

''(11) Test procedures for traffic signal modules shall be based on the test method used under the Energy Star program of the Environmental Protection Agency for traffic signal modules, as in effect on the date of enactment of this paragraph.

''(12) Test procedures for medium base compact fluorescent lamps shall be based on the test methods used under the August 9, 2001 version of the Energy Star program of the Environmental Protection Agency and Department of Energy for compact fluorescent lamps. Covered products shall meet all test requirements for regulated parameters in section 325(bb). However, covered products may be marketed prior to completion of lamp life and lumen maintenance at 40 percent of rated life testing provided manufacturers document engineering predictions and analysis that support expected attainment of lumen maintenance at 40 percent rated life and lamp life time.''; and

(2) by adding at the end the following:

''(f) ADDITIONAL CONSUMER AND COMMERCIAL PRODUCTS.—The Secretary shall within 24 months after the date of enactment of this subsection prescribe testing requirements for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers and refrigerator-freezers. Such testing requirements shall be based on existing test procedures used in industry to the extent practical and reasonable. In the case of suspended ceiling fans, such test procedures shall include efficiency at both maximum output and at an output no more than 50 percent of the maximum output.''.

(c) NEW STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended by adding at the end the following:

''(u) STANDBY MODE ELECTRIC ENERGY CONSUMPTION.—

''(1) INITIAL RULEMAKING.—

''(A) The Secretary shall, within 18 months after the date of enactment of this subsection, prescribe by notice and comment, definitions of standby mode and test procedures for the standby mode power use of battery chargers and external power supplies. In establishing these test procedures, the Secretary shall consider, among other factors, existing test procedures used for measuring energy consumption in standby mode and assess the current and projected future market for battery chargers and external power supplies. This assessment shall include estimates of the significance of potential energy savings from technical improvements to these products and suggested product classes for standards. Prior to the end of this time period, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for standby mode energy use for these products.

''(B) The Secretary shall, within 3 years after the date of enactment of this subsection, issue a final rule that determines whether energy conservation standards shall be promulgated for battery chargers and external power supplies or classes thereof. For each product class, any such standards shall be set at the lowest level of standby energy use that—

''(i) meets the criteria of subsections (o), (p), (q), (r), (s) and (t); and

''(ii) will result in significant overall annual energy savings, considering both standby mode and other operating modes.

''(2) DESIGNATION OF ADDITIONAL COVERED PRODUCTS.—

''(A) Not later than 180 days after the date of enactment of this subsection, the Secretary shall publish for public comment and public hearing a notice to determine whether any non-covered products should be designated as covered products for the purpose of instituting a rulemaking under this section to determine whether an energy conservation standard restricting standby mode energy consumption, should be promulgated; except that any restriction on standby mode energy consumption shall be limited to major sources of such consumption.

''(B) In making the determinations pursuant to subparagraph (A) of whether to designate new covered products and institute rulemakings, the Secretary shall, among other relevant factors and in addition to the criteria in section 322(b), consider—

''(i) standby mode power consumption compared to overall product energy consumption; and

''(ii) the priority and energy savings potential of standards which may be promulgated under this subsection compared to other required rulemakings under this section and the available resources of the Department to conduct such rulemakings.

''(C) Not later than 1 year after the date of enactment of this subsection, the Secretary shall issue a determination of any new covered products for which he intends to institute rulemakings on standby mode pursuant to this section and he shall state the dates by which he intends to initiate those rulemakings.

''(3) REVIEW OF STANDBY ENERGY USE IN COVERED PRODUCTS.—In determining pursuant to section 323 whether test procedures and energy conservation standards pursuant to this section should be revised, the Secretary shall consider for covered products which are major sources of standby mode energy consumption whether to incorporate standby mode into such test procedures and energy conservation standards, taking into account, among other relevant factors, the criteria for non-covered products in subparagraph (B) of paragraph (2) of this subsection.

''(4) RULEMAKING.—

''(A) Any rulemaking instituted under this subsection or for covered products under this

section which restricts standby mode power consumption shall be subject to the criteria and procedures for issuing energy conservation standards set forth in this section and the criteria set forth in subparagraph (B) of paragraph (2) of this subsection.

''(B) No standard can be proposed for new covered products or covered products in a standby mode unless the Secretary has promulgated applicable test procedures for each product pursuant to section 323.

''(C) The provisions of section 327 shall apply to new covered products which are subject to the rulemakings for standby mode after a final rule has been issued.

''(5) EFFECTIVE DATE.—Any standard promulgated under this subsection shall be applicable to products manufactured or imported 3 years after the date of promulgation.

''(6) VOLUNTARY PROGRAMS.—The Secretary and the Administrator shall collaborate and develop programs, including programs pursuant to section 324A (relating to Energy Star Programs) and other voluntary industry agreements or codes of conduct, which are designed to reduce standby mode energy use.

''(v) SUSPENDED CEILING FANS, VENDING MACHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS AND REFRIGERATOR-FREEZERS.—The Secretary shall within 36 months after the date on which testing requirements are prescribed by the Secretary pursuant to section 323(f), prescribe, by rule, energy conservation standards for suspended ceiling fans, refrigerated bottled or canned beverage vending machines, and commercial refrigerators, freezers and refrigerator-freezers. In establishing standards under this subsection, the Secretary shall use the criteria and procedures contained in subsections (l) and (m). Any standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing such standard.

''(w) ILLUMINATED EXIT SIGNS.—Illuminated exit signs manufactured on or after January 1, 2005 shall meet the Version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

''(x) TORCHIERES.—Torchieres manufactured on or after January 1, 2005—

''(1) shall consume not more than 190 watts of power; and

''(2) shall not be capable of operating with lamps that total more than 190 watts.

''(y) DISTRIBUTION TRANSFORMERS.—The efficiency of low voltage dry-type transformers manufactured on or after January 1, 2005 shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the 'Guide for Determining Energy Efficiency for Distribution Transformers' published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

''(z) TRAFFIC SIGNAL MODULES.—Traffic signal modules manufactured on or after January 1, 2006 shall meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this paragraph, and shall be installed with compatible, electrically-connected signal control interface devices and conflict monitoring systems.

''(aa) UNIT HEATERS.—Unit heaters manufactured on or after the date that is three years after the date of enactment of the Energy Policy Act of 2003 shall be equipped with an intermittent ignition device and shall have either power venting or an automatic flue damper.

''(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—Bare lamp and covered lamp (no reflector) medium base compact fluorescent lamps manufactured on or after January 1, 2005 shall meet the following requirements prescribed by the August 9, 2001 version of the Energy Star Program Requirements for CFLs, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy: minimum initial efficacy; lumen maintenance at 1000 hours; lumen maintenance at 40 percent of rated life; rapid cycle stress test; and lamp life. The Secretary may, by rule, establish requirements for color quality (CRI); power factor; operating frequency; and maximum allowable start time based on the requirements prescribed by the August 9, 2001 version of the Energy Star Program Requirements for CFLs. The Secretary may, by rule, revise these requirements or establish other requirements considering energy savings, cost effectiveness, and consumer satisfaction.

''(cc) EFFECTIVE DATE.—The provisions of section 327 shall apply—

''(1) to products for which standards are to be set pursuant to subsection (v) of this section on the date on which a final rule is issued by the Department of Energy, except that any state or local standards prescribed or enacted for any such product prior to the date on which such final rule is issued shall not be preempted until the standard set pursuant to subsection (v) for that product takes effect; and

''(2) to products for which standards are set in subsections (w) through (bb) of this section on the date of enactment of the Energy Policy Act of 2003, except that any state or local standards prescribed or enacted prior to the date of enactment of the Energy Policy Act of 2003 shall not be preempted until the standards set in subsections (w) through (bb) take effect.''.

SEC. 622. ENERGY LABELING.

(a) RULEMAKING ON EFFECTIVENESS OF CONSUMER PRODUCT LABELING.—Paragraph (2) of section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)) is amended by adding at the end the following:

''(F) Not later than 3 months after the date of enactment of this subparagraph, the Commission shall initiate a rulemaking to consider the effectiveness of the current consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency and to consider changes to the labeling rules that would improve the effectiveness of consumer product labels. Such rulemaking shall be completed within 2 years after the date of enactment of this subparagraph.''.

(b) RULEMAKING ON LABELING FOR ADDITIONAL PRODUCTS.—Section 324(a) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)) is further amended by adding at the end the following:

''(5) The Secretary or the Commission, as appropriate, may for covered products referred to in subsections (u) through (aa) of section 325, prescribe, by rule, pursuant to this section, labeling requirements for such products after a test procedure has been set pursuant to section 323. In the case of products to which TP–1 standards under section 325(y) apply, labeling requirements shall be based on the ''Standard for the Labeling of Distribution Transformer Efficiency'' prescribed by the National Electrical Manufacturers Association (NEMA TP–3) as in effect upon the date of enactment of this Act.''.

SEC. 623. ENERGY STAR PROGRAM.

(a) AMENDMENT.—The Energy Policy and Conservation Act (42 U.S.C. 6201 et. seq.) is amended by inserting the following after section 324:

''SEC. 324A. ENERGY STAR PROGRAM.

''There is established at the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards. Responsibilities under the program shall be divided between the Department of Energy and the Environmental Protection Agency consistent with the terms of agreements between the two agencies. The Administrator and the Secretary shall—

''(1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and to reduce pollution;

''(2) work to enhance public awareness of the Energy Star label, including special outreach to small businesses;

''(3) preserve the integrity of the Energy Star label;

''(4) solicit the comments of interested parties in establishing a new Energy Star product category, specifications, or criteria, or in revising a product category, and upon adoption of a new or revised product category, specifications, or criteria, publish a notice of any changes in product categories, specifications or criteria along with an explanation of such changes, and, where appropriate, responses to comments submitted by interested parties; and

''(5) unless waived or reduced by mutual agreement between the Administrator, the Secretary, and the affected parties, provide not less than 12 months lead time prior to implementation of changes in product categories, specifications, or criteria as may be adopted pursuant to this section.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy and Conservation Act is amended by inserting after the item relating to section 324 the following new item:

''Sec. 324A. Energy Star program.''.

SEC. 624. HVAC MAINTENANCE CONSUMER EDUCATION PROGRAM.

Section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) is amended by adding at the end the following:

''(c) HVAC MAINTENANCE.—For the purpose of ensuring that installed air conditioning and heating systems operate at their maximum rated efficiency levels, the Secretary shall, within 180 days of the date of enactment of this subsection, carry out a program to educate homeowners and small business owners concerning the energy savings resulting from properly conducted maintenance of air conditioning, heating, and ventilating systems. The Secretary shall carry out the program in a cost-shared manner in cooperation with the Administrator of the Environmental Protection Agency and such other entities as the Secretary considers appropriate, including industry trade associations, industry members, and energy efficiency organizations.

''(d) SMALL BUSINESS EDUCATION AND ASSISTANCE.—The Administrator of the Small Business Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and coordinate a Government-wide program, building on the existing Energy Star for Small Business Program, to assist small business to become more energy efficient, understand the cost

savings obtainable through efficiencies, and identify financing options for energy efficiency upgrades. The Secretary and the Administrator shall make the program information available directly to small businesses and through other Federal agencies, including the Federal Emergency Management Program, and the Department of Agriculture.''.

Subtitle D—Public Housing

SEC. 631. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AFFORDABLE HOUSING.

Section 4(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note) is amended—

(1) in paragraph (1), by inserting before the semicolon at the end the following: '', including capabilities regarding the provision of energy efficient, affordable housing and residential energy conservation measures''; and

(2) in paragraph (2), by inserting before the semicolon the following: '', including such activities relating to the provision of energy efficient, affordable housing and residential energy conservation measures that benefit low-income families''.

SEC. 632. INCREASE OF CDBG PUBLIC SERVICES CAP FOR ENERGY CONSERVATION AND EFFICIENCY ACTIVITIES.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) is amended—

(1) by inserting ''or efficiency'' after ''energy conservation'';

(2) by striking '', and except that'' and inserting ''; except that''; and

(3) by inserting before the semicolon at the end the following: ''; and except that each percentage limitation under this paragraph on the amount of assistance provided under this title that may be used for the provision of public services is hereby increased by 10 percent, but such percentage increase may be used only for the provision of public services concerning energy conservation or efficiency''.

SEC. 633. FHA MORTGAGE INSURANCE INCENTIVES FOR ENERGY EFFICIENT HOUSING.

(a) SINGLE FAMILY HOUSING MORTGAGE INSURANCE.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended, in the first undesignated and indented paragraph beginning after subparagraph (B)(iii) (relating to solar energy systems)—

(1) by inserting ''or paragraph (10)'' before the first comma; and

(2) by striking ''20 percent'' and inserting ''30 percent''.

(b) MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) is amended, in the second undesignated paragraph beginning after paragraph (3) (relating to solar energy systems and residential energy conservation measures), by striking ''20 percent'' and inserting ''30 percent''.

(c) COOPERATIVE HOUSING MORTGAGE INSURANCE.—Section 213(p) of the National Housing Act (12 U.S.C. 1715e(p)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(d) REHABILITATION AND NEIGHBORHOOD CONSERVATION HOUSING MORTGAGE INSURANCE.—Section 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(e) LOW-INCOME MULTIFAMILY HOUSING MORTGAGE INSURANCE.—Section 221(k) of the National Housing Act (12 U.S.C. 1715l(k)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(f) ELDERLY HOUSING MORTGAGE INSURANCE.—The proviso at the end of section 231(c)(2) of the National Housing Act (12 U.S.C. 1715v(c)(2)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

(g) CONDOMINIUM HOUSING MORTGAGE INSURANCE.—Section 234(j) of the National Housing Act (12 U.S.C. 1715y(j)) is amended by striking ''20 per centum'' and inserting ''30 percent''.

SEC. 634. PUBLIC HOUSING CAPITAL FUND.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(1) in subsection (d)(1)—

(A) in subparagraph (I), by striking ''and'' at the end;

(B) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

''(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.''; and

(2) in subsection (e)(2)(C)—

(A) by striking ''The'' and inserting the following:

''(i) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(ii) THIRD PARTY CONTRACTS.—Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

''(iii) TERM OF CONTRACT.—The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generations, advanced energy savings technologies, including renewable energy generation, and other such retrofits.''.

SEC. 635. GRANTS FOR ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

Section 251(b)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8231(1)) is amended—

(1) by striking ''financed with loans'' and inserting ''assisted'';

(2) by inserting after ''1959,'' the following: ''which are eligible multifamily housing projects (as such term is defined in section 512 of the Multi-family Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note)) and are subject to mortgage restructuring and rental assistance sufficiency plans under such Act,''; and

(3) by inserting after the period at the end of the first sentence the following new sentence: ''Such improvements may also include the installation of energy and water conserving fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation.''.

SEC. 636. NORTH AMERICAN DEVELOPMENT BANK.

Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m 290m–3) is amended by adding at the end the following:

''SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.

''Consistent with the focus of the Bank's Charter on environmental infrastructure projects, the Board members representing the United States should use their voice and vote to encourage the Bank to finance projects related to clean and efficient energy, including energy conservation, that prevent, control, or reduce environmental pollutants or contaminants.''.

SEC. 637. ENERGY-EFFICIENT APPLIANCES.

In purchasing appliances, a public housing agency shall purchase energy-efficient appliances that are Energy Star products or FEMP-designated products, as such terms are defined in section 553 of the National Energy Policy and Conservation Act (as amended by this Act), unless the purchase of energy-efficient appliances is not cost-effective to the agency.

SEC. 638. ENERGY EFFICIENCY STANDARDS.

Section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2003'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), where such standards are determined to be cost effective by the Secretary of Housing and Urban Development.''; and

(B) in paragraph (2), by striking ''Council of American'' and all that follows through ''90.1–1989')'' and inserting ''2000 International Energy Conservation Code'';

(2) in subsection (b)—

(A) by striking ''1 year after the date of the enactment of the Energy Policy Act of 1992'' and inserting ''September 30, 2003''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2000 International Energy Conservation Code''; and

(3) in subsection (c)—

(A) in the heading, by striking ''MODEL ENERGY CODE'' and inserting ''INTERNATIONAL ENERGY CONSERVATION CODE''; and

(B) by striking ''CABO'' and all that follows through ''1989'' and inserting ''the 2000 International Energy Conservation Code''.

SEC. 639. ENERGY STRATEGY FOR HUD.

The Secretary of Housing and Urban Development shall develop and implement an integrated strategy to reduce utility expenses through cost-effective energy conservation and efficiency measures and energy efficient design and construction of public and assisted housing. The energy strategy shall include the development of energy reduction goals and incentives for public housing agencies. The Secretary shall submit a report to Congress, not later than one year after the date of the enactment of this Act, on the energy strategy and the actions taken by the Department of Housing and Urban Development to monitor the energy usage of public housing agencies and shall submit an update every two years thereafter on progress in implementing the strategy.

TITLE VII—TRANSPORTATION FUELS

Subtitle A—Alternative Fuel Programs

SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED VEHICLES.

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

''(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area where—

''(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

''(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.

''(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.''.

SEC. 702. FUEL USE CREDITS.

(a) IN GENERAL.—Section 312 of the Energy Policy Act of 1992 (42 U.S.C. 13220) is amended to read as follows:

''SEC. 312. FUEL USE CREDITS.

''(a) ALLOCATION.—

''(1) The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of alternative fuel or biodiesel purchased for use in an on-road motor vehicle operated by the fleet that weighs more than 8,500 pounds gross vehicle weight rating.

''(2) No credits shall be allocated under this section for purchase of an alternative fuel or biodiesel that is required by Federal or State law.

''(3) A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under this section.

''(b) USE.—At the request of a fleet or covered person allocated a credit under subsection (a), the Secretary shall, for the year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this title, title IV, or title V.

''(c) TREATMENT.—A credit provided to a fleet or covered person under this section shall be considered a credit under section 508.

''(d) ISSUANCE OF RULE.—Not later than 6 months after the date of enactment of this section, the Secretary shall issue a rule establishing procedures for the implementation of this section.

''(e) DEFINITIONS.—For the purposes of this section

''(1) the term 'biodiesel' means a diesel fuel substitute produced from non-petroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act; and

''(2) the term 'qualifying volume' means—

''(A) in the case of biodiesel, when used as a component of fuel containing at least 20 percent biodiesel by volume, 450 gallons, or if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use; or

''(B) in the case of an alternative fuel, the amount of such fuel determined by the Secretary to have an equivalent energy content to the amount of biodiesel defined as a qualifying volume pursuant to subparagraph (A).''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 is amended by adding at the end of the items relating to title III the following new item:

''Sec. 312. Fuel use credits.''

SEC. 703. NEIGHBORHOOD ELECTRIC VEHICLES.

Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (3), by striking ''or a dual fueled vehicle'' and inserting '', a dual fueled vehicle, or a neighborhood electric vehicle'';

(2) by striking ''and'' at the end of paragraph (13);

(3) by striking the period at the end of paragraph (14) and inserting ''; and''; and

(4) by adding at the end the following:

''(15) the term 'neighborhood electric vehicle' means a motor vehicle—

''(A) which meets the definition of a low-speed vehicle, as such term is defined in part 571 of title 49, Code of Federal Regulations;

''(B) which meets the definition of a zero-emission vehicle, as such term is defined in section 86.1702–99 of title 40, Code of Federal Regulations;

''(C) which meets the requirements of Federal Motor Vehicle Safety Standard No. 500; and

''(D) which has a top speed of not greater than 25 miles per hour.''.

SEC. 704. CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is amended by adding at the end the following:

''(e) CREDIT FOR PURCHASE OF MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—

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

''(A) The term 'medium duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds.

''(B) The term 'heavy duty dedicated vehicle' means a dedicated vehicle that has a gross vehicle weight rating of more than 14,000 pounds.

''(2) CREDITS FOR MEDIUM DUTY VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a medium duty dedicated vehicle.

''(3) CREDITS FOR HEAVY DUTY VEHICLES.—The Secretary shall issue 3 full credits to a fleet or covered person under this title, if the fleet or covered person acquires a heavy duty dedicated vehicle.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

SEC. 705. ALTERNATIVE FUEL INFRASTRUCTURE.

Section 508 of the Energy Policy Act of 1992 (42 U.S.C. 13258) is further amended by adding at the end the following:

''(f) CREDIT FOR INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

''(1) DEFINITIONS.—In this subsection, the term 'qualifying infrastructure' means—

''(A) equipment required to refuel or recharge alternative fueled vehicles;

''(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

''(C) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

''(3) AMOUNT.—For the purposes of credits under this subsection—

''(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or equivalent expenditure, as determined by the Secretary; and

''(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

SEC. 706. INCREMENTAL COST ALLOCATION.

Section 303(c) of the Energy Policy Act of 1992 (42 U.S.C. 13212(c) is amended by striking ''may'' and inserting ''shall''.

SEC. 707. REVIEW OF ALTERNATIVE FUEL PROGRAMS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall complete a study to determine the effect that titles III, IV, and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.) have had on the development of alternative fueled vehicle technology, its availability in the market, and the cost of light duty motor vehicles that are alternative fueled vehicles.

(b) TOPICS.—As part of such study, the Secretary shall specifically identify—

(1) the number of alternative fueled vehicles acquired by fleets or covered persons required to acquire alternative fueled vehicles;

(2) the amount, by type, of alternative fuel actually used in alternative fueled vehicles acquired by fleets or covered persons;

(3) the amount of petroleum displaced by the use of alternative fuels in alternative fueled vehicles acquired by fleets or covered persons;

(4) the cost of compliance with vehicle acquisition requirements by fleets or covered persons; and

(5) the existence of obstacles preventing compliance with vehicle acquisition requirements and increased use of alternative fuel in alternative fueled vehicles acquired by fleets or covered persons.

(c) REPORT.—Upon completion of the study, the Secretary shall submit to the Congress a report that describes the results of the study conducted under this section and includes any recommendations of the Secretary for legislative or administrative changes concerning the alternative fueled vehicle requirements under titles III, IV and V of the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.). Such study shall be updated on a regular basis as deemed necessary by the Secretary.

SEC. 708. HIGH OCCUPANCY VEHICLE EXCEPTION.

Notwithstanding section 102(a)(1) of title 23, United States Code, a State may permit a vehicle with fewer than 2 occupants to operate in high occupancy vehicle lanes if such vehicle is a dedicated vehicle (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)).

SEC. 709. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.

(a) ALTERNATIVE COMPLIANCE.—Title V of the Energy Policy Act of 1992 is amended by adding at the end the following:

''SEC. 515. ALTERNATIVE COMPLIANCE.

''(a) APPLICATION FOR WAIVER.—Any covered person subject to the requirements of section 501 and any State subject to the requirement of section 507(o) may petition the Secretary for a waiver of the applicable requirements of section 501 or 507(o).

''(b) GRANT OF WAIVER.—The Secretary may grant a waiver of the requirements of section 501 or 507(o) upon a showing that the fleet owned, operated, leased, or otherwise controlled by the State or covered person—

''(1) will achieve a reduction in its annual consumption of petroleum fuels equal to the reduction in consumption of petroleum that would result from compliance with section 501 or 507(o); and

''(2) is in compliance with all applicable vehicle emission standards established by the Administrator under the Clean Air Act.

''(c) REVOCATION OF WAIVER.—The Secretary shall revoke any waiver granted under this section if the State or covered person fails to comply with the requirements of subsection (b).''.

(b) CREDIT FOR HYBRID VEHICLES, DEDICATED ALTERNATIVE FUEL VEHICLES, AND INFRASTRUCTURE.—Section 507 of the Energy Policy Act of 1992 (42 U.S.C. 13258) (as amended by section 705) is amended by adding at the end the following:

''(r) CREDITS FOR NEW QUALIFIED HYBRID MOTOR VEHICLES.—

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

''(A) 2000 MODEL YEAR CITY FUEL EFFICIENCY.—The term '2000 model year city fuel efficiency', with respect to a motor vehicle, means fuel efficiency determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

''If vehicle inertia weight class is:	**The 2000 model year city fuel efficiency is:**
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

''(ii) In the case of a light truck:

''If vehicle inertia weight class is:	**The 2000 model year city fuel efficiency is:**
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

''(B) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(C) ENERGY STORAGE DEVICE.—The term 'energy storage device' means an onboard rechargeable energy storage system or similar storage device.

''(D) FUEL EFFICIENCY.—The term 'fuel efficiency' means the percentage increased fuel efficiency specified in table 1 in paragraph (2)(C) over the average 2000 model year city fuel efficiency of vehicles in the same weight class.

''(E) MAXIMUM AVAILABLE POWER.—The term 'maximum available power', with respect to a new qualified hybrid motor vehicle that is a passenger vehicle or light truck, means the quotient obtained by dividing—

''(i) the maximum power available from the electrical storage device of the new qualified hybrid motor vehicle, during a standard 10-second pulse power or equivalent test; by

''(ii) the sum of—

''(I) the maximum power described in clause (i); and

''(II) the net power of the internal combustion or heat engine, as determined in accordance with standards established by the Society of Automobile Engineers.

''(F) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

''(G) NEW QUALIFIED HYBRID MOTOR VEHICLE.—The term 'new qualified hybrid motor vehicle' means a motor vehicle that—

''(i) draws propulsion energy from both—

''(I) an internal combustion engine (or heat engine that uses combustible fuel); and

''(II) an energy storage device;

''(ii) in the case of a passenger automobile or light truck—

''(I) in the case of a 2001 or later model vehicle, receives a certificate of conformity under the Clean Air Act (42 U.S.C. 7401 et seq.) and produces emissions at a level that is at or below the standard established by a qualifying California standard described in section 243(e)(2) of the Clean Air Act (42 U.S.C. 7583(e)(2)) for that make and model year; and

''(II) in the case of a 2004 or later model vehicle, is certified by the Administrator as producing emissions at a level that is at or below the level established for Bin 5 vehicles in the Tier 2 regulations promulgated by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and

''(iii) employs a vehicle braking system that recovers waste energy to charge an energy storage device.

''(H) VEHICLE INERTIA WEIGHT CLASS.—The term 'vehicle inertia weight class' has the meaning given the term in regulations promulgated by the Administrator for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(2) ALLOCATION.—

''(A) IN GENERAL.—The Secretary shall allocate a partial credit to a fleet or covered person under this title if the fleet or person acquires a new qualified hybrid motor vehicle that is eligible to receive a credit under each of the tables in subparagraph (C).

''(B) AMOUNT.—The amount of a partial credit allocated under subparagraph (A) for a vehicle described in that subparagraph shall be equal to the sum of—

''(i) the partial credits determined under table 1 in subparagraph (C); and

''(ii) the partial credits determined under table 2 in subparagraph (C).

''(C) TABLES.—The tables referred to in subparagraphs (A) and (B) are as follows:

''Table 1

''Partial credit for increased fuel efficiency:	**Amount of credit:**
At least 125% but less than 150% of 2000 model year city fuel efficiency.	0.14
At least 150% but less than 175% of 2000 model year city fuel efficiency.	0.21
At least 175% but less than 200% of 2000 model year city fuel efficiency.	0.28
At least 200% but less than 225% of 2000 model year city fuel efficiency.	0.35
At least 225% but less than 250% of 2000 model year city fuel efficiency.	0.50.

''Table 2

''Partial credit for 'Maximum Available Power':	**Amount of credit:**
At least 5% but less than 10%	0.125
At least 10% but less than 20%	0.250
At least 20% but less than 30%	0.375
At least 30% or more	0.500.

''(D) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the qualified hybrid motor vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(3) REGULATIONS.—The Secretary shall promulgate regulations under which any Federal fleet that acquires a new qualified hybrid motor vehicle will receive partial credits determined under the tables contained in paragraph (2)(C) for purposes of meeting the requirements of section 303.

''(s) CREDIT FOR SUBSTANTIAL CONTRIBUTION TOWARDS USE OF DEDICATED VEHICLES IN NONCOVERED FLEETS.—

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

''(A) DEDICATED VEHICLE.—The term 'dedicated vehicle' includes—

''(i) a light, medium, or heavy duty vehicle; and

''(ii) a neighborhood electric vehicle.

''(B) MEDIUM OR HEAVY DUTY VEHICLE.—The term 'medium or heavy duty vehicle' includes a vehicle that—

''(i) operates solely on alternative fuel; and

''(ii)(I) in the case of a medium duty vehicle, has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds; or

''(II) in the case of a heavy duty vehicle, has a gross vehicle weight rating of more than 14,000 pounds.

''(C) SUBSTANTIAL CONTRIBUTION.—The term 'substantial contribution' (equal to 1

full credit) means not less than $15,000 in cash or in kind services, as determined by the Secretary.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title if the fleet or person makes a substantial contribution toward the acquisition and use of dedicated vehicles by a person that owns, operates, leases, or otherwise controls a fleet that is not covered by this title.

''(3) MULTIPLE CREDITS FOR MEDIUM AND HEAVY DUTY DEDICATED VEHICLES.—The Secretary shall issue 2 full credits to a fleet or covered person under this title if the fleet or person acquires a medium or heavy duty dedicated vehicle.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the acquisition of the dedicated vehicle is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.

''(5) LIMITATION.—Per vehicle credits acquired under this subsection shall not exceed the per vehicle credits allowed under this section to a fleet for qualifying vehicles in each of the weight categories (light, medium, or heavy duty).

''(t) CREDIT FOR SUBSTANTIAL INVESTMENT IN ALTERNATIVE FUEL INFRASTRUCTURE.—

''(1) DEFINITIONS.—In this section, the term 'qualifying infrastructure' means—

''(A) equipment required to refuel or recharge alternative fueled vehicles;

''(B) facilities or equipment required to maintain, repair, or operate alternative fueled vehicles;

''(C) training programs, educational materials, or other activities necessary to provide information regarding the operation, maintenance, or benefits associated with alternative fueled vehicles; and

''(D) such other activities the Secretary considers to constitute an appropriate expenditure in support of the operation, maintenance, or further widespread adoption of or utilization of alternative fueled vehicles.

''(2) ISSUANCE OF CREDITS.—The Secretary shall issue a credit to a fleet or covered person under this title for investment in qualifying infrastructure if the qualifying infrastructure is open to the general public during regular business hours.

''(3) AMOUNT.—For the purposes of credits under this subsection—

''(A) 1 credit shall be equal to a minimum investment of $25,000 in cash or in kind services, as determined by the Secretary; and

''(B) except in the case of a Federal or State fleet, no part of the investment may be provided by Federal or State funds.

''(4) USE OF CREDITS.—At the request of a fleet or covered person allocated a credit under this subsection, the Secretary shall, for the year in which the investment is made, treat that credit as the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title.''.

(c) LEASE CONDENSATE FUELS.—Section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—

(1) in paragraph (2), by inserting ''mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;'' after ''liquified petroleum gas;'';

(2) in paragraph (15), by inserting ''mixtures containing 50 percent or more by volume of lease condensate or fuels extracted from lease condensate;'' after ''liquified petroleum gas;''; and

(3) by adding at the end the following:

''(16) the term 'lease condensate' means a mixture, primarily of pentanes and heavier hydrocarbons, which is recovered as a liquid from natural gas in lease separation facilities.''.

Subtitle B—Automobile Fuel Economy

SEC. 711. AUTOMOBILE FUEL ECONOMY STANDARDS.

(a) TITLE 49 AMENDMENT.—Section 32902(f) of title 49, United States Code, is amended to read as follows:

''(f) CONSIDERATIONS.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

''(1) technological feasibility;

''(2) economic practicability;

''(3) the effect of other motor vehicle standards of the Government on fuel economy;

''(4) the need of the United States to conserve energy;

''(5) the effects of fuel economy standards on motor vehicle and passenger safety; and

''(6) the effects of compliance with average fuel economy standards on levels of employment in the United States.''.

(b) CLARIFICATION OF AUTHORITY.—Section 32902(b) of title 49, United States Code, is amended by inserting before the period at the end the following: ''or such other number as the Secretary prescribes under subsection (c)''.

(c) ENVIRONMENTAL ASSESSMENT.—When issuing final regulations setting forth increased average fuel economy standards under section 32902(a) or section 32902(c) of title 49, United States Code, the Secretary of Transportation shall also issue an environmental assessment of the effects of the increased standards on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2004 through 2008.

SEC. 712. DUAL-FUELED AUTOMOBILES.

(a) MANUFACTURING INCENTIVES.—Section 32905 of title 49, United States Code, is amended—

(1) in subsections (b) and (d), by striking ''1993–2004'' and inserting ''1993–2008'';

(2) in subsection (f), by striking ''2001'' and inserting ''2005'';

(3) in subsection (f)(1), by striking ''2004'' and inserting ''2008''; and

(4) in subsection (g), by striking ''September 30, 2000'' and inserting ''September 30, 2004''.

(b) MAXIMUM FUEL ECONOMY INCREASE.—Subsection (a)(1) of section 32906 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking ''the model years 1993–2004'' and inserting ''model years 1993–2008''; and

(2) in subparagraph (B), by striking ''the model years 2005–2008'' and inserting ''model years 2009–2012''.

SEC. 713. FEDERAL FLEET FUEL ECONOMY.

Section 32917 of title 49, United States Code, is amended to read as follows:

''§ 32917. Standards for executive agency automobiles

''(a) BASELINE AVERAGE FUEL ECONOMY.—The head of each executive agency shall determine, for all automobiles in the agency's fleet of automobiles that were leased or bought as a new vehicle in fiscal year 1999, the average fuel economy for such automobiles. For the purposes of this section, the average fuel economy so determined shall be the baseline average fuel economy for the agency's fleet of automobiles.

''(b) INCREASE OF AVERAGE FUEL ECONOMY.—The head of an executive agency shall manage the procurement of automobiles for that agency in such a manner that not later than September 30, 2005, the average fuel economy of the new automobiles in the agency's fleet of automobiles is not less than 3 miles per gallon higher than the baseline average fuel economy determined under subsection (a) for that fleet.

''(c) CALCULATION OF AVERAGE FUEL ECONOMY.—Average fuel economy shall be calculated for the purposes of this section in accordance with guidance which the Secretary of Transportation shall prescribe for the implementation of this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'automobile' does not include any vehicle designed for combat-related missions, law enforcement work, or emergency rescue work.

''(2) The term 'executive agency' has the meaning given that term in section 105 of title 5.

''(3) The term 'new automobile', with respect to the fleet of automobiles of an executive agency, means an automobile that is leased for at least 60 consecutive days or bought, by or for the agency, after September 30, 1999.''.

SEC. 714. RAILROAD EFFICIENCY.

(a) ESTABLISHMENT.—The Secretary of Energy, in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall establish a cost-shared, public-private research partnership to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation. Such partnership shall involve the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads.

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $25,000,000 for fiscal year 2004, $35,000,000 for fiscal year 2005, and $50,000,000 for fiscal year 2006.

SEC. 715. REDUCTION OF ENGINE IDLING IN HEAVY-DUTY VEHICLES.

(a) IDENTIFICATION.—Not later than 180 days after the date of enactment of this section, the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall commence a study to analyze the potential fuel savings and emissions reductions resulting from use of idling reduction technologies as they are applied to heavy-duty vehicles. Upon completion of the study, the Secretary of Energy shall, by rule, certify those idling reduction technologies with the greatest economic or technical feasibility and the greatest potential for fuel savings and emissions reductions, and publish a list of such certified technologies in the Federal Register.

(b) VEHICLE WEIGHT EXEMPTION.—Section 127(a) of Title 23, United States Code, is amended by adding at the end the following: ''In order to promote reduction of fuel use and emissions due to engine idling, the maximum gross vehicle weight limit and the axle weight limit for any motor vehicle equipped with an idling reduction technology certified by the U.S. Department of Energy will be increased by an amount necessary to compensate for the additional weight of the idling reduction system, provided that the

weight increase shall be no greater than 400 pounds.''

(c) DEFINITIONS.—For the purposes of this section:

(1) The term ''idling reduction technology'' means a device or system of devices utilized to reduce long-duration idling of a vehicle.

(2) The term ''heavy-duty vehicle'' means a vehicle that has a gross vehicle weight rating greater than 8,500 pounds and is powered by a diesel engine.

(3) The term ''long-duration idling'' means the operation of a main drive engine, for a period greater than 30 consecutive minutes, where the main drive engine is not engaged in gear. Such term does not apply to routine stoppages associated with traffic movement or congestion.

SEC. 716. PROVISION NOT TO TAKE EFFECT.

Section 711 shall not take effect.

SEC. 717. REVISED CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.

Section 32902(f) of title 49, United States Code, is amended to read as follows:

''(f) CONSIDERATIONS FOR DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider the following matters:

''(1) Technological feasibility.

''(2) Economic practicability.

''(3) The effect of other motor vehicle standards of the Government on fuel economy.

''(4) The need of the United States to conserve energy.

''(5) The desirability of reducing United States dependence on imported oil.

''(6) The effects of the average fuel economy standards on motor vehicle and passenger safety.

''(7) The effects of increased fuel economy on air quality.

''(8) The adverse effects of average fuel economy standards on the relative competitiveness of manufacturers.

''(9) The effects of compliance with average fuel economy standards on levels of employment in the United States.

''(10) The cost and lead time necessary for the introduction of the necessary new technologies.

''(11) The potential for advanced technology vehicles, such as hybrid and fuel cell vehicles, to contribute to the achievement of significant reductions in fuel consumption.

''(12) The extent to which the necessity for vehicle manufacturers to incur near-term costs to comply with the average fuel economy standards adversely affects the availability of resources for the development of advanced technology for the propulsion of motor vehicles.

''(13) The report of the National Research Council that is entitled 'Effectiveness and Impact of Corporate Average Fuel Economy Standards', issued in January 2002.''.

SEC. 718. INCREASED FUEL ECONOMY STANDARDS.

(a) NEW REGULATIONS REQUIRED.—

(1) NON-PASSENGER AUTOMOBILES.—

(A) REQUIREMENT FOR NEW REGULATIONS.—The Secretary of Transportation shall issue, under section 32902 of title 49, United States Code, new regulations setting forth increased average fuel economy standards for non-passenger automobiles. The regulations shall be determined on the basis of the maximum feasible average fuel economy levels for the non-passenger automobiles, taking into consideration the matters set forth in subsection (f) of such section. The new regulations under this paragraph shall apply for model years after the 2007 model year, subject to subsection (b).

(B) TIME FOR ISSUING REGULATIONS.—The Secretary of Transportation shall issue the final regulations under subparagraph (A) not later than April 1, 2006.

(2) PASSENGER AUTOMOBILES.—

(A) REQUIREMENT FOR NEW REGULATIONS.—The Secretary of Transportation shall issue, under section 32902 of title 49, United States Code, new regulations setting forth increased average fuel economy standards for passenger automobiles, taking into consideration the matters set forth in subsection (f) of such section.

(B) TIME FOR ISSUING REGULATIONS.—The Secretary of Transportation shall issue the final regulations under subparagraph (A) not later than 2½ years after the date of the enactment of this Act.

(b) PHASED INCREASES.—The regulations issued pursuant to subsection (a) shall specify standards that take effect successively over several vehicle model years not exceeding 15 vehicle model years.

(c) CLARIFICATION OF AUTHORITY TO AMEND PASSENGER AUTOMOBILE STANDARD.—Section 32902(b) of title 49, United States Code, is amended by inserting before the period at the end the following: ''or such other number as the Secretary prescribes under subsection (c)''.

(d) ENVIRONMENTAL ASSESSMENT.—When issuing final regulations setting forth increased average fuel economy standards under section 32902(a) or section 32902(c) of title 49, United States Code, the Secretary of Transportation shall also issue an environmental assessment of the effects of the increased standards on the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2004 through 2008 for carrying out this section and for administering the regulations issued pursuant to this section.

SEC. 719. EXPEDITED PROCEDURES FOR CONGRESSIONAL INCREASE IN FUEL ECONOMY STANDARDS.

(a) CONDITION FOR APPLICABILITY.—If the Secretary of Transportation fails to issue final regulations with respect to non-passenger automobiles under section 719 or fails to issue final regulations with respect to passenger automobiles under such section, on or before the date by which such final regulations are required by such section to be issued, respectively, then this section shall apply with respect to a bill described in subsection (b).

(b) BILL.—A bill referred to in this subsection is a bill that satisfies the following requirements:

(1) INTRODUCTION.—The bill is introduced by one or more Members of Congress not later than 60 days after the date referred to in subsection (a).

(2) TITLE.—The title of the bill is as follows: ''A bill to establish new average fuel economy standards for certain motor vehicles.''.

(3) TEXT.—The bill provides after the enacting clause only the text specified in subparagraph (A) or (B) or any provision described in subparagraph (C), as follows:

(A) NON-PASSENGER AUTOMOBILES.—In the case of a bill relating to a failure timely to issue final regulations relating to non-passenger automobiles, the following text:

''That, section 32902 of title 49, United States Code, is amended by adding at the end the following new subsection:

'''(__) NON-PASSENGER AUTOMOBILES.—The average fuel economy standard for non-passenger automobiles manufactured by a manufacturer in a model year after model year ____ shall be ____ miles per gallon.''', the first blank space being filled in with a subsection designation, the second blank space being filled in with the number of a year, and the third blank space being filled in with a number.

(B) PASSENGER AUTOMOBILES.—In the case of a bill relating to a failure timely to issue final regulations relating to passenger automobiles, the following text:

''That, section 32902(b) of title 49, United States Code, is amended to read as follows:

'''(b) PASSENGER AUTOMOBILES.—Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year ____ shall be ____ miles per gallon.''', the first blank space being filled in with the number of a year and the second blank space being filled in with a number.

(C) SUBSTITUTE TEXT.—Any text substituted by an amendment that is in order under subsection (c)(3).

(c) EXPEDITED PROCEDURES.—A bill described in subsection (b) shall be considered in a House of Congress in accordance with the procedures provided for the consideration of joint resolutions in paragraphs (3) through (8) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473; 98 Stat. 1936), with the following exceptions:

(1) REFERENCES TO RESOLUTION.—The references in such paragraphs to a resolution shall be deemed to refer to the bill described in subsection (b).

(2) COMMITTEES OF JURISDICTION.—The committees to which the bill is referred under this subsection shall—

(A) in the Senate, be the Committee on Commerce, Science, and Transportation; and

(B) in the House of Representatives, be the Committee on Energy and Commerce.

(3) AMENDMENTS.—

(A) AMENDMENTS IN ORDER.—Only four amendments to the bill are in order in each House, as follows:

(i) Two amendments proposed by the majority leader of that House.

(ii) Two amendments proposed by the minority leader of that House.

(B) FORM AND CONTENT.—To be in order under subparagraph (A), an amendment shall propose to strike all after the enacting clause and substitute text that only includes the same text as is proposed to be stricken except for one or more different numbers in the text.

(C) DEBATE, ET CETERA.—Subparagraph (B) of section 8066(c)(5) of the Department of Defense Appropriations Act, 1985 (98 Stat. 1936) shall apply to the consideration of each amendment proposed under this paragraph in the same manner as such subparagraph (B) applies to debatable motions.

Subtitle C—Advanced Clean Vehicles

SEC. 731. HYBRID VEHICLES RESEARCH AND DEVELOPMENT.

(a) RECHARGEABLE ENERGY STORAGE SYSTEMS AND OTHER TECHNOLOGIES.—The Secretary of Energy shall accelerate research and development directed toward the improvement of batteries and other rechargeable energy storage systems, power electronics, hybrid systems integration, and other technologies for use in hybrid vehicles.

(b) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for each of fiscal years 2004, 2005, and

2006 in the amount $50,000,000 for research and development activities under this section.

SEC. 732. DIESEL FUELED VEHICLES RESEARCH AND DEVELOPMENT.

(a) DIESEL COMBUSTION AND AFTER TREATMENT TECHNOLOGIES.—The Secretary of Energy shall accelerate research and development directed toward the improvement of diesel combustion and after treatment technologies for use in diesel fueled motor vehicles.

(b) GOALS.—The Secretary shall carry out subsection (a) with a view to achieving the following goals:

(1) COMPLIANCE WITH CERTAIN EMISSION STANDARDS BY 2010.—Developing and demonstrating diesel technologies that, not later than 2010, meet the following standards:

(A) TIER-2 EMISSION STANDARDS.—The tier 2 emission standards.

(B) HEAVY-DUTY EMISSION STANDARDS OF 2007.—The heavy-duty emission standards of 2007.

(2) POST-2010 HIGHLY EFFICIENT TECHNOLOGIES.—Developing the next generation of low emissions, high efficiency diesel engine technologies, including homogeneous charge compression ignition technology.

(c) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for each of fiscal years 2004, 2005, and 2006 in the amount of $75,000,000 for research and development of advanced combustion engines and advanced fuels.

SEC. 733. PROCUREMENT OF ALTERNATIVE FUELED PASSENGER AUTOMOBILES.

(a) VEHICLE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that only alternative fueled vehicles are procured by or for each agency fleet of passenger automobiles that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

(b) WAIVER AUTHORITY.—The head of an agency, in consultation with the Administrator, may waive the applicability of the policy regarding the procurement of alternative fueled vehicles in subsection (a) to—

(1) the procurement for such agency of any vehicles described in subparagraphs (A) through (F) of section 303(b)(3) of the Energy Policy Act of 1992 (42 U.S.C. 13212(b)(3)); or

(2) a procurement of vehicles for such agency if the procurement of alternative fueled vehicles cannot meet the requirements of the agency for vehicles due to insufficient availability of the alternative fuel used to power such vehicles.

(c) APPLICABILITY TO PROCUREMENTS AFTER FISCAL YEAR 2004.—This subsection applies with respect to procurements of alternative fueled vehicles in fiscal year 2005 and subsequent fiscal years.

SEC. 734. PROCUREMENT OF HYBRID LIGHT DUTY TRUCKS.

(a) VEHICLE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—

(1) HYBRID VEHICLES.—The head of each agency of the executive branch shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by or for each agency fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

(2) WAIVER AUTHORITY.—The head of an agency, in consultation with the Administrator, may waive the applicability of the policy regarding the procurement of hybrid vehicles in paragraph (1) to that agency to the extent that the head of that agency determines necessary—

(A) to meet specific requirements of the agency for capabilities of light duty trucks;

(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government;

(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles; or

(D) to avoid the necessity of procuring a hybrid vehicle for the agency when each of the hybrid vehicles available for meeting the requirements of the agency has a cost to the United States that exceeds the costs of comparable nonhybrid vehicles by a factor that is significantly higher than the difference between—

(i) the real cost of the hybrid vehicle to retail purchasers, taking into account the benefit of any tax incentives available to retail purchasers for the purchase of the hybrid vehicle; and

(ii) the costs of the comparable nonhybrid vehicles to retail purchasers.

(3) APPLICABILITY TO PROCUREMENTS AFTER FISCAL YEAR 2004.—This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

(b) INAPPLICABILITY TO DEPARTMENT OF DEFENSE.—This section does not apply to the Department of Defense, which is subject to comparable requirements under section 318 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1055; 10 U.S.C. 2302 note).

SEC. 735. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' means—

(A) an alternative fueled vehicle, as defined in section 301(3) of the Energy Policy Act of 1992 (42 U.S.C. 13211(3));

(B) a motor vehicle that operates on a blend of fuel that is at least 20 percent (by volume) biodiesel, as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)); and

(C) a motor vehicle that operates on a blend of fuel that is at least 20 percent (by volume) bioderived hydrocarbons (including aliphatic compounds) produced from agricultural and animal waste.

(2) HEAVY-DUTY EMISSION STANDARDS OF 2007.—The term ''heavy-duty emission standards of 2007'' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on January 18, 2001, under section 202 of the Clean Air Act to apply to heavy-duty vehicles of model years beginning with the 2007 vehicle model year.

(3) HYBRID VEHICLE.—The term ''hybrid vehicle'' means—

(A) a motor vehicle that draws propulsion energy from on board sources of stored energy that are both—

(i) an internal combustion or heat engine using combustible fuel; and

(ii) a rechargeable energy storage system; and

(B) any other vehicle that is defined as a hybrid vehicle in regulations prescribed by the Secretary of Energy for the administration of title III of the Energy Policy Act of 1992.

(4) MOTOR VEHICLE.—The term ''motor vehicle'' means any vehicle that is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and that has at least four wheels.

(5) TIER 2 EMISSION STANDARDS DEFINED.—The term ''tier 2 emission standards'' means the motor vehicle emission standards promulgated by the Administrator of the Environmental Protection Agency on February 10, 2000, under section 202 of the Clean Air Act (42 U.S.C. 7521) to apply to passenger automobiles, light trucks, and larger passenger vehicles of model years after the 2003 vehicle model year.

(6) TERMS DEFINED IN EPA REGULATIONS.—The terms ''passenger automobile'' and ''light truck'' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

TITLE VIII—HYDROGEN

Subtitle A—Basic Research Programs

SEC. 801. SHORT TITLE.

This subtitle may be cited as the ''George E. Brown, Jr. and Robert S. Walker Hydrogen Future Act of 2003''.

SEC. 802. MATSUNAGA ACT AMENDMENT.

The Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401 et seq.) is amended by striking sections 102 through 109 and inserting the following:

''SEC. 102. DEFINITIONS.

''In this Act—

''(1) the term 'advisory committee' means the Hydrogen and Fuel Cell Technical Advisory Committee established under section 107;

''(2) the term 'Department' means the Department of Energy;

''(3) the term 'fuel cell' means a device that directly converts the chemical energy of a fuel into electricity by an electrochemical process;

''(4) the term 'infrastructure' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen; and

''(5) the term 'Secretary' means the Secretary of Energy.

''SEC. 103. HYDROGEN RESEARCH AND DEVELOPMENT.

''(a) IN GENERAL.—The Secretary shall conduct a research and development program on technologies related to the production, distribution, storage, and use of hydrogen energy, fuel cells, and related infrastructure.

''(b) GOAL.—The goal of such program shall be to enable the safe, economic, and environmentally sound use of hydrogen energy, fuel cells, and related infrastructure for transportation, commercial, industrial, residential, and electric power generation applications.

''(c) FOCUS.—In carrying out activities under this section, the Secretary shall focus on critical technical issues including, but not limited to—

''(1) the production of hydrogen from diverse energy sources, with emphasis on cost-effective production from renewable energy sources;

''(2) the delivery of hydrogen, including safe delivery in fueling stations and use of existing hydrogen pipelines;

''(3) the storage of hydrogen, including storage of hydrogen in surface transportation;

''(4) fuel cell technologies for transportation, stationary and portable applications, with emphasis on cost-reduction of fuel cell stacks; and

''(5) the use of hydrogen energy and fuel cells, including use in—

''(A) isolated villages, islands, and areas in which other energy sources are not available or are very expensive; and

''(B) foreign markets, particularly where an energy infrastructure is not well developed.

''(d) CODES AND STANDARDS.—The Secretary shall facilitate the development of domestic and international codes and standards and seek to resolve other critical regulatory and technical barriers preventing the introduction of hydrogen energy and fuel cells into the marketplace.

''(e) SOLICITATION.—The Secretary shall carry out the research and development activities authorized under this section through solicitation of proposals, and evaluation using competitive merit review.

''(f) COST SHARING.—The Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of proposed research and development projects. The Secretary may reduce or eliminate the cost sharing requirement—

''(1) if the Secretary determines that the research and development is of a basic or fundamental nature, or

''(2) for technical analyses, outreach activities, and educational programs that the Secretary does not expect to result in a marketable product.

''SEC. 104. DEMONSTRATION PROGRAMS.

''(a) REQUIREMENT.—In conjunction with activities conducted under section 103, the Secretary shall conduct demonstrations of hydrogen energy and fuel cell technologies in order to evaluate the commercial potential of such technologies.

''(b) SOLICITATION.—The Secretary shall carry out the demonstrations authorized under this section through solicitation of proposals, and evaluation using competitive merit review.

''(c) COST SHARING.—The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

''SEC. 105. TECHNOLOGY TRANSFER.

''The Secretary shall conduct programs to—

''(1) transfer critical hydrogen energy and fuel cell technologies to the private sector in order to promote wider understanding of such technologies and wider use of research progress under this Act;

''(2) accelerate wider application of hydrogen energy and fuel cell technologies in foreign countries in order to increase the global market for the technologies and foster global development without harmful environmental effects;

''(3) foster the exchange of generic, nonproprietary information and technology developed pursuant to this Act, among industry, academia, and the Federal agencies; and

''(4) inventory and assess the technical and commercial viability of technologies related to production, distribution, storage, and use of hydrogen energy and fuel cells.

''SEC. 106. COORDINATION AND CONSULTATION.

''The Secretary shall have overall management responsibility for carrying out programs under this Act. In carrying out such programs, the Secretary—

''(1) shall establish a central point for the coordination of all hydrogen energy and fuel cell research, development, and demonstration activities of the Department;

''(2) in carrying out the Secretary's authorities pursuant to this Act, shall consult with other Federal agencies as appropriate, and may obtain the assistance of any Federal agency, on a reimbursable basis or otherwise and with the consent of such agency; and

''(3) shall attempt to ensure that activities under this Act do not unnecessarily duplicate any available research and development results or displace or compete with privately funded hydrogen and fuel cell energy activities.

''SEC. 107. ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—There is hereby established the Hydrogen and Fuel Cell Technical Advisory Committee, to advise the Secretary on the programs under this Act.

''(b) MEMBERSHIP.—The advisory committee shall be comprised of not fewer than 12 nor more than 25 members appointed by the Secretary based on their technical and other qualifications from domestic industry, automakers, universities, professional societies, Federal laboratories, financial institutions, and environmental and other organizations as the Secretary deems appropriate. The advisory committee shall have a chairperson, who shall be elected by the members from among their number.

''(c) TERMS.—Members of the advisory committee shall be appointed for terms of 3 years, with each term to begin not later than 3 months after the date of enactment of the Energy Policy Act of 2003, except that one-third of the members first appointed shall serve for 1 year, and one-third of the members first appointed shall serve for 2 years, as designated by the Secretary at the time of appointment.

''(d) REVIEW.—The advisory committee shall review and make any necessary recommendations to the Secretary on—

''(1) implementation and conduct of programs under this Act;

''(2) economic, technological, and environmental consequences of the deployment of technologies related to production, distribution, storage, and use of hydrogen energy, and fuel cells;

''(3) means for resolving barriers to implementing hydrogen and fuel cell technologies; and

''(4) the coordination plan and any updates thereto prepared by the Secretary pursuant to section 108.

''(e) RESPONSE.—The Secretary shall consider any recommendations made by the advisory committee, and shall provide a response to the advisory committee within 30 days after receipt of such recommendations. Such response shall either describe the implementation of the advisory committee's recommendations or provide an explanation of the reasons that any such recommendations will not be implemented.

''(f) SUPPORT.—The Secretary shall provide such staff, funds and other support as may be necessary to enable the advisory committee to carry out its functions. In carrying out activities pursuant to this section, the advisory committee may also obtain the assistance of any Federal agency, on a reimbursable basis or otherwise and with the consent of such agency.

''SEC. 108. COORDINATION PLAN.

''(a) PLAN.—The Secretary, in consultation with other Federal agencies, shall prepare and maintain on an ongoing basis a comprehensive plan for activities under this Act.

''(b) DEVELOPMENT.—In developing such plan, the Secretary shall—

''(1) consider the guidance of the National Hydrogen Energy Roadmap published by the Department in November 2002 and any updates thereto;

''(2) consult with the advisory committee; and

''(3) consult with interested parties from domestic industry, automakers, universities, professional societies, Federal laboratories, financial institutions, and environmental and other organizations as the Secretary deems appropriate.

''(c) CONTENTS.—At a minimum, the plan shall provide—

''(1) an assessment of the effectiveness of the programs authorized under this Act, including a summary of recommendations of the advisory committee for improvements in such programs;

''(2) a description of proposed research, development, and demonstration activities planned by the Department for the next five years;

''(3) a description of the role Federal laboratories, institutions of higher education, small businesses, and other private sector firms are expected to play in such programs;

''(4) cost and performance milestones that will be used to evaluate the programs for the next five years;

''(5) any significant technical, regulatory, and other hurdles that stand in the way of achieving such cost and performance milestones, and how the programs will address those hurdles; and

(6) to the extent practicable, an analysis of Federal, State, local, and private sector hydrogen research, development, and demonstration activities to identify areas for increased intergovernmental and private-public sector collaboration.

''(d) REPORT.—Not later than January 1, 2005, and biennially thereafter, the Secretary shall transmit to Congress the comprehensive plan developed for the programs authorized under this Act, or any updates thereto.

''SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out the purposes of this Act—

''(1) such sums as may be necessary for fiscal years 1992 through 2003;

''(2) $105,000,000 for fiscal year 2004;

''(3) $150,000,000 for fiscal year 2005;

''(4) $175,000,000 for fiscal year 2006;

''(5) $200,000,000 for fiscal year 2007; and

''(6) $225,000,000 for fiscal year 2008.''.

SEC. 803. HYDROGEN TRANSPORTATION AND FUEL INITIATIVE.

(a) VEHICLE TECHNOLOGIES.—The Secretary shall carry out a research, development, demonstration, and commercial application program on advanced hydrogen-powered vehicle technologies. Such program shall address—

(1) engine and emission control systems;

(2) energy storage, electric propulsion, and hybrid systems;

(3) automotive materials;

(4) hydrogen-carrier fuels; and

(5) other advanced vehicle technologies.

(b) HYDROGEN FUEL INITIATIVE.—In coordination with the program authorized in subsection (a), the Secretary of Energy, in partnership with the private sector, shall conduct a research, development, demonstration and commercial application program designed to enable the rapid and coordinated introduction of hydrogen-fueled vehicles and associated infrastructure into commerce. Such program shall address—

(1) production of hydrogen from diverse energy resources, including—

(A) renewable energy resources;

(B) fossil fuels, in conjunction with carbon capture and sequestration;

(C) hydrogen-carrier fuels; and

(D) nuclear energy;

(2) delivery of hydrogen or hydrogen-carrier fuels, including—

(A) transmission by pipeline and other distribution methods; and

(B) safe, convenient, and economic refueling of vehicles, either at central refueling stations or through distributed on-site generation;

(3) storage of hydrogen or hydrogen-carrier fuels, including development of materials for safe and economic storage in gaseous, liquid or solid forms at refueling facilities or onboard vehicles;

(4) development of advanced vehicle technologies, such as efficient fuel cells and direct hydrogen combustion engines, and related component technologies such as advanced materials and control systems; and

(5) development of necessary codes, standards, and safety practices to accompany the production, distribution, storage and use of hydrogen or hydrogen-carrier fuels in transportation.

(c) MATSUNAGA ACT.—In carrying out programs and projects under subsections (a) and (b), the Secretary shall ensure that such programs and projects are consistent with, and do not unnecessarily duplicate, activities carried out under the programs authorized under the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401 et seq.).

(d) ADVISORY COMMITTEE.—The Hydrogen and Fuel Cell Technical Advisory Committee authorized under section 107 of the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12408), as amended in this title, shall also advise the Secretary on the programs and activities carried out under this section.

(e) SOLICITATION.—The Secretary shall carry out the programs authorized under this section through solicitation of proposals, and evaluation using competitive merit review.

(f) COST SHARING.—The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(g) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary—

(1) for activities pursuant to subsection (a), to remain available until expended—

(A) $100,000,000 for each of fiscal years 2004 and 2005;

(B) $110,000,000 for each of fiscal years 2006 and 2007; and

(C) $120,000,000 for fiscal year 2008; and

(2) for activities pursuant to subsection (b), to remain available until expended—

(A) $125,000,000 for fiscal year 2004;

(B) $150,000,000 for fiscal year 2005;

(C) $175,000,000 for fiscal year 2006; and

(D) $200,000,000 for each of fiscal years 2007 and 2008.

SEC. 804. INTERAGENCY TASK FORCE AND COORDINATION PLAN.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the Secretary shall establish an interagency task force to coordinate Federal hydrogen and fuel cell energy activities.

(b) COMPOSITION.—The task force shall be chaired by a designee of the Secretary, and shall include representatives of—

(1) the Office of Science and Technology Policy;

(2) the Department of Transportation;

(3) the Department of Defense;

(4) the Department of Commerce (including the National Institute for Standards and Technology);

(5) the Environmental Protection Agency;

(6) the National Aeronautics and Space Administration;

(7) the Department of State; and

(8) other Federal agencies as the Director considers appropriate.

(c) COORDINATION PLAN.—The task force shall prepare a comprehensive coordination plan for Federal hydrogen and fuel cell energy activities, which shall include a summary of such activities.

(d) REPORT.—Not later than one year after it is established, the task force shall report to Congress on the coordination plan in subsection (c) and on the interagency coordination of Federal hydrogen and fuel cell energy activities.

SEC. 805. REVIEW BY THE NATIONAL ACADEMIES.

Not later than two years after the date of enactment of this Act, and every four years thereafter, the Secretary shall enter into a contract with the National Academies. Such contract shall require the National Academies to perform a review of the progress made through Federal hydrogen and fuel cell energy programs and activities, including the need for modified or additional programs, and to report to the Congress on the results of such review. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the requirements of this section.

Subtitle B—Demonstration Programs

SEC. 811. DEFINITIONS.

For the purposes of this subtitle and subtitle C—

(1) the term ''fuel cell'' means a device that directly converts the chemical energy of a fuel into electricity by an electrochemical process;

(2) the term ''hydrogen-carrier fuel'' means any hydrocarbon fuel that is capable of being thermochemically processed or otherwise reformed to produce hydrogen;

(3) the term ''infrastructure'' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen or hydrogen-carrier fuels;

(4) the term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

(5) the term ''Secretary'' means the Secretary of Energy.

SEC. 812. HYDROGEN VEHICLE DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a program for demonstration and commercial application of hydrogen-powered vehicles and associated hydrogen fueling infrastructure in a variety of transportation-related applications, including—

(1) fuel cell vehicles in light-duty vehicle fleets;

(2) heavy-duty fuel cell on-road and off-road vehicles, including mass transit buses;

(3) use of hydrogen-powered vehicles and hydrogen fueling infrastructure (including multiple hydrogen refueling stations) along major transportation routes or in entire regions; and

(4) other similar projects as the Secretary may deem necessary to contribute to the rapid demonstration and deployment of hydrogen-based technologies in widespread use for transportation.

(b) ELIGIBILITY.—Federal, state, tribal, and local governments, academic and other nonprofit organizations, private entities, and consortia of these entities shall be eligible for these projects.

(c) SELECTION.—In selecting projects under this section, the Secretary shall—

(1) consult with Federal, State, local and private fleet managers to identify potential projects where hydrogen-powered vehicles may be placed into service;

(2) identify not less than 10 sites at which to carry out projects under this program, 2 of which must be based at Federal facilities; and

(3) select projects based on the following factors—

(A) geographic diversity;

(B) a diverse set of operating environments, duty cycles, and likely weather conditions;

(C) the interest and capability of the participating agencies, entities, or fleets;

(D) the availability and appropriateness of potential sites for refueling infrastructure and for maintenance of the vehicle fleet;

(E) the existence of traffic congestion in the area expected to be served by the hydrogen-powered vehicles;

(F) proximity to non-attainment areas as defined in section 171 of the Clean Air Act (42 U.S.C. 7501); and

(G) such other criteria as the Secretary determines to be appropriate in order to carry out the purposes of the program.

(d) INFRASTRUCTURE.—In funding projects under this section, the Secretary shall also support the installation of refueling infrastructure at sites necessary for success of the project, giving preference to those infrastructure projects that include co-production of both—

(1) hydrogen for use in transportation; and

(2) electricity that can be consumed on site.

(e) OPERATION AND MAINTENANCE PERIOD.—Vehicles purchased for projects under this section shall be operated and maintained by the participating agencies or entities in regular duty cycles for a period of not less than 12 months.

(f) TRAINING AND TECHNICAL SUPPORT.—In funding proposals under this section, the Secretary shall also provide funding for training and technical support as may be necessary to assure the success of such projects, including training and technical support in—

(1) the installation, operation, and maintenance of fueling infrastructure;

(2) the operation and maintenance of fuel cell vehicles; and

(3) data collection necessary to monitor project performance.

(g) COST-SHARING.—Except as otherwise provided, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(h) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $50,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

SEC. 813. STATIONARY FUEL CELL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a program for demonstration and commercial application of hydrogen fuel cells in stationary applications, including—

(1) fuel cells for use in residential and commercial buildings;

(2) portable fuel cells, including auxiliary power units in trucks;

(3) small form and micro fuel cells of 20 watts or less;

(4) distributed generation systems with fuel cells using renewable energy; and

(5) other similar projects as the Secretary may deem necessary to contribute to the rapid demonstration and deployment of hydrogen-based technologies in widespread use.

(b) COMPETITIVE EVALUATION.—Proposals submitted in response to solicitations issued pursuant to this section shall be evaluated on a competitive basis using peer review. The Secretary is not required to make an award under this section in the absence of a meritorious proposal.

(c) PREFERENCE.—The Secretary shall give preference, in making an award under this section, to proposals that—

(1) are submitted jointly from consortia that include two or more participants from institutions of higher education, industry, State, tribal, or local governments, and Federal laboratories; and

(2) reflect proven experience and capability with technologies relevant to the projects proposed.

(d) TRAINING AND TECHNICAL SUPPORT.—In funding proposals under this section, the Secretary shall also provide funding for training and technical support as may be necessary to assure the success of such projects, including training and technical support in the installation, operation, and maintenance of fuel cells and the collection of data to monitor project performance.

(e) COST-SHARING.—Except as otherwise provided, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section. The Secretary may reduce such non-Federal requirement if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(f) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $50,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

SEC. 814. HYDROGEN DEMONSTRATION PROGRAMS IN NATIONAL PARKS.

(a) STUDY.—Not later than 1 year after the date of enactment of this section, the Secretary of the Interior and the Secretary of Energy shall jointly study and report to Congress on—

(1) the energy needs and uses at National Parks; and

(2) the potential for fuel cell and other hydrogen-based technologies to meet such energy needs in—

(A) stationary applications, including power generation, combined heat and power for buildings and campsites, and standby and backup power systems; and

(B) transportation-related applications, including support vehicles, passenger vehicles and heavy-duty trucks and buses.

(b) PILOT PROJECTS.—Based on the results of the study conducted under subsection (a), the Secretary of the Interior shall fund not fewer than 3 pilot projects in national parks to provide for demonstration of fuel cells or other hydrogen-based technologies in those applications where the greatest potential for such use in National Parks has been identified. Such pilot projects shall be geographically distributed throughout the United States.

(c) DEFINITION.—For the purpose of this section, the term ''National Parks'' means those areas of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Interior $1,000,000 for fiscal year 2004, and $15,000,000 for fiscal year 2005, to remain available until expended.

SEC. 815. INTERNATIONAL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation with the Administrator of the U.S. Agency for International Development, shall conduct demonstrations of fuel cells and associated hydrogen fueling infrastructure in countries other than the United States, particularly in areas where an energy infrastructure is not already well developed.

(b) ELIGIBLE TECHNOLOGIES.—The program may demonstrate—

(1) fuel cell vehicles in light-duty vehicle fleets;

(2) heavy-duty fuel cell on-road and off-road vehicles;

(3) stationary fuel cells in residential and commercial buildings; or

(4) portable fuel cells, including auxiliary power units in trucks.

(c) PARTICIPANTS.—

(1) ELIGIBILITY.—Foreign nations, non-profit organizations, and private companies shall be eligible for these pilot projects.

(2) COOPERATION.—Eligible entities may perform the projects in cooperation with United States non-profit organizations and private companies.

(3) COST-SHARING.—The Secretary may require a commitment from participating private companies and from participating foreign countries.

(d) AUTHORIZATION OF APPROPRIATIONS.—For activities conducted under this section, there are authorized to be appropriated to the Secretary $25,000,000 for each of fiscal years 2006 through 2010, to remain available until expended.

SEC. 816. TRIBAL STATIONARY HYBRID POWER DEMONSTRATION.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with Indian tribes, shall develop and transmit to Congress a strategy for a demonstration and commercial application program to develop hybrid distributed power systems on Indian lands that combine—

(1) one renewable electric power generating technology of 2 megawatts or less located near the site of electric energy use; and

(2) fuel cell power generation suitable for use in distributed power systems.

(b) DEFINITION.—For the purposes of this section, the terms ''Indian tribe'' and ''Indian land'' have the meaning given such terms under Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.), as amended by this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—For activities under this section, there are authorized to be appropriated to the Secretary of Energy $1,000,000 for fiscal year 2005, and $5,000,000 for each of fiscal years 2006 through 2008.

SEC. 817. DISTRIBUTED GENERATION PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall support a demonstration program to develop, deploy, and commercialize distributed generation systems to significantly reduce the cost of producing hydrogen from renewable energy for use in fuel cells. Such program shall provide the necessary infrastructure to test these distributed generation technologies at pilot scales in a real-world environment.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy, to remain available until expended, for the purposes of carrying out this section—

(1) $10,000,000 for fiscal year 2004;

(2) $15,000,000 for fiscal year 2005; and

(3) $20,000,000 for each of fiscal years 2006 through 2008.

Subtitle C—Federal Programs

SEC. 821. PUBLIC EDUCATION AND TRAINING.

(a) EDUCATION.—The Secretary shall conduct a public education program designed to increase public interest in and acceptance of hydrogen energy and fuel cell technologies.

(b) TRAINING.—The Secretary shall conduct a program to promote university-based training in critical skills for research in, production of, and use of hydrogen energy and fuel cell technologies. Such program may include research fellowships at institutions of higher education, centers of excellence in critical technologies, internships in industry, and such other measures as the Secretary deems appropriate.

(c) AUTHORIZATION OF APPROPRIATIONS.—For activities pursuant to this section, there are authorized to be appropriated to the Secretary $7,000,000 for each of fiscal years 2004 through 2008.

SEC. 822. HYDROGEN TRANSITION STRATEGIC PLANNING.

(a) IN GENERAL.—Not later than September 30, 2004, the head of each federal agency with annual outlays of greater than $20,000,000 shall submit to the Director of the Office of Management and Budget and to the Congress a hydrogen transition strategic plan containing a comprehensive assessment of how the transition to a hydrogen-based economy could assist the mission, operation and regulatory program of the agency.

(b) CONTENTS.—At a minimum, each plan shall contain—

(1) a description of areas within the agency's control where using hydrogen and/or fuel cells could benefit the operation of the agency, assist in the implementation of its regulatory functions or enhance the agency's mission; and

(2) a description of any agency management practices, procurement policies, regulations, policies, or guidelines that may inhibit the agency's transition to use of fuel cells and hydrogen as an energy source.

(c) DURATION AND REVISION.—The strategic plan shall cover a period of not less than the five years following the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

SEC. 823. MINIMUM FEDERAL FLEET REQUIREMENT.

(a) Section 303(b) of the Energy Policy Act of 1992 (42 U.S.C. 13212(b)) is amended by adding at the end the following:

''(4) HYDROGEN VEHICLES.—

''(A) Of the number of vehicles acquired under paragraph (1)(D) by a Federal fleet of 100 or more vehicles, not less than—

''(i) 5 percent in fiscal years 2006 and 2007;

''(ii) 10 percent in fiscal years 2008 and 2009;

''(iii) 15 percent in fiscal years 2010 and 2011; and

''(iv) 20 percent in fiscal years 2012 and thereafter,

shall be hydrogen-powered vehicles that meet standards for performance, reliability, cost, and maintenance established by the Secretary.

''(B) The Secretary may establish a lesser percentage, or waive the requirement under subparagraph (A) for any fiscal year entirely, if hydrogen-powered vehicles meeting the

standards set by the Secretary pursuant to subparagraph (A) are not available at a purchase price that is less than 150 percent of the purchase price of other comparable alternative fueled vehicles.

''(C) The Secretary may by rule, delay the implementation of the requirements under subparagraph (A) in the event that the Secretary determines that hydrogen-powered vehicles are not commercially or economically available, or that fuel for such vehicles is not commercially or economically available.

''(D) The Secretary, in consultation with the Administrator of General Services, may for reasons of refueling infrastructure use and cost optimization, elect to allocate the acquisitions necessary to achieve the requirements in subparagraph (A) to certain Federal fleets in lieu of requiring each Federal fleet to achieve the requirements in subparagraph (A).''.

(b) REFUELING.—Section 304 of the Energy Policy Act of 1992 (42 U.S.C. 13213) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in the second sentence of subsection (a), by striking ''If publicly'' and inserting the following:

''(b) COMMERCIAL ARRANGEMENTS.—

''(1) IN GENERAL.—If publicly''; and

(3) in subsection (b) (as designated by paragraph (2)), by adding at the end the following:

''(2) MANDATORY ARRANGEMENTS.—

''(A) IN GENERAL.—In a case in which publicly available fueling facilities are not convenient or accessible to the locations of 2 or more Federal fleets for which hydrogen-powered vehicles are required to be purchased under section 303(b)(4), the Federal agency for which the Federal fleets are maintained (or the Federal agencies for which the Federal fleets are maintained, acting jointly under a memorandum of agreement providing for cost sharing) shall enter into a commercial arrangement as provided in paragraph (1).

''(B) SUNSET.—Subparagraph (A) ceases to be effective at the end of fiscal year 2013.''.

SEC. 824. STATIONARY FUEL CELL PURCHASE REQUIREMENT.

(a) REQUIREMENT.—The President, acting through the Secretary of Energy, shall seek to ensure that, to the extent economically practicable and technically feasible, of the total amount of electric energy the Federal Government consumes during any fiscal year, the following amounts shall be generated by fuel cells—

(1) not less than 1 percent in fiscal years 2006 through 2008;

(2) not less than 2 percent in fiscal years 2009 and 2010; and

(3) not less than 3 percent in fiscal year 2011 and each fiscal year thereafter.

(b) COMPLIANCE.—In complying with the requirements of subsection (a), Federal agencies are encouraged to—

(1) use innovative purchasing practices;

(2) use fuel cells at the site of electricity usage and in combined heat and power applications; and

(3) use fuel cells in stand alone power functions, such as but not limited to battery power and backup power.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''fuel cells'' means an integrated system comprised of a fuel cell stack assembly and balance of plant components that converts a fuel into electricity using an electrochemical means; and

(2) the term ''electrical energy'' includes on and off grid power, including premium power applications, standby power applications and electricity generation.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary of Energy $30,000,000 for fiscal year 2004, $70,000,000 for fiscal year 2005, and $100,000,000 for each of fiscal years 2006 and thereafter.

SEC. 825. DEPARTMENT OF ENERGY STRATEGY.

Not later than 1 year after the date of enactment of this Act, the Secretary shall publish and transmit to Congress a plan identifying critical technologies, enabling strategies and applications, technical targets, and associated timeframes that support the commercialization of hydrogen-fueled fuel cell vehicles.

TITLE IX—RESEARCH AND DEVELOPMENT

SEC. 901. SHORT TITLE.

This Title may be cited as the ''Energy Research, Development, Demonstration, and Commercial Application Act of 2003''.

SEC. 902. GOALS.

(a) IN GENERAL.—In order to achieve the purposes of this title, the Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application, focused on—

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies,

(2) promoting diversity of energy supply,

(3) decreasing the nation's dependence on foreign energy supplies,

(4) improving United States energy security, and

(5) decreasing the environmental impact of energy-related activities.

(b) GOALS.—The Secretary shall publish measurable cost and performance-based goals with each annual budget submission in at least the following areas:

(1) energy efficiency for buildings, energy-consuming industries, and vehicles;

(2) electric energy generation (including distributed generation), transmission, and storage;

(3) renewable energy technologies including wind power, photovoltaics, solar thermal systems, geothermal energy, hydrogen-fueled systems, biomass-based systems, biofuels, and hydropower;

(4) fossil energy including power generation, onshore and offshore oil and gas resource recovery, and transportation; and

(5) nuclear energy including programs for existing and advanced reactors, and education of future specialists.

(c) PUBLIC COMMENT.—The Secretary shall provide mechanisms for input on the annually published goals from industry, university, and other public sources.

(d) EFFECT OF GOALS.—Nothing in subsection (a) or the annually published goals creates any new authority for any Federal agency, or may be used by a Federal agency to support the establishment of regulatory standards or regulatory requirements.

SEC. 903. DEFINITIONS.

For purposes of this title:

(1) The term ''Department'' means the Department of Energy.

(2) The term ''departmental mission'' means any of the functions vested in the Secretary of Energy by the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) or other law.

(3) The term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) The term ''National Laboratory'' means any of the following laboratories owned by the Department:

(A) Ames Laboratory.

(B) Argonne National Laboratory.

(C) Brookhaven National Laboratory.

(D) Fermi National Accelerator Laboratory.

(E) Idaho National Engineering and Environmental Laboratory.

(F) Lawrence Berkeley National Laboratory.

(G) Lawrence Livermore National Laboratory.

(H) Los Alamos National Laboratory.

(I) National Energy Technology Laboratory.

(J) National Renewable Energy Laboratory.

(K) Oak Ridge National Laboratory.

(L) Pacific Northwest National Laboratory.

(M) Princeton Plasma Physics Laboratory.

(N) Sandia National Laboratories.

(O) Stanford Linear Accelerator Center.

(P) Thomas Jefferson National Accelerator Facility.

(5) The term ''nonmilitary energy laboratory'' means the laboratories listed in (4) with the exclusion of (4)(G), (4)(H), and (4)(N).

(6) The term ''Secretary'' means the Secretary of Energy.

(7) The term ''single-purpose research facility'' means any of the primarily single-purpose entities owned by the Department or any other organization of the Department designated by the Secretary.

Subtitle A—Energy Efficiency

SEC. 911. ENERGY EFFICIENCY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for energy efficiency and conservation research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) for fiscal year 2004, $616,000,000;

(2) for fiscal year 2005, $695,000,000;

(3) for fiscal year 2006, $772,000,000;

(4) for fiscal year 2007, $865,000,000; and

(5) for fiscal year 2008, $920,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 912—

(A) for fiscal year 2004, $20,000,000; and

(B) for fiscal year 2005, $30,000,000.

(2) For activities under section 914—

(A) for fiscal year 2004, $4,000,000; and

(B) for each of fiscal years 2005 through 2008, $7,000,000.

(3) For activities under section 915—

(A) for fiscal year 2004, $20,000,000;

(B) for fiscal year 2005, $25,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for activities under section 912, $50,000,000 for each of fiscal years 2006 through 2013.

(d) None of the funds authorized to be appropriated under this section may be used for—

(1) the promulgation and implementation of energy efficiency regulations;

(2) the Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act;

(3) the State Energy Program under part D of title III of the Energy Policy and Conservation Act; or

(4) the Federal Energy Management Program under part 3 of title V of the National Energy Conservation Policy Act.

SEC. 912. NEXT GENERATION LIGHTING INITIATIVE.

(a) IN GENERAL.—The Secretary shall carry out a Next Generation Lighting Initiative in accordance with this section to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes.

(b) OBJECTIVES.—The objectives of the initiative shall be to develop advanced solid-state organic and inorganic lighting technologies based on white light emitting diodes that, compared to incandescent and fluorescent lighting technologies, are longer lasting; more energy-efficient; cost-competitive and have less environmental impact.

(c) INDUSTRY ALLIANCE.—The Secretary shall, within 3 months from the date of enactment of this section, competitively select an Industry Alliance to represent participants who are private, for-profit firms which, as a group, are broadly representative of United States solid state lighting research, development, infrastructure, and manufacturing expertise as a whole.

(d) RESEARCH.—

(1) The Secretary shall carry out the research activities of the Next Generation Lighting Initiative through competitively awarded grants to researchers, including Industry Alliance participants, national laboratories and institutions of higher education.

(2) The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) assessment of the progress of the Initiative's research activities; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) The information and roadmaps under (2) shall be available to the public.

(e) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—The Secretary shall carry out a development, demonstration, and commercial application program for the Next Generation Lighting Initiative through competitively selected awards. The Secretary may give preference to participants of the Industry Alliance selected pursuant to subsection (c).

(f) COST SHARING.—The Secretary shall require cost sharing according to 42 U.S.C. 13542.

(g) INTELLECTUAL PROPERTY.—The Secretary may require, in accordance with the authorities provided in 35 U.S.C. 202(a)(ii), 42 U.S.C. 2182 and 42 U.S.C. 5908, that for any new invention from subsection (d)—

(1) that the Industry Alliance members who are active participants in research, development and demonstration activities related to the advanced solid-state lighting technologies that are the subject of this legislation shall be granted first option to negotiate with the invention owner, at least in the field of solid-state lighting, non-exclusive licenses and royalties on terms that are reasonable under the circumstances;

(2) that the invention owner must offer to negotiate licenses with the Industry Alliance participants cited in (1), in good faith, for at least 1 year after U.S. patents are issued on any such new invention; and

(3) such other terms as the Secretary determines are required to promote accelerated commercialization of inventions made under the Initiative.

(h) NATIONAL ACADEMY REVIEW.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct periodic reviews of the Next Generation Lighting Initiative.

(i) DEFINITIONS.—As used in this section:

(1) The term ''advanced solid-state lighting'' means a semiconducting device package and delivery system that produces white light using externally applied voltage.

(2) The term ''research'' includes basic research on the technologies, materials and manufacturing processes required for white light emitting diodes.

(3) The term ''Industry Alliance'' means an entity selected by the Secretary under subsection (c).

(4) The term ''white light emitting diode'' means a semiconducting package, utilizing either organic or inorganic materials, that produces white light using externally applied voltage.

SEC. 913. NATIONAL BUILDING PERFORMANCE INITIATIVE.

(a) INTERAGENCY GROUP.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall establish an interagency group to develop, in coordination with the advisory committee established under subsection (e), a National Building Performance Initiative (in this section referred to as the ''Initiative''). The interagency group shall be co-chaired by appropriate officials of the Department and the Department of Commerce, who shall jointly arrange for the provision of necessary administrative support to the group.

(b) INTEGRATION OF EFFORTS.—The Initiative shall integrate Federal, State, and voluntary private sector efforts to reduce the costs of construction, operation, maintenance, and renovation of commercial, industrial, institutional, and residential buildings.

(c) PLAN.—Not later than 1 year after the date of enactment of this Act, the interagency group shall submit to Congress a plan for carrying out the appropriate Federal role in the Initiative. The plan shall include—

(1) research, development, demonstration, and commercial application of systems and materials for new construction and retrofit relating to the building envelope and building system components; and

(2) the collection, analysis, and dissemination of research results and other pertinent information on enhancing building performance to industry, government entities, and the public.

(d) DEPARTMENT OF ENERGY ROLE.—Within the Federal portion of the Initiative, the Department shall be the lead agency for all aspects of building performance related to use and conservation of energy.

(e) ADVISORY COMMITTEE.—The Director of the Office of Science and Technology Policy shall establish an advisory committee to—

(1) analyze and provide recommendations on potential private sector roles and participation in the Initiative; and

(2) review and provide recommendations on the plan described in subsection (c).

(f) CONSTRUCTION.—Nothing in this section provides any Federal agency with new authority to regulate building performance.

SEC. 914. SECONDARY ELECTRIC VEHICLE BATTERY USE PROGRAM.

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''battery'' means an energy storage device that previously has been used to provide motive power in a vehicle powered in whole or in part by electricity.

(2) The term ''associated equipment'' means equipment located where the batteries will be used that is necessary to enable the use of the energy stored in the batteries.

(b) PROGRAM.—The Secretary shall establish and conduct a research, development, demonstration, and commercial application program for the secondary use of batteries. Such program shall be—

(1) designed to demonstrate the use of batteries in secondary applications, including utility and commercial power storage and power quality;

(2) structured to evaluate the performance, including useful service life and costs, of such batteries in field operations, and the necessary supporting infrastructure, including reuse and disposal of batteries; and

(3) coordinated with ongoing secondary battery use programs at the National Laboratories and in industry.

(c) SOLICITATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall solicit proposals to demonstrate the secondary use of batteries and associated equipment and supporting infrastructure in geographic locations throughout the United States. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(d) SELECTION OF PROPOSALS.—

(1) The Secretary shall, not later than 90 days after the closing date established by the Secretary for receipt of proposals under subsection (c), select up to 5 proposals which may receive financial assistance under this section once the Department is in receipt of appropriated funds.

(2) In selecting proposals, the Secretary shall consider diversity of battery type, geographic and climatic diversity, and life-cycle environmental effects of the approaches.

(3) No one project selected under this section shall receive more than 25 percent of the funds authorized for this Program.

(4) The Secretary shall consider the extent of involvement of State or local government and other persons in each demonstration project to optimize use of Federal resources.

(5) The Secretary may consider such other criteria as the Secretary considers appropriate.

(e) CONDITIONS.—The Secretary shall require that—

(1) relevant information be provided to the Department, the users of the batteries, the proposers, and the battery manufacturers; and

(2) the proposer provide at least 50 percent of the costs associated with the proposal.

SEC. 915. ENERGY EFFICIENCY SCIENCE INITIATIVE.

(a) ESTABLISHMENT.—The Secretary shall establish an Energy Efficiency Science Initiative to be managed by the Assistant Secretary in the Department with responsibility for energy conservation under section 203(a)(9) of the Department of Energy Organization Act (42 U.S.C. 7133(a)(9)), in consultation with the Director of the Office of Science, for grants to be competitively awarded and subject to peer review for research relating to energy efficiency.

(b) REPORT.—The Secretary shall submit to the Congress, along with the President's annual budget request under section 1105(a) of title 31, United States Code, a report on the activities of the Energy Efficiency Science Initiative, including a description of the process used to award the funds and an explanation of how the research relates to energy efficiency.

Subtitle B—Distributed Energy and Electric Energy Systems

SEC. 921. DISTRIBUTED ENERGY AND ELECTRIC ENERGY SYSTEMS.

(a) IN GENERAL.—

(1) The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

(A) for fiscal year 2004, $190,000,000;

(B) for fiscal year 2005, $200,000,000;

(C) for fiscal year 2006, $220,000,000;

(D) for fiscal year 2007, $240,000,000; and

(E) for fiscal year 2008, $260,000,000.

(2) For the Initiative in subsection 927(e), there are authorized to be appropriated—

(A) for fiscal year 2004, $15,000,000;

(B) for fiscal year 2005, $20,000,000;

(C) for fiscal year 2006, $30,000,000;

(D) for fiscal year 2007, $35,000,000; and

(E) for fiscal year 2008, $40,000,000.

(b) MICRO-COGENERATION ENERGY TECHNOLOGY.—From amounts authorized under subsection (a), $20,000,000 for each of fiscal years 2004 and 2005 shall be available for activities under section 924.

SEC. 922. HYBRID DISTRIBUTED POWER SYSTEMS.

Not later than 1 year after the date of enactment of this Act, the Secretary shall develop and transmit to the Congress a strategy for a comprehensive research, development, demonstration, and commercial application program to develop hybrid distributed power systems that combine—

(1) one or more renewable electric power generation technologies of 10 megawatts or less located near the site of electric energy use; and

(2) nonintermittent electric power generation technologies suitable for use in a distributed power system.

SEC. 923. HIGH POWER DENSITY INDUSTRY PROGRAM.

The Secretary shall establish a comprehensive research, development, demonstration, and commercial application program to improve energy efficiency of high power density facilities, including data centers, server farms, and telecommunications facilities. Such program shall consider technologies that provide significant improvement in thermal controls, metering, load management, peak load reduction, or the efficient cooling of electronics.

SEC. 924. MICRO-COGENERATION ENERGY TECHNOLOGY.

The Secretary shall make competitive, merit-based grants to consortia for the development of micro-cogeneration energy technology. The consortia shall explore the use of small-scale combined heat and power in residential heating appliances, the use of excess power to operate other appliances within the residence and supply of excess generated power to the power grid.

SEC. 925. DISTRIBUTED ENERGY TECHNOLOGY DEMONSTRATION PROGRAM.

The Secretary, within the sums authorized under section 921(a)(1), may provide financial assistance to coordinating consortia of interdisciplinary participants for demonstrations designed to accelerate the utilization of distributed energy technologies, such as fuel cells, microturbines, reciprocating engines, thermally activated technologies, and combined heat and power systems, in highly energy intensive commercial applications.

SEC. 926. OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

(a) CREATION OF AN OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.—Title II of the Department of Energy Organization Act is amended by inserting the following after section 217 (42 U.S.C. 7144d):

''OFFICE OF ELECTRIC TRANSMISSION AND DISTRIBUTION.

''SEC. 218. (a) There is established within the Department an Office of Electric Transmission and Distribution. This Office shall be headed by a Director, who shall be appointed by the Secretary. The Director shall be compensated at the annual rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) The Director shall—

''(1) coordinate and develop a comprehensive, multi-year strategy to improve the Nation's electricity transmission and distribution;

''(2) ensure that the recommendations of the Secretary's National Transmission Grid Study are implemented;

''(3) carry out the research, development, and demonstration functions;

''(4) grant authorizations for electricity import and export;

''(5) perform other electricity transmission and distribution-related functions assigned by the Secretary; and

''(6) develop programs for workforce training in power and transmission engineering.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents of the Department of Energy Act is amended by inserting after the item relating to section 217 the following new item:

''218. Office of Electric Transmission and Distribution.''.

(2) Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Electric Transmission and Distribution, Department of Energy.'' after ''Inspector General, Department of Energy.''.

SEC. 927. ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAMS.

(a) DEMONSTRATION PROGRAM.—The Secretary, acting through the Director of the Office of Electric Transmission and Distribution, shall establish a comprehensive research, development, and demonstration program to ensure the reliability, efficiency, and environmental integrity of electrical transmission and distribution systems. This program shall include—

(1) advanced energy and energy storage technologies, materials, and systems, giving priority to new transmission technologies, including composite conductor materials and other technologies that enhance reliability, operational flexibility, or power-carrying capability;

(2) advanced grid reliability and efficiency technology development;

(3) technologies contributing to significant load reductions;

(4) advanced metering, load management, and control technologies;

(5) technologies to enhance existing grid components;

(6) the development and use of high-temperature superconductors to—

(A) enhance the reliability, operational flexibility, or power-carrying capability of electric transmission or distribution systems; or

(B) increase the efficiency of electric energy generation, transmission, distribution, or storage systems;

(7) integration of power systems, including systems to deliver high-quality electric power, electric power reliability, and combined heat and power;

(8) supply of electricity to the power grid by small scale, distributed and residential-based power generators;

(9) the development and use of advanced grid design, operation and planning tools;

(10) any other infrastructure technologies, as appropriate; and

(11) technology transfer and education.

(b) PROGRAM PLAN.—Not later than 1 year after the date of the enactment of this legislation, the Secretary, in consultation with other appropriate Federal agencies, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. In preparing the program plan, the Secretary shall consult with utilities, energy services providers, manufacturers, institutions of higher education, other appropriate State and local agencies, environmental organizations, professional and technical societies, and any other persons the Secretary considers appropriate.

(c) IMPLEMENTATION.—The Secretary shall consider implementing this program using a consortium of industry, university and national laboratory participants.

(d) REPORT.—Not later than 2 years after the transmittal of the plan under subsection (b), the Secretary shall transmit a report to Congress describing the progress made under this section and identifying any additional resources needed to continue the development and commercial application of transmission and distribution of infrastructure technologies.

(e) POWER DELIVERY RESEARCH INITIATIVE.—The Secretary shall establish a research, development and demonstration initiative specifically focused on power delivery utilizing components incorporating high temperature superconductivity.

(1) Goals of this Initiative shall be to—

(A) establish world-class facilities to develop high temperature superconductivity power applications in partnership with manufacturers and utilities;

(B) provide technical leadership for establishing reliability for high temperature superconductivity power applications including suitable modeling and analysis;

(C) facilitate commercial transition toward direct current power transmission, storage, and use for high power systems utilizing high temperature superconductivity; and

(D) facilitate the integration of very low impedance high temperature superconducting wires and cables in existing electric networks to improve system performance, power flow control and reliability.

(2) The Initiative shall include—

(A) feasibility analysis, planning, research, and design to construct demonstrations of superconducting links in high power, direct current and controllable alternating current transmission systems;

(B) public-private partnerships to demonstrate deployment of high temperature superconducting cable into testbeds simulating a realistic transmission grid and under varying transmission conditions, including actual grid insertions; and

(C) testbeds developed in cooperation with national laboratories, industries, and universities to demonstrate these technologies, prepare the technologies for commercial introduction, and address cost or performance roadblocks to successful commercial use.

(f) TRANSMISSION AND DISTRIBUTION GRID PLANNING AND OPERATIONS INITIATIVE.—The Secretary shall establish a research, development and demonstration initiative specifically focused on tools needed to plan, operate and expand the transmission and distribution grids in the presence of competitive market mechanisms for energy, load demand, customer response and ancillary services. Goals of this Initiative shall be to—

(1) develop and utilize a geographically distributed Center, consisting of research universities and national laboratories, with expertise and facilities to develop the underlying theory and software for power system

application, and to assure commercial development in partnership with software vendors and utilities;

(2) provide technical leadership in engineering and economic analysis for reliability and efficiency of power systems planning and operations in the presence of competitive markets for electricity;

(3) model, simulate and experiment with new market mechanisms and operating practices to understand and optimize such new methods before actual use; and

(4) provide technical support and technology transfer to electric utilities and other participants in the domestic electric industry and marketplace.

Subtitle C—Renewable Energy

SEC. 931. RENEWABLE ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for renewable energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) for fiscal year 2004, $480,000,000;
(2) for fiscal year 2005, $550,000,000;
(3) for fiscal year 2006, $610,000,000;
(4) for fiscal year 2007, $659,000,000; and
(5) for fiscal year 2008, $710,000,000.

(b) BIOENERGY.—From the amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 932:

(1) for fiscal year 2004, $135,425,000;
(2) for fiscal year 2005, $155,600,000;
(3) for fiscal year 2006, $167,650,000;
(4) for fiscal year 2007, $180,000,000; and
(5) for fiscal year 2008, $192,000,000.

(c) BIODIESEL ENGINE TESTING.—From amounts authorized under subsection (a), $5,000,000 is authorized to be appropriated in each of fiscal years 2004 and 2008 to carry out section 933.

(d) CONCENTRATING SOLAR POWER.—From amounts authorized under subsection (a), the following sums are authorized to be appropriated to carry out section 934:

(1) for fiscal year 2004, $20,000,000;
(2) for fiscal year 2005, $40,000,000; and
(3) for each of fiscal years 2006, 2007 and 2008, $50,000,000.

(e) LIMITS ON USE OF FUNDS.—

(1) None of the funds authorized to be appropriated under this section may be used for Renewable Support and Implementation.

(2) Of the funds authorized under subsection (b), not less than $5,000,000 for each fiscal year shall be made available for grants to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions.

(f) CONSULTATION.—In carrying out this section, the Secretary, in consultation with the Secretary of Agriculture, shall demonstrate the use of advanced wind power technology, including combined use with coal gasification; biomass; geothermal energy systems; and other renewable energy technologies to assist in delivering electricity to rural and remote locations.

SEC. 932. BIOENERGY PROGRAMS.

(a) IN GENERAL.—The Secretary shall conduct a program of research, development, demonstration, and commercial application for bioenergy, including—

(1) biopower energy systems;
(2) biofuels;
(3) bioproducts;
(4) integrated biorefineries that may produce biopower, biofuels and bioproducts;
(5) cross-cutting research and development in feedstocks; and
(6) economic analysis.

(b) BIOFUELS AND BIOPRODUCTS.—The goals of the biofuels and bioproducts programs shall be to develop, in partnership with industry—

(1) advanced biochemical and thermochemical conversion technologies capable of making fuels from cellulosic feedstocks that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles; and

(2) advanced biotechnology processes capable of making biofuels and bioproducts with emphasis on development of biorefinery technologies using enzyme-based processing systems.

(c) DEFINITION.—For purposes of (b), the term ''cellulosic feedstock'' means any portion of a crop not normally used in food production or any non-food crop grown for the purpose of producing biomass feedstock.

SEC. 933. BIODIESEL ENGINE TESTING PROGRAM.

(a) IN GENERAL.—Not later that 180 days after enactment of this Act, the Secretary shall initiate a partnership with diesel engine, diesel fuel injection system, and diesel vehicle manufacturers and diesel and biodiesel fuel providers to include biodiesel testing in advanced diesel engine and fuel system technology.

(b) SCOPE.—The study shall provide for testing to determine the impact of biodiesel on current and future emission control technologies, with emphasis on—

(1) the impact of biodiesel on emissions warranty, in-use liability, and anti-tampering provisions;

(2) the impact of long-term use of biodiesel on engine operations;

(3) the options for optimizing these technologies for both emissions and performance when switching between biodiesel and diesel fuel; and

(4) the impact of using biodiesel in these fueling systems and engines when used as a blend with 2006 Environmental Protection Agency-mandated diesel fuel containing a maximum of 15-parts-per-million sulfur content.

(c) REPORT.—Not later than 2 years after the date of enactment, the Secretary shall provide an interim report to Congress on the findings of this study, including a comprehensive analysis of impacts from biodiesel on engine operation for both existing and expected future diesel technologies, and recommendations for ensuring optimal emissions reductions and engine performance with biodiesel.

(d) DEFINITION.—For purposes of this section, the term ''biodiesel'' means a diesel fuel substitute produced from non-petroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751–02a ''Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels''.

SEC. 934. CONCENTRATING SOLAR POWER RESEARCH PROGRAM.

(a) IN GENERAL.—The Secretary shall conduct a program of research and development to evaluate the potential of concentrating solar power for hydrogen production, including co-generation approaches for both hydrogen and electricity. Such program shall take advantage of existing facilities to the extent possible and shall include—

(1) development of optimized technologies that are common to both electricity and hydrogen production;

(2) evaluation of thermo-chemical cycles for hydrogen production at the temperatures attainable with concentrating solar power;

(3) evaluation of materials issues for the thermo-chemical cycles in (2);

(4) system architectures and economics studies; and

(5) coordination with activities in the Advanced Reactor Hydrogen Co-generation Project on high temperature materials, thermo-chemical cycle and economic issues.

(b) ASSESSMENT.—In carrying out the program under this section, the Secretary is directed to assess conflicting guidance on the economic potential of concentrating solar power for electricity production received from the National Research Council report entitled ''Renewable Power Pathways: A Review of the U.S. Department of Energy's Renewable Energy Programs'' in 2000 and subsequent DOE-funded reviews of that report and provide an assessment of the potential impact of this technology before, or concurrent with, submission of the fiscal year 2006 budget.

(c) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall provide a report to Congress on the economic and technical potential for electricity or hydrogen production, with or without co-generation, with concentrating solar power, including the economic and technical feasibility of potential construction of a pilot demonstration facility suitable for commercial production of electricity and/or hydrogen from concentrating solar power.

SEC. 935. MISCELLANEOUS PROJECTS.

The Secretary shall conduct research, development, demonstration, and commercial application programs for—

(1) ocean energy, including wave energy;

(2) the combined use of renewable energy technologies with one another and with other energy technologies, including the combined use of wind power and coal gasification technologies; and

(3) renewable energy technologies for cogeneration of hydrogen and electricity.

Subtitle D—Nuclear Energy

SEC. 941. NUCLEAR ENERGY.

(a) CORE PROGRAMS.—The following sums are authorized to be appropriated to the Secretary for nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle, other than those described in subsection (b):

(1) for fiscal year 2004, $273,000,000;
(2) for fiscal year 2005, $305,000,000;
(3) for fiscal year 2006, $330,000,000;
(4) for fiscal year 2007, $355,000,000; and
(5) for fiscal year 2008, $495,000,000.

(b) NUCLEAR INFRASTRUCTURE SUPPORT.—The following sums are authorized to be appropriated to the Secretary for activities under section 942(f):

(1) for fiscal year 2004, $125,000,000;
(2) for fiscal year 2005, $130,000,000;
(3) for fiscal year 2006, $135,000,000;
(4) for fiscal year 2007, $140,000,000; and
(5) for fiscal year 2008, $145,000,000.

(c) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 943—
(A) for fiscal year 2004, $140,000,000;
(B) for fiscal year 2005, $145,000,000;
(C) for fiscal year 2006, $150,000,000;
(D) for fiscal year 2007, $155,000,000; and
(E) for fiscal year 2008, $275,000,000.
(2) For activities under section 944—
(A) for fiscal year 2004, $33,000,000;
(B) for fiscal year 2005, $37,900,000;
(C) for fiscal year 2006, $43,600,000;
(D) for fiscal year 2007, $50,100,000; and
(E) for fiscal year 2008, $56,000,000.

(3) For activities under section 946, for each of fiscal years 2004 through 2008, $6,000,000.

(d) None of the funds authorized under this section may be used for decommissioning the Fast Flux Test Facility.

SEC. 942. NUCLEAR ENERGY RESEARCH PROGRAMS.

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.—The Secretary shall carry out a Nuclear Energy Plant Optimization Program to support research and development activities addressing reliability, availability, productivity, component aging, safety and security of existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.—The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations in the October 2001 report entitled ''A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010'' issued by the Nuclear Energy Research Advisory Committee of the Department. The Program shall include—

(1) utilization of the expertise and capabilities of industry, universities, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

(2) consideration of a variety of reactor designs suitable for both developed and developing nations;

(3) participation of international collaborators in research, development, and design efforts as appropriate; and

(4) encouragement for university and industry participation.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.—The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application. The Initiative shall examine advanced proliferation-resistant and passively safe reactor designs, including designs that—

(1) are economically competitive with other electric power generation plants;

(2) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(3) use fuels that are proliferation resistant and have substantially reduced production of high-level waste per unit of output; and

(4) use improved instrumentation.

(e) REACTOR PRODUCTION OF HYDROGEN.—The Secretary shall carry out research to examine designs for high-temperature reactors capable of producing large-scale quantities of hydrogen using thermo-chemical processes.

(f) NUCLEAR INFRASTRUCTURE SUPPORT.—The Secretary shall develop and implement a strategy for the facilities of the Office of Nuclear Energy, Science, and Technology and shall transmit a report containing the strategy along with the President's budget request to the Congress for fiscal year 2006. Such strategy shall provide a cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility upgrades and modifications; and

(4) building new facilities.

SEC. 943. ADVANCED FUEL CYCLE INITIATIVE.

(a) IN GENERAL.—The Secretary, through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling technology research and development program to evaluate proliferation-resistant fuel recycling and transmutation technologies which minimize environmental or public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Secretary's Nuclear Energy Research Advisory Committee or other independent entity, as appropriate. Opportunities to enhance progress of this program through international cooperation should be sought.

(b) REPORTS.—The Secretary shall report on the activities of the advanced fuel recycling technology research and development program as part of the Department's annual budget submission.

SEC. 944. UNIVERSITY NUCLEAR SCIENCE AND ENGINEERING SUPPORT.

(a) ESTABLISHMENT.—The Secretary shall support a program to invest in human resources and infrastructure in the nuclear sciences and engineering and related fields (including health physics and nuclear and radiochemistry), consistent with departmental missions related to civilian nuclear research and development.

(b) DUTIES.—In carrying out the program under this section, the Secretary shall establish fellowship and faculty assistance programs, as well as provide support for fundamental research and encourage collaborative research among industry, national laboratories, and universities through the Nuclear Energy Research Initiative. The Secretary is encouraged to support activities addressing the entire fuel cycle through involvement of both the Offices of Nuclear Energy, Science and Technology and Civilian Radioactive Waste Management. The Secretary shall support communication and outreach related to nuclear science, engineering and nuclear waste management.

(c) MAINTAINING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.—Activities under this section may include—

(1) converting research reactors currently using high-enrichment fuels to low-enrichment fuels, upgrading operational instrumentation, and sharing of reactors among institutions of higher education;

(2) providing technical assistance, in collaboration with the United States nuclear industry, in relicensing and upgrading training reactors as part of a student training program; and

(3) providing funding for reactor improvements as part of a focused effort that emphasizes research, training, and education.

(d) UNIVERSITY-NATIONAL LABORATORY INTERACTIONS.—The Secretary shall develop sabbatical fellowship and visiting scientist programs to encourage sharing of personnel between national laboratories and universities.

(e) OPERATING AND MAINTENANCE COSTS.—Funding for a research project provided under this section may be used to offset a portion of the operating and maintenance costs of a research reactor at an institution of higher education used in the research project.

SEC. 945. SECURITY OF NUCLEAR FACILITIES.

The Secretary, through the Director of the Office of Nuclear Energy, Science and Technology shall conduct a research and development program on cost-effective technologies for increasing the safety of nuclear facilities from natural phenomena and the security of nuclear facilities from deliberate attacks.

SEC. 946. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE SOURCES.

(a) SURVEY.—Not later than August 1, 2004, the Secretary shall provide to the Congress results of a survey of industrial applications of large radioactive sources. The survey shall—

(1) consider well-logging sources as one class of industrial sources;

(2) include information on current domestic and international Department, Department of Defense, State Department and commercial programs to manage and dispose of radioactive sources; and

(3) discuss available disposal options for currently deployed or future sources and, if deficiencies are noted for either deployed or future sources, recommend legislative options that Congress may consider to remedy identified deficiencies.

(b) PLAN.—In conjunction with the survey in subsection (a), the Secretary shall establish a research and development program to develop alternatives to such sources that reduce safety, environmental, or proliferation risks to either workers using the sources or the public. Miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators for production of short-lived radioactive materials at an industrial site shall be considered as part of the research and development efforts. Details of the program plan shall be provided to the Congress by August 1, 2004.

Subtitle E—Fossil Energy

SEC. 951. FOSSIL ENERGY.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for fossil energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle:

(1) for fiscal year 2004, $523,000,000;

(2) for fiscal year 2005, $542,000,000;

(3) for fiscal year 2006, $558,000,000;

(4) for fiscal year 2007, $585,000,000; and

(5) for fiscal year 2008, $600,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 952(b)(2), $28,000,000 for each of the fiscal years 2004 through 2008.

(2) For activities under section 953—

(A) for fiscal year 2004, $12,000,000;

(B) for fiscal year 2005, $15,000,000; and

(C) for each of fiscal years 2006 through 2008, $20,000,000.

(3) For activities under section 954, to remain available until expended—

(A) for fiscal year 2004, $200,000,000;

(B) for fiscal year 2005, $210,000,000; and

(C) for fiscal year 2006, $220,500,000.

(4) For the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), $25,000,000 for each of fiscal years 2004 through 2008.

(c) EXTENDED AUTHORIZATION.—There are authorized to be appropriated to the Secretary for the Office of Arctic Energy under section 3197 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), $25,000,000 for each of fiscal years 2009 through 2012.

(d) LIMITS ON USE OF FUNDS.—

(1) None of the funds authorized under this section may be used for Fossil Energy Environmental Restoration or Import/Export Authorization.

(2) Of the funds authorized under subsection (b)(2), not less than 20 percent of the

funds appropriated for each fiscal year shall be dedicated to research and development carried out at institutions of higher education.

SEC. 952. OIL AND GAS RESEARCH PROGRAMS.

(a) OIL AND GAS RESEARCH.—The Secretary shall conduct a program of research, development, demonstration, and commercial application on oil and gas, including—

(1) exploration and production;

(2) gas hydrates;

(3) reservoir life and extension;

(4) transportation and distribution infrastructure;

(5) ultraclean fuels;

(6) heavy oil and shale; and

(7) related environmental research.

(b) FUEL CELLS.—

(1) The Secretary shall conduct a program of research, development, demonstration, and commercial application on fuel cells for low-cost, high-efficiency, fuel-flexible, modular power systems.

(2) The demonstrations shall include fuel cell proton exchange membrane technology for commercial, residential, and transportation applications, and distributed generation systems, utilizing improved manufacturing production and processes.

(c) NATURAL GAS AND OIL DEPOSITS REPORT.—Not later than 2 years after the date of the enactment of this Act, and every 2 years thereafter, the Secretary of the Interior, in consultation with other appropriate Federal agencies, shall transmit a report to the Congress of the latest estimates of natural gas and oil reserves, reserves growth, and undiscovered resources in Federal and State waters off the coast of Louisiana and Texas.

(d) INTEGRATED CLEAN POWER AND ENERGY RESEARCH.—

(1) The Secretary shall establish a national center or consortium of excellence in clean energy and power generation, utilizing the resources of the existing Clean Power and Energy Research Consortium, to address the nation's critical dependence on energy and the need to reduce emissions.

(2) The center or consortium will conduct a program of research, development, demonstration and commercial application on integrating the following six focus areas—

(A) efficiency and reliability of gas turbines for power generation;

(B) reduction in emissions from power generation;

(C) promotion of energy conservation issues;

(D) effectively utilizing alternative fuels and renewable energy;

(E) development of advanced materials technology for oil and gas exploration and utilization in harsh environments; and

(F) education on energy and power generation issues.

SEC. 953. RESEARCH AND DEVELOPMENT FOR COAL MINING TECHNOLOGIES.

(a) ESTABLISHMENT.—The Secretary shall carry out a program for research and development on coal mining technologies. The Secretary shall cooperate with appropriate Federal agencies, coal producers, trade associations, equipment manufacturers, institutions of higher education with mining engineering departments, and other relevant entities.

(b) PROGRAM.—The research and development activities carried out under this section shall—

(1) be guided by the mining research and development priorities identified by the Mining Industry of the Future Program and in the recommendations from relevant reports of the National Academy of Sciences on mining technologies;

(2) include activities exploring minimization of contaminants in mined coal that contribute to environmental concerns including development and demonstration of electromagnetic wave imaging ahead of mining operations;

(3) develop and demonstrate coal bed electromagnetic wave imaging and techniques for horizontal drilling in order to increase methane recovery efficiency, prevent spoilage of domestic coal reserves and minimize water disposal associated with methane extraction; and

(4) expand mining research capabilities at institutions of higher education.

SEC. 954. COAL AND RELATED TECHNOLOGIES PROGRAM.

(a) IN GENERAL.—In addition to the program authorized under Title II of this Act, the Secretary of Energy shall conduct a program of technology research, development and demonstration and commercial application for coal and power systems, including programs to facilitate production and generation of coal-based power through—

(1) innovations for existing plants;

(2) integrated gasification combined cycle;

(3) advanced combustion systems;

(4) turbines for synthesis gas derived from coal;

(5) carbon capture and sequestration research and development;

(6) coal-derived transportation fuels and chemicals;

(7) solid fuels and feedstocks; and

(8) advanced coal-related research.

(b) COST AND PERFORMANCE GOALS.—In carrying out programs authorized by this section, the Secretary shall identify cost and performance goals for coal-based technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel in 2007, 2015, and the years after 2020. In establishing such cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department of Energy in support of such assessment;

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations and organizations representing workers;

(3) not later than 120 days after the date of enactment of this section, publish in the Federal Register proposed draft cost and performance goals for public comments; and

(4) not later than 180 days after the date of enactment of this section and every four years thereafter, submit to Congress a report describing final cost and performance goals for such technologies that includes a list of technical milestones as well as an explanation of how programs authorized in this section will not duplicate the activities authorized under the Clean Coal Power Initiative authorized under Title II of this Act.

SEC. 955. COMPLEX WELL TECHNOLOGY TESTING FACILITY.

The Secretary of Energy, in coordination with industry leaders in extended research drilling technology, shall establish a Complex Well Technology Testing Facility at the Rocky Mountain Oilfield Testing Center to increase the range of extended drilling technologies.

Subtitle F—Science

SEC. 961. SCIENCE.

(a) IN GENERAL.—The following sums are authorized to be appropriated to the Secretary for research, development, demonstration, and commercial application activities of the Office of Science, including activities authorized under this subtitle, including the amounts authorized under the amendment made by section 967(c)(2)(D), and including basic energy sciences, advanced scientific and computing research, biological and environmental research, fusion energy sciences, high energy physics, nuclear physics, and research analysis and infrastructure support:

(1) for fiscal year 2004, $3,785,000,000;

(2) for fiscal year 2005, $4,153,000,000;

(3) for fiscal year 2006, $4,586,000,000;

(4) for fiscal year 2007, $5,000,000,000; and

(5) for fiscal year 2008, $5,400,000,000.

(b) ALLOCATIONS.—From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities of the Fusion Energy Sciences Program, including activities under section 962—

(A) for fiscal year 2004, $335,000,000;

(B) for fiscal year 2005, $349,000,000;

(C) for fiscal year 2006, $362,000,000;

(D) for fiscal year 2007, $377,000,000; and

(E) for fiscal year 2008, $393,000,000.

(2) For the Spallation Neutron Source—

(A) for construction in fiscal year 2004, $124,600,000;

(B) for construction in fiscal year 2005, $79,800,000;

(C) for completion of construction in fiscal year 2006, $41,100,000; and

(D) for other project costs (including research and development necessary to complete the project, preoperations costs, and capital equipment related to construction), $103,279,000 for the period encompassing fiscal years 2003 through 2006, to remain available until expended through September 30, 2006.

(3) For Catalysis Research activities under section 965—

(A) for fiscal year 2004, $33,000,000;

(B) for fiscal year 2005, $35,000,000;

(C) for fiscal year 2006, $36,500,000;

(D) for fiscal year 2007, $38,200,000; and

(E) for fiscal year 2008, $40,100,000.

(4) For Nanoscale Science and Engineering Research activities under section 966—

(A) for fiscal year 2004, $270,000,000;

(B) for fiscal year 2005, $290,000,000;

(C) for fiscal year 2006, $310,000,000;

(D) for fiscal year 2007, $330,000,000; and

(E) for fiscal year 2008, $375,000,000.

(5) For activities under subsection 966(c), from the amounts authorized under subparagraph (4)—

(A) for fiscal year 2004, $135,000,000;

(B) for fiscal year 2005, $150,000,000;

(C) for fiscal year 2006, $120,000,000;

(D) for fiscal year 2007, $100,000,000; and

(E) for fiscal year 2008, $125,000,000.

(6) For activities in the Genomes to Life Program under section 968—

(A) for fiscal year 2004, $100,000,000;

(B) for fiscal year 2005, $170,000,000;

(C) for fiscal year 2006, $325,000,000;

(D) for fiscal year 2007, $415,000,000; and

(E) for fiscal year 2008, $455,000,000.

(7) For construction and ancillary equipment of the Genomes to Life User Facilities under section 968(d), of funds authorized under (6)—

(A) for fiscal year 2004, $16,000,000;

(B) for fiscal year 2005, $70,000,000;

(C) for fiscal year 2006, $175,000,000;

(D) for fiscal year 2007, $215,000,000; and

(E) for fiscal year 2008, $205,000,000.

(8) For activities in the Water Supply Technologies Program under section 970, $30,000,000 for each of fiscal years 2004 through 2008.

(c) In addition to the funds authorized under subsection (b)(1), the following sums are authorized for construction costs associated with the ITER project under section 962—

(1) for fiscal year 2006, $55,000,000;

(2) for fiscal year 2007, $95,000,000; and

(3) for fiscal year 2008, $115,000,000.

SEC. 962. UNITED STATES PARTICIPATION IN ITER.

(a) PARTICIPATION.—

(1) The Secretary of Energy is authorized to undertake full scientific and technological cooperation in the International Thermonuclear Experimental Reactor project (referred to in this title as ''ITER'').

(2) In the event that ITER fails to go forward within a reasonable period of time, the Secretary shall send to Congress a plan, including costs and schedules, for implementing the domestic burning plasma experiment known as the Fusion Ignition Research Experiment. Such a plan shall be developed with full consultation with the Fusion Energy Sciences Advisory Committee and be reviewed by the National Research Council.

(3) It is the intent of Congress that such sums shall be largely for work performed in the United States and that such work contributes the maximum amount possible to the U.S. scientific and technological base.

(b) PLANNING.—

(1) Not later than 180 days of the date of enactment of this act, the Secretary shall present to Congress a plan, with proposed cost estimates, budgets and potential international partners, for the implementation of the goals of this section. The plan shall ensure that—

(A) existing fusion research facilities are more fully utilized;

(B) fusion science, technology, theory, advanced computation, modeling and simulation are strengthened;

(C) new magnetic and inertial fusion research facilities are selected based on scientific innovation, cost effectiveness, and their potential to advance the goal of practical fusion energy at the earliest date possible, and those that are selected are funded at a cost-effective rate;

(D) communication of scientific results and methods between the fusion energy science community and the broader scientific and technology communities is improved;

(E) inertial confinement fusion facilities are utilized to the extent practicable for the purpose of inertial fusion energy research and development; and

(F) attractive alternative inertial and magnetic fusion energy approaches are more fully explored.

(2) Such plan shall also address the status of and, to the degree possible, costs and schedules for—

(A) in coordination with the program in section 969, the design and implementation of international or national facilities for the testing of fusion materials; and

(B) the design and implementation of international or national facilities for the testing and development of key fusion technologies.

SEC. 963. SPALLATION NEUTRON SOURCE.

(a) DEFINITION.—For the purposes of this section, the term ''Spallation Neutron Source'' means Department Project 9909E 09334, Oak Ridge National Laboratory, Oak Ridge, Tennessee.

(b) REPORT.—The Secretary shall report on the Spallation Neutron Source as part of the Department's annual budget submission, including a description of the achievement of milestones, a comparison of actual costs to estimated costs, and any changes in estimated project costs or schedule.

(c) AUTHORIZATION OF APPROPRIATIONS.—The total amount obligated by the Department, including prior year appropriations, for the Spallation Neutron Source may not exceed—

(1) $1,192,700,000 for costs of construction;

(2) $219,000,000 for other project costs; and

(3) $1,411,700,000 for total project cost.

SEC. 964. SUPPORT FOR SCIENCE AND ENERGY FACILITIES AND INFRASTRUCTURE.

(a) FACILITY AND INFRASTRUCTURE POLICY.—The Secretary shall develop and implement a strategy for facilities and infrastructure supported primarily from the Office of Science, the Office of Energy Efficiency and Renewable Energy, the Office of Fossil Energy, or the Office of Nuclear Energy, Science and Technology Programs at all national laboratories and single-purpose research facilities. Such strategy shall provide cost-effective means for—

(1) maintaining existing facilities and infrastructure, as needed;

(2) closing unneeded facilities;

(3) making facility modifications; and

(4) building new facilities.

(b) REPORT.—

(1) The Secretary shall prepare and transmit, along with the President's budget request to the Congress for fiscal year 2006, a report containing the strategy developed under subsection (a).

(2) For each national laboratory and single-purpose research facility, for the facilities primarily used for science and energy research, such report shall contain—

(A) the current priority list of proposed facilities and infrastructure projects, including cost and schedule requirements;

(B) a current ten-year plan that demonstrates the reconfiguration of its facilities and infrastructure to meet its missions and to address its long-term operational costs and return on investment;

(C) the total current budget for all facilities and infrastructure funding; and

(D) the current status of each facility and infrastructure project compared to the original baseline cost, schedule, and scope.

SEC. 965. CATALYSIS RESEARCH PROGRAM.

(a) ESTABLISHMENT.—The Secretary, through the Office of Science, shall support a program of research and development in catalysis science consistent with the Department's statutory authorities related to research and development. The program shall include efforts to—

(1) enable catalyst design using combinations of experimental and mechanistic methodologies coupled with computational modeling of catalytic reactions at the molecular level;

(2) develop techniques for high throughput synthesis, assay, and characterization at nanometer and sub-nanometer scales in situ under actual operating conditions:

(3) synthesize catalysts with specific site architectures;

(4) conduct research on the use of precious metals for catalysis; and

(5) translate molecular understanding to the design of catalytic compounds.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out this program, the Director of the Office of Science shall—

(1) support both individual investigators and multidisciplinary teams of investigators to pioneer new approaches in catalytic design;

(2) develop, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators in collaboration with national user facilities such as nanoscience and engineering centers;

(3) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(4) coordinate research and development activities with industry and other federal agencies.

(c) TRIENNIAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every three years to report on gains made in the fundamental science of catalysis and its progress towards developing new fuels for energy production and material fabrication processes.

SEC. 966. NANOSCALE SCIENCE AND ENGINEERING RESEARCH.

(a) ESTABLISHMENT.—The Secretary, acting through the Office of Science, shall support a program of research, development, demonstration, and commercial application in nanoscience and nanoengineering. The program shall include efforts to further the understanding of the chemistry, physics, materials science, and engineering of phenomena on the scale of nanometers and to apply this knowledge to the Department's mission areas.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) support both individual investigators and teams of investigators, including multidisciplinary teams;

(2) carry out activities under subsection (c);

(3) support technology transfer activities to benefit industry and other users of nanoscience and nanoengineering; and

(4) coordinate research and development activities with other DOE programs, industry and other Federal agencies.

(c) NANOSCIENCE AND NANOENGINEERING RESEARCH CENTERS AND MAJOR INSTRUMENTATION.—

(1) The Secretary shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanoscience and nanoengineering.

(2) Projects under paragraph (1) may include the measurement of properties at the scale of nanometers, manipulation at such scales, and the integration of technologies based on nanoscience or nanoengineering into bulk materials or other technologies.

(3) Facilities under paragraph (1) may include electron microcharacterization facilities, microlithography facilities, scanning probe facilities, and related instrumentation.

(4) The Secretary shall encourage collaborations among DOE programs, institutions of higher education, laboratories, and industry at facilities under this subsection.

SEC. 967. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY MISSIONS.

(a) IN GENERAL.—The Secretary, acting through the Office of Science, shall support a program to advance the Nation's computing capability across a diverse set of grand challenge, computationally based, science problems related to departmental missions.

(b) DUTIES OF THE OFFICE OF SCIENCE.—In carrying out the program under this section, the Office of Science shall—

(1) advance basic science through computation by developing software to solve grand challenge science problems on new generations of computing platforms in collaboration with other DOE program offices;

(2) enhance the foundations for scientific computing by developing the basic mathematical and computing systems software needed to take full advantage of the computing capabilities of computers with peak speeds of 100 teraflops or more, some of which may be unique to the scientific problem of interest;

(3) enhance national collaboratory and networking capabilities by developing software to integrate geographically separated researchers into effective research teams and to facilitate access to and movement and analysis of large (petabyte) data sets;

(4) maintain a robust scientific computing hardware infrastructure to ensure that the computing resources needed to address departmental missions are available; and

(5) explore new computing approaches and technologies that promise to advance scientific computing including developments in quantum computing.

(c) HIGH-PERFORMANCE COMPUTING ACT OF 1991 AMENDMENTS.—The High-Performance Computing Act of 1991 is amended—

(1) in section 4 (15 U.S.C. 5503)—

(A) in paragraph (3) by striking ''means'' and inserting ''and 'networking and information technology' mean'', and by striking ''(including vector supercomputers and large scale parallel systems)''; and

(B) in paragraph (4), by striking ''packet switched''; and

(2) in section 203 (15 U.S.C. 5523)—

(A) in subsection (a), by striking all after ''As part of the'' and inserting: ''Networking and Information Technology Research and Development Program, the Secretary of Energy shall conduct basic and applied research in networking and information technology, with emphasis on supporting fundamental research in the physical sciences and engineering, and energy applications; providing supercomputer access and advanced communication capabilities and facilities to scientific researchers; and developing tools for distributed scientific collaboration.'';

(B) in subsection (b), by striking ''Program'' and inserting ''Networking and Information Technology Research and Development Program''; and

(C) by amending subsection (e) to read as follows:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Energy to carry out the Networking and Information Technology Research and Development Program such sums as may be necessary for fiscal years 2004 through 2008.''.

(d) COORDINATION.—The Secretary shall ensure that the program under this section is integrated and consistent with—

(1) the Accelerated Strategic Computing Initiative of the National Nuclear Security Administration; and

(2) other national efforts related to advanced scientific computing for science and engineering.

SEC. 968. GENOMES TO LIFE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall carry out a program of research, development, demonstration, and commercial application, to be known as the Genomes to Life Program, in systems biology and proteomics consistent with the Department's statutory authorities.

(b) PLANNING.—

(1) The Secretary shall prepare a program plan describing how knowledge and capabilities would be developed by the program and applied to Department missions relating to energy security, environmental cleanup, and national security.

(2) The program plan will be developed in consultation with other relevant Department technology programs.

(3) The program plan shall focus science and technology on long-term goals, including—

(A) contributing to U.S. independence from foreign energy sources, including production of hydrogen;

(B) converting carbon dioxide to organic carbon;

(C) advancing environmental cleanup;

(D) providing the science and technology for new biotechnology industries; and

(E) improving national security and combating bioterrorism.

(4) The program plan shall establish specific short-term goals and update these goals with the Secretary's annual budget submission.

(c) PROGRAM EXECUTION.—In carrying out the program under this Act, the Secretary shall—

(1) support individual investigators and multidisciplinary teams of investigators;

(2) subject to subsection (d), develop, plan, construct, acquire, or operate special equipment or facilities for the use of investigators conducting research, development, demonstration, or commercial application in systems biology and proteomics;

(3) support technology transfer activities to benefit industry and other users of systems biology and proteomics; and

(4) coordinate activities by the Department with industry and other federal agencies.

(d) GENOMES TO LIFE USER FACILITIES AND ANCILLARY EQUIPMENT.—

(1) Within the funds authorized to be appropriated pursuant to this Act, the amounts specified under section 961(b)(7) shall, subject to appropriations, be available for projects to develop, plan, construct, acquire, or operate special equipment, instrumentation, or facilities for investigators conducting research, development, demonstration, and commercial application in systems biology and proteomics and associated biological disciplines.

(2) Projects under paragraph (1) may include—

(A) the identification and characterization of multiprotein complexes;

(B) characterization of gene regulatory networks;

(C) characterization of the functional repertoire of complex microbial communities in their natural environments at the molecular level; and

(D) development of computational methods and capabilities to advance understanding of complex biological systems and predict their behavior.

(3) Facilities under paragraph (1) may include facilities, equipment, or instrumentation for—

(A) the production and characterization of proteins;

(B) whole proteome analysis;

(C) characterization and imaging of molecular machines; and

(D) analysis and modeling of cellular systems.

(4) The Secretary shall encourage collaborations among universities, laboratories and industry at facilities under this subsection. All facilities under this subsection shall have a specific mission of technology transfer to other institutions.

SEC. 969. FISSION AND FUSION ENERGY MATERIALS RESEARCH PROGRAM.

In the President's fiscal year 2006 budget request, the Secretary shall establish a research and development program on material science issues presented by advanced fission reactors and the Department's fusion energy program. The program shall develop a catalog of material properties required for these applications, develop theoretical models for materials possessing the required properties, benchmark models against existing data, and develop a roadmap to guide further research and development in this area.

SEC. 970. ENERGY-WATER SUPPLY TECHNOLOGIES PROGRAM.

(a) ESTABLISHMENT.—There is established within the Office of Science, Office of Biological and Environmental Research, the ''Energy-Water Supply Technologies Program,'' to study energy-related issues associated with water resources and municipal waterworks and to study water supply issues related to energy production.

(b) DEFINITIONS.—

(1) The term ''Foundation'' means the American Water Works Association Research Foundation.

(2) The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(3) The term ''Program'' means the Water Supply Technologies Program established by section 970(a).

(c) PROGRAM AREAS.—The program shall conduct research and development, including—

(1) arsenic removal under subsection (d);

(2) desalination research program under subsection (e);

(3) the water and energy sustainability program under subsection (f); and

(4) other energy-intensive water supply and treatment technologies and other technologies selected by the Secretary.

(d) ARSENIC REMOVAL PROGRAM.—

(1) As soon as practicable after the date of enactment of this Act, the Secretary shall enter into a contract with the Foundation to utilize the facilities, institutions and relationships established in the ''Consolidated Appropriations Resolution, 2003'' as described in Senate Report 107–220 that will carry out a research program to develop and demonstrate innovative arsenic removal technologies.

(2) In carrying out the arsenic removal program, the Foundation shall, to the maximum extent practicable, conduct research on means of—

(A) reducing energy costs incurred in using arsenic removal technologies;

(B) minimizing materials, operating, and maintenance costs incurred in using arsenic removal technologies; and

(C) minimizing any quantities of waste (especially hazardous waste) that result from use of arsenic removal technologies.

(3) The Foundation shall carry out peer-reviewed research and demonstration projects to develop and demonstrate water purification technologies.

(4) In carrying out the arsenic removal program—

(A) demonstration projects will be implemented with municipal water system partners to demonstrate the applicability of innovative arsenic removal technologies in areas with different water chemistries representative of areas across the United States with arsenic levels near or exceeding EPA guidelines; and

(B) not less than 40 percent of the funds of the Department used for demonstration projects under the arsenic removal program shall be expended on projects focused on needs of and in partnership with rural communities or Indian tribes.

(5) The Foundation shall develop evaluations of cost effectiveness of arsenic removal technologies used in the program and an education, training, and technology transfer component for the program.

(6) The Secretary shall consult with the Administrator of the Environmental Protection Agency to ensure that activities under the arsenic removal program are coordinated with appropriate programs of the Environmental Protection Agency and other federal agencies, state programs and academia.

(7) Not later than 1 year after the date of commencement of the arsenic removal program, and annually thereafter, the Secretary shall submit to Congress a report on the results of the arsenic removal program.

(e) DESALINATION PROGRAM.—

(1) The Secretary, in cooperation with the Commissioner of Reclamation, shall carry out a desalination research program in accordance with the desalination technology progress plan developed in Title II of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 498), and described in Senate Report 107–39 under the heading ''WATER AND RELATED RESOURCES'' in the ''BUREAU OF RECLAMATION'' section.

(2) The desalination program shall—

(A) draw on the national laboratory partnership established with the Bureau of Reclamation to develop the January 2003 national Desalination and Water Purification Technology Roadmap for next-generation desalination technology;

(B) focus on research relating to, and development and demonstration of, technologies that are appropriate for use in desalinating brackish groundwater, wastewater and other saline water supplies; disposal of residual brine or salt; and

(C) consider the use of renewable energy sources.

(3) Under the desalination program, funds made available may be used for construction projects, including completion of the National Desalination Research Center for brackish groundwater and ongoing facility operational costs.

(4) The Secretary and the Commissioner of Reclamation shall jointly establish a steering committee for the desalination program. The steering committee shall be jointly chaired by 1 representative from this Program and 1 representative from the Bureau of Reclamation.

(f) WATER AND ENERGY SUSTAINABILITY PROGRAM.—

(1) The Secretary shall carry out a research program to develop understanding and technologies to assist in ensuring that sufficient quantities of water are available to meet present and future requirements.

(2) Under this program and in collaboration with other programs within the Department including those within the Offices of Fossil Energy and Energy Efficiency and Renewable Energy, the Secretary of the Interior, Army Corps of Engineers, Environmental Protection Agency, Department of Commerce, Department of Defense, state agencies, non-governmental agencies and academia, the Secretary shall assess the current state of knowledge and program activities concerning—

(A) future water resources needed to support energy production within the United States including but not limited to the water needs for hydropower and thermo-electric power generation;

(B) future energy resources needed to support development of water purification and treatment including desalination and long-distance water conveyance;

(C) reuse and treatment of water produced as a by-product of oil and gas extraction;

(D) use of impaired and non-traditional water supplies for energy production and other uses; and

(E) technologies to reduce water use in energy production.

(3) In addition to the assessments in (2), the Secretary shall—

(A) develop a research plan defining the scientific and technology development needs and activities required to support long-term water needs and planning for energy sustainability, use of impaired water for energy production and other uses, and reduction of water use in energy production;

(B) carry out the research plan required under (A) including development of numerical models, decision analysis tools, economic analysis tools, databases, planning methodologies and strategies;

(C) implement at least three planning demonstration projects using the models, tools and planning approaches developed under subparagraph (B) and assess the viability of these tools at the scale of river basins with at least one demonstration involving an international border; and

(D) transfer these tools to other federal agencies, state agencies, non-profit organizations, industry and academia for use in their energy and water sustainability efforts.

(4) Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the water and energy sustainability program that describes the research elements described under paragraph (2), and makes recommendations for a management structure that optimizes use of Federal resources and programs.

(g) COST SHARING.—

(1) Research projects under this section shall not require cost-sharing.

(2) Each demonstration project carried out under the Program shall be carried out on a cost-shared basis, as determined by the Secretary.

(3) With respect to a demonstration project, the Secretary may accept in-kind contributions, and waive the cost-sharing requirement in appropriate circumstances.

Subtitle G—Energy and Environment

SEC. 971. UNITED STATES-MEXICO ENERGY TECHNOLOGY COOPERATION.

(a) PROGRAM.—The Secretary shall establish a research, development, demonstration, and commercial application program to be carried out in collaboration with entities in Mexico and the United States to promote energy efficient, environmentally sound economic development along the United States-Mexico border which minimizes public health risks from industrial activities in the border region.

(b) PROGRAM MANAGEMENT.—The program under subsection (a) shall be managed by the Department of Energy Carlsbad Environmental Management Field Office.

(c) TECHNOLOGY TRANSFER.—In carrying out projects and activities under this section, the Secretary shall assess the applicability of technology developed under the Environmental Management Science Program of the Department.

(d) INTELLECTUAL PROPERTY.—In carrying out this section, the Secretary shall comply with the requirements of any agreement entered into between the United States and Mexico regarding intellectual property protection.

(e) AUTHORIZATION OF APPROPRIATIONS.—The following sums are authorized to be appropriated to the Secretary to carry out activities under this section:

(1) For each of fiscal years 2004 and 2005, $5,000,000.

(2) For each of fiscal years 2006, 2007, and 2008, $6,000,000.

SEC. 972. COAL TECHNOLOGY LOAN.

There are authorized to be appropriated to the Secretary $125,000,000 to provide a loan to the owner of the experimental plant constructed under United States Department of Energy cooperative agreement number DE–FC–22–91PC90544 on such terms and conditions as the Secretary determines, including interest rates and upfront payments.

Subtitle H—Management

SEC. 981. AVAILABILITY OF FUNDS.

Funds authorized to be appropriated to the Department under this title shall remain available until expended.

SEC. 982. COST SHARING.

(a) RESEARCH AND DEVELOPMENT.—Except as otherwise provided in this title, for research and development programs carried out under this title, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. Cost sharing is not required for research and development of a basic or fundamental nature.

(b) DEMONSTRATION AND COMMERCIAL APPLICATION.—Except as otherwise provided in this subtitle, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this subtitle to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this title.

(c) CALCULATION OF AMOUNT.—In calculating the amount of the non-Federal commitment under subsection (a) or (b), the Secretary may include personnel, services, equipment, and other resources.

SEC. 983. MERIT REVIEW OF PROPOSALS.

Awards of funds authorized under this title shall be made only after an impartial review of the scientific and technical merit of the proposals for such awards has been carried out by or for the Department.

SEC. 984. EXTERNAL TECHNICAL REVIEW OF DEPARTMENTAL PROGRAMS.

(a) NATIONAL ENERGY RESEARCH AND DEVELOPMENT ADVISORY BOARDS.—

(1) The Secretary shall establish one or more advisory boards to review Department research, development, demonstration, and commercial application programs in energy efficiency, renewable energy, nuclear energy, and fossil energy.

(2) The Secretary may designate an existing advisory board within the Department to fulfill the responsibilities of an advisory board under this subsection, and may enter into appropriate arrangements with the National Academy of Sciences to establish such an advisory board.

(b) UTILIZATION OF EXISTING COMMITTEES.—The Secretary shall continue to use the scientific program advisory committees chartered under the Federal Advisory Committee Act by the Office of Science to oversee research and development programs under that Office.

(c) MEMBERSHIP.—Each advisory board under this section shall consist of persons with appropriate expertise representing a diverse range of interests.

(d) MEETINGS AND PURPOSES.—Each advisory board under this section shall meet at

least semi-annually to review and advise on the progress made by the respective research, development, demonstration, and commercial application program or programs. The advisory board shall also review the measurable cost and performance-based goals for such programs as established under section 902, and the progress on meeting such goals.

(e) PERIODIC REVIEWS AND ASSESSMENTS.—The Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct periodic reviews and assessments of the programs authorized by this title, the measurable cost and performance-based goals for such programs as established under section 902, if any, and the progress on meeting such goals. Such reviews and assessments shall be conducted every 5 years, or more often as the Secretary considers necessary, and the Secretary shall transmit to the Congress reports containing the results of all such reviews and assessments.

SEC. 985. IMPROVED COORDINATION OF TECHNOLOGY TRANSFER ACTIVITIES.

(a) TECHNOLOGY TRANSFER COORDINATOR.—The Secretary shall designate a Technology Transfer Coordinator to perform oversight of and policy development for technology transfer activities at the Department. The Technology Transfer Coordinator shall coordinate the activities of the Technology Transfer Working Group, shall oversee the expenditure of funds allocated to the Technology Transfer Working Group, and shall coordinate with each technology partnership ombudsman appointed under section 11 of the Technology Transfer Commercialization Act of 2000 (42 U.S.C. 7261c).

(b) TECHNOLOGY TRANSFER WORKING GROUP.—The Secretary shall establish a Technology Transfer Working Group, which shall consist of representatives of the National Laboratories and single-purpose research facilities, to—

(1) coordinate technology transfer activities occurring at National Laboratories and single-purpose research facilities;

(2) exchange information about technology transfer practices, including alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters; and

(3) develop and disseminate to the public and prospective technology partners information about opportunities and procedures for technology transfer with the Department, including those related to alternative approaches to resolution of disputes involving intellectual property rights and other technology transfer matters.

(c) TECHNOLOGY TRANSFER RESPONSIBILITY.—Nothing in this section shall affect the technology transfer responsibilities of Federal employees under the Stevenson-Wydler Technology Innovation Act of 1980.

SEC. 986. TECHNOLOGY INFRASTRUCTURE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish a Technology Infrastructure Program in accordance with this section.

(b) PURPOSE.—The purpose of the Technology Infrastructure Program shall be to improve the ability of National Laboratories and single-purpose research facilities to support departmental missions by—

(1) stimulating the development of technology clusters that can support departmental missions at the National Laboratories or single-purpose research facilities;

(2) improving the ability of National Laboratories and single-purpose research facilities to leverage and benefit from commercial research, technology, products, processes, and services; and

(3) encouraging the exchange of scientific and technological expertise between National Laboratories or single-purpose research facilities and entities that can support departmental missions at the National Laboratories or single-purpose research facilities, such as institutions of higher education; technology-related business concerns; nonprofit institutions; and agencies of State, tribal, or local governments.

(c) PROJECTS.—The Secretary shall authorize the Director of each National Laboratory or single-purpose research facility to implement the Technology Infrastructure Program at such National Laboratory or facility through projects that meet the requirements of subsections (d) and (e).

(d) PROGRAM REQUIREMENTS.—Each project funded under this section shall meet the following requirements:

(1) Each project shall include at least one of each of the following entities: a business; an institution of higher education; a nonprofit institution; and an agency of a State, local, or tribal government.

(2) Not less than 50 percent of the costs of each project funded under this section shall be provided from non-Federal sources. The calculation of costs paid by the non-Federal sources to a project shall include cash, personnel, services, equipment, and other resources expended on the project after start of the project. Independent research and development expenses of Government contractors that qualify for reimbursement under section 3109205 0918(e) of the Federal Acquisition Regulations issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) may be credited towards costs paid by non-Federal sources to a project, if the expenses meet the other requirements of this section.

(3) All projects under this section shall be competitively selected using procedures determined by the Secretary.

(4) Any participant that receives funds under this section may use generally accepted accounting principles for maintaining accounts, books, and records relating to the project.

(5) No Federal funds shall be made available under this section for construction or any project for more than 5 years.

(e) SELECTION CRITERIA.—

(1) The Secretary shall allocate funds under this section only if the Director of the National Laboratory or single-purpose research facility managing the project determines that the project is likely to improve the ability of the National Laboratory or single-purpose research facility to achieve technical success in meeting departmental missions.

(2) The Secretary shall consider the following criteria in selecting a project to receive Federal funds—

(A) the potential of the project to promote the development of a commercially sustainable technology cluster following the period of Department investment, which will derive most of the demand for its products or services from the private sector, and which will support departmental missions at the participating National Laboratory or single-purpose research facility;

(B) the potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating National Laboratory or single-purpose research facility to achieve its mission or the commercial development of technological innovations made at the participating National Laboratory or single-purpose research facility;

(C) the extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the missions of the participating National Laboratory or single-purpose research facility and that will make substantive contributions to achieving the goals of the project;

(D) the extent to which the project focuses on promoting the development of technology-related business concerns that are small businesses or involves such small businesses substantively in the project; and

(E) such other criteria as the Secretary determines to be appropriate.

(f) ALLOCATION.—In allocating funds for projects approved under this section, the Secretary shall provide—

(1) the Federal share of the project costs; and

(2) additional funds to the National Laboratory or single-purpose research facility managing the project to permit the National Laboratory or single-purpose research facility to carry out activities relating to the project, and to coordinate such activities with the project.

(g) REPORT TO CONGRESS.—Not later than July 1, 2006, the Secretary shall report to Congress on whether the Technology Infrastructure Program should be continued and, if so, how the program should be managed.

(h) DEFINITIONS.—In this section:

(1) The term ''technology cluster'' means a concentration of technology-related business concerns, institutions of higher education, or nonprofit institutions, that reinforce each other's performance in the areas of technology development through formal or informal relationships.

(2) The term ''technology-related business concern'' means a for-profit corporation, company, association, firm, partnership, or small business concern that conducts scientific or engineering research; develops new technologies; manufactures products based on new technologies; or performs technological services.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for activities under this section $10,000,000 for each of fiscal years 2004, 2005, and 2006.

SEC. 987. SMALL BUSINESS ADVOCACY AND ASSISTANCE.

(a) SMALL BUSINESS ADVOCATE.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to designate a small business advocate to—

(1) increase the participation of small business concerns, including socially and economically disadvantaged small business concerns, in procurement, collaborative research, technology licensing, and technology transfer activities conducted by the National Laboratory or single-purpose research facility;

(2) report to the Director of the National Laboratory or single-purpose research facility on the actual participation of small business concerns in procurement and collaborative research along with recommendations, if appropriate, on how to improve participation;

(3) make available to small businesses training, mentoring, and information on how to participate in procurement and collaborative research activities;

(4) increase the awareness inside the National Laboratory or single-purpose research facility of the capabilities and opportunities presented by small business concerns; and

(5) establish guidelines for the program under subsection (b) and report on the effectiveness of such program to the Director of the National Laboratory or single-purpose research facility.

(b) ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE PROGRAM.—The Secretary shall require the Director of each National Laboratory, and may require the Director of a single-purpose research facility, to establish a program to provide small business concerns—

(1) assistance directed at making them more effective and efficient subcontractors or suppliers to the National Laboratory or single-purpose research facility; or

(2) general technical assistance, the cost of which shall not exceed $10,000 per instance of assistance, to improve the small business concern's products or services.

(c) USE OF FUNDS.—None of the funds expended under subsection (b) may be used for direct grants to the small business concerns.

(d) DEFINITIONS.—In this section:

(1) The term ''small business concern'' has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term ''socially and economically disadvantaged small business concerns'' has the meaning given such term in section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)).

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for activities under this section $5,000,000 for each of fiscal years 2004 through 2008.

SEC. 988. MOBILITY OF SCIENTIFIC AND TECHNICAL PERSONNEL.

Not later than 2 years after the date of enactment of this section, the Secretary shall transmit a report to the Congress identifying any policies or procedures of a contractor operating a National Laboratory or single-purpose research facility that create disincentives to the temporary transfer of scientific and technical personnel among the contractor-operated National Laboratories or contractor-operated single-purpose research facilities and provide suggestions for improving inter-laboratory exchange of scientific and technical personnel.

SEC. 989. NATIONAL ACADEMY OF SCIENCES REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the Academy to—

(1) conduct a study on—

(A) the obstacles to accelerating the research, development, demonstration, and commercial application cycle for energy technology; and

(B) the adequacy of Department policies and procedures for, and oversight of, technology transfer-related disputes between contractors of the Department and the private sector; and

(2) report to the Congress on recommendations developed as a result of the study.

SEC. 990. OUTREACH.

The Secretary shall ensure that each program authorized by this title includes an outreach component to provide information, as appropriate, to manufacturers, consumers, engineers, architects, builders, energy service companies, institutions of higher education, facility planners and managers, State and local governments, and other entities.

SEC. 991. COMPETITIVE AWARD OF MANAGEMENT CONTRACTS.

None of the funds authorized to be appropriated to the Secretary by this title may be used to award a management and operating contract for a nonmilitary energy laboratory of the Department unless such contract is competitively awarded or the Secretary grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver and shall submit to the Congress a report notifying the Congress of the waiver and setting forth the reasons for the waiver at least 60 days prior to the date of the award of such a contract.

SEC. 992. REPROGRAMMING.

(a) DISTRIBUTION REPORT.—Not later than 60 days after the date of the enactment of an Act appropriating amounts authorized under this title, the Secretary shall transmit to the appropriate authorizing committees of the Congress a report explaining how such amounts will be distributed among the authorizations contained in this title.

(b) PROHIBITION.—

(1) No amount identified under subsection (a) shall be reprogrammed if such reprogramming would result in an obligation which changes an individual distribution required to be reported under subsection (a) by more than 5 percent unless the Secretary has transmitted to the appropriate authorizing committees of the Congress a report described in subsection (c) and a period of 30 days has elapsed after such committees receive the report.

(2) In the computation of the 30-day period described in paragraph (1), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain.

(c) REPROGRAMMING REPORT.—A report referred to in subsection (b)(1) shall contain a full and complete statement of the action proposed to be taken and the facts and circumstances relied on in support of the proposed action.

SEC. 993. CONSTRUCTION WITH OTHER LAWS.

Except as otherwise provided in this title, the Secretary shall carry out the research, development, demonstration, and commercial application programs, projects, and activities authorized by this title in accordance with the applicable provisions of the Atomic Energy Act of 1954 (42 U.S.C. et seq.), the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35, United States Code (commonly referred to as the Bayh-Dole Act), and any other Act under which the Secretary is authorized to carry out such activities.

SEC. 994. IMPROVED COORDINATION AND MANAGEMENT OF CIVILIAN SCIENCE AND TECHNOLOGY PROGRAMS.

(a) EFFECTIVE TOP-LEVEL COORDINATION OF RESEARCH AND DEVELOPMENT PROGRAMS.—Section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)) is amended to read as follows:

''(b)(1) There shall be in the Department an Under Secretary for Energy and Science, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) The Under Secretary for Energy and Science shall be appointed from among persons who—

''(A) have extensive background in scientific or engineering fields; and

''(B) are well qualified to manage the civilian research and development programs of the Department of Energy.

''(3) The Under Secretary for Energy and Science shall—

''(A) serve as the Science and Technology Advisor to the Secretary;

''(B) monitor the Department's research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

''(C) advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department;

''(D) advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

''(E) advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

''(F) exercise authority and responsibility over Assistant Secretaries carrying out energy research and development and energy technology functions under sections 203 and 209, as well as other elements of the Department assigned by the Secretary.''.

(b) RECONFIGURATION OF POSITION OF DIRECTOR OF THE OFFICE OF SCIENCE.—

(1) Section 209 of the Department of Energy Organization Act (41 U.S.C. 7139) is amended to read as follows:

''OFFICE OF SCIENCE

''SEC. 209. (a) There shall be within the Department an Office of Science, to be headed by an Assistant Secretary for Science, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) The Assistant Secretary for Science shall be in addition to the Assistant Secretaries provided for under section 203 of this Act.

''(c) It shall be the duty and responsibility of the Assistant Secretary for Science to carry out the fundamental science and engineering research functions of the Department, including the responsibility for policy and management of such research, as well as other functions vested in the Secretary which he may assign to the Assistant Secretary.''.

(2) Notwithstanding section 3345(b)(1) of title 5, United States Code, the President may designate the Director of the Office of Science immediately prior to the effective date of this Act to act in the office of the Assistant Secretary of Energy for Science until the office is filled as provided in section 209 of the Department of Energy Organization Act, as amended by paragraph (1). While so acting, such person shall receive compensation at the rate provided by this Act for the office of Assistant Secretary for Science.

(c) ADDITIONAL ASSISTANT SECRETARY POSITION TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY ISSUES.—

(1) Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking ''There shall be in the Department six Assistant Secretaries'' and inserting ''Except as provided in section 209, there shall be in the Department seven Assistant Secretaries''.

(2) It is the sense of the Congress that the leadership for departmental missions in nuclear energy should be at the Assistant Secretary level.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 202 of the Department of Energy Organization Act (42 U.S.C. 7132) is further amended by adding the following at the end:

''(d) There shall be in the Department an Under Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe, consistent with this section. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(e) There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''.

(2) Section 5314 of title 5, United States Code, is amended by striking ''Under Secretaries of Energy (2)'' and inserting ''Under Secretaries of Energy (3)''.

(3) Section 5315 of title 5, United States Code, is amended by—

(A) striking ''Director, Office of Science, Department of Energy.''; and

(B) striking ''Assistant Secretaries of Energy (6)'' and inserting ''Assistant Secretaries of Energy (8)''.

(4) The table of contents for the Department of Energy Organization Act (42 U.S.C. 7101 note) is amended—

(A) by striking ''Section 209'' and inserting ''Sec. 209'';

(B) by striking ''213.'' and inserting ''Sec. 213.'';

(C) by striking ''214.'' and inserting ''Sec. 214.'';

(D) by striking ''215.'' and inserting ''Sec. 215.''; and

(E) by striking ''216.'' and inserting ''Sec. 216.''.

SEC. 995. EDUCATIONAL PROGRAMS IN SCIENCE AND MATHEMATICS.

(a) Section 3165a of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end:

''(14) Support competitive events for students, under supervision of teachers, designed to encourage student interest and knowledge in science and mathematics.''.

(b) Section 3169 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381e), as redesignated by this Act, is amended by inserting before the period: ''; and $40,000,000 for each of fiscal years 2004 through 2008.''.

SEC. 996. OTHER TRANSACTIONS AUTHORITY.

Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following:

''(g)(1) In addition to other authorities granted to the Secretary under law, the Secretary may enter into other transactions on such terms as the Secretary may deem appropriate in furtherance of research, development, or demonstration functions vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908).

''(2)(A) The Secretary shall ensure that—

''(i) to the maximum extent the Secretary determines practicable, no transaction entered into under paragraph (1) provides for research, development, or demonstration that duplicates research, development, or demonstration being conducted under existing projects carried out by the Department;

''(ii) to the extent the Secretary determines practicable, the funds provided by the Government under a transaction authorized by paragraph (1) do not exceed the total amount provided by other parties to the transaction; and

''(iii) to the extent the Secretary determines practicable, competitive, merit-based selection procedures shall be used when entering into transactions under paragraph (1).

''(B) A transaction authorized by paragraph (1) may be used for a research, development, or demonstration project only if the Secretary determines the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

''(3)(A) The Secretary shall protect from disclosure, including disclosure under section 552 of title 5, United States Code, for up to 5 years after the date the information is received by the Secretary—

''(i) a proposal, proposal abstract, and supporting documents submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award to the party submitting the information entering into a transaction under paragraph (1); and

''(ii) a business plan and technical information relating to a transaction authorized by paragraph (1) submitted to the Department as confidential business information.

''(B) The Secretary may protect from disclosure, for up to 5 years after the information was developed, any information developed pursuant to a transaction under paragraph (1) which developed information is of a character that it would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if obtained from a person other than a Federal agency.

''(4) Not later than 90 days after the date of enactment of this section, the Secretary shall prescribe guidelines for using other transactions authorized by the amendment under subsection (a). Such guidelines shall be published in the Federal Register for public comment under rulemaking procedures of the Department.

''(5) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be delegated to any other person.''.

SEC. 997. REPORT ON RESEARCH AND DEVELOPMENT PROGRAM EVALUATION METHODOLOGIES

Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to investigate and report on the scientific and technical merits of any evaluation methodology currently in use or proposed for use in relation to the scientific and technical programs of the Department by the Secretary or other Federal official. Not later than 6 months after receiving the report of the National Academy, the Secretary shall submit such report to Congress, along with any other views or plans of the Secretary with respect to the future use of such evaluation methodology.

TITLE X—PERSONNEL AND TRAINING

SEC. 1001. WORKFORCE TRENDS AND TRAINEESHIP GRANTS.

(a) WORKFORCE TRENDS.—

(1) The Secretary of Energy (in this title referred to as the ''Secretary''), in consultation with the Secretary of Labor and utilizing statistical data collected by the Secretary of Labor, shall monitor trends in the workforce of skilled technical personnel supporting energy technology industries, including renewable energy industries, companies developing and commercializing devices to increase energy efficiency, the oil and gas industry, the nuclear power industry, the coal industry, and other industrial sectors as the Secretary may deem appropriate.

(2) The Secretary shall report to the Congress whenever the Secretary determines that significant national shortfalls of skilled technical personnel in one or more energy industry segments are forecast or have occurred.

(b) TRAINEESHIP GRANTS FOR SKILLED TECHNICAL PERSONNEL.—The Secretary, in consultation with the Secretary of Labor, may establish grant programs in the appropriate offices of the Department of Energy to enhance training of skilled technical personnel for which a shortfall is determined under subsection (a).

(c) DEFINITION.—For purposes of this section, the term ''skilled technical personnel'' means journey and apprentice level workers who are enrolled in or have completed a State or federally recognized apprenticeship program and other skilled workers in energy technology industries.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.

SEC. 1002. RESEARCH FELLOWSHIPS IN ENERGY RESEARCH.

(a) POSTDOCTORAL FELLOWSHIPS.—The Secretary shall establish a program of fellowships to encourage outstanding young scientists and engineers to pursue postdoctoral research appointments in energy research and development at institutions of higher education of their choice.

(b) DISTINGUISHED SENIOR RESEARCH FELLOWSHIPS.—The Secretary shall establish a program of fellowships to allow outstanding senior researchers in energy research and development and their research groups to explore research and development topics of their choosing for a fixed period of time. Awards under this program shall be made on the basis of past scientific or technical accomplishment and promise for continued accomplishment during the period of support, which shall not be less than 3 years.

(c) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated to the Secretary $40,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.

SEC. 1003. TRAINING GUIDELINES FOR ELECTRIC ENERGY INDUSTRY PERSONNEL.

The Secretary of Labor, in consultation with the Secretary of Energy and jointly with the electric industry and recognized employee representatives, shall develop model personnel training guidelines to support electric system reliability and safety. The training guidelines shall, at a minimum—

(1) include training requirements for workers engaged in the construction, operation, inspection, and maintenance of electric generation, transmission, and distribution, including competency and certification requirements, and assessment requirements that include initial and ongoing evaluation of workers, recertification assessment procedures, and methods for examining or testing

the qualification of individuals performing covered tasks; and

(2) consolidate existing training guidelines on the construction, operation, maintenance, and inspection of electric generation, transmission, and distribution facilities, such as those established by the National Electric Safety Code and other industry consensus standards.

SEC. 1004. NATIONAL CENTER ON ENERGY MANAGEMENT AND BUILDING TECHNOLOGIES.

The Secretary shall support the establishment of a National Center on Energy Management and Building Technologies, to carry out research, education, and training activities to facilitate the improvement of energy efficiency and indoor air quality in industrial, commercial, and residential buildings. The National Center shall be established by—

(1) recognized representatives of employees in the heating, ventilation, and air-conditioning industry;

(2) contractors that install and maintain heating, ventilation, and air-conditioning systems and equipment;

(3) manufacturers of heating, ventilation, and air-conditioning systems and equipment;

(4) representatives of the advanced building envelope industry, including design, windows, lighting, and insulation industries; and

(5) other entities as the Secretary may deem appropriate.

SEC. 1005. IMPROVED ACCESS TO ENERGY-RELATED SCIENTIFIC AND TECHNICAL CAREERS.

(a) DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS.—Section 3164 of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381a) is amended by adding at the end the following:

''(c) PROGRAMS FOR STUDENTS FROM UNDERREPRESENTED GROUPS.—In carrying out a program under subsection (a), the Secretary shall give priority to activities that are designed to encourage students from under-represented groups to pursue scientific and technical careers.''.

(b) PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING INSTITUTIONS, AND TRIBAL COLLEGES.—The Department of Energy Science Education Enhancement Act (42 U.S.C. 7381 et seq.) is amended—

(1) by redesignating sections 3167 and 3168 as sections 3168 and 3169, respectively; and

(2) by inserting after section 3166 the following:

''SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, HISPANIC-SERVING INSTITUTIONS, AND TRIBAL COLLEGES.

''(a) DEFINITIONS.—In this section:

''(1) HISPANIC-SERVING INSTITUTION.—The term 'Hispanic-serving institution' has the meaning given that term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

''(2) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term 'historically Black college or university' has the meaning given the term 'part B institution' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

''(3) NATIONAL LABORATORY.—The term 'National Laboratory' has the meaning given that term in section 903(5) of the Energy Policy Act of 2003.

''(4) SCIENCE FACILITY.—The term 'science facility' has the meaning given the term 'single-purpose research facility' in section 903(8) of the Energy Policy Act of 2003.

''(5) TRIBAL COLLEGE.—The term 'tribal college' has the meaning given the term 'tribally controlled college or university' in section 2(a) of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)).

''(b) EDUCATION PARTNERSHIP.—The Secretary shall direct the Director of each National Laboratory, and may direct the head of any science facility, to increase the participation of historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges in activities that increase the capacity of the historically Black colleges or universities, Hispanic-serving institutions, or tribal colleges to train personnel in science or engineering.

''(c) ACTIVITIES.—An activity under subsection (b) may include—

''(1) collaborative research;

''(2) equipment transfer;

''(3) training activities conducted at a National Laboratory or science facility; and

''(4) mentoring activities conducted at a National Laboratory or science facility.

''(d) REPORT.—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Congress a report on the activities carried out under this section.''.

SEC. 1006. NATIONAL POWER PLANT OPERATIONS TECHNOLOGY AND EDUCATION CENTER.

(a) ESTABLISHMENT.—The Secretary shall support the establishment of a National Power Plant Operations Technology and Education Center (in this section referred to as the ''Center''), to address the need for training and educating certified operators for electric power generation plants.

(b) ROLE.—The Center shall provide both training and continuing education relating to electric power generation plant technologies and operations. The Center shall conduct training and education activities on site and through Internet-based information technologies that allow for learning at remote sites.

(c) CRITERIA FOR COMPETITIVE SELECTION.—The Secretary shall support the establishment of the Center at an institution of higher education with expertise in power plant technology and operation and with the ability to provide on-site as well as Internet-based training.

SEC. 1007. FEDERAL MINE INSPECTORS.

In light of projected retirements of Federal mine inspectors and the need for additional personnel, the Secretary of Labor shall hire, train, and deploy such additional skilled Federal mine inspectors as necessary to ensure the availability of skilled and experienced individuals and to maintain the number of Federal mine inspectors at or above the levels authorized by law or established by regulation.

TITLE XI—ELECTRICITY

SEC. 1101. DEFINITIONS.

(a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

''(22) 'electric utility' means any person or Federal or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing agency;''.

(b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

''(23) 'transmitting utility' means an entity, including any entity described in section 201(f), that owns or operates facilities used for the transmission of electric energy—

''(A) in interstate commerce; or

''(B) for the sale of electric energy at wholesale;''.

(c) ADDITIONAL DEFINITIONS.—At the end of section (3) of the Federal Power Act, add the following:

''(26) 'unregulated transmitting utility' means an entity that—

''(A) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

''(B) is an entity described in section 201(f);

''(27) 'electric cooperative' means a cooperatively owned electric utility;

''(28) 'Regional Transmission Organization' or 'RTO' means an entity of sufficient regional scope approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure non-discriminatory access to such facilities; and

''(29) 'Independent System Operator' or 'ISO' means an entity used for the transmission of electric energy and which has been approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure non-discriminatory access to such facilities.''.

(d) ADDITIONAL MODIFICATIONS.—

(1) Section 210(b)(2) of the Federal Power Act (16 U.S.C. 824(b)(2)) is amended by striking ''The'' the first time it appears and inserting, ''Notwithstanding section 201(f), the''.

(2) Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by adding after ''political subdivision of a state,'' ''an electric cooperative that has financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or sells less than 4,000,000 megawatt hours of electricity per year,''.

(e) For the purposes of this title, the term ''Commission'' means the Federal Energy Regulatory Commission.

Subtitle A—Reliability

SEC. 1111. ELECTRIC RELIABILITY STANDARDS.

(a) Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''ELECTRIC RELIABILITY

''SEC. 215. (a) For the purposes of this section:

''(1) The term 'bulk-power system' means

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c), the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system components and the design of planned additions or modifications to such components to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such components or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the components of the bulk power

system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system components.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulkpower system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the portion of the system within their control.

''(6) The term 'transmission organization' means an RTO or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulkpower system, including the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section. The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) Following the issuance of a Commission rule under subsection (b), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify one such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (d)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulkpower system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

''(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

''(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d)(1) The ERO shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The ERO shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the ERO for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the ERO to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this Part; and

''(C) the ordered change becomes effective under this Part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e)(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulkpower system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

''(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) The ERO shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

''(g) The ERO shall conduct periodic assessments of the reliability and adequacy of the bulkpower system in North America.

''(h) The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

''(i)(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the ERO or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

''(5) The Commission, after consultation with the ERO, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the ERO, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region; whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest; whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest, and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) The provisions of this section do not apply to Alaska or Hawaii.''.

(b) The electric reliability organization certified by the Commission under section 215(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e) of the Federal Power Act are not departments, agencies, or instrumentalities of the United States Government.

Subtitle B—Regional Markets

SEC. 1121. IMPLEMENTATION DATE FOR PROPOSED RULEMAKING ON STANDARD MARKET DESIGN.

The Commission's proposed rulemaking entitled ''Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design'' (Docket No. RM01–12–[000) is remanded to the Commission for reconsideration. No final rule pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, may be issued before July 1, 2005. Any final rule issued by the Commission pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, shall be preceded by a notice of proposed rulemaking issued after the date of enactment of this Act and an opportunity for public comment.

SEC. 1122. SENSE OF THE CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.

It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should voluntarily become members of independently administered Regional Transmission Organizations (''RTO'') that have operational or functional control of facilities used for the transmission of electric energy in interstate commerce and do not own or have a financial interest in generation facilities used to supply electric energy for sale at wholesale.

SEC. 1123. PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS. .

Nothing in this Act authorizes the Commission to require a transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved organization designated to provide non-discriminatory transmission access.

SEC. 1124. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''appropriate Federal regulatory authority'' means—

(A) with respect to a Federal power marketing agency, the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) The term ''Federal utility'' means a Federal power marketing agency or the Tennessee Valley Authority.

(3) The term ''transmission system'' means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) TRANSFER.—

(1) The appropriate Federal regulatory authority is authorized to enter into a contract, agreement, or other arrangement transferring control and use of all or part of the Federal utility's transmission system to a Regional Transmission Organization (''RTO''), as defined in the Federal Power Act. Such contract, agreement or arrangement shall be voluntary and include—

(A) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement, or other arrangement; consistency with existing contracts and third-party financing arrangements; and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(B) provisions for monitoring and oversight by the Federal utility of the RTO fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision that may provide for the resolution of disputes through arbitration or other means with the RTO or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(C) a provision that allows the Federal utility to withdraw from the RTO and terminate the contract, agreement, or other arrangement in accordance with its terms.

(2) Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using an RTO shall serve to confer upon the Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(1) Any statutory provision requiring or authorizing a Federal utility to transmit, electric power, or to construct, operate, or maintain its transmission system shall not be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of subsection (b).

(2) This subsection shall not be construed to—

(A) suspend, or exempt any Federal utility from any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

SEC. 1125. REGIONAL CONSIDERATION OF COMPETITIVE WHOLESALE MARKETS.

(a) STATE REGULATORY AUTHORITIES.—Not later than 90 days after the date of enactment of this Act, the Commission shall convene regional discussions with State regulatory authorities, as defined in section 3(21) of the Federal Power Act. The regional discussions should address whether wholesale electric markets in each region are working effectively to provide reliable service to electric consumers in the region at the lowest reasonable cost. Priority should be given to discussions in regions that do not have, as of the date of enactment of this Act, a Regional Transmission Organization (''RTO'') or an Independent System Operator (''ISO''s, as defined in the Federal Power Act. The regional discussions shall consider—

(1) the need for an RTO or other organizations in the region to provide nondiscriminatory transmission access and generation interconnection;

(2) a process for regional planning of transmission facilities with State regulatory authority participation and for consideration of multi-state projects;

(3) a means for ensuring that costs for all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and buyers of wholesale energy or capacity are reasonable and economically efficient;

(4) a means for ensuring that all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), within the region maintain their ability to use the existing transmission system without incurring unreasonable additional costs in order to expand the transmission system for new customers;

(5) whether the integrated transmission and electric power supply system can and should be operated in a manner that schedules and economically prioritizes all available electric generation resources, so as to minimize the costs of electric energy to all consumers (''economic dispatch'') and maintain system reliability;

(6) a means to provide transparent price signals to promote proper location and utilization of generation and the efficient expansion of transmission in a manner that does not result in collection of transmission rents that do not relieve congestion;

(7) eliminating in a reasonable manner, consistent with applicable State and Federal law, multiple, cumulative charges for transmission service across successive locations within a region (''pancaked rates'');

(8) resolution of seams issues with neighboring regions and inter-regional coordination;

(9) a means of providing information electronically to potential users of the transmission system;

(10) implementation of a market monitor for the region with State regulatory authority and Commission oversight and establishment of rules and procedures that ensure that State regulatory authorities are provided access to market information and that provides for expedited consideration by the Commission of any complaints concerning exercise of market power and the operation of wholesale markets;

(11) a process by which to phase-in any proposed RTO or other organization designated to provide non-discriminatory transmission access, including the formulation of transmission pricing methodologies, so as to best meet the needs of a region, and, if relevant, shall take into account the special circumstances that may be found in the Western Interconnection related to the existence of transmission congestion, the existence of significant hydroelectric capacity, the participation of unregulated transmitting utilities, and the distances between generation and load;

(12) the need to submit regional studies, within one year of enactment of this Act, to the Commission outlining possible methodologies that will ensure that the amount of energy produced in any region will be equal to at least 50 percent of the amount of energy consumed in that region by 2013;

(13) the potential value of developing a uniform system-wide average rate for transmission pricing as a way to enhance the efficiency and reliability of the transmission grid; and

(14) a timetable to meet the objectives of this section.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall report to Congress on the progress made in addressing the issues in subsection (a) of this section in discussions with the States.

(c) SAVINGS.—Nothing in this section shall affect any discussions between the Commission and State or other retail regulatory authorities that are on-going prior to enactment of this Act.

Subtitle C—Improving Transmission Access and Protecting Service Obligations

SEC. 1131. SERVICE OBLIGATION SECURITY AND PARITY.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SERVICE OBLIGATION SECURITY AND PARITY

''SEC. 216. (a)(1) Any load-serving entity that, as of the date of enactment of this section''—

(A) owns generation facilities, markets the output of federal generation facilities, or holds rights under one or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

''(B) by reason of ownership of transmission facilities, or one or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation, is entitled to use such firm transmission rights, or, at its election, equivalent tradeable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradeable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradeable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations.

''(b) Nothing in this section shall affect any methodology, approved by the Commission prior to the date of enactment of this section, for the allocation of transmission rights by an RTO or ISO that has been authorized by the Commission to allocate transmission rights.

''(c) Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

''(d) Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

''(e) For purposes of this section:

''(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through one or more additional State utilities or electric cooperatives, provides electric service to end-users.

''(2) The term 'load-serving entity' means a distribution utility or an electric utility that has a service obligation.

''(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

''(4) The term 'State utility' means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.

''(5) A transmitting utility that is a water district or water agency to which section 201 (f) applies and that has a right under state law to provide water shall be treated as a load-serving entity. Such water district or water agency's right to provide water should be treated as a service obligation.

''(f) Nothing in the section shall apply to an entity located in an area referred to in section 212(k)(2)(A).

''(g) This section does not authorize the Commission to take any action not otherwise within its jurisdiction under other provisions of this Act.''

SEC. 1132. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 (16 U.S.C. 824j) the following:

''OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

''SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

''(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

''(b) The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

''(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) The requirements of subsection (a) shall not apply to facilities used in local distribution.

''(d) If an unregulated transmitting utility exempted pursuant to subsection (b) no longer meets any of the criteria for exemption, the exemption shall expire.

''(e) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(f) In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(g) The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

''(h) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(i) Nothing in this Act authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities

to an RTO or any other Commission-approved organization designated to provide non-discriminatory transmission access.''.

SEC. 1133. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''PARTICIPANT FUNDING

''SEC. 217. (a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate final regulations establishing transmission pricing policies applicable to all public utilities associated with the construction of new interstate transmission facilities and expansion, modification, or upgrading of existing interstate transmission facilities (''transmission expansion'').

''(b) CONTENTS.—Consistent with section 205, the regulation under subsection (a) shall, to the maximum extent practicable—

''(1) promote economic capital investment in efficient transmission systems;

''(2) encourage the construction and use of transmission facilities and generation facilities that reduce risk and provide just and reasonable rates to consumers;

''(3) encourage improved operation of generation and transmission facilities and deployment of transmission technologies designed to increase capacity and efficiency of existing networks; and

''(4) ensure that the costs of any transmission expansion are assigned or allocated in a fair manner, meaning that those who benefit from the transmission expansion pay an appropriate share of the associated costs.

''(c) PLAN.——

''(1) IN GENERAL.—An RTO or ISO may submit to the Commission a plan containing the criteria for determining the person or persons who will be required to pay for any transmission expansion. Nothing herein diminishes or alters the rights of individual members of an RTO or ISO under the Act.

''(2) Requirements.—The Commission shall approve a plan submitted under paragraph (1) if the Commission determines that the plan—

''(A) meets all the requirements of this Act and is consistent with the regulation promulgated under subsection (a);

''(B) specifies the method or methods by which costs may be allocated or assigned. Such methods may include, but are not limited to:

''(i) directly assigned;

''(ii) participant funded; or

''(iii) rolled into regional or sub-regional rates; and

''(C) ensures that the party or parties who pay for facilities necessary for the transmission expansion receive appropriate compensation for those facilities, considering among other factors the economic benefits associated with the transmission expansion.

''(3) DEFERENCE.—In exercising its jurisdiction under this section, the Commission shall give substantial deference to the comments filed with the Commission by State regulatory authorities, other appropriate State officials, and stakeholders of the RTO or ISO.

''(4) EFFECT OF SECTION.—Nothing in this section shall affect an RTO or ISO's allocation methodology for transmission expansion approved by the Commission prior to the date of enactment of this section.''.

Subtitle D—Amendments to the Public Utility Regulatory Policies Act of 1978

SEC. 1141. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111 (d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—

''(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

''(i) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section 111(d)(11), the term net metering service shall mean a service provided in accordance with the following standards:

''(1) An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(2) An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with reasonable metering practices.

''(3) If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with reasonable metering practices.

''(4) If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

''(B) the owner or operator of the on-site generating facility. shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

''(5) An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(6) The Commission, after consultation with State regulatory authorities and unregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability. ''(7) For purposes of this subsection—

''(A) The term 'eligible on-site generating facility' means a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

''(B) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

''(C) The term 'high efficiency system' means fuel cells or combined heat and power.

''(D) The term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.''.

SEC. 1142. SMART METERING.

(a) IN GENERAL.—Section 111 (d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(12) TIME-BASED METERING AND COMMUNICATIONS.—

''(A) Each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use. and cost through advanced metering and communications technology.

''(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

''(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

''(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption; and

''(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis and may change as often as hourly.

''(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-

based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

''(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

''(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 12 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(I) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).''.

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(j) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.''.

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Polices Act of 1978 (16 U.S.C. 2642(a)) is amended by striking ''and'' at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting ''; and'', and by adding the following at the end thereof:

''(5) technologies, techniques, and ratemaking methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.''.

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

''(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

''(1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;

''(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and

''(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2003, providing the Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2005.

''(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

''(1) It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

''(2) The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

''(A) identifying the areas with the greatest demand response potential;

''(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; and

''(C) developing plans and programs to use demand response to respond to peak demand or emergency needs.

''(3) Not later than 1 year after the date of enactment of the Energy Policy Act of 2003, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

''(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

''(B) existing demand response programs and time-based rate programs;

''(C) the annual resource contribution of demand resources;

''(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes; and

''(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party.

''(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated.''.

SEC. 1143. ADOPTION OF ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

''(6) Each electric utility shall provide distributed generation, combined heat and power, and district heating and cooling systems competitive access to the local distribution grid and competitive pricing of service, and shall use simplified standard contracts for the interconnection of generating facilities that have a power production capacity of 250 kilowatts or less.

''(7) No electric utility may refuse to interconnect a generating facility with the distribution facilities of the electric utility if the owner or operator of the generating facility complies with technical standards adopted by the State regulatory authority and agrees to pay the costs established by such State regulatory authority.

''(8) Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

''(9) Each electric utility shall develop and implement a 10–year plan to increase the efficiency of its fossil fuel generation.''.

(b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

''(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of subsection (b), any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this subsection.''.

SEC. 1144. TECHNICAL ASSISTANCE.

Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is amended to read as follows:

''(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide such technical assistance as determined appropriate to assist State regulatory authorities and electric utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and (9) of section 113(b).''.

SEC. 1145. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

''(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

''(1) OBLIGATION TO PURCHASE.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—

''(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

''(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

''(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

''(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.

''(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

''(B) For the purposes of this paragraph, the term 'existing qualifying cogeneration facility' means a facility that—

''(i) was a qualifying cogeneration facility on the date of enactment of subsection (m); or

''(ii) had filed with the Commission a notice of self-certification, self-recertification

or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

''(3) COMMISSION REVIEW.—Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

''(4) REINSTATEMENT OF OBLIGATION TO PURCHASE.—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

''(5) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that—

''(A) competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

''(B) the electric utility is not required by State law to sell electric energy in its service territory.

''(6) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

''(7) RECOVERY OF COSTS.—

''(A) The Commission shall promulgate and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

''(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

''(n) RULEMAKING FOR NEW QUALIFYING FACILITIES.—

''(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure—

''(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

''(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

''(iii) continuing progress in the development of efficient electric energy generating technology.

''(B) The rule promulgated pursuant to section (n)(1)(A) shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in section (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

''(2) RULES FOR EXISTING FACILITIES.—Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

''(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

''(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).''.

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

''(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe.''.

(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

''(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.''.

Subtitle E—Provisions Regarding the Public Utility Holding Company Act of 1935

This subtitle may be cited as the ''Public Utility Holding Company Act of 2003.''

sec. 1151. definitions.

For the purposes of this subtitle:

(1) The term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company, and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public-utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public-utility companies.

(16) The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company, and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1152. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective 12 months after the date of enactment of this Act.

SEC. 1153. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 1154. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or any associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public-utility company, and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, or other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, or other records, under Federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 1155. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the date of enactment of this title, the Commission shall promulgate a final rule to exempt from the requirements of section 1153 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public-utility company or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public-utility company, the Commission shall exempt such person or transaction from the requirements of section 1153.

SEC. 1156. AFFILIATE TRANSACTIONS.

Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public-utility company, public utility, or natural gas company from an associate company.

SEC. 1157. APPLICABILITY.

No provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of such officer, agent, or employee's official duty.

SEC. 1158. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1159. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 1160. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY. Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

SEC. 1161. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this title, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle; and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 1162. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 1163. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this title.

SEC. 1164. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

Subtitle F—Market Transparency, Anti-Manipulation and Enforcement

SEC. 1171. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''MARKET TRANSPARENCY RULES

''SEC. 218. (a) Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public. The

Commission shall have authority to obtain such information from any electric and transmitting utility, including any entity described in section 201(f).

''(b) The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

''(c) This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission.''.

SEC. 1172. MARKET MANIPULATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''PROHIBITION ON FILING FALSE INFORMATION

''SEC. 219. It shall be a violation of this Act for any person or any other entity (including entities described in section 201(f)) knowingly and willfully to report any information relating to the price of electricity sold at wholesale or availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to any governmental entity with the intent to manipulate the data being compiled by such governmental entity.

''PROHIBITION ON ROUND TRIP TRADING

''SEC. 220. (a) It shall be a violation of this Act for any person or any other entity (including entities described in section 201(f)) knowingly and willfully to enter into any contract or other arrangement to execute a 'round trip trade' for the purchase or sale of electric energy at wholesale.

''(b) For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or any other entity—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

''(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

''(3) enters into the contract or arrangement with the intent to deceptively affect reported revenues, trading volumes, or prices.''.

SEC. 1173. MARKET TRANSPARENCY.

(a) IN GENERAL.—It shall be a violation of the Commodity Exchange Act (7 U.S.C. 1 et seq.) for a person or entity to knowingly report or manipulate any information relating to the price, quantity, sale or purchase, and counter party of any agreement, contract or transaction related to natural gas or electricity in interstate commerce, which the person or entity knew to be false at the time of reporting to any governmental entity or any person or entity engaged in the business of collecting and disseminating information.

(b) CLARIFICATION OF EXISTING CFTC AUTHORITY.—Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by designating subsection (f) as subsection (e), and adding:

''(f) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—The Commission may bring administrative or civil action as provided in this Act against any person for a violation of any provision of this section including, but not limited to, false reporting under subsection (a)(2). This applies to any action pending on or commenced after the date of enactment of the Energy Policy Act of 2003.''.

(c) FRAUD AUTHORITY.—Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by striking subsection (a) and inserting the following:

''(a) PROHIBITION.—It shall be unlawful for any person, directly or indirectly in or in connection with any account, or any offer to enter into, the entry into, or the confirmation of the execution of, any agreement contract, or transaction subject to regulation or this Act—

''(1) to cheat or defraud or attempt to cheat or defraud any person;

''(2) to willfully make or cause to be made to any person any false report or statement, or to willfully enter or cause to be entered for any person any false record;

''(3) to willfully deceive or attempt to deceive any person by any means whatsoever; or

''(4) except as permitted in written rules of a designated contract market or registered derivative transaction execution facility which the agreement, contract, or transaction is traded and executed—

''(A) to bucket an order;

''(B) to fill an order by offsetting against 1 or more orders of another person; or

''(C) willfully and knowingly, for or on behalf of any other person and without the prior consent of such person, to become—

''(i) the buyer with respect to any selling order of the person; or

''(ii) the seller with respect to any buying order of the person.''

(d) TECHNICAL CORRECTIONS.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e) is amended by adding at the end the following:

''Any request by any Federal, State or foreign government department, agency, or political subdivision, or foreign futures authority, for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas and electricity) within the exclusive jurisdiction of the Commission shall be directed to the Commission.''.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Commission for fiscal year 2004 such sums as may be necessary to carry out the additional responsibilities and obligations of the Commission under this section.

SEC. 1174. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting ''electric utility,'' after ''Any person,''; and

(2) inserting '', transmitting utility,'' after ''licensee'' each place it appears.

(b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended by inserting ''or transmitting utility'' after ''any person'' in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting ''electric utility,'' after ''Any person,'' in the first sentence.

(d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended—

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

(f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years''; and

(2) in subsection (b), by striking ''$500'' and inserting ''$50,000''.

SEC. 1175. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of'';

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''; and

(4) striking the fifth sentence and inserting the following: ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.''.

Subtitle G—Consumer Protections

SEC. 1181. ELECTRIC UTILITY MERGERS.

(a) Section 203(a) of the Federal Power Act (16 U.S.C. 824(b)) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000,

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other persons, by any means whatsoever, or

''(C) purchase, acquire, or take any security of any other public utility of a value in excess of $10,000,000.

''(2) No holding company in a holding company system that includes an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with an electric utility company, a gas utility company, or a holding company in a holding company system that includes a public-utility company of value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

''(3) Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest. In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction—

''(A) will adequately protect consumer interests,

''(B) will be consistent with competitive wholesale markets,

''(C) will not impair the ability of the Commission or the ability of a State commission having jurisdiction following the completion of the transaction over any public utility that is a party to the transaction or an associate company of any party to the transaction to protect the interests of consumers or the public,

''(D) will not impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction, and

''(E) satisfies such other criteria as the Commission considers consistent with the public interest.

''(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the Commission does not act within 90 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues one or more orders tolling the time for acting on the application.

''(6) For purposes of this subsection, the terms ''associate company'', ''electric utility company'', ''gas utility company'', ''holding company'', ''holding company system'', and ''public-utility company'' have the meaning given those terms in the Public Utility Holding Company Act of 2003.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 12 months after the date of enactment of this section.

SEC. 1182. MARKET-BASED POLICY.

Within six months of the enactment of this section, the Commission shall issue a policy statement establishing the conditions under which public utilities may charge market-based rates for the sale of electric energy subject to the jurisdiction of the Commission. Such policy statement should consider consumer protections and market power, as well as any other factors the Commission may deem necessary, to ensure that such rates are just and reasonable.

SEC. 1183. INTER-AGENCY REVIEW OF COMPETITION IN THE WHOLESALE AND RETAIL MARKETS FOR ELECTRIC ENERGY.

(a) TASK FORCE.—There is established an inter-agency task force, to be known as the ''Electric Energy Market Competition Task Force'' (referred to in this section as the ''task force''), which shall consist of—

(1) one member each from—

(A) the Department of Justice, to be appointed by the Attorney General of the United States;

(B) the Federal Energy Regulatory Commission, to be appointed by the chairman of that Commission;

(C) the Federal Trade Commission, to be appointed by the chairman of that Commission;

(D) the Department of Energy, to be appointed by the Secretary of Energy; and (E) the Rural Utilities Service, to be appointed by the Secretary of Agriculture.

(b) STUDY AND REPORT.—

(1) STUDY.—The task force shall perform a study and analysis of competition within the wholesale and retail market for electric energy in the United States.

(2) REPORT.—

(A) FINAL REPORT.—Not later than 1 year after the effective date of this subtitle, the task force shall submit a final report of its findings under paragraph (1) to the Congress.

(B) PUBLIC COMMENT.—At least 60 days before submission of a final report to the Congress under subparagraph (A), the task force shall publish a draft report in the Federal Register to provide for public comment.

(c) CONSULTATION.—In performing the study required by this section, the task force shall consult with and solicit comments from its advisory members, the States, representatives of the electric power industry, and the public.

SEC. 1184. CONSUMER PRIVACY.

The Federal Trade Commission shall issue rules protecting the privacy of electric consumers from the disclosure of consumer information in connection with the sale or delivery of electric energy to a retail electric consumer. If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 1185. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if determined by the appropriate State regulatory authority to be necessary to prevent loss of service.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(c) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 1186. DEFINITIONS.

For purposes of this subtitle—

(1) the term ''State regulatory authority'' has the meaning given that term in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)).

(2) the term ''electric consumer'' and ''electric utility'' have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Technical Amendments

SEC. 1191. TECHNICAL AMENDMENTS.

(a) Section 211(c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

(1) striking ''(2)'';

(2) striking ''(A)'' and inserting ''(1)''

(3) striking ''(B)'' and inserting ''(2)''; and

(4) striking ''termination of modification'' and inserting ''termination or modification''.

(b) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by striking ''electric utility'' the second time it appears and inserting ''transmitting utility''.

(c) Section 315(c) of the Federal Power Act (16 U.S.C. 825n(c)) is amended by striking ''subsection'' and inserting ''section''.

DIVISION B—ENERGY TAX INCENTIVES

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This division may be cited as the ''Energy Tax Incentives Act of 2003''.

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

(c) TABLE OF CONTENTS.—The table of contents for this division is as follows:

TITLE I—RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

SEC. 101. 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) 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 the date of the enactment of the Energy Tax Incentives Act of 2003,

''(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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of such Act—

''(i) subsection (a)(1) shall be applied by substituting '1.2 cents' for '1.5 cents', and

''(ii) the 5-year period beginning on January 1, 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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of the Energy Tax Incentives Act of 2003 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 the date of the enactment of the Energy Tax Incentives Act of 2003 and before January 1, 2007.

''(B) SPECIAL RULE.—In the case of any facility or unit described in subparagraph (A), the 5-year period beginning on the date the facility or unit was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

''(C) CREDIT ELIGIBILITY.—In the case of any qualified facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.''.

(2) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(e) (relating to definitions and special rules), as redesignated by paragraph (1), is amended by striking paragraph (6) and inserting the following new paragraph:

''(6) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (d)(6)(A), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted to operate in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).''.

(3) CONFORMING AMENDMENT.—Section 45(e), as so redesignated, is amended by striking ''subsection (c)(3)(A)'' in paragraph (7)(A)(i) and inserting ''subsection (d)(1)''.

(c) CREDIT RATE FOR ELECTRICITY PRODUCED FROM NEW FACILITIES.—

(1) IN GENERAL.—Section 45(a) is amended by adding at the end the following new flush sentence:

''In the case of electricity produced after 2003 at any qualified facility originally placed in service after the date of the enactment of the Energy Tax Incentives Act of 2003, paragraph (1) shall be applied by substituting '1.8 cents' for '1.5 cents'.''.

(2) NEW RATE NOT SUBJECT TO INFLATION ADJUSTMENT.—Section 45(b)(2) (relating to credit and phaseout adjustment based on inflation) is amended by adding at the end the following new sentence: ''This paragraph shall not apply to any amount which is substituted for the 1.5 cent amount in subsection (a) by reason of any provision of this section.''.

(d) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3)(A) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting ''(other than proceeds of an issue of State or local government obligations the interest on which is exempt from tax under section 103, or any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act 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''.

(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 of 2003.

''(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) 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 the date of the enactment of this Act, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made

by this section shall apply to electricity produced and sold after December 31, 2003, in taxable years ending after such date.

(3) CREDIT RATE FOR NEW FACILITIES.—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2003, 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 on or before such date of enactment.

TITLE II—ALTERNATIVE MOTOR VEHICLES AND FUELS INCENTIVES

SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

"SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

''(2) the new qualified hybrid motor vehicle credit determined under subsection (c), and

''(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d).

''(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

''(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(2) INCREASE FOR FUEL EFFICIENCY.—

''(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

''(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

''(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

''(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

''(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

''(B) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

''(ii) In the case of a light truck:

"If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

''(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

''(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(c) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

''(2) CREDIT AMOUNT.—

''(A) IN GENERAL.—The credit amount determined under this paragraph shall be determined in accordance with the following tables:

''(i) In the case of a new qualified hybrid motor vehicle which is a passenger automobile, medium duty passenger vehicle, or light truck and which provides the following percentage of the maximum available power:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 4 percent but less than 10 percent.	$250
At least 10 percent but less than 20 percent.	$500
At least 20 percent but less than 30 percent.	$750
At least 30 percent	$1,000.

''(ii) In the case of a new qualified hybrid motor vehicle which is a heavy duty hybrid motor vehicle and which provides the following percentage of the maximum available power:

''(I) If such vehicle has a gross vehicle weight rating of not more than 14,000 pounds:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 20 percent but less than 30 percent.	$1,000
At least 30 percent but less than 40 percent.	$1,750
At least 40 percent but less than 50 percent.	$2,000
At least 50 percent but less than 60 percent.	$2,250
At least 60 percent	$2,500.

''(II) If such vehicle has a gross vehicle weight rating of more than 14,000 but not more than 26,000 pounds:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 20 percent but less than 30 percent.	$4,000
At least 30 percent but less than 40 percent.	$4,500
At least 40 percent but less than 50 percent.	$5,000
At least 50 percent but less than 60 percent.	$5,500
At least 60 percent	$6,000.

''(III) If such vehicle has a gross vehicle weight rating of more than 26,000 pounds:

"If percentage of the maximum available power is:	**The credit amount is:**
At least 20 percent but less than 30 percent.	$6,000
At least 30 percent but less than 40 percent.	$7,000
At least 40 percent but less than 50 percent.	$8,000
At least 50 percent but less than 60 percent.	$9,000
At least 60 percent	$10,000.

''(B) INCREASE FOR FUEL EFFICIENCY.—

''(i) AMOUNT.—The amount determined under subparagraph (A)(i) with respect to a new qualified hybrid motor vehicle which is a passenger automobile or light truck shall be increased by—

''(I) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2002 model year city fuel economy,

''(II) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

''(III) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

''(IV) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

''(V) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy, and

''(VI) $3,000, if such vehicle achieves at least 250 percent of the 2002 model year city fuel economy.

''(ii) 2002 MODEL YEAR CITY FUEL ECONOMY.—For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

''(C) INCREASE FOR ACCELERATED EMISSIONS PERFORMANCE.—The amount determined under subparagraph (A)(ii) with respect to an applicable heavy duty hybrid motor vehicle shall be increased by the increased credit amount determined in accordance with the following tables:

''(i) In the case of a vehicle which has a gross vehicle weight rating of not more than 14,000 pounds:

''If the model year is:	**The increased credit amount is:**
2003	$3,000
2004	$2,500
2005	$2,000
2006	$1,500.

''(ii) In the case of a vehicle which has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds:

''If the model year is:	**The increased credit amount is:**
2003	$7,750
2004	$6,500
2005	$5,250
2006	$4,000.

''(iii) In the case of a vehicle which has a gross vehicle weight rating of more than 26,000 pounds:

''If the model year is:	**The increased credit amount is:**
2003	$12,000
2004	$10,000
2005	$8,000
2006	$6,000.

''(D) DEFINITIONS RELATING TO CREDIT AMOUNT.—

''(i) APPLICABLE HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (C), the term 'applicable heavy duty hybrid motor vehicle' means a heavy duty hybrid motor vehicle which is powered by an internal combustion or heat engine which is certified as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2007 and later model year diesel heavy duty engines, or for 2008 and later model year ottocycle heavy duty engines, as applicable.

''(ii) MAXIMUM AVAILABLE POWER.—

''(I) PASSENGER AUTOMOBILE, MEDIUM DUTY PASSENGER VEHICLE, OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

''(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term 'maximum available power' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. The term 'total traction power' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

''(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified hybrid motor vehicle' means a motor vehicle—

''(i) which draws propulsion energy from onboard sources of stored energy which are both—

''(I) an internal combustion or heat engine using consumable fuel, and

''(II) a rechargeable energy storage system,

''(ii) which, in the case of a passenger automobile, medium duty passenger vehicle, or light truck—

''(I) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(II) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(iii) which, in the case of a heavy duty hybrid motor vehicle, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

''(iv) the original use of which commences with the taxpayer,

''(v) which is acquired for use or lease by the taxpayer and not for resale, and

''(vi) which is made by a manufacturer.

''(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

''(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of this subsection, the term 'heavy duty hybrid motor vehicle' means a new qualified hybrid motor vehicle which has a gross vehicle weight rating of more than 8,500 pounds. Such term does not include a medium duty passenger vehicle.

''(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

''(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

''(A) 40 percent, plus

''(B) 30 percent, if such vehicle—

''(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

''(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act of 2003.

''(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

''(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'new qualified alternative fuel motor vehicle' means any motor vehicle—

''(i) which is only capable of operating on an alternative fuel,

''(ii) the original use of which commences with the taxpayer,

''(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

''(iv) which is made by a manufacturer.

''(B) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

''(5) CREDIT FOR MIXED-FUEL VEHICLES.—

''(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

''(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

''(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

''(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term 'mixed-fuel vehicle' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

''(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

''(ii) either—

''(I) has received a certificate of conformity under the Clean Air Act, or

''(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

''(iii) the original use of which commences with the taxpayer,

''(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

''(v) which is made by a manufacturer.

''(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '75/25 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

''(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term '90/10 mixed-fuel vehicle' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

''(3) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'medium duty passenger vehicle', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (e)).

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter—

''(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (d) shall be reduced by the amount of such credit attributable to such cost, and

''(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(10) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before the date of the enactment of this paragraph.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(11) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

''(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

''(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(g) REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

''(h) TERMINATION.—This section shall not apply to any property purchased after—

''(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2011, and

''(2) in the case of any other property, December 31, 2006.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 30B(f)(4).''.

(2) Section 55(c)(2) is amended by inserting ''30B(e),'' after ''30(b)(3),''.

(3) Section 6501(m) is amended by inserting ''30B(f)(9),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Alternative motor vehicle credit.''.

(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, in taxable years ending after such date.

SEC. 202. MODIFICATION OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Section 30(a) (relating to allowance of credit) is amended by striking ''10 percent of''.

(2) LIMITATION OF CREDIT ACCORDING TO TYPE OF VEHICLE.—Section 30(b) (relating to limitations) is amended—

(A) by striking paragraphs (1) and (2) and inserting the following new paragraph:

''(1) LIMITATION ACCORDING TO TYPE OF VEHICLE.—The amount of the credit allowed under subsection (a) for any vehicle shall not exceed the greatest of the following amounts applicable to such vehicle:

''(A) In the case of a vehicle with a gross vehicle weight rating not exceeding 8,500 pounds—

''(i) except as provided in clause (ii) or (iii), $3,500,

''(ii) $6,000, if such vehicle is—

''(I) capable of a driving range of at least 100 miles on a single charge of the vehicle's rechargeable batteries as measured pursuant to the urban dynamometer schedules under appendix I to part 86 of title 40, Code of Federal Regulations, or

''(II) capable of a payload capacity of at least 1,000 pounds, and

''(iii) if such vehicle is a low-speed vehicle which conforms to Standard 500 prescribed by the Secretary of Transportation (49 C.F.R. 571.500), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003, the lesser of—

''(I) 10 percent of the manufacturer's suggested retail price of the vehicle, or

''(II) $1,500.

''(B) In the case of a vehicle with a gross vehicle weight rating exceeding 8,500 but not exceeding 14,000 pounds, $10,000.

''(C) In the case of a vehicle with a gross vehicle weight rating exceeding 14,000 but not exceeding 26,000 pounds, $20,000.

''(D) In the case of a vehicle with a gross vehicle weight rating exceeding 26,000 pounds, $40,000.'', and

(B) by redesignating paragraph (3) as paragraph (2).

(3) CONFORMING AMENDMENTS.—

(A) Section 53(d)(1)(B)(iii) is amended by striking ''section 30(b)(3)(B)'' and inserting ''section 30(b)(2)(B)''.

(B) Section 55(c)(2), as amended by this Act, is amended by striking ''30(b)(3)'' and inserting ''30(b)(2)''.

(b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

(1) IN GENERAL.—Section 30(c)(1)(A) (defining qualified electric vehicle) is amended to read as follows:

''(A) which is—

''(i) operated solely by use of a battery or battery pack, or

''(ii) powered primarily through the use of an electric battery or battery pack using a flywheel or capacitor which stores energy produced by an electric motor through regenerative braking to assist in vehicle operation,''.

(2) LEASED VEHICLES.—Section 30(c)(1)(C) is amended by inserting ''or lease'' after ''use''.

(3) CONFORMING AMENDMENTS.—

(A) Subsections (a), (b)(2), and (c) of section 30 are each amended by inserting ''battery'' after ''qualified'' each place it appears.

(B) The heading of subsection (c) of section 30 is amended by inserting ''BATTERY'' after ''QUALIFIED''.

(C) The heading of section 30 is amended by inserting ''battery'' after ''qualified''.

(D) The item relating to section 30 in the table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting ''battery'' after ''qualified''.

(E) Section 179A(c)(3) is amended by inserting ''battery'' before ''electric''.

(F) The heading of paragraph (3) of section 179A(c) is amended by inserting ''**battery**'' before ''**electric**''.

(c) ADDITIONAL SPECIAL RULES.—Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(2) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year, except that no excess may be carried to a taxable year beginning before the date of the enactment of this paragraph.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 203. CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified clean-fuel vehicle refueling property.

''(b) LIMITATION.—The credit allowed under subsection (a)—

''(1) with respect to any retail clean-fuel vehicle refueling property, shall not exceed $30,000, and

''(2) with respect to any residential clean-fuel vehicle refueling property, shall not exceed $1,000.

''(c) YEAR CREDIT ALLOWED.—Notwithstanding subsection (a), no credit shall be allowed under subsection (a) with respect to any qualified clean-fuel vehicle refueling property before the taxable year in which the property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified clean-fuel vehicle refueling property' has the same meaning given such term by section 179A(d).

''(2) RESIDENTIAL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'residential clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL CLEAN-FUEL VEHICLE REFUELING PROPERTY.—The term 'retail clean-fuel vehicle refueling property' means qualified clean-fuel vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30B, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—

''(1) COORDINATION WITH OTHER DEDUCTIONS AND CREDITS.—Except as provided in paragraph (2), the amount of any deduction or other credit allowable under this chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

''(2) NO DEDUCTION ALLOWED UNDER SECTION 179A.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified clean-fuel vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail clean-fuel vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year, such excess shall be a credit carryforward to each of the 20 taxable years following such taxable year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(b) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) to the extent provided in section 30C(f).''.

(2) Section 55(c)(2), as amended by this Act, is amended by inserting ''30C(e),'' after ''30B(e),''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

''Sec. 30C. Clean-fuel vehicle refueling property credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 204. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

"SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the alternative fuel retail sales credit for any taxable year is the applicable amount for each gasoline gallon equivalent of alternative fuel sold at retail by the taxpayer during such year as a fuel to propel any qualified motor vehicle.

''(b) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE AMOUNT.—The term 'applicable amount' means the amount determined in accordance with the following table:

"In the case of any taxable year ending in—	The applicable amount is—
2003	30 cents
2004	40 cents
2005 and 2006	50 cents.

''(2) ALTERNATIVE FUEL.—The term 'alternative fuel' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, or any liquid at least 85 percent of the volume of which consists of methanol or ethanol.

''(3) GASOLINE GALLON EQUIVALENT.—The term 'gasoline gallon equivalent' means, with respect to any alternative fuel, the amount (determined by the Secretary) of such fuel having a Btu content of 114,000.

''(4) QUALIFIED MOTOR VEHICLE.—The term 'qualified motor vehicle' means any motor vehicle (as defined in section 30(c)(2)) which meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled.

''(5) SOLD AT RETAIL.—

''(A) IN GENERAL.—The term 'sold at retail' means the sale, for a purpose other than resale, after manufacture, production, or importation.

''(B) USE TREATED AS SALE.—If any person uses alternative fuel (including any use after importation) as a fuel to propel any new qualified alternative fuel motor vehicle (as defined in section 30B(d)(4)) before such fuel is sold at retail, then such use shall be treated in the same manner as if such fuel were sold at retail as a fuel to propel such a vehicle by such person.

''(c) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any fuel taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such fuel.

''(d) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold at retail after December 31, 2006.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the alternative fuel retail sales credit determined under section 40A(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 40A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the alternative fuel retail sales credit determined under section 40A(a) may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 40 the following new item:

''Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold at retail after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 205. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

''(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking ''30,000,000'' each place it appears and inserting ''60,000,000''.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) is amended by striking ''subpart D'' and inserting ''subpart D, other than section 40(a)(3),''.

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

(A) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) SPECIAL RULES FOR SMALL ETHANOL PRODUCER CREDIT.—

''(A) IN GENERAL.—In the case of the small ethanol producer credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the small ethanol producer credit).

''(B) SMALL ETHANOL PRODUCER CREDIT.—For purposes of this subsection, the term 'small ethanol producer credit' means the credit allowable under subsection (a) by reason of section 40(a)(3).''.

(B) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii) and subclause (II) of section 38(c)(3)(A)(ii) are each amended by inserting ''or the small ethanol producer credit'' after ''employee credit''.

(4) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 (relating to income inclusion of alcohol fuel credit) is amended to read as follows:

"SEC. 87. ALCOHOL FUEL CREDIT.

''Gross income includes an amount equal to the sum of—

''(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1), and

''(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2).''.

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

''(k) CROSS REFERENCE.—For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).''.

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

SEC. 206. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

"SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

''(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

''(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

''(ii) for the taxable year in which such sale or use occurs.

''(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(2) BIODIESEL CREDIT.—

''(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

''(i) is used by the taxpayer as a fuel in a trade or business, or

''(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

''(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

''(3) CREDIT FOR AGRI-BIODIESEL.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

''(B) CERTIFICATION FOR AGRI-BIODIESEL.—Subparagraph (A) shall apply only if the taxpayer described in paragraph (1)(A) or (2)(A) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

''(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any agri-biodiesel shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such agri-biodiesel solely by reason of the application of section 6426 or 6427(e).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter for use in diesel-powered engines which meet—

''(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(B) the requirements of the American Society of Testing and Materials D6751.

''(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

''(3) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year ending on or before the date of the enactment of section 40B.''.

(2)(A) Section 87, as amended by this Act, is amended—

(i) by striking ''and'' at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting '', and'',

(iii) by adding at the end the following new paragraph:

''(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).'', and

(iv) by striking ''**FUEL CREDIT**'' in the heading and inserting ''**AND BIODIESEL FUELS CREDITS**''.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking ''fuel credit'' and inserting ''and biodiesel fuels credits''.

(3) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting '', and'', and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(4) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 207. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

''SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

''(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

''(1) the alcohol fuel mixture credit, plus

''(2) the biodiesel mixture credit.

''(b) ALCOHOL FUEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the applicable amount for each gallon of alcohol used by the taxpayer in producing an alcohol fuel mixture.

''(2) APPLICABLE AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

''(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

''(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' is a mixture which—

''(A) consists of alcohol and a taxable fuel, and

''(B) is sold for use or used as a fuel by the taxpayer producing the mixture.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

''(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

''(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

''(5) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2010.

''(c) BIODIESEL MIXTURE CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any qualified biodiesel mixture.

''(2) APPLICABLE AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

''(B) AMOUNT FOR AGRI-BIODIESEL.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

''(ii) CERTIFICATION FOR AGRI-BIODIESEL.—Clause (i) shall apply only if the taxpayer described in paragraph (1) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer

of the agri-biodiesel which identifies the product produced.

''(3) DEFINITIONS.—Any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2005.

''(d) MIXTURE NOT USED AS A FUEL, ETC.—

''(1) IMPOSITION OF TAX.—If—

''(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or qualified biodiesel mixture, respectively, and

''(B) any person—

''(i) separates such alcohol or biodiesel from the mixture, or

''(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

''(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.''.

(b) REGISTRATION REQUIREMENT.—Section 4101(a) (relating to registration) is amended by inserting ''and every person producing biodiesel (as defined in section 40B(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))'' after ''4091''.

(c) CONFORMING AMENDMENTS.—

(1) Section 40(c) is amended by striking ''section 4081(c), or section 4091(c)'' and inserting ''section 4091(c), section 6426, section 6427(e), or section 6427(f)''.

(2) Section 40(d)(4)(B) is amended by striking ''or 4081(c)''.

(3) Section 40(e)(1) is amended—

(A) by striking ''2007'' in subparagraph (A) and inserting ''2010'', and

(B) by striking ''2008'' in subparagraph (B) and inserting ''2011''.

(4) Section 40(h) is amended—

(A) by striking ''2007'' in paragraph (1) and inserting ''2010'', and

(B) by striking '', 2006, or 2007'' in the table contained in paragraph (2) and inserting ''through 2010''.

(5) Section 4041(b)(2)(B) is amended by striking ''a substance other than petroleum or natural gas'' and inserting ''coal (including peat)''.

(6) Paragraph (1) of section 4041(k) is amended to read as follows:

''(1) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 6426(b)(4)(A)), the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c).''.

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

''(2) GASOLINE.—The term 'gasoline'—

''(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)) or a denaturant of alcohol (as defined in section 6426(b)(4)(A)), and

''(B) includes, to the extent prescribed in regulations—

''(i) any gasoline blend stock, and

''(ii) any product commonly used as an additive in gasoline.

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.''.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

''(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS FUELS.—Except as provided in subsection (k)—

''(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

''(2) USED AS FUEL.—If alcohol (as defined in section 40(d)(1)) or biodiesel (as defined in section 40B(d)(1)) or agri-biodiesel (as defined in section 40B(d)(2)) which is not in a mixture with a taxable fuel (as defined in section 4083(a)(1))—

''(A) is used by any person as a fuel in a trade or business, or

''(B) is sold by any person at retail to another person and placed in the fuel tank of such person's vehicle,

the Secretary shall pay (without interest) to such person an amount equal to the alcohol credit (as determined under section 40(b)(2)) or the biodiesel credit (as determined under section 40B(b)(2)) with respect to such fuel.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

''(4) TERMINATION.—This subsection shall not apply with respect to—

''(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) or alcohol (as so defined) sold or used after December 31, 2010, and

''(B) any qualified biodiesel mixture (within the meaning of section 6426(c)(1)) or biodiesel (as so defined) or agri-biodiesel (as so defined) sold or used after December 31, 2005.''.

(10) Subsection (f) of section 6427 is amended to read as follows:

''(f) AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

''(1) IN GENERAL.—Except as provided in subsection (k), if any aviation fuel on which tax was imposed by section 4091 at the regular tax rate is used by any person in producing a mixture described in section 4091(c)(1)(A) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

''(2) DEFINITIONS.—For purposes of paragraph (1)—

''(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

''(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(2) thereof.

''(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any aviation fuel with respect to which an amount is payable under subsection (d) or (l).

''(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.''.

(11) Paragraphs (1) and (2) of section 6427(i) are amended by inserting ''(f),'' after ''(d),''.

(12) Section 6427(i)(3) is amended—

(A) by striking ''subsection (f)'' both places it appears in subparagraph (A) and inserting ''subsection (e)(1)'',

(B) by striking ''gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))'' in subparagraph (A) and inserting ''a mixture described in section 6426'',

(C) by striking ''subsection (f)(1)'' in subparagraph (B) and inserting ''subsection (e)(1)'',

(D) by striking ''20 days of the date of the filing of such claim'' in subparagraph (B) and inserting ''45 days of the date of the filing of such claim (20 days in the case of an electronic claim)'', and

(E) by striking ''ALCOHOL MIXTURE'' in the heading and inserting ''ALCOHOL FUEL AND BIODIESEL MIXTURE''.

(13) Section 6427(o) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) any tax is imposed by section 4081, and'',

(B) by striking ''such gasohol'' in paragraph (2) and inserting ''the alcohol fuel mixture (as defined in section 6426(b)(3))'',

(C) by striking ''gasohol'' both places it appears in the matter following paragraph (2) and inserting ''alcohol fuel mixture'', and

(D) by striking ''GASOHOL'' in the heading and inserting ''ALCOHOL FUEL MIXTURE''.

(14) Section 9503(b)(1) is amended by adding at the end the following new flush sentence: ''For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.''.

(15) Section 9503(b)(4) is amended—

(A) by adding ''or'' at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(16) Section 9503(c)(2)(A)(i)(III) is amended by inserting ''(other than subsection (e) thereof)'' after ''section 6427''.

(17) Section 9503(e)(2) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(18) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

''Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used after September 30, 2003.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (b)(12)(D)) not later than September 30, 2003.

SEC. 208. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES.

(a) PROHIBITION.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended—

(1) by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) Any gasoline or diesel fuel sold at a duty-free sales enterprise shall be considered to be entered for consumption into the customs territory of the United States.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

TITLE III—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

SEC. 301. CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualifying new home during construction of such home.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—

''(A) IN GENERAL.—The credit allowed by this section with respect to a qualifying new home shall not exceed—

''(i) in the case of a 30-percent home, $1,000, and

''(ii) in the case of a 50-percent home, $2,000.

''(B) 30- OR 50-PERCENT HOME.—For purposes of subparagraph (A)—

''(i) 30-PERCENT HOME.—The term '30-percent home' means—

''(I) a qualifying new home which is certified to have a projected level of annual heating and cooling energy consumption, measured in terms of average annual energy cost to the homeowner, which is at least 30 percent less than the annual level of heating and cooling energy consumption of a qualifying new home constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment, or

''(II) in the case of a qualifying new home which is a manufactured home, a home which meets the applicable standards required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(ii) 50-PERCENT HOME.—The term '50-percent home' means a qualifying new home which would be described in clause (i)(I) if 50 percent were substituted for 30 percent.

''(C) PRIOR CREDIT AMOUNTS ON SAME HOME TAKEN INTO ACCOUNT.—The amount of the credit otherwise allowable for the taxable year with respect to a qualifying new home under clause (i) or (ii) of subparagraph (A) shall be reduced by the sum of the credits allowed under subsection (a) to any taxpayer with respect to the home for all preceding taxable years.

''(2) COORDINATION WITH CERTAIN CREDITS.—For purposes of this section—

''(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to the rehabilitation credit (as determined under section 47(a)) or to the energy credit (as determined under section 48(a)), and

''(B) expenditures taken into account under section 25D, 47, or 48(a) shall not be taken into account under this section.

''(3) PROVIDER LIMITATION.—Any eligible contractor who directly or indirectly provides the guarantee of energy savings under a guarantee-based method of certification described in subsection (d)(1)(D) shall not be eligible to receive the credit allowed by this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means—

''(A) the person who constructed the qualifying new home, or

''(B) in the case of a qualifying new home which is a manufactured home, the manufactured home producer of such home.

If more than 1 person is described in subparagraph (A) or (B) with respect to any qualifying new home, such term means the person designated as such by the owner of such home.

''(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling equipment or system which can, individually or in combination with other components, meet the requirements of this section.

''(3) QUALIFYING NEW HOME.—

''(A) IN GENERAL.—The term 'qualifying new home' means a dwelling—

''(i) located in the United States,

''(ii) the construction of which is substantially completed after the date of the enactment of this section, and

''(iii) the first use of which after construction is as a principal residence (within the meaning of section 121).

''(B) MANUFACTURED HOME INCLUDED.—The term 'qualifying new home' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

''(5) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a qualifying new home when installed in or on such home,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(d) CERTIFICATION.—

''(1) METHOD OF CERTIFICATION.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be determined either by a component-based method, a performance-based method, or a guarantee-based method, or, in the case of a qualifying new home which is a manufactured home, by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) COMPONENT-BASED METHOD.—A component-based method is a method which uses the applicable technical energy efficiency specifications or ratings (including product labeling requirements) for the energy efficient building envelope component or energy efficient heating or cooling equipment. The Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, develop prescriptive component-based packages which are equivalent in energy performance to properties which qualify under subparagraph (C).

''(C) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—A performance-based method is a method which calculates projected energy usage and cost reductions in the qualifying new home in relation to a new home—

''(I) heated by the same fuel type, and

''(II) constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(D) GUARANTEE-BASED METHOD.—

''(i) IN GENERAL.—A guarantee-based method is a method which guarantees in writing to the homeowner energy savings of either 30 percent or 50 percent over the 2000 International Energy Conservation Code for heating and cooling costs. The guarantee shall be provided for a minimum of 2 years and shall fully reimburse the homeowner any heating and cooling costs in excess of the guaranteed amount.

''(ii) COMPUTER SOFTWARE.—Computer software shall be selected by the provider to support the guarantee-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(2) PROVIDER.—A certification described in subsection (b)(1)(B) shall be provided by—

''(A) in the case of a component-based method, a local building regulatory authority, a utility, or a home energy rating organization,

''(B) in the case of a performance-based method or a guarantee-based method, an individual recognized by an organization designated by the Secretary for such purposes, or

''(C) in the case of a qualifying new home which is a manufactured home, a manufactured home primary inspection agency.

''(3) FORM.—

''(A) IN GENERAL.—A certification described in subsection (b)(1)(B) shall be made in writing in a manner which specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance, and

''(i) in the case of a performance-based method, accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such qualifying new home, and

''(ii) in the case of a qualifying new home which is a manufactured home, accompanied by such documentation as required by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

''(B) FORM PROVIDED TO BUYER.—A form documenting the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their rated energy efficiency performance shall be provided to the buyer of the qualifying new home. The form shall include labeled R-value for insulation products, NFRC-labeled U-factor and solar heat gain coefficient for windows, skylights, and doors, labeled annual fuel utilization efficiency (AFUE) ratings for furnaces and boilers, labeled heating seasonal performance factor

(HSPF) ratings for electric heat pumps, and labeled seasonal energy efficiency ratio (SEER) ratings for air conditioners.

''(C) RATINGS LABEL AFFIXED IN DWELLING.—A permanent label documenting the ratings in subparagraph (B) shall be affixed to the front of the electrical distribution panel of the qualifying new home, or shall be otherwise permanently displayed in a readily inspectable location in such home.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for performance-based and guarantee-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the homebuyer.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(e) APPLICATION.—Subsection (a) shall apply to qualifying new homes the construction of which is substantially completed after the date of the enactment of this section and purchased during the period beginning on such date and ending on—

''(1) in the case of any 30-percent home, December 31, 2005, and

''(2) in the case of any 50-percent home, December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', plus'', and by adding at the end the following new paragraph:

''(18) the new energy efficient home credit determined under section 45G(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

''(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a qualifying new home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45G(a).''.

(d) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(13) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to any taxable year ending on or before the date of the enactment of such section.''.

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking ''and'' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting '', and'', and by adding after paragraph (11) the following new paragraph:

''(12) the new energy efficient home credit determined under section 45G(a).''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45G. New energy efficient home credit.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to homes the construction of which is substantially completed after the date of the enactment of this Act.

SEC. 302. CREDIT FOR ENERGY EFFICIENT APPLIANCES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the sum of the amounts determined under paragraph (2) for qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(2) AMOUNT.—The amount determined under this paragraph for any category described in subsection (b)(2)(B) shall be the product of the applicable amount for appliances in the category and the eligible production for the category.

''(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

''(1) APPLICABLE AMOUNT.—The applicable amount is—

''(A) $50, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.42 MEF, or

''(ii) a refrigerator which consumes at least 10 percent less kilowatt hours per year than the energy conservation standards for refrigerators promulgated by the Department of Energy and effective on July 1, 2001,

''(B) $100, in the case of—

''(i) a clothes washer which is manufactured with at least a 1.50 MEF, or

''(ii) a refrigerator which consumes at least 15 percent (20 percent in the case of a refrigerator manufactured after 2006) less kilowatt hours per year than such energy conservation standards, and

''(C) $150, in the case of a refrigerator manufactured before 2007 which consumes at least 20 percent less kilowatt hours per year than such energy conservation standards.

''(2) ELIGIBLE PRODUCTION.—

''(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

''(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

''(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 2000, 2001, and 2002.

''(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

''(i) clothes washers described in paragraph (1)(A)(i),

''(ii) clothes washers described in paragraph (1)(B)(i),

''(iii) refrigerators described in paragraph (1)(A)(ii),

''(iv) refrigerators described in paragraph (1)(B)(ii), and

''(v) refrigerators described in paragraph (1)(C).

''(c) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall not exceed $60,000,000, of which not more than $30,000,000 may be allowed with respect to the credit determined by using the applicable amount under subsection (b)(1)(A).

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) a clothes washer described in subparagraph (A)(i) or (B)(i) of subsection (b)(1), or

''(B) a refrigerator described in subparagraph (A)(ii), (B)(ii), or (C) of subsection (b)(1).

''(2) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(3) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(4) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(e) SPECIAL RULES.—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

''(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).

''(g) TERMINATION.—This section shall not apply—

''(1) with respect to refrigerators described in subsection (b)(1)(A)(ii) produced after December 31, 2004, and

''(2) with respect to all other qualified energy efficient appliances produced after December 31, 2007.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting '', plus'', and by adding at the end the following new paragraph:

''(19) the energy efficient appliance credit determined under section 45H(a).''.

(c) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(14) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—

No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45H may be carried to a taxable year ending on or before the date of the enactment of such section.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45H. Energy efficient appliance credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 303. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year,

''(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

''(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

''(4) 30 percent of the qualified wind energy property expenditures made by the taxpayer during such year, and

''(5) the sum of the qualified Tier 2 energy efficient building property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed—

''(A) $2,000 for property described in paragraph (1), (2), or (5) of subsection (d),

''(B) $500 for each 0.5 kilowatt of capacity of property described in subsection (d)(4), and

''(C) for property described in subsection (d)(6)—

''(i) $150 for each electric heat pump water heater,

''(ii) $125 for each advanced natural gas, oil, propane furnace, or hot water boiler,

''(iii) $150 for each advanced natural gas, oil, or propane water heater,

''(iv) $50 for each natural gas, oil, or propane water heater,

''(v) $50 for an advanced main air circulating fan,

''(vi) $150 for each advanced combination space and water heating system,

''(vii) $50 for each combination space and water heating system, and

''(viii) $250 for each geothermal heat pump.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

''(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

''(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

''(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

''(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

''(ii) in the case of the energy efficiency ratio (EER) for property described in subsection (d)(6)(B)(viii)—

''(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

''(iii) are in effect at the time of the acquisition of the property.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

''(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

''(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

''(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified Tier 2 energy efficient building property expenditure' means an expenditure for any Tier 2 energy efficient building property.

''(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy efficient building property' means—

''(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

''(ii) an advanced natural gas, oil, propane furnace, or hot water boiler which achieves at least 95 percent annual fuel utilization efficiency (AFUE),

''(iii) an advanced natural gas, oil, or propane water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure,

''(iv) a natural gas, oil, or propane water heater which has an energy factor of at least 0.65 but less than 0.80 in the standard Department of Energy test procedure,

''(v) an advanced main air circulating fan used in a new natural gas, propane, or oil-fired furnace, including main air circulating fans that use a brushless permanent magnet motor or another type of motor which achieves similar or higher efficiency at half and full speed, as determined by the Secretary,

''(vi) an advanced combination space and water heating system which has a combined energy factor of at least 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure,

''(vii) a combination space and water heating system which has a combined energy factor of at least 0.65 but less than 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure, and

''(viii) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21.

''(7) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1), (2), (4), (5), or (6) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

''(8) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such

individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—Except in the case of qualified wind energy property expenditures, if less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(g) TERMINATION.—The credit allowed under this section shall not apply to expenditures after December 31, 2007.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b), as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(h) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, is amended by striking ''section 1400C'' and inserting ''sections 25C and 1400C''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, is amended by inserting '', 25C,'' after ''sections 23''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, is amended by inserting ''and section 25C'' after ''this section''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential energy efficient property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SEC. 304. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property or qualified microturbine property,''.

(b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—Section 48(a) (relating to energy credit) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

''(A) QUALIFIED FUEL CELL PROPERTY.—

''(i) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant which—

''(I) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(II) has an electricity-only generation efficiency greater than 30 percent.

''(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to $500 for each 0.5 kilowatt of capacity of such property.

''(iii) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

''(iv) TERMINATION.—The term 'qualified fuel cell property' shall not include any property placed in service after December 31, 2007.

''(B) QUALIFIED MICROTURBINE PROPERTY.—

''(i) IN GENERAL.—The term 'qualified microturbine property' means a stationary microturbine power plant which—

''(I) has a capacity of less than 2,000 kilowatts, and

''(II) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

''(ii) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal $200 for each kilowatt of capacity of such property.

''(iii) STATIONARY MICROTURBINE POWER PLANT.—The term 'stationary microturbine power plant' means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

''(iv) TERMINATION.—The term 'qualified microturbine property' shall not include any property placed in service after December 31, 2006.''.

(c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) is amended by inserting ''except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),'' before ''the energy''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 305. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

''SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

''(a) IN GENERAL.—There shall be allowed as a deduction for the taxable year in which a building is placed in service by a taxpayer, an amount equal to the energy efficient commercial building property expenditures made by such taxpayer with respect to the construction or reconstruction of such building for the taxable year or any preceding taxable year.

''(b) MAXIMUM AMOUNT OF DEDUCTION.—The amount of energy efficient commercial building property expenditures taken into account under subsection (a) shall not exceed an amount equal to the product of—

''(1) $2.25, and

''(2) the square footage of the building with respect to which the expenditures are made.

''(c) ENERGY EFFICIENT COMMERCIAL BUILDING PROPERTY EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'energy efficient commercial building property expenditures' means amounts paid or incurred for energy efficient property installed on or in connection with the construction or reconstruction of a building—

''(A) for which depreciation is allowable under section 167,

''(B) which is located in the United States, and

''(C) which is the type of structure to which the Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America is applicable.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

''(2) ENERGY EFFICIENT PROPERTY.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'energy efficient property' means any property which reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a building which meets the minimum requirements of Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America, using methods of calculation described in subparagraph (B) and certified by qualified individuals as provided under paragraph (5).

''(B) METHODS OF CALCULATION.—The Secretary, in consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power costs.

''(C) COMPUTER SOFTWARE.—

''(i) IN GENERAL.—Any calculation described in subparagraph (B) shall be prepared by qualified computer software.

''(ii) QUALIFIED COMPUTER SOFTWARE.—For purposes of this subparagraph, the term 'qualified computer software' means software—

''(I) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power costs as required by the Secretary,

''(II) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

''(III) which provides a notice form which summarizes the energy efficiency features of the building and its projected annual energy costs.

''(3) ALLOCATION OF DEDUCTION FOR PUBLIC PROPERTY.—In the case of energy efficient commercial building property expenditures made by a public entity with respect to the construction or reconstruction of a public building, the Secretary shall promulgate regulations under which the value of the deduction with respect to such expenditures which would be allowable to the public entity under this section (determined without regard to the tax-exempt status of such entity) may be allocated to the person primarily responsible for designing the energy efficient property. Such person shall be treated as the taxpayer for purposes of this section.

''(4) NOTICE TO OWNER.—Any qualified individual providing a certification under paragraph (5) shall provide an explanation to the owner of the building regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (2)(C)(ii)(III).

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings by qualified individuals described in subparagraph (B). Such procedures shall be—

''(i) comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards, and

''(ii) fuel neutral such that the same energy efficiency measures allow a building to be eligible for the credit under this section regardless of whether such building uses a gas or oil furnace or boiler or an electric heat pump.

''(B) QUALIFIED INDIVIDUALS.—Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes. The Secretary may qualify a home energy ratings organization, a local building regulatory authority, a State or local energy office, a utility, or any other organization which meets the requirements prescribed under this paragraph.

''(C) PROFICIENCY OF QUALIFIED INDIVIDUALS.—The Secretary shall consult with nonprofit organizations and State agencies with expertise in energy efficiency calculations and inspections to develop proficiency tests and training programs to qualify individuals to determine compliance.

''(d) BASIS REDUCTION.—For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient property, the basis of such property shall be reduced by the amount of the deduction so allowed.

''(e) REGULATIONS.—The Secretary shall promulgate such regulations as necessary to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section.

''(f) TERMINATION.—This section shall not apply with respect to any energy efficient commercial building property expenditures in connection with a building the construction of which is not completed on or before December 31, 2009.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 179B(d).''.

(2) Section 1245(a) is amended by inserting ''179B,'' after ''179A,'' both places it appears in paragraphs (2)(C) and (3)(C).

(3) Section 1250(b)(3) is amended by inserting before the period at the end of the first sentence ''or by section 179B''.

(4) Section 263(a)(1) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by inserting after subparagraph (H) the following new subparagraph:

''(I) expenditures for which a deduction is allowed under section 179B.''.

(5) Section 312(k)(3)(B) is amended by striking ''or 179A'' each place it appears in the heading and text and inserting '', 179A, or 179B''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after section 179A the following new item:

''Sec. 179B. Energy efficient commercial buildings deduction.''.

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

SEC. 306. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

''(15) QUALIFIED ENERGY MANAGEMENT DEVICE.—

''(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any meter or metering device which is used by the taxpayer—

''(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 307. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the

end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) any qualified water submetering device.''.

(b) DEFINITION OF QUALIFIED WATER SUBMETERING DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(16) QUALIFIED WATER SUBMETERING DEVICE.—

''(A) IN GENERAL.—The term 'qualified water submetering device' means any water submetering device which is placed in service before January 1, 2008, by a taxpayer who is an eligible resupplier with respect to the unit for which the device is placed in service.

''(B) WATER SUBMETERING DEVICE.—For purposes of this paragraph, the term 'water submetering device' means any submetering device which is used by the taxpayer—

''(i) to measure and record water usage data, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.

''(C) ELIGIBLE RESUPPLIER.—For purposes of subparagraph (A), the term 'eligible resupplier' means any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 308. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Section 48(a)(3)(A) (defining energy property), as amended by this Act, is amended by striking ''or'' at the end of clause (ii), by adding ''or'' at the end of clause (iii), and by inserting after clause (iii) the following new clause:

''(iv) combined heat and power system property,''.

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Section 48(a) (relating to energy credit), as amended by this Act, is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

''(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

''(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

''(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

''(iii) which produces—

''(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

''(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

''(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

''(v) which is placed in service before January 1, 2007.

''(B) SPECIAL RULES.—

''(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

''(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

''(II) the denominator of which is the lower heating value of the primary fuel source for the system.

''(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

''(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

''(iv) PUBLIC UTILITY PROPERTY.—

''(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(10)), the taxpayer may only claim the credit under this subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

''(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter following paragraph (3)(D) shall not apply to combined heat and power system property.

''(v) NONAPPLICATION OF CERTAIN RULES.—For purposes of determining if the term 'combined heat and power system property' includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves or which make use of waste heat from industrial processes such as by using organic rankin, stirling, or kalina heat engine systems, subparagraph (A) shall be applied without regard to clauses (i), (iii), and (iv) thereof.

''(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed a credit under this section for a combined heat and power system property which has a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.''.

(c) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(15) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(6), as added by this Act, is amended by striking ''section 48(a)(5)(C)'' and inserting ''section 48(a)(6)(C)''.

(B) Section 29(b)(3)(A)(i)(III), as amended by this Act, is amended by striking ''section 48(a)(5)(C)'' and inserting ''section 48(a)(6)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 309. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits), as amended by this Act, is amended by inserting after section 25C the following new section:

''SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

''(b) LIMITATION.—The credit allowed by this section with respect to a dwelling for any taxable year shall not exceed $300, reduced (but not below zero) by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all preceding taxable years.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which is certified to meet or exceed the latest prescriptive criteria for such component in the International Energy Conservation Code approved by the Department of Energy before the installation of such component, or any combination of energy efficiency measures which are certified as achieving at least a 30 percent reduction in heating and cooling energy usage for the dwelling (as measured in terms of energy cost to the taxpayer), if—

''(1) such component or combination of measures is installed in or on a dwelling which—

''(A) is located in the United States,

''(B) has not been treated as a qualifying new home for purposes of any credit allowed under section 45G, and

''(C) is owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

''(2) the original use of such component or combination of measures commences with the taxpayer, and

''(3) such component or combination of measures reasonably can be expected to remain in use for at least 5 years.

''(e) CERTIFICATION.—

''(1) METHODS OF CERTIFICATION.—

''(A) COMPONENT-BASED METHOD.—The certification described in subsection (d) for any component described in such subsection shall be determined on the basis of applicable energy efficiency ratings (including product labeling requirements) for affected building envelope components.

''(B) PERFORMANCE-BASED METHOD.—

''(i) IN GENERAL.—The certification described in subsection (d) for any combination of measures described in such subsection shall be—

''(I) determined by comparing the projected heating and cooling energy usage for the dwelling to such usage for such dwelling in its original condition, and

''(II) accompanied by a written analysis documenting the proper application of a permissible energy performance calculation method to the specific circumstances of such dwelling.

''(ii) COMPUTER SOFTWARE.—Computer software shall be used in support of a performance-based method certification under clause (i). Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy.

''(2) PROVIDER.—A certification described in subsection (d) shall be provided by—

''(A) in the case of the method described in paragraph (1)(A), a third party, such as a local building regulatory authority, a utility, a manufactured home primary inspection agency, or a home energy rating organization, or

''(B) in the case of the method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

''(3) FORM.—A certification described in subsection (d) shall be made in writing on forms which specify in readily inspectable fashion the energy efficient components and other measures and their respective efficiency ratings, and which include a permanent label affixed to the electrical distribution panel of the dwelling.

''(4) REGULATIONS.—

''(A) IN GENERAL.—In prescribing regulations under this subsection for certification methods described in paragraph (1)(B), the Secretary, after examining the requirements for energy consultants and home energy ratings providers specified by the Mortgage Industry National Home Energy Rating Standards, shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall—

''(i) provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a dwelling to be eligible for the credit under this section regardless of whether such dwelling uses a gas or oil furnace or boiler or an electric heat pump, and

''(ii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the owner of the dwelling.

''(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the Mortgage Industry National Home Energy Rating Standards.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following rules shall apply:

''(A) The amount of the credit allowable under subsection (a) by reason of expenditures for the qualified energy efficiency improvements made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified energy efficiency improvements made by such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means—

''(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain or a dwelling when installed in or on such dwelling,

''(B) exterior windows (including skylights), and

''(C) exterior doors.

''(5) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

''(h) TERMINATION.—Subsection (a) shall not apply to qualified energy efficiency improvements installed after December 31, 2006.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25D(b), as added by subsection (a), is amended—

(A) by striking ''The credit'' and inserting the following:

''(1) DOLLAR AMOUNT.—The credit'', and

(B) by adding at the end the following new paragraph:

''(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25D(c), as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(2)''.

(B) Section 23(b)(4)(B), as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(C) Section 24(b)(3)(B), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(D) Section 25(e)(1)(C), as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(E) Section 25B(g)(2), as amended by this Act, is amended by striking ''23 and 25C'' and inserting ''23, 25C, and 25D''.

(F) Section 26(a)(1), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(G) Section 904(h), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(H) Section 1400C(d), as amended by this Act, is amended by striking ''and 25C'' and inserting ''25C, and 25D''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting '', 25D,'' after ''sections 25C''.

(2) Section 25(e)(1)(C), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by inserting ''25D,'' after ''25C,''.

(3) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting ''; and'', and by adding at the end the following new paragraph:

''(33) to the extent provided in section 25D(g), in the case of amounts with respect to which a credit has been allowed under section 25D.''.

(4) Section 1400C(d), as in effect for taxable years beginning before January 1, 2004, and as amended by this Act, is amended by striking ''section 25C'' and inserting ''sections 25C and 25D''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 25C the following new item:

''Sec. 25D. Energy efficiency improvements to existing homes.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property installed after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

TITLE IV—CLEAN COAL INCENTIVES

Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-Based Electricity Generation Facilities

SEC. 401. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

(a) CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of clean coal technology production credit, multiplied by

''(2) the applicable percentage of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was returned to service after becoming a qualifying clean coal technology unit.

''(b) APPLICABLE AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable amount of clean coal technology production credit is equal to $0.0034.

''(2) INFLATION ADJUSTMENT.—For calendar years after 2004, the applicable amount of clean coal technology production credit shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (e) bears to the total megawatt capacity of such unit.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFYING CLEAN COAL TECHNOLOGY UNIT.—The term 'qualifying clean coal technology unit' means a clean coal technology unit of the taxpayer which—

''(A) on the date of the enactment of this section—

''(i) was a coal-based electricity generating steam generator-turbine unit which was not a clean coal technology unit, and

''(ii) had a nameplate capacity rating of not more than 300 megawatts,

''(B) becomes a clean coal technology unit as the result of the retrofitting, repowering, or replacement of the unit with clean coal technology during the 10-year period beginning on the date of the enactment of this section,

''(C) is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy, and

''(D) receives an allocation of a portion of the national megawatt capacity limitation under subsection (e).

''(2) CLEAN COAL TECHNOLOGY UNIT.—The term 'clean coal technology unit' means a unit which—

''(A) uses clean coal technology, including advanced pulverized coal or atmospheric fluidized bed combustion, pressurized fluidized bed combustion, integrated gasification combined cycle, or any other technology, for the production of electricity,

''(B) uses an input of at least 75 percent coal to produce at least 50 percent of its thermal output as electricity,

''(C) has a design net heat rate of at least 500 less than that of such unit as described in paragraph (1)(A),

''(D) has a maximum design net heat rate of not more than 9,500, and

''(E) meets the pollution control requirements of paragraph (3).

''(3) POLLUTION CONTROL REQUIREMENTS.—

''(A) IN GENERAL.—A unit meets the requirements of this paragraph if—

''(i) its emissions of sulfur dioxide, nitrogen oxide, or particulates meet the lower of the emission levels for each such emission specified in—

''(I) subparagraph (B), or

''(II) the new source performance standards of the Clean Air Act (42 U.S.C. 7411) which are in effect for the category of source at the time of the retrofitting, repowering, or replacement of the unit, and

''(ii) its emissions do not exceed any relevant emission level specified by regulation pursuant to the hazardous air pollutant requirements of the Clean Air Act (42 U.S.C. 7412) in effect at the time of the retrofitting, repowering, or replacement.

''(B) SPECIFIC LEVELS.—The levels specified in this subparagraph are—

''(i) in the case of sulfur dioxide emissions, 50 percent of the sulfur dioxide emission levels specified in the new source performance standards of the Clean Air Act (42 U.S.C. 7411) in effect on the date of the enactment of this section for the category of source,

''(ii) in the case of nitrogen oxide emissions—

''(I) 0.1 pound per million Btu of heat input if the unit is not a cyclone-fired boiler, and

''(II) if the unit is a cyclone-fired boiler, 15 percent of the uncontrolled nitrogen oxide emissions from such boilers, and

''(iii) in the case of particulate emissions, 0.02 pound per million Btu of heat input.

''(4) DESIGN NET HEAT RATE.—The design net heat rate with respect to any unit, measured in Btu per kilowatt hour (HHV)—

''(A) shall be based on the design annual heat input to and the design annual net electrical power, fuels, and chemicals output from such unit (determined without regard to such unit's co-generation of steam),

''(B) shall be adjusted for the heat content of the design coal to be used by the unit if it is less than 12,000 Btu per pound according to the following formula:

Design net heat rate = Unit net heat rate [1 − {((12,000-design coal heat content, Btu per pound)/1,000) 0.013}],

''(C) shall be corrected for the site reference conditions of—

''(i) elevation above sea level of 500 feet,

''(ii) air pressure of 14.4 pounds per square inch absolute (psia),

''(iii) temperature, dry bulb of 63°F,

''(iv) temperature, wet bulb of 54°F, and

''(v) relative humidity of 55 percent, and

''(D) if carbon capture controls have been installed with respect to any qualifying unit and such controls remove at least 50 percent of the unit's carbon dioxide emissions, shall be adjusted up to the design heat rate level which would have resulted without the installation of such controls.

''(5) HHV.—The term 'HHV' means higher heating value.

''(6) APPLICATION OF CERTAIN RULES.—The rules of paragraphs (3), (4), and (5) of section 45(e) shall apply.

''(7) INFLATION ADJUSTMENT FACTOR.—

''(A) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2003.

''(B) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(8) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this section, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying clean coal technology unit during such period.

''(e) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF QUALIFYING CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of this section, the national megawatt capacity limitation for qualifying clean coal technology units is 4,000 megawatts.

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection,

''(B) to limit the capacity of any qualifying clean coal technology unit to which this section applies so that the megawatt capacity allocated to any unit under this subsection does not exceed 300 megawatts and the combined megawatt capacity allocated to all such units when all such units are placed in service during the 10-year period described in subsection (d)(1)(B), does not exceed 4,000 megawatts,

''(C) to provide a certification process under which the Secretary, in consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation—

''(i) to encourage that units with the highest thermal efficiencies, when adjusted for the heat content of the design coal and site reference conditions described in subsection (d)(4)(C), and environmental performance, be placed in service as soon as possible, and

''(ii) to allocate capacity to taxpayers which have a definite and credible plan for placing into commercial operation a qualifying clean coal technology unit, including—

''(I) a site,

''(II) contractual commitments for procurement and construction or, in the case of regulated utilities, the agreement of the State utility commission,

''(III) filings for all necessary preconstruction approvals,

''(IV) a demonstrated record of having successfully completed comparable projects on a timely basis, and

''(V) such other factors that the Secretary determines are appropriate,

''(D) to allocate the national megawatt capacity limitation to a portion of the capacity of a qualifying clean coal technology unit if the Secretary determines that such an allocation would maximize the amount of efficient production encouraged with the available tax credits,

''(E) to set progress requirements and conditional approvals so that capacity allocations for clean coal technology units which

become unlikely to meet the necessary conditions for qualifying can be reallocated by the Secretary to other clean coal technology units, and

''(F) to provide taxpayers with opportunities to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the qualifying clean coal technology production credit determined under section 45I(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(16) NO CARRYBACK OF SECTION 45I CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying clean coal technology production credit determined under section 45I may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45I. Credit for production from a qualifying clean coal technology unit.''.

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

Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

SEC. 411. CREDIT FOR INVESTMENT IN QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY.

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to amount of credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the qualifying advanced clean coal technology unit credit.''.

(b) AMOUNT OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

''SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.

''(a) IN GENERAL.—For purposes of section 46, the qualifying advanced clean coal technology unit credit for any taxable year is an amount equal to 10 percent of the applicable percentage of the qualified investment in a qualifying advanced clean coal technology unit for such taxable year.

''(b) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the term 'qualifying advanced clean coal technology unit' means an advanced clean coal technology unit of the taxpayer—

''(A)(i) in the case of a unit first placed in service after the date of the enactment of this section, the original use of which commences with the taxpayer, or

''(ii) in the case of the retrofitting or repowering of a unit first placed in service before such date of enactment, the retrofitting or repowering of which is completed by the taxpayer after such date, or

''(B) which is depreciable under section 167,

''(C) which has a useful life of not less than 4 years,

''(D) which is located in the United States,

''(E) which is not receiving nor is scheduled to receive funding under the Clean Coal Technology Program, the Power Plant Improvement Initiative, or the Clean Coal Power Initiative administered by the Secretary of Energy,

''(F) which is not a qualifying clean coal technology unit, and

''(G) which receives an allocation of a portion of the national megawatt capacity limitation under subsection (f).

''(2) SPECIAL RULE FOR SALE-LEASEBACKS.—For purposes of subparagraph (A) of paragraph (1), in the case of a unit which—

''(A) is originally placed in service by a person, and

''(B) is sold and leased back by such person, or is leased to such person, within 3 months after the date such unit was originally placed in service, for a period of not less than 12 years,

such unit shall be treated as originally placed in service not earlier than the date on which such unit is used under the leaseback (or lease) referred to in subparagraph (B). The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—For purposes of this subsection, a unit which is not in compliance with the applicable State and Federal pollution prevention, control, and permit requirements for any period of time shall not be considered to be a qualifying advanced clean coal technology unit during such period.

''(c) APPLICABLE PERCENTAGE.—For purposes of this section, with respect to any qualifying advanced clean coal technology unit, the applicable percentage is the percentage equal to the ratio which the portion of the national megawatt capacity limitation allocated to the taxpayer with respect to such unit under subsection (f) bears to the total megawatt capacity of such unit.

''(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of this section—

''(1) IN GENERAL.—The term 'advanced clean coal technology unit' means a new, retrofit, or repowering unit of the taxpayer which—

''(A) is—

''(i) an eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit,

''(ii) an eligible pressurized fluidized bed combustion technology unit,

''(iii) an eligible integrated gasification combined cycle technology unit, or

''(iv) an eligible other technology unit, and

''(B) meets the carbon emission rate requirements of paragraph (6).

''(2) ELIGIBLE ADVANCED PULVERIZED COAL OR ATMOSPHERIC FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible advanced pulverized coal or atmospheric fluidized bed combustion technology unit' means a clean coal technology unit using advanced pulverized coal or atmospheric fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2013, and

''(B) has a design net heat rate of not more than 8,500 (8,900 in the case of units placed in service before 2009).

''(3) ELIGIBLE PRESSURIZED FLUIDIZED BED COMBUSTION TECHNOLOGY UNIT.—The term 'eligible pressurized fluidized bed combustion technology unit' means a clean coal technology unit using pressurized fluidized bed combustion technology which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2017, and

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013).

''(4) ELIGIBLE INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY UNIT.—The term 'eligible integrated gasification combined cycle technology unit' means a clean coal technology unit using integrated gasification combined cycle technology, with or without fuel or chemical co-production, which—

''(A) is placed in service after the date of the enactment of this section and before January 1, 2017,

''(B) has a design net heat rate of not more than 7,720 (8,900 in the case of units placed in service before 2009, and 8,500 in the case of units placed in service after 2008 and before 2013), and

''(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 44.2 percent (38.4 percent in the case of units placed in service before 2009, and 40.2 percent in the case of units placed in service after 2008 and before 2013).

''(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—The term 'eligible other technology unit' means a clean coal technology unit using any other technology for the production of electricity which is placed in service after the date of the enactment of this section and before January 1, 2017.

''(6) CARBON EMISSION RATE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

''(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

''(ii) in the case of a unit using design coal with a heat content of more than 9,000 Btu per pound, the carbon emission rate is less than 0.54 pound of carbon per kilowatt hour.

''(B) ELIGIBLE OTHER TECHNOLOGY UNIT.—In the case of an eligible other technology unit, subparagraph (A) shall be applied by substituting '0.51' and '0.459' for '0.60' and '0.54', respectively.

''(e) GENERAL DEFINITIONS.—Any term used in this section which is also used in section 45I shall have the meaning given such term in section 45I.

''(f) NATIONAL LIMITATION ON THE AGGREGATE CAPACITY OF ADVANCED CLEAN COAL TECHNOLOGY UNITS.—

''(1) IN GENERAL.—For purposes of subsection (b)(1)(G), the national megawatt capacity limitation is—

''(A) for qualifying advanced clean coal technology units using advanced pulverized coal or atmospheric fluidized bed combustion technology, not more than 1,000 megawatts

(not more than 500 megawatts in the case of units placed in service before 2009),

''(B) for such units using pressurized fluidized bed combustion technology, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009),

''(C) for such units using integrated gasification combined cycle technology, with or without fuel or chemical co-production, not more than 2,000 megawatts (not more than 750 megawatts in the case of units placed in service before 2009), and

''(D) for such units using other technology for the production of electricity, not more than 500 megawatts (not more than 250 megawatts in the case of units placed in service before 2009).

''(2) ALLOCATION OF LIMITATION.—The Secretary shall allocate the national megawatt capacity limitation for qualifying advanced clean coal technology units in such manner as the Secretary may prescribe under the regulations under paragraph (3).

''(3) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate—

''(A) to carry out the purposes of this subsection and section 45J,

''(B) to limit the capacity of any qualifying advanced clean coal technology unit to which this section applies so that the combined megawatt capacity of all such units to which this section applies does not exceed 4,000 megawatts,

''(C) to provide a certification process described in section 45I(e)(3)(C),

''(D) to carry out the purposes described in subparagraphs (D), (E), and (F) of section 45I(e)(3), and

''(E) to reallocate capacity which is not allocated to any technology described in subparagraphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

''(4) SELECTION CRITERIA.—For purposes of this subsection, the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

''(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

''(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government, and

''(C) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

''(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term 'qualified investment' means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit described in subsection (b)(1)(A)(ii), only that portion of the basis of such unit which is properly attributable to the retrofitting or repowering of such unit).

''(h) QUALIFIED PROGRESS EXPENDITURES.—

''(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (g) without regard to this subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

''(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term 'progress expenditure property' means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

''(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term 'qualified progress expenditures' means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

''(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term 'qualified progress expenditures' means the amount paid during the taxable year to another person for the construction of such property.

''(4) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) SELF-CONSTRUCTED PROPERTY.—The term 'self-constructed property' means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

''(B) NONSELF-CONSTRUCTED PROPERTY.—The term 'nonself-constructed property' means property which is not self-constructed property.

''(C) CONSTRUCTION, ETC.—The term 'construction' includes reconstruction and erection, and the term 'constructed' includes reconstructed and erected.

''(D) ONLY CONSTRUCTION OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT TO BE TAKEN INTO ACCOUNT.—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

''(5) ELECTION.—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.

''(i) COORDINATION WITH OTHER CREDITS.—This section shall not apply to any property with respect to which the rehabilitation credit under section 47 or the energy credit under section 48 is allowed unless the taxpayer elects to waive the application of such credit to such property.''.

(c) RECAPTURE.—Section 50(a) (relating to other special rules) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES RELATING TO QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For purposes of applying this subsection in the case of any credit allowable by reason of section 48A, the following rules shall apply:

''(A) GENERAL RULE.—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a qualifying advanced clean coal technology unit (as defined by section 48A(b)(1)) multiplied by a fraction the numerator of which is the number of years remaining to fully depreciate under this title the qualifying advanced clean coal technology unit disposed of, and the denominator of which is the total number of years over which such unit would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the qualifying advanced clean coal technology unit shall be treated as a year of remaining depreciation.

''(B) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—Rules similar to the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

''(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.''.

(d) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(17) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology unit credit determined under section 48A may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(e) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) the portion of the basis of any qualifying advanced clean coal technology unit attributable to any qualified investment (as defined by section 48A(g)).''.

(2) Section 50(a)(4) is amended by striking ''and (2)'' and inserting '', (2), and (6)''.

(3) Section 50(c) is amended by adding at the end the following new paragraph:

''(6) NONAPPLICATION.—Paragraphs (1) and (2) shall not apply to any qualifying advanced clean coal technology unit credit under section 48A.''.

(4) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Qualifying advanced clean coal technology unit credit.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 412. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT.

''(a) GENERAL RULE.—For purposes of section 38, the qualifying advanced clean coal technology production credit of any taxpayer for any taxable year is equal to—

''(1) the applicable amount of advanced clean coal technology production credit, multiplied by

''(2) the applicable percentage (as determined under section 48A(c)) of the sum of—

''(A) the kilowatt hours of electricity, plus

''(B) each 3,413 Btu of fuels or chemicals,

produced by the taxpayer during such taxable year at a qualifying advanced clean coal technology unit, but only if such production occurs during the 10-year period beginning on the date the unit was originally placed in service (or returned to service after becoming a qualifying advanced clean coal technology unit).

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

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable amount of advanced clean coal technology production credit with respect to production from a qualifying advanced clean coal technology unit shall be determined as follows:

''(A) If the qualifying advanced clean coal technology unit is producing electricity only:

''(i) In the case of a unit originally placed in service before 2009, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	$.0060	$.0038
More than 8,500 but not more than 8,750	$.0025	$.0010
More than 8,750 but less than 8,900	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	$.0105	$.0090
More than 7,770 but not more than 8,125	$.0085	$.0068
More than 8,125 but less than 8,500	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	$.0140	$.0115
More than 7,380 but not more than 7,720	$.0120	$.0090.

''(B) If the qualifying advanced clean coal technology unit is producing fuel or chemicals:

''(i) In the case of a unit originally placed in service before 2009, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.2 percent	$.0060	$.0038
Less than 40.2 but not less than 39 percent	$.0025	$.0010
Less than 39 but not less than 38.4 percent	$.0010	$.0010.

''(ii) In the case of a unit originally placed in service after 2008 and before 2013, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.9 percent	$.0105	$.0090
Less than 43.9 but not less than 42 percent	$.0085	$.0068
Less than 42 but not less than 40.2 percent	$.0075	$.0055.

''(iii) In the case of a unit originally placed in service after 2012 and before 2017, if—

''The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 46.3 percent	$.0140	$.0115
Less than 46.3 but not less than 44.2 percent ...	$.0120	$.0090.

''(2) SPECIAL RULE FOR UNITS QUALIFYING FOR GREATER APPLICABLE AMOUNT WHEN PLACED IN SERVICE.—If, at the time a qualifying advanced clean coal technology unit is placed in service, production from the unit would be entitled to a greater applicable amount if such unit had been placed in service at a later date, the applicable amount for such unit shall be such greater amount.

''(c) INFLATION ADJUSTMENT.—For calendar years after 2004, each dollar amount in subsection (b)(1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the amount is applied. If any amount as increased under the preceding sentence is not a multiple of 0.01 cent, such amount shall be rounded to the nearest multiple of 0.01 cent.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) IN GENERAL.—Any term used in this section which is also used in section 45I or 48A shall have the meaning given such term in such section.

''(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 45(e) shall apply.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting '', plus'', and by adding at the end the following new paragraph:

''(21) the qualifying advanced clean coal technology production credit determined under section 45J(a).''.

(c) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) NO CARRYBACK OF SECTION 45J CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology production credit determined under section 45J may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) DENIAL OF DOUBLE BENEFIT.—Section 29(d) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DOUBLE BENEFIT.—This section shall not apply with respect to any qualified fuel the production of which may be taken into account for purposes of determining the credit under section 45J.''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45J. Credit for production from a qualifying advanced clean coal technology unit.''.

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

Subtitle C—Treatment of Persons Not Able To Use Entire Credit

SEC. 421. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.

(a) IN GENERAL.—Section 45I, as added by this Act, is amended by adding at the end the following new subsection:

''(f) TREATMENT OF PERSON NOT ABLE TO USE ENTIRE CREDIT.—

''(1) ALLOWANCE OF CREDITS.—

''(A) IN GENERAL.—Any credit allowable under this section, section 45J, or section 48A with respect to a facility owned by a person described in subparagraph (B) may be transferred or used as provided in this subsection, and the determination as to whether the credit is allowable shall be made without regard to the tax-exempt status of the person.

''(B) PERSONS DESCRIBED.—A person is described in this subparagraph if the person is—

''(i) an organization described in section 501(c)(12)(C) and exempt from tax under section 501(a),

''(ii) an organization described in section 1381(a)(2)(C),

''(iii) a public utility (as defined in section 136(c)(2)(B)),

''(iv) any State or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing,

''(v) any Indian tribal government (within the meaning of section 7871) or any agency or instrumentality thereof, or

''(vi) the Tennessee Valley Authority.

''(2) TRANSFER OF CREDIT.—

''(A) IN GENERAL.—A person described in clause (i), (ii), (iii), (iv), or (v) of paragraph (1)(B) may transfer any credit to which paragraph (1)(A) applies through an assignment to any other person not described in paragraph (1)(B). Such transfer may be revoked only with the consent of the Secretary.

''(B) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to ensure that any credit described in subparagraph (A) is claimed once and not reassigned by such other person.

''(C) TRANSFER PROCEEDS TREATED AS ARISING FROM ESSENTIAL GOVERNMENT FUNCTION.—Any proceeds derived by a person described in clause (iii), (iv), or (v) of paragraph (1)(B) from the transfer of any credit under subparagraph (A) shall be treated as arising from the exercise of an essential government function.

''(3) USE OF CREDIT AS AN OFFSET.—Notwithstanding any other provision of law, in

the case of a person described in clause (i), (ii), or (v) of paragraph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of this section.

''(4) USE BY TVA.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

''(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

''(C) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described paragraph (1)(A) with respect to such person exceeds the aggregate amount of payment obligations described in subparagraph (A), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this paragraph.

''(5) CREDIT NOT INCOME.—Any transfer under paragraph (2) or use under paragraph (3) of any credit to which paragraph (1)(A) applies shall not be treated as income for purposes of section 501(c)(12).

''(6) TREATMENT OF UNRELATED PERSONS.—For purposes of this subsection, transfers among and between persons described in clauses (i), (ii), (iii), (iv), and (v) of paragraph (1)(B) shall be treated as transfers between unrelated parties.''.

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

TITLE V—OIL AND GAS PROVISIONS

SEC. 501. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

''(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

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

''(1) IN GENERAL.—The credit amount is—

''(A) $3 per barrel of qualified crude oil production, and

''(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

''(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

''(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

''(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

''(B) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2002.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

''(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

''(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

''(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

''(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or domestic natural gas which is produced from a qualified marginal well.

''(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

''(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

''(B) PROPORTIONATE REDUCTIONS.—

''(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

''(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

''(3) NONCOMPLIANCE WITH POLLUTION LAWS.—Production from any well during any period in which such well is not in compliance with applicable Federal pollution prevention, control, and permit requirements shall not be treated as qualified crude oil production or qualified natural gas production.

''(4) DEFINITIONS.—

''(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

''(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

''(ii) which, during the taxable year—

''(I) has average daily production of not more than 25 barrel equivalents, and

''(II) produces water at a rate not less than 95 percent of total well effluent.

''(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

''(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

''(D) DOMESTIC NATURAL GAS.—The term 'domestic natural gas' does not include Alaska natural gas (as defined in section 45M(c)(1)).

''(d) OTHER RULES.—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than 1 owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

''(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

''(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting '', plus'', and by adding at the end the following new paragraph:

''(22) the marginal oil and gas well production credit determined under section 45K(a).''.

(c) NO CARRYBACK OF MARGINAL OIL AND GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(19) NO CARRYBACK OF MARGINAL OIL AND GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the marginal oil and gas well production credit determined under section 45K may be carried back to a taxable year ending on or before the date of the enactment of such section.''.

(d) COORDINATION WITH SECTION 29.—Section 29(a) (relating to allowance of credit) is amended by striking ''There'' and inserting ''At the election of the taxpayer, there''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this

Act, is amended by adding at the end the following new item:

''Sec. 45K. Credit for producing oil and gas from marginal wells.''.

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

SEC. 502. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property) 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) any natural gas gathering line, and''.

(b) NATURAL GAS GATHERING LINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(17) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

''(A) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

''(i) a gas processing plant,

''(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

''(iii) an interconnection with an intrastate transmission pipeline, or

''(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer, or

''(B) any other pipe, equipment, or appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (C)(i) the following new item:

''(C)(ii) ..... 10''.

(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, in taxable years ending after such date.

SEC. 503. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179B the following new section:

''SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

''(a) TREATMENT AS EXPENSE.—

''(1) IN GENERAL.—A small business refiner may elect to treat any qualified capital costs as an expense which is not chargeable to capital account. Any qualified cost which is so treated shall be allowed as a deduction for the taxable year in which the cost is paid or incurred.

''(2) LIMITATION.—

''(A) IN GENERAL.—The aggregate costs which may be taken into account under this subsection for any taxable year with respect to any facility may not exceed the applicable percentage of the qualified capital costs paid or incurred for the taxable year with respect to such facility.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—Except as provided in clause (ii), the applicable percentage is 75 percent.

''(ii) REDUCED PERCENTAGE.—In the case of any facility with average daily refinery runs or average retained production for the period described in subsection (b)(2) in excess of 155,000 barrels, the percentage described in clause (i) shall be reduced (but not below zero) by the product of—

''(I) such percentage (before the application of this clause), and

''(II) the ratio of such excess to 50,000 barrels.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means any costs which—

''(A) are otherwise chargeable to capital account, and

''(B) are paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency, as in effect on the date of the enactment of this section, with respect to a facility placed in service by the taxpayer before such date.

''(2) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil—

''(A) which, within the refinery operations of the business, employs not more than 1,500 employees on any day during such taxable year, and

''(B) the average daily refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on the date of the enactment of this section did not exceed 410,000 barrels.

''(c) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.

''(d) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by inserting after subparagraph (I) the following new subparagraph:

''(J) expenditures for which a deduction is allowed under section 179C.''.

(2) Section 263A(c)(3) is amended by inserting ''179C,'' after ''section''.

(3) Section 312(k)(3)(B), as amended by this Act, is amended by striking ''or 179B'' each place it appears in the heading and text and inserting ''179B, or 179C''.

(4) Section 1016(a), as amended by this Act, is amended by striking ''and'' at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting '', and'', and by adding at the end the following new paragraph:

''(34) to the extent provided in section 179C(d).''.

(5) Section 1245(a), as amended by this Act, is amended by inserting ''179C,'' after ''179B,'' both places it appears in paragraphs (2)(C) and (3)(C).

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179B the following new item:

''Sec. 179C. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 504. ENVIRONMENTAL TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45L. ENVIRONMENTAL TAX CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the amount of the environmental tax credit determined under this section with respect to any small business refiner for any taxable year is an amount equal to 5 cents for every gallon of low-sulfur diesel fuel produced at a facility by such small business refiner during such taxable year.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—For any small business refiner, the aggregate amount determined under subsection (a) for any taxable year with respect to any facility shall not exceed the applicable percentage of the qualified capital costs paid or incurred by such small business refiner with respect to such facility during the applicable period, reduced by the credit allowed under subsection (a) with respect to such facility for any preceding year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable percentage is 25 percent.

''(B) REDUCED PERCENTAGE.—The percentage described in subparagraph (A) shall be reduced in the same manner as under section 179C(a)(2)(B)(ii).

''(c) DEFINITIONS.—For purposes of this section—

''(1) IN GENERAL.—The terms 'small business refiner' and 'qualified capital costs' have the same meaning as given in section 179C.

''(2) LOW-SULFUR DIESEL FUEL.—The term 'low-sulfur diesel fuel' means diesel fuel containing not more than 15 parts per million of sulfur.

''(3) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on the day after the date of the enactment of this section and ending with the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

''(4) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency, as in effect on the date of the enactment of this section.

''(d) CERTIFICATION.—

''(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which a credit is allowed under this section with respect to a facility, the small business refiner shall obtain a certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

''(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities

and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

''(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

''(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

''(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the period described in paragraph (3) ends with respect to the taxpayer, and

''(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(e) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(f) COOPERATIVE ORGANIZATIONS.—

''(1) APPORTIONMENT OF CREDIT.—

''(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

''(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

''(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

''(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

''(3) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(A) such reduction, over

''(B) the amount not apportioned to such patrons under paragraph (1) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (21), by striking the period at the end of paragraph (22) and inserting '', plus'', and by adding at the end the following new paragraph:

''(23) in the case of a small business refiner, the environmental tax credit determined under section 45L(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable), as amended by this Act, is amended by adding at the end the following new subsection:

''(e) ENVIRONMENTAL TAX CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45L(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45L. Environmental tax credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 505. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to limitations on application of subsection (c)) is amended to read as follows:

''(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or 1 or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 60,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.''.

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

SEC. 506. MARGINAL PRODUCTION INCOME LIMIT EXTENSION.

Section 613A(c)(6)(H) (relating to temporary suspension of taxable income limit with respect to marginal production) is amended by striking ''2004'' and inserting ''2007''.

SEC. 507. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

''(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

''(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

''(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

''(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

''(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act.

SEC. 508. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation), as amended by this Act, is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

''(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

''(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.''.

(b) CONFORMING AMENDMENT.—Section 263A(c)(3) is amended by inserting ''167(h), 167(i),'' after ''under section''.

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

SEC. 509. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

''(h) EXTENSION FOR OTHER FACILITIES.—

''(1) OIL AND GAS.—In the case of a well or facility for producing qualified fuels described in subparagraph (A) or (B) of subsection (c)(1) which was drilled or placed in service after the date of the enactment of this subsection and before January 1, 2007, notwithstanding subsection (f), this section shall apply with respect to such fuels produced at such well or facility before the close of the 3-year period beginning on the date that such well is drilled or such facility is placed in service.

''(2) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

''(A) IN GENERAL.—In the case of facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 3-year period beginning on the date such facility is placed in service.

''(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

''(3) WELLS PRODUCING VISCOUS OIL.—

''(A) IN GENERAL.—In the case of a well for producing viscous oil which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such well before the close of the 3-year period beginning on the date such well is placed in service.

''(B) VISCOUS OIL.—The term 'viscous oil' means heavy oil, as defined in section 613A(c)(6), except that—

''(i) '22 degrees' shall be substituted for '20 degrees' in applying subparagraph (F) thereof, and

''(ii) in all cases, the oil gravity shall be measured from the initial well-head samples, drill cuttings, or down hole samples.

''(C) WAIVER OF UNRELATED PERSON REQUIREMENT.—In the case of viscous oil, the requirement under subsection (a)(2)(A) of a sale to an unrelated person shall not apply to any sale to the extent that the viscous oil is not consumed in the immediate vicinity of the wellhead.

''(4) FACILITIES PRODUCING REFINED COAL.—

''(A) IN GENERAL.—In the case of a facility described in subparagraph (C) for producing refined coal which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility before the close of the 5-year period beginning on the date such facility is placed in service.

''(B) REFINED COAL.—For purposes of this paragraph, the term 'refined coal' means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

''(C) COVERED FACILITIES.—

''(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology which results in—

''(I) a qualified emission reduction, and

''(II) a qualified enhanced value.

''(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

''(iii) QUALIFIED ENHANCED VALUE.—For purposes of this subparagraph, the term 'qualified enhanced value' means an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

''(iv) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNITS EXCLUDED.—A facility described in this subparagraph shall not include a qualifying advanced clean coal technology unit (as defined in section 48A(b)).

''(5) COALMINE GAS.—

''(A) IN GENERAL.—This section shall apply to coalmine gas—

''(i) captured or extracted by the taxpayer during the period beginning after the date of the enactment of this subsection and ending before January 1, 2007, and

''(ii) utilized as a fuel source or sold by or on behalf of the taxpayer to an unrelated person during such period.

''(B) COALMINE GAS.—For purposes of this paragraph, the term 'coalmine gas' means any methane gas which is—

''(i) liberated during or as a result of coal mining operations, or

''(ii) extracted up to 10 years in advance of coal mining operations as part of a specific plan to mine a coal deposit.

''(C) SPECIAL RULE FOR ADVANCED EXTRACTION.—In the case of coalmine gas which is captured in advance of coal mining operations, the credit under subsection (a) shall be allowed only after the date the coal extraction occurs in the immediate area where the coalmine gas was removed.

''(D) NONCOMPLIANCE WITH POLLUTION LAWS.—This paragraph shall not apply to the capture or extraction of coalmine gas from coal mining operations with respect to any period in which such coal mining operations are not in compliance with applicable State and Federal pollution prevention, control, and permit requirements.

''(6) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

''(A) FUELS TREATED AS QUALIFIED FUELS.—Any fuel described in paragraph (2), (3), (4), or (5) shall be treated as a qualified fuel for purposes of this section.

''(B) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

''(C) CREDIT AMOUNT.—The dollar amount applicable under subsection (a)(1) shall be $3 (and the inflation adjustment under subsection (b)(2) shall not apply to such amount).''.

(b) CLARIFICATION OF PLACED IN SERVICE DATE FOR CERTAIN LANDFILL GAS FACILITIES.—Section 29(d) (relating to other definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) CLARIFICATION OF PLACED IN SERVICE DATE FOR CERTAIN LANDFILL GAS FACILITIES.—

''(A) IN GENERAL.—In the case of a landfill placed in service on or before the date of the enactment of this paragraph—

''(i) a facility for producing qualified fuel from such landfill shall include all wells, pipes, and related components used to collect landfill gas, and

''(ii) production of landfill gas from such landfill attributable to wells, pipes, and related components placed in service after such date of enactment shall be treated as produced from a facility placed in service on the date such wells, pipes, and related components were placed in service.

''(B) LANDFILL GAS.—The term 'landfill gas' means gas described in subsection (c)(1)(B)(ii) and derived from the biodegradation of municipal solid waste.''.

(c) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—Section 29(f)(2) (relating to application of section) is amended by inserting ''(January 1, 2006, in the case of any coke, coke gas, or natural gas and by-products produced by coal gasification from lignite in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

(d) STUDY OF COALBED METHANE.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study regarding the effect of section 29 of the Internal Revenue Code of 1986 on the production of coalbed methane.

(2) CONTENTS OF STUDY.—The study under paragraph (1) shall estimate the total amount of credits under section 29 of the Internal Revenue Code of 1986 claimed annually and in the aggregate which are related to the production of coalbed methane since the date of the enactment of such section 29. Such study shall report the annual value of such credits allowable for coalbed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). Such study shall also estimate the incremental increase in production of coalbed methane which has resulted from the enactment of such section 29, and the cost to the Federal Government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coalbed methane produced annually and in the aggregate since such enactment.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel sold after the date of the enactment of this Act, in taxable years ending after such date.

(2) EXISTING FACILITIES.—The amendments made by subsection (c) shall apply to fuel sold after December 31, 2002, in taxable years ending after such date.

SEC. 510. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—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 by inserting '', and'', and by adding at the end the following new clause:

''(iv) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by adding after the item relating to subparagraph (E)(iii) the following new item:

''(E)(iv) ..... 20''.

(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, in taxable years ending after such date.

SEC. 511. CREDIT FOR ALASKA NATURAL GAS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45M. ALASKA NATURAL GAS.

''(a) IN GENERAL.—For purposes of section 38, the Alaska natural gas credit for any taxable year is an amount equal to the product of—

''(1) the credit amount, and

''(2) Alaska natural gas the production of which is attributable to the taxpayer.

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

''(1) IN GENERAL.—The credit amount is $0.52 per 1,000,000 Btu of Alaska natural gas.

''(2) REDUCTION AS GAS PRICES INCREASE.—

''(A) IN GENERAL.—The dollar amount under paragraph (1) shall be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

''(i) the excess (if any) of the applicable reference price over $0.83, bears to

''(ii) $0.52.

''(B) APPLICABLE REFERENCE PRICE.—For purposes of this paragraph—

''(i) IN GENERAL.—The applicable reference price for any calendar month in a taxable year is the reference price for the calendar month in which production occurs.

''(ii) REFERENCE PRICE.—The term 'reference price' means, with respect to any calendar month, a published market price for natural gas in United States dollars per 1,000,000 Btu (reduced by any gas transportation costs and gas processing costs as determined by the appropriate national regulatory body for natural gas transportation) as determined under regulations by the Secretary.

''(C) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in paragraph (1) and subparagraph (A) of this paragraph shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year.

''(ii) INFLATION ADJUSTMENT FACTOR.—For purposes of clause (i)—

''(I) IN GENERAL.—The term 'inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 2002.

''(II) GDP IMPLICIT PRICE DEFLATOR.—The term 'GDP implicit price deflator' means, for any calendar year, the most recent revision of the implicit price deflator for the gross domestic product as of June 30 of such calendar year as computed by the Department of Commerce before October 1 of such calendar year.

''(c) ALASKA NATURAL GAS.—For purposes of this section—

''(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(18) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

''(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

''(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

''(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).

''(d) SPECIAL RULES.—For purposes of this section—

''(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—

''(A) IN GENERAL.—In the case of a well in which there is more than 1 person or entity—

''(i) entitled to production of Alaska natural gas, or

''(ii) at the election of such person or entity, entitled to the value of production as either an operating interest owner or a royalty interest owner,

the portion of such production attributable to such person or entity shall be determined on the basis of the ratio which the person's or entity's interest in the production or the value of production bears to the aggregate of the interests of all such persons or entities. Production otherwise attributable to a United States tax-exempt person or entity by reason of a royalty interest shall be attributable to such person or entity with respect to whom royalty-in-value production remains or to whom royalty-in-kind production is sold.

''(B) PARTNERSHIP PROPERTIES.—In the case of a partnership, for purposes of applying subparagraph (A), production shall be attributable to its partners based on each partner's distributive share of Alaska natural gas which is produced from partnership properties and attributable to the partnership or its partners under subparagraph (A).

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) APPLICATION OF SECTION.—This section shall apply to Alaska natural gas during the period—

''(1) beginning with the later of—

''(A) January 1, 2010, or

''(B) the initial date for the interstate transportation of such Alaska natural gas, and

''(2) ending with the date which is 25 years after the date described in paragraph (1).''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) The Alaska natural gas credit determined under section 45M(a).''.

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

(1) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax), as amended by this Act, is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) SPECIAL RULES FOR ALASKA NATURAL GAS CREDIT.—

''(A) IN GENERAL.—In the case of the Alaska natural gas credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the Alaska natural gas credit).

''(B) ALASKA NATURAL GAS CREDIT.—For purposes of this subsection, the term 'Alaska natural gas credit' means the credit allowable under subsection (a) by reason of section 45M(a).''.

(2) CONFORMING AMENDMENTS.—Subclause (II) of section 38(c)(2)(A)(ii), as amended by this Act, subclause (II) of section 38(c)(3)(A)(ii), as amended by this Act, and subclause (II) of section 38(c)(4)(A)(ii), as added by this Act, are each amended by inserting ''or the Alaska natural gas credit'' after ''producer credit''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45M. Alaska natural gas.''.

SEC. 512. CERTAIN ALASKA NATURAL GAS PIPELINE PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking ''and'' at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

''(iii) any Alaska natural gas pipeline, and''.

(b) ALASKA NATURAL GAS PIPELINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(18) ALASKA NATURAL GAS PIPELINE.—The term 'Alaska natural gas pipeline' means the natural gas pipeline system located in the State of Alaska which—

''(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

''(B) is—

''(i) placed in service after December 31, 2012, or

''(ii) treated as placed in service on January 1, 2013, if the taxpayer who places such system in service before January 1, 2013, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes), as amended by this Act, is amended by inserting after the item relating to subparagraph (C)(ii) the following new item:

''(C)(iii) ..... 10''.

''(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service on or after the date of the enactment of this Act.

SEC. 513. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Section 148(b) (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

''(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

''(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

''(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by or for a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract for the utility during any year does not exceed the sum of—

''(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

''(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

''(i) only if the electricity is generated by a utility owned by a governmental unit, and

''(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

''(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

''(i) NEW BUSINESS CUSTOMERS.—If—

''(I) after the close of the testing period and before the date of issuance of the issue,

the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for use by a business at a property within the service area of such utility, and

''(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

''(ii) OVERALL LIMITATION.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

''(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

''(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

''(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

''(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

''(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

''(ii) APPLICABLE SHARE.—For purposes of clause (i), the term 'applicable share' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

''(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

''(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

''(ii) the amount of natural gas used to transport such natural gas to the utility.

''(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

''(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

''(i) any area throughout which such utility provided at all times during the testing period—

''(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

''(II) in the case of an electric utility, electricity distribution services,

''(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

''(iii) any area recognized as the service area of such utility under State or Federal law.''.

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Section 141(c)(2) (providing exceptions to the private loan financing test) is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by adding at the end the following new subparagraph:

''(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 514. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO CERTAIN ALASKA FACILITIES.

(a) IN GENERAL.—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

''(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

''(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

''(ii) prepares Alaska natural gas (as defined in section 45M(c)(1)) for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

''(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2003.

TITLE VI—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

SEC. 601. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

''(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.''.

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Section 468A(e) (relating to Nuclear Decommissioning Reserve Fund) is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

''(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

''(B) no amount shall be treated as distributed from such Fund, or be includable in gross income, by reason of such transfer.''.

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

''(f) TRANSFERS INTO QUALIFIED FUNDS.—

''(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

''(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

''(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

''(C) TRANSFERS OF QUALIFIED FUNDS.—If—

''(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

''(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferee and not the transferor. The preceding sentence shall not apply if the transferor is an entity exempt from tax under this chapter.

''(D) SPECIAL RULES.—

''(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

''(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall not exceed the adjusted basis of such property.

''(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

''(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.''.

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) (defining ruling amount) is amended to read as follows:

''(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and''.

(d) TECHNICAL AMENDMENT.—Section 468A(e)(2) (relating to taxation of Fund) is amended—

(1) by striking ''rate set forth in subparagraph (B)'' in subparagraph (A) and inserting ''rate of 20 percent'',

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

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

SEC. 602. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Section 501(c)(12)(C) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

''(ii) from any open access transaction (other than income received or accrued directly or indirectly from a member),

''(iii) from any nuclear decommissioning transaction,

''(iv) from any asset exchange or conversion transaction, or

''(v) from the prepayment of any loan, debt, or obligation made, insured, or guaranteed under the Rural Electrification Act of 1936.''.

(2) DEFINITIONS AND SPECIAL RULES.—Section 501(c)(12) is amended by adding at the end the following new subparagraphs:

''(E) For purposes of subparagraph (C)(ii)—

''(i) The term 'open access transaction' means any transaction meeting the open access requirements of any of the following subclauses with respect to a mutual or cooperative electric company:

''(I) The provision or sale of electric transmission service or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff, or under a regional transmission organization agreement approved by FERC.

''(II) The provision or sale of electric energy distribution services or ancillary services meets the open access requirements of this subclause only if such services are provided on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the mutual or cooperative electric company (or its members).

''(III) The delivery or sale of electric energy generated by a generation facility meets the open access requirements of this subclause only if such facility is directly connected to distribution facilities owned by the mutual or cooperative electric company (or its members) which owns the generation facility, and such distribution facilities meet the open access requirements of subclause (II).

''(ii) Clause (i)(I) shall apply in the case of a voluntarily filed tariff only if the mutual or cooperative electric company files a report with FERC within 90 days after the date of the enactment of this subparagraph relating to whether or not such company will join a regional transmission organization.

''(iii) A mutual or cooperative electric company shall be treated as meeting the open access requirements of clause (i)(I) if a regional transmission organization controls the transmission facilities.

''(iv) References to FERC in this subparagraph shall be treated as including references to the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))) or references to the Rural Utilities Service with respect to any other facility not subject to FERC jurisdiction.

''(v) For purposes of this subparagraph—

''(I) The term 'transmission facility' means an electric output facility (other than a generation facility) which operates at an electric voltage of 69 kilovolts or greater. To the extent provided in regulations, such term includes any output facility which FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act (as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003).

''(II) The term 'regional transmission organization' includes an independent system operator.

''(III) The term 'FERC' means the Federal Energy Regulatory Commission.

''(F) The term 'nuclear decommissioning transaction' means—

''(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

''(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

''(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

''(G) The term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

''(i) generating, transmitting, distributing, or selling electric energy, or

''(ii) producing, transmitting, distributing, or selling natural gas.''.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS.—Section 501(c)(12), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

''(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

''(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

''(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

''(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

''(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

''(II) the megawatt hours of electric energy sold during the base year to such members.

''(v) For purposes of clause (iv)(II), the term 'base year' means—

''(I) the calendar year preceding the start-up year, or

''(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

''(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

''(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes the date of the enactment of this subparagraph or, if later, at the election of the mutual or cooperative electric company—

''(I) the first year that such electric company offers nondiscriminatory open access, or

''(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

''(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

''(ix) In the case of a mutual or cooperative electric company, income from any open access transaction received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.''.

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Section 512(b) (relating to modifications) is amended by adding at the end the following new paragraph:

''(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.''.

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

''(c) CROSS REFERENCE.—

''For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).''.

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

SEC. 603. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

''(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

''(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year (determined without regard to this subsection),

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

''(2) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2008, of—

''(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

''(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

''(3) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

''(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

''(B) a person—

''(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

''(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than January 1, 2008, or

''(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

''(4) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.

''(5) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions occurring after the date of the enactment of this Act.

TITLE VII—ADDITIONAL PROVISIONS

SEC. 701. EXTENSION OF ACCELERATED DEPRECIATION AND WAGE CREDIT BENEFITS ON INDIAN RESERVATIONS.

(a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON INDIAN RESERVATIONS.—Section 168(j)(8) (relating to termination) is amended by striking ''2004'' and inserting ''2005''.

(b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f) (relating to termination) is amended by striking ''2004'' and inserting ''2005''.

SEC. 702. STUDY OF EFFECTIVENESS OF CERTAIN PROVISIONS BY GAO.

(a) STUDY.—The Comptroller General of the United States shall undertake an ongoing analysis of—

(1) the effectiveness of the alternative motor vehicles and fuel incentives provisions under title II and the conservation and energy efficiency provisions under title III, and

(2) the recipients of the tax benefits contained in such provisions, including an identification of such recipients by income and other appropriate measurements.

Such analysis shall quantify the effectiveness of such provisions by examining and comparing the Federal Government's forgone revenue to the aggregate amount of energy actually conserved and tangible environmental benefits gained as a result of such provisions.

(b) REPORTS.—The Comptroller General of the United States shall report the analysis required under subsection (a) to Congress not later than December 31, 2004, and annually thereafter.

SEC. 703. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking ''or a diesel-powered train'' each place it appears and by striking ''or train''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows ''section 6421(e)(2)'' and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

''(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

''(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.''

(D) Subsection (f) of section 4082 is amended by striking ''section 4041(a)(1)'' and inserting ''subsections (d)(3) and (a)(1) of section 4041, respectively''.

(E) Paragraph (3) of section 4083(a) is amended by striking ''or a diesel-powered train''.

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

''(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.''

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

''(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.''

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding ''and'' at the end of subparagraph (A), by striking '', and'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 704. EXPANSION OF RESEARCH CREDIT.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE ENERGY RESEARCH CONSORTIA.—

(1) IN GENERAL.—Section 41(a) (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium.''.

(2) ENERGY RESEARCH CONSORTIUM DEFINED.—Section 41(f) (relating to special rules) is amended by adding at the end the following new paragraph:

''(6) ENERGY RESEARCH CONSORTIUM.—

''(A) IN GENERAL.—The term 'energy research consortium' means any organization—

''(i) which is—

''(I) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct energy research, or

''(II) organized and operated primarily to conduct energy research in the public interest (within the meaning of section 501(c)(3)),

''(ii) which is not a private foundation,

''(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for energy research, and

''(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for energy research.

''(B) TREATMENT OF PERSONS.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).''.

(3) CONFORMING AMENDMENT.—Section 41(b)(3)(C) is amended by inserting ''(other than an energy research consortium)'' after ''organization''.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) (relating to contract research expenses) is amended by adding at the end the following new subparagraph:

''(D) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to—

''(I) an eligible small business,

''(II) an institution of higher education (as defined in section 3304(f)), or

''(III) an organization which is a Federal laboratory,

for qualified research which is energy research, subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

''(iv) FEDERAL LABORATORY.—For purposes of this subparagraph, the term 'Federal laboratory' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

TITLE VIII—REVENUE PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

SEC. 801. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction, or

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 802. 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 COMPROMISE OF PENALTY.—

''(A) 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 paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) CROSS REFERENCE.—

''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.''.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a continuing 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) is amended—

(A) by striking subparagraphs (C) and (D) of paragraph (2), and

(B) by adding at the end the following:

''(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.''.

(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. 803. 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. 804. 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, 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) EFFECTIVE DATE.—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.

SEC. 805. 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) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) 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. 806. 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. 807. 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.

Subtitle B—Provisions to Discourage Corporate Expatriation

SEC. 821. 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 RELATED PARTY TRANSACTIONS.—

''(1) ANNUAL APPLICATION FOR AGREEMENTS ON RETURN POSITIONS.—

''(A) IN GENERAL.—Each acquired entity to which subsection (b) applies shall file with the Secretary an application for an approval agreement under subparagraph (D) for each taxable year which includes a portion of the applicable period. Such application shall be filed at such time and manner, and shall contain such information, as the Secretary may prescribe.

''(B) SECRETARIAL ACTION.—Within 90 days of receipt of an application under subparagraph (A) (or such longer period as the Secretary and entity may agree upon), the Secretary shall—

''(i) enter into an agreement described in subparagraph (D) for the taxable year covered by the application,

''(ii) notify the entity that the Secretary has determined that the application was filed in good faith and substantially complies with the requirements for the application under subparagraph (A), or

''(iii) notify the entity that the Secretary has determined that the application was not filed in good faith or does not substantially comply with such requirements.

If the Secretary fails to act within the time prescribed under the preceding sentence, the entity shall be treated for purposes of this paragraph as having received notice under clause (ii).

''(C) FAILURES TO COMPLY.—If an acquired entity fails to file an application under subparagraph (A), or the acquired entity receives a notice under subparagraph (B)(iii), for any taxable year, then for such taxable year—

''(i) there shall not be allowed any deduction, or addition to basis or cost of goods sold, for amounts paid or incurred, or losses incurred, by reason of a transaction between the acquired entity and a foreign related person,

''(ii) any transfer or license of intangible property (as defined in section 936(h)(3)(B)) between the acquired entity and a foreign related person shall be disregarded, and

''(iii) any cost-sharing arrangement between the acquired entity and a foreign related person shall be disregarded.

''(D) APPROVAL AGREEMENT.—For purposes of subparagraph (A), the term 'approval agreement' means a prefiling, advance pricing, or other agreement specified by the Secretary which contains such provisions as the Secretary determines necessary to ensure that the requirements of sections 163(j), 267(a)(3), 482, and 845, and any other provision of this title applicable to transactions between related persons and specified by the Secretary, are met.

''(E) TAX COURT REVIEW.—

''(i) IN GENERAL.—The Tax Court shall have jurisdiction over any action brought by an acquired entity receiving a notice under subparagraph (B)(iii) to determine whether the issuance of the notice was an abuse of discretion, but only if the action is brought within 30 days after the date of the mailing (determined under rules similar to section 6213) of the notice.

''(ii) COURT ACTION.—The Tax Court shall issue its decision within 30 days after the filing of the action under clause (i) and may order the Secretary to issue a notice described in subparagraph (B)(ii).

''(iii) REVIEW.—An order of the Tax Court under this subparagraph shall be reviewable in the same manner as any other decision of the Tax Court.

''(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, passthrough 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) TREATMENT OF AGREEMENTS.—

(1) CONFIDENTIALITY.—

(A) TREATMENT AS RETURN INFORMATION.—Section 6103(b)(2) (relating to return information) is amended by striking ''and'' at the end of subparagraph (C), by inserting ''and'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) any approval agreement under section 7874(d)(1) to which any preceding subparagraph does not apply and any background information related to the agreement or any application for the agreement,''.

(B) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—Section 6110(b)(1)(B) is amended by striking ''or (D)'' and inserting '', (D), or (E)''.

(2) REPORTING.—The Secretary of the Treasury shall include with any report on advance pricing agreements required to be submitted after the date of the enactment of this Act under section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) a report regarding approval agreements under section 7874(d)(1) of the Internal Revenue Code of 1986. Such report shall include information similar to the information required with respect to advance pricing agreements and shall be treated for confidentiality purposes in the same manner as the reports on advance pricing agreements are treated under section 521(b)(3) of such Act.

(c) 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.

(d) 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.''.

(e) 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. 822. 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, and

''(2) any specified stock compensation which is sold, exchanged, or distributed 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 any member of the expanded affiliated group which includes such corporation, or

''(B) would be subject to such requirements if such corporation or member 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. 823. 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.

Subtitle C—Other Revenue Provisions

SEC. 831. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

''Category	**Average fee**
Employee plan ruling and opinion ..	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination.	$275
Chief counsel ruling	$200.

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

''Sec. 7528. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7528 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 832. 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 ''April 2, 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. 843. INDIVIDUAL EXPATRIATION TO AVOID TAX.

(a) EXPATRIATION TO AVOID TAX.—

(1) IN GENERAL.—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—

''(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

''(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

''(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $122,000,

''(B) the net worth of the individual as of such date is $2,000,000 or more, or

''(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2003, such $122,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '2002' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.''.

(2) REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

''(2) DUAL CITIZENS.—

''(A) IN GENERAL.—An individual is described in this paragraph if—

''(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

''(ii) the individual has had no substantial contacts with the United States.

''(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

''(i) was never a resident of the United States (as defined in section 7701(b)),

''(ii) has never held a United States passport, and

''(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

''(3) CERTAIN MINORS.—An individual is described in this paragraph if—

''(A) the individual became at birth a citizen of the United States,

''(B) neither parent of such individual was a citizen of the United States at the time of such birth,

''(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

''(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.''.

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).''.

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would not (but for this subsection) be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States until such individual—

''(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

''(2) provides a statement in accordance with section 6039G.''.

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

''(g) PHYSICAL PRESENCE.—This section shall not apply to any individual for any taxable year during the 10-year period referred to in subsection (a) in which such individual is present (within the meaning of section 7701(b)(7) without regard to subparagraphs (B), (C), and (D) thereof) in the United States for more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States for such taxable year.''.

(d) TRANSFERS SUBJECT TO GIFT TAX.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by adding at the end the following:

''(6) TRANSFERS OF CERTAIN STOCK.—

''(A) IN GENERAL.—Paragraph (3) shall not apply to the transfer of stock described in subparagraph (B) by any individual to whom section 877(b) applies, and section 2511(a) shall be applied without regard to whether such stock is property which is situated within the United States.

''(B) VALUATION.—For purposes of subparagraph (A), the value of stock shall be determined as provided in section 2103, except that—

''(i) if the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

''(ii) if such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

''(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

''(II) the total value of the stock of such corporation,

then the portion of the fair market value of the stock of such foreign corporation transferred by such donor which is included for purposes of subparagraph (A) shall be the amount which bears the same ratio to such value as the fair market value of any assets owned by such foreign corporation and situated in the United States at the time of such transfer bears to the total fair market value of all assets owned by such foreign corporation at such time. For purposes of the preceding sentence, a donor shall be treated as owning stock of a foreign corporation at the time of such transfer if, at such time, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.''.

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).''.

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

''(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

''(1) the taxpayer's TIN,

''(2) the mailing address of such individual's principal foreign residence,

''(3) the foreign country, in which such individual is residing,

''(4) the foreign country of which such individual is a citizen,

''(5) information detailing the income, assets, and liabilities of such individual,

''(6) the number of days that the individual was present in the United States during the taxable year, and

''(7) such other information as the Secretary may prescribe.''.

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

''(d) PENALTY.—If—

''(1) an individual is required to file a statement under subsection (a) for any taxable year, and

''(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $5,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after February 27, 2003.

SA 1433. Mr. FRIST proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

At the end of the amendment add the following:

All provisions of Division A and Division B shall take effect one day after enactment of this Act.

SA 1434. Mr. FRIST proposed an amendment to amendment SA 1433 proposed by Mr. FRIST to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

On line 3 of the amendment strike ''one day'' and insert ''two days''.

SA 1435. Mr. FRIST (for Mr. CAMPBELL) proposed an amendment to the bill S. 523, to make technical corrections to law relating to Native Americans, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Technical Corrections Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITION OF SECRETARY.

In this Act, except as otherwise provided in this Act, the term ''Secretary'' means the Secretary of the Interior.

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A—Technical Amendments

SEC. 101. BOSQUE REDONDO MEMORIAL ACT.

Section 206 of the Bosque Redondo Memorial Act (16 U.S.C. 431 note; Public Law 106–511) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''2000'' and inserting ''2004''; and

(B) in paragraph (2), by striking ''2001 and 2002'' and inserting ''2005 and 2006''; and

(2) in subsection (b), by striking ''2002'' and inserting ''2007,''.

SEC. 102. NAVAJO-HOPI LAND SETTLEMENT ACT.

Section 25(a)(8) of Public Law 93–531 (commonly known as the ''Navajo-Hopi Land Settlement Act of 1974'') (25 U.S.C. 640d–24(a)(8)) is amended by striking ''annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000'' and inserting ''for each of fiscal years 2003 through 2008''.

SEC. 103. TRIBAL SOVEREIGNTY.

Section 16 of the Act of June 18, 1934 (25 U.S.C. 476), is amended by adding at the end the following:

''(h) TRIBAL SOVEREIGNTY.—Notwithstanding any other provision of this Act—

''(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

''(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).''.

SEC. 104. COW CREEK BAND OF UMPQUA INDIANS.

Section 7 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712e) is amended in the third sentence by inserting before the period at the end the following: '', and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust''.

SEC. 105. PUEBLO DE COCHITI; MODIFICATION OF SETTLEMENT.

Section 1 of Public Law 102–358 (106 Stat. 960) is amended—

(1) by striking ''implement the settlement'' and inserting the following: ''implement—

''(1) the settlement;'';

(2) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(2) the modifications regarding the use of the settlement funds as described in the agreement known as the 'First Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution', executed—

''(A) on October 22, 2001, by the Army Corps of Engineers;

''(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

''(C) on November 8, 2001, by the Secretary of the Interior.''.

SEC. 106. FOUR CORNERS INTERPRETIVE CENTER.

Section 7 of the Four Corners Interpretive Center Act (113 Stat. 1706) is amended—

(1) in subsection (a)(2), by striking ''2005'' and inserting ''2008'';

(2) in subsection (b), by striking ''2002'' and inserting ''2005''; and

(3) in subsection (c), by striking ''2001'' and inserting ''2004''.

SEC. 107. MISSISSIPPI BAND OF CHOCTAW INDIANS.

Section 1(a)(2) of Public Law 106–228 (114 Stat. 462) is amended by striking ''report entitled'' and all that follows through ''is hereby declared'' and inserting the following: ''report entitled 'Report of May 17, 2002, Clarifying and Correcting Legal Descriptions or Recording Information for Certain Lands placed into Trust and Reservation Status for the Mississippi Band of Choctaw Indians by Section 1(a)(2) of Pub. L. 106–228, as amended by Title VIII, Section 811 of Pub. L. 106–568', on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is declared''.

SEC. 108. REHABILITATION OF CELILO INDIAN VILLAGE.

Section 401(b)(3) of Public Law 100–581 (102 Stat. 2944) is amended by inserting ''and Celilo Village'' after ''existing sites''.

Subtitle B—Other Provisions Relating to Native Americans

SEC. 121. BARONA BAND OF MISSION INDIANS; FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, and to any easements or similar restrictions which may be granted to the city of San Diego, California, for the construction, operation and maintenance of a pipeline and related appurtenances and facilities for conveying water from the San Vicente Reservoir to the Barona Indian Reservation, or for conservation, wildlife or habitat protection, or related purposes, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the ''Band'')—

(1) is declared to be held in trust by the United States for the benefit of the Band; and

(2) shall be considered to be a portion of the reservation of the Band.

(b) LAND.—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California, and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W½ SE¼, 68 acres; NW¼ NW¼, 17 acres.

(c) GAMING.—The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor

be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

SEC. 122. CONVEYANCE OF NATIVE ALASKAN OBJECTS.

Notwithstanding any provision of law affecting the disposal of Federal property, on the request of the Chugach Alaska Corporation or Sealaska Corporation, the Secretary of Agriculture shall convey to whichever of those corporations that has received title to a cemetery site or historical place on National Forest System land conveyed under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) all artifacts, physical remains, and copies of any available field records that—

(1)(A) are in the possession of the Secretary of Agriculture; and

(B) have been collected from the cemetery site or historical place; but

(2) are not required to be conveyed in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) or any other applicable law.

SEC. 123. PUEBLO OF ACOMA; LAND AND MINERAL CONSOLIDATION.

(a) DEFINITION OF BIDDING OR ROYALTY CREDIT.—The term ''bidding or royalty credit'' means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other monetary payment for—

(1) a bonus bid for a lease sale on the outer Continental Shelf; or

(2) a royalty due on oil or gas production; for any lease located on the outer Continental Shelf outside the zone defined and governed by section 8(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(2)).

(b) AUTHORITY.—Notwithstanding any other provision of law, the Secretary may acquire any nontribal interest in or to land (including an interest in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation for the purpose of carrying out Public Law 107–138 (116 Stat. 6) by issuing bidding or royalty credits under this section in an amount equal to the value of the interest acquired by the Secretary, as determined under section 1(a) of Public Law 107–138 (116 Stat. 6).

(c) USE OF BIDDING AND ROYALTY CREDITS.—On issuance by the Secretary of a bidding or royalty credit under subsection (b), the bidding or royalty credit—

(1) may be freely transferred to any other person (except that, before any such transfer, the transferor shall notify the Secretary of the transfer by such method as the Secretary may specify); and

(2) shall remain available for use by any person during the 5-year period beginning on the date of issuance by the Secretary of the bidding or royalty credit.

SEC. 124. QUINAULT INDIAN NATION; WATER FEASIBILITY STUDY.

(a) IN GENERAL.—The Secretary is authorized to carry out, in accordance with Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), a water source, quantity, and quality feasibility study for land of the Quinault Indian Nation to identify ways to meet the current and future domestic and commercial water supply and distribution needs of the Quinault Indian Nation on the Olympic Peninsula, Washington.

(b) PUBLIC AVAILABILITY OF RESULTS.—As soon as practicable after completion of a feasibility study under subsection (a), the Secretary shall—

(1) publish in the Federal Register a notice of the availability of the results of the feasibility study; and

(2) make available to the public, on request, the results of the feasibility study.

SEC. 125. SANTEE SIOUX TRIBE; STUDY AND REPORT.

(a) STUDY.—Pursuant to reclamation laws, the Secretary, acting through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the ''Tribe''), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) REPORT.—Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $500,000, to remain available until expended.

SEC. 126. SHAKOPEE MDEWAKANTON SIOUX COMMUNITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, without further authorization by the United States, the Shakopee Mdewakanton Sioux Community in the State of Minnesota (referred to in this section as the ''Community'') may lease, sell, convey, warrant, or otherwise transfer all or any part of the interest of the Community in or to any real property that is not held in trust by the United States for the benefit of the Community.

(b) NO EFFECT ON TRUST LAND.—Nothing in this section—

(1) authorizes the Community to lease, sell, convey, warrant, or otherwise transfer all or part of an interest in any real property that is held in trust by the United States for the benefit of the Community; or

(2) affects the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in that trust land.

SEC. 127. AGUA CALIENTE BAND OF CAHUILLA INDIANS.

(a) IN GENERAL.—Notwithstanding any other provision of law (including any restrictive covenant in effect under, or required by operation of, a State law), title to land that the Secretary of the Interior agrees is to be acquired by the United States in accordance with the Act of June 18, 1934 (25 U.S.C. 465), for the Agua Caliente Band of Cahuilla Indians shall be taken in the name of the United States.

(b) COVENANTS.—A restrictive covenant referred to in subsection (a) shall be unenforceable against the United States if the land to which the restrictive covenant is attached was held in trust by the United States for, or owned by, the Agua Caliente Band of Cahuilla Indians, or an individual member of the Band, before the date on which the restrictive covenant attached to the land.

SEC. 128. SAGINAW CHIPPEWA TRIBAL COLLEGE.

Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103–382) is amended—

(1) by redesignating paragraphs (22) through (31) as paragraphs (23) through (32), respectively; and

(2) by inserting after paragraph (21) the following:

''(22) Saginaw Chippewa Tribal College.''.

SEC. 129. UTE INDIAN TRIBE; OIL SHALE RESERVE.

Section 3405(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261) is amended by striking paragraph (3) and inserting the following:

''(3) With respect to the land conveyed to the Tribe under subsection (b)—

''(A) the land shall not be subject to any Federal restriction on alienation; and

''(B) notwithstanding any provision to the contrary in the constitution, bylaws, or charter of the Tribe, the Act of May 11, 1938 (commonly known as the 'Indian Mineral Leasing Act of 1938') (25 U.S.C. 396a et seq.), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.), section 2103 of the Revised Statutes (25 U.S.C. 81), or section 2116 of the Revised Statutes (25 U.S.C. 177), or any other law, no purchase, grant, lease, or other conveyance of the land (or any interest in the land), and no exploration, development, or other agreement relating to the land that is authorized by resolution by the governing body of the Tribe, shall require approval by the Secretary of the Interior or any other Federal official.''.

TITLE II—PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

SEC. 201. DEFINITIONS.

In this title:

(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled ''Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract'', entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term ''boundary line'' means the boundary line established under section 204(a).

(3) GOVERNORS.—The term ''Governors'' means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PUEBLOS.—The term ''Pueblos'' means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) TRUST LAND.—The term ''trust land'' means the land held by the United States in trust under section 202(a) or 203(a).

SEC. 202. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., sec. 23, New Mexico Principal Meridian;
(3) the southern half of T. 20 N., R. 7 E., sec. 24, New Mexico Principal Meridian;
(4) T. 20 N., R. 7 E., sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;
(5) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;
(6) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;
(7) the portion of T. 20 N., R. 8 E., sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and
(8) the portion of T. 20 N., R. 8 E., sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 203. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.
(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—
(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;
(2) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;
(3) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;
(4) T. 20 N., R. 7 E., sec. 34, New Mexico Principal Meridian; and
(5) the portion of T. 20 N., R. 7 E., sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 204. SURVEY AND LEGAL DESCRIPTIONS.

(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 3102(b) and 3103(b), the boundaries of the trust land.
(b) LEGAL DESCRIPTIONS.—
(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—
(A) a legal description of the boundary line; and
(B) legal descriptions of the trust land.
(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 3102(b) and 3103(b) to ensure that the descriptions are consistent with the terms of the Agreement.
(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 205. ADMINISTRATION OF TRUST LAND.

(a) IN GENERAL.—Effective beginning on the date of enactment of this Act—
(1) the land held in trust under section 202(a) shall be declared to be a part of the Santa Clara Indian Reservation; and
(2) the land held in trust under section 203(a) shall be declared to be a part of the San Ildefonso Indian Reservation.
(b) APPLICABLE LAW.—
(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.
(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the ''Pueblo Lands Act'') (25 U.S.C. 331 note):
(A) The trust land.
(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.
(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.
(c) USE OF TRUST LAND.—
(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—
(A) traditional and customary uses; or
(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.
(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.
(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

SEC. 206. EFFECT.

Nothing in this title—
(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—
(A) in or to the trust land; and
(B) in existence before the date of enactment of this Act;
(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—
(A) based on Aboriginal or Indian title; and
(B) in existence before the date of enactment of this Act;
(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or
(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

SEC. 207. GAMING.

Land taken into trust under this title shall neither be considered to have been taken into trust for, nor be used for, gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

TITLE III—DISTRIBUTION OF QUINAULT PERMANENT FISHERIES FUNDS

SEC. 301. DISTRIBUTION OF JUDGMENT FUNDS.

(a) FUNDS TO BE DEPOSITED INTO SEPARATE ACCOUNTS.—
(1) IN GENERAL.—Subject to section 302, not later than 30 days after the date of enactment of this Act, the funds appropriated on September 19, 1989, in satisfaction of an award granted to the Quinault Indian Nation under Dockets 772–71, 773–71, 774–71, and 775–71 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest accrued to the date of disbursement, shall be distributed by the Secretary and deposited into 3 separate accounts to be established and maintained by the Quinault Indian Nation (referred to in this title as the ''Tribe'') in accordance with this subsection.
(2) ACCOUNT FOR PRINCIPAL AMOUNT.—
(A) IN GENERAL.—The Tribe shall—
(i) establish an account for the principal amount of the judgment funds; and
(ii) use those funds to establish a Permanent Fisheries Fund.
(B) USE AND INVESTMENT.—The principal amount described in subparagraph (A)(i)—
(i) except as provided in subparagraph (A)(ii), shall not be expended by the Tribe; and
(ii) shall be invested by the Tribe in accordance with the investment policy of the Tribe.
(3) ACCOUNT FOR INVESTMENT INCOME.—
(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on amounts in the Permanent Fisheries Fund established under paragraph (2)(A)(ii) after the date of distribution of the funds to the Tribe under paragraph (1).
(B) USE OF FUNDS.—Funds deposited in the account established under subparagraph (A) shall be available to the Tribe—
(i) subject to subparagraph (C), to carry out fisheries enhancement projects; and
(ii) pay expenses incurred in administering the Permanent Fisheries Fund established under paragraph (2)(A)(ii).
(C) SPECIFICATION OF PROJECTS.—Each fisheries enhancement project carried out under subparagraph (B)(i) shall be specified in the approved annual budget of the Tribe.
(4) ACCOUNT FOR INCOME ON JUDGMENT FUNDS.—
(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on the judgment funds described in subsection (a) during the period beginning on September 19, 1989, and ending on the date of distribution of the funds to the Tribe under paragraph (1).
(B) USE OF FUNDS.—
(i) IN GENERAL.—Subject to clause (ii), funds deposited in the account established under subparagraph (A) shall be available to the Tribe for use in carrying out tribal government activities.
(ii) SPECIFICATION OF ACTIVITIES.—Each tribal government activity carried out under clause (i) shall be specified in the approved annual budget of the Tribe.
(b) DETERMINATION OF AMOUNT OF FUNDS AVAILABLE.—Subject to compliance by the Tribe with paragraphs (3)(C) and (4)(B)(ii) of subsection (a), the Quinault Business Committee, as the governing body of the Tribe, may determine the amount of funds available for expenditure under paragraphs (3) and (4) of subsection (a).
(c) ANNUAL AUDIT.—The records and investment activities of the 3 accounts established under subsection (a) shall—
(1) be maintained separately by the Tribe; and
(2) be subject to an annual audit.
(d) REPORTING OF INVESTMENT ACTIVITIES AND EXPENDITURES.—Not later than 120 days after the date on which each fiscal year of the Tribe ends, the Tribe shall make available to members of the Tribe a full accounting of the investment activities and expenditures of the Tribe with respect to each fund established under this section (which may be

in the form of the annual audit described in subsection (c)) for the fiscal year.

SEC. 302. CONDITIONS FOR DISTRIBUTION.

(a) UNITED STATES LIABILITY.—On disbursement to the Tribe of the funds under section 301(a), the United States shall bear no trust responsibility or liability for the investment, supervision, administration, or expenditure of the funds.

(b) APPLICATION OF OTHER LAW.—All funds distributed under this title shall be subject to section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407).

FILING OF MOTION

Mr. FRIST. Mr. President, I move to commit S. 14 to the Committee on Energy and Natural Resources with the instructions to report back forthwith with the following amendment. The text of amendment SA 1432 is printed in today's RECORD under ''Text of Amendments.''

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been rescheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources;

The hearing will be held on Tuesday, September 9, 2003, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills: S. 808, to provide for expansion of Sleeping Bear Dunes National Lakeshore; S. 1107, to enhance the recreational fee demonstration program for the National Park Service, and for other purposes; and H.R. 620, to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist the State of California or local educational agencies in California in providing educational services for students attending schools located within the Park.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom Lillie at (202) 224–5161 or Pete Lucero at (202) 224–6293.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, July 30, at 9:30 a.m., to conduct a business meeting to consider S. 930, S. 1279, GSA resolutions to authorize the FY 2004 Capital and Investment Leasing Program, H.R. 274, S. 269, S. 551, the Recycled Oil Bill (to be introduced), S. 793, H.R. 1018, H.R. 281, S. 1210, S. 1425, and the POPS implementing bill, to be introduced.

The hearing will be held in SD 406 (Hearing Room).

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 30, 2003, at 9 a.m., to hold a nominations hearing.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, July 30, 2003, at a time and location to be determined to hold a business meeting to consider the nominations of Joe D. Whitley to be General Counsel, Department of Homeland Security; Penrose C. Albright to be Assistant Secretary of Homeland Security for Plans, Programs, and Budget, Department of Homeland Security, and Joel D. Kaplan to be Deputy Director of the Office of Management and Budget.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, July 30, 2003.

The following agenda will be considered:

Presidential nominations: Howard Radzely, of Maryland, to be Solicitor for the Department of Labor; and Michael Young, of Pennsylvania, to be a member of the Federal Mine Safety and Health Review Commission.

Any additional nominees cleared for action.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, July 30, 2003, at 10 a.m., in room 216 of the Hart Senate Office Building to conduct a business meeting on pending business, to be followed immediately by an oversight hearing on potential settlement mechanisms of the Cobell v. Norton lawsuit.

Mr. President, I also ask unanimous consent that the Committee on Indian Affairs be authorized to meet in the afternoon on Wednesday, July 30, 2003, at 2 p.m., in room 216 of the Hart Senate Office Building to conduct a hearing on S. 578, The Tribal Government Amendments to the Homeland Security Act of 2002.

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

COMMITTEE ON THE JUDICIARY

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Judicial Nominations'' on Wednesday, July 30, 2003, at 10 a.m., in the Dirksen Senate Office Building Room 226.

Witness List:

Panel I: Senators.

Panel II: Henry W. Saad to be United States Circuit Judge for the Sixth Circuit.

Panel III: Larry Alan Burns to be United States District Judge for the Southern District of California; Glen E. Conrad to be United States District Judge for the Western District of Virginia; Henry F. Floyd to be United States District Judge for the District of South Carolina; Kim R. Gibson to be United States District Judge for the Western District of Pennsylvania; Michael W. Mosman to be United States District Judge for the District of Oregon; and Dana Makoto Sabraw to be United States District Judge for the Southern District of California.

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

COMMITTEE ON THE JUDICIARY

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, July 30, 2003, at 2:30 p.m. in the Dirksen Senate Office Building, Room 226 on ''An Examination of S. 1194, The Mentally Ill Offender Treatment and Crime Reduction Act of 2003.''

Witness List:

Panel I: Mr. Ron Honberg, Esq., National Alliance for Mental Illness, Arlington, VA; The Honorable Eve Stratton, Justice Ohio Supreme Court, Columbus, OH; Mr. Reggie Wilkinson, Director of Ohio Department of Rehabilitation & Corrections, Columbus, OH; Sheriff Donald Eslinger, Seminole County Sheriff's Department, Sanford, FL; and The Honorable John Campbell, Vermont State Senate, Quechee, VT.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Wednesday, July 30, 2003, at 9 a.m., for a hearing entitled ''SARS: Best Practices for Identifying and Caring for New Cases.''

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space be authorized to meet on Wednesday, July 30, 2003, at 2:30 p.m., on Space Exploration.

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

PRIVILEGES OF THE FLOOR

Ms. CANTWELL. Mr. President, I ask unanimous consent the privilege of the floor be granted to Antonio Gonzales, Daniel Archuleta, Jasmine Fallstitch, Christine Nelson, Ryan Davies, James Guttierrez, Frank Murray, Tara Peterkin, and Scott Pearsall for today.

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

Mr. REID. I ask unanimous consent that the privilege of the floor be granted to Erica Buehrens, a legislative fellow on the staff of Senator EDWARDS.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Joanna Bush, Angela Wilson, and Michael Kuehner, interns in my office, be given the privilege of the floor during the debate and vote on amendment No. 1419.

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

Mr. HATCH. Mr. President, I ask unanimous consent that floor privileges be granted to Tom Johnson and Brock Taylor of my staff for the duration of the debate on the Pryor nomination.

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

Mr. REID. Madam President, I ask unanimous consent that Lisa Polk from the Finance Committee be granted the privileges of the floor for the remainder of the day.

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

NATIVE AMERICAN TECHNICAL CORRECTIONS ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 100, S. 523.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 523) to make technical corrections to laws relating to Native Americans, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 523

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

[SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Native American Technical Corrections Act of 2003''.

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[SEC. 2. DEFINITION OF SECRETARY.

[In this Act, except as otherwise provided in this Act, the term ''Secretary'' means the Secretary of the Interior.

[TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

[Subtitle A—Technical Amendments

[SEC. 101. UTE MOUNTAIN UTE TRIBE; OIL SHALE RESERVE.

[Section 3405(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261) is amended by striking paragraph (3) and inserting the following:

[''(3) With respect to the land conveyed to the Tribe under subsection (b)—

[''(A) the land shall not be subject to any Federal restriction on alienation; and

[''(B) no grant, lease, exploration or development agreement, or other conveyance of the land (or any interest in the land) that is authorized by the governing body of the Tribe shall be subject to approval by the Secretary of the Interior or any other Federal official.''.

[SEC. 102. BOSQUE REDONDO MEMORIAL ACT.

[Section 206 of the Bosque Redondo Memorial Act (16 U.S.C. 431 note; Public Law 106–511) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by striking ''2000'' and inserting ''2004''; and

[(B) in paragraph (2), by striking ''2001 and 2002'' and inserting ''2005 and 2006''; and

[(2) in subsection (b), by striking ''2002'' and inserting ''2007,''.

[SEC. 103. NAVAJO-HOPI LAND SETTLEMENT ACT.

[Section 25(a)(8) of Public Law 93–531 (commonly known as the ''Navajo-Hopi Land Settlement Act of 1974'') (25 U.S.C. 640d–24(a)(8)) is amended by striking ''annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000'' and inserting ''for each of fiscal years 2003 through 2008''.

[SEC. 104. COW CREEK BAND OF UMPQUA INDIANS.

[Section 7 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712e) is amended in the third sentence by inserting before the period at the end the following: '', and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust''.

[SEC. 105. PUEBLO DE COCHITI; MODIFICATION OF SETTLEMENT.

[Section 1 of Public Law 102–358 (106 Stat. 960) is amended—

[(1) by striking ''implement the settlement'' and inserting the following: ''implement—

[''(1) the settlement;'';

[(2) by striking the period at the end and inserting ''; and''; and

[(3) by adding at the end the following:

[''(2) the modifications regarding the use of the settlement funds as described in the agreement known as the 'First Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution', executed—

[''(A) on October 22, 2001, by the Army Corps of Engineers;

[''(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

[''(C) on November 8, 2001, by the Secretary of the Interior.''.

[SEC. 106. CHIPPEWA CREE TRIBE; MODIFICATION OF SETTLEMENT.

[(a) IN GENERAL.—Section 101(b)(3) of the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163; 113 Stat. 1782) is amended by striking ''3 years'' and inserting ''6 years''.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any decree described in section 101(b)(1) of the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163; 113 Stat. 1782) entered into on or after December 9, 1999.

[SEC. 107. MISSISSIPPI BAND OF CHOCTAW INDIANS.

[Section 1(a)(2) of Public Law 106–228 (114 Stat. 462) is amended by striking ''report entitled'' and all that follows through ''is hereby declared'' and inserting the following: ''report entitled 'Report of May 17, 2002, Clarifying and Correcting Legal Descriptions or Recording Information for Certain Lands Placed into Trust and Reservation Status for the Mississippi Band of Choctaw Indians by Section 1(a)(2) of Pub. L. 106–228, as amended by Title VIII, Section 811 of Pub. L. 106–568', on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is declared''.

[Subtitle B—Other Provisions Relating to Native Americans

[SEC. 111. BARONA BAND OF MISSION INDIANS; FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

[(a) IN GENERAL.—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, and to any easements or similar restrictions which may be granted to the city of San Diego, California, for the construction, operation and maintenance of a pipeline and related appurtenances and facilities for conveying water from the San Vicente Reservoir to the Barona Indian Reservation, or for conservation, wildlife or habitat protection, or related purposes, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the ''Band'')—

[(1) is declared to be held in trust by the United States for the benefit of the Band; and

[(2) shall be considered to be a portion of the reservation of the Band.

[(b) LAND.—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California, and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W½ SE¼, 68 acres; NW¼ NW¼, 17 acres.

[(c) GAMING.—The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

[SEC. 112. CONVEYANCE OF NATIVE ALASKAN OBJECTS.

[Notwithstanding any provision of law affecting the disposal of Federal property, on the request of the Chugach Alaska Corporation or Sealaska Corporation, the Secretary of Agriculture shall convey to whichever of those corporations that has received title to a cemetery site or historical place on National Forest System land conveyed under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) all artifacts, physical remains, and copies of any available field records that—

[(1)(A) are in the possession of the Secretary of Agriculture; and

[(B) have been collected from the cemetery site or historical place; but

[(2) are not required to be conveyed in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) or any other applicable law.

[SEC. 113. OGLALA SIOUX TRIBE; WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS.

[Notwithstanding any other provision of law—

[(1) the balances of all outstanding expert assistance loans made to the Oglala Sioux Tribe under Public Law 88–168 (77 Stat. 301), and relating to Oglala Sioux Tribe v. United States (Docket No. 117 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

[(2) the Secretary shall take such action as is necessary to—

[(A) document the cancellation under paragraph (1); and

[(B) release the Oglala Sioux Tribe from any liability associated with any loan described in paragraph (1).

[SEC. 114. PUEBLO OF ACOMA; LAND AND MINERAL CONSOLIDATION.

[(a) DEFINITION OF BIDDING OR ROYALTY CREDIT.—The term ''bidding or royalty credit'' means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other monetary payment for—

[(1) a bonus bid for a lease sale on the outer Continental Shelf; or

[(2) a royalty due on oil or gas production; [for any lease located on the outer Continental Shelf outside the zone defined and governed by section 8(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(2)).

[(b) AUTHORITY.—Notwithstanding any other provision of law, the Secretary may acquire any nontribal interest in or to land (including an interest in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation for the purpose of carrying out Public Law 107–138 (116 Stat. 6) by issuing bidding or royalty credits under this section in an amount equal to the value of the interest acquired by the Secretary, as determined under section 1(a) of Public Law 107–138 (116 Stat. 6).

[(c) USE OF BIDDING AND ROYALTY CREDITS.—On issuance by the Secretary of a bidding or royalty credit under subsection (b), the bidding or royalty credit—

[(1) may be freely transferred to any other person (except that, before any such transfer, the transferor shall notify the Secretary of the transfer by such method as the Secretary may specify); and

[(2) shall remain available for use by any other person during the 5-year period beginning on the date of issuance by the Secretary of the bidding or royalty credit.

[SEC. 115. PUEBLO OF SANTO DOMINGO; WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS.

[Notwithstanding any other provision of law—

[(1) the balances of all expert assistance loans made to the Pueblo of Santo Domingo under Public Law 88–168 (77 Stat. 301), and relating to Pueblo of Santo Domingo v. United States (Docket No. 355 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

[(2) the Secretary shall take such action as is necessary to—

[(A) document the cancellation under paragraph (1); and

[(B) release the Pueblo of Santo Domingo from any liability associated with any loan described in paragraph (1).

[SEC. 116. QUINAULT INDIAN NATION; WATER FEASIBILITY STUDY.

[(a) IN GENERAL.—The Secretary may carry out a water source, quantity, and quality feasibility study for the Quinault Indian Nation, to identify ways to meet the current and future domestic and commercial water supply and distribution needs of the Quinault Indian Nation on the Olympic Peninsula, Washington.

[(b) PUBLIC AVAILABILITY OF RESULTS.—As soon as practicable after completion of a feasibility study under subsection (a), the Secretary shall—

[(1) publish in the Federal Register a notice of the availability of the results of the feasibility study; and

[(2) make available to the public, on request, the results of the feasibility study.

[SEC. 117. SANTEE SIOUX TRIBE; STUDY AND REPORT.

[(a) STUDY.—Pursuant to reclamation laws, the Secretary, acting through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the ''Tribe''), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

[(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

[(c) REPORT.—Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

[(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $500,000, to remain available until expended.

[SEC. 118. SEMINOLE TRIBE OF OKLAHOMA; WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS.

[Notwithstanding any other provision of law—

[(1) the balances of all outstanding expert assistance loans made to the Seminole Tribe of Oklahoma under Public Law 88–168 (77 Stat. 301), and relating to Seminole Tribe of Oklahoma v. United States (Docket No. 247 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

[(2) the Secretary shall take such action as is necessary to—

[(A) document the cancellation under paragraph (1); and

[(B) release the Seminole Tribe of Oklahoma from any liability associated with any loan described in paragraph (1).

[SEC. 119. SHAKOPEE MDEWAKANTON SIOUX COMMUNITY.

[(a) IN GENERAL.—Notwithstanding any other provision of law, without further authorization by the United States, the Shakopee Mdewakanton Sioux Community in the State of Minnesota (referred to in this section as the ''Community'') may lease, sell, convey, warrant, or otherwise transfer all or any part of the interest of the Community in or to any real property that is not held in trust by the United States for the benefit of the Community.

[(b) NO EFFECT ON TRUST LAND.—Nothing in this section—

[(1) authorizes the Community to lease, sell, convey, warrant, or otherwise transfer all or part of an interest in any real property that is held in trust by the United States for the benefit of the Community; or

[(2) affects the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in that trust land.

[TITLE II—PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

[SEC. 201. DEFINITIONS.

[In this title:

[(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled ''Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract'', entered into by the Governors on December 20, 2000.

[(2) BOUNDARY LINE.—The term ''boundary line'' means the boundary line established under section 204(a).

[(3) GOVERNORS.—The term ''Governors'' means—

[(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

[(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

[(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

[(5) PUEBLOS.—The term ''Pueblos'' means—

[(A) the Pueblo of Santa Clara, New Mexico; and

[(B) the Pueblo of San Ildefonso, New Mexico.

[(6) TRUST LAND.—The term ''trust land'' means the land held by the United States in trust under section 202(a) or 203(a).

[SEC. 202. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

[(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

[(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

[(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

[(2) the southern half of T. 20 N., R. 7 E., sec. 23, New Mexico Principal Meridian;

[(3) the southern half of T. 20 N., R. 7 E., sec. 24, New Mexico Principal Meridian;

[(4) T. 20 N., R. 7 E., sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

[(5) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

[(6) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

[(7) the portion of T. 20 N., R. 8 E., sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

[(8) the portion of T. 20 N., R. 8 E., sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

[SEC. 203. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

[(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

[(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

[(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

[(2) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

[(3) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

[(4) T. 20 N., R. 7 E., sec. 34, New Mexico Principal Meridian; and

[(5) the portion of T. 20 N., R. 7 E., sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

[SEC. 204. SURVEY AND LEGAL DESCRIPTIONS.

[(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 3102(b) and 3103(b), the boundaries of the trust land.

[(b) LEGAL DESCRIPTIONS.—

[(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

[(A) a legal description of the boundary line; and

[(B) legal descriptions of the trust land.

[(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 3102(b) and 3103(b) to ensure that the descriptions are consistent with the terms of the Agreement.

[(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

[SEC. 205. ADMINISTRATION OF TRUST LAND.

[(a) IN GENERAL.—Effective beginning on the date of enactment of this Act—

[(1) the land held in trust under section 202(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

[(2) the land held in trust under section 203(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

[(b) APPLICABLE LAW.—

[(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

[(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the ''Pueblo Lands Act'') (25 U.S.C. 331 note):

[(A) The trust land.

[(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

[(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

[(c) USE OF TRUST LAND.—

[(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

[(A) traditional and customary uses; or

[(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

[(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

[(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

[SEC. 206. EFFECT.

[Nothing in this title—

[(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

[(A) in or to the trust land; and

[(B) in existence before the date of enactment of this Act;

[(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

[(A) based on Aboriginal or Indian title; and

[(B) in existence before the date of enactment of this Act;

[(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

[(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

[SEC. 207. GAMING.

[Land taken into trust under this title shall neither be considered to have been taken into trust, nor be used for, gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

[TITLE III—DISTRIBUTION OF QUINAULT PERMANENT FISHERIES FUNDS

[SEC. 301. DISTRIBUTION OF JUDGMENT FUNDS.

[(a) FUNDS TO BE DEPOSITED INTO SEPARATE ACCOUNTS.—

[(1) IN GENERAL.—Subject to section 302, not later than 30 days after the date of enactment of this Act, the funds appropriated on September 19, 1989, in satisfaction of an award granted to the Quinault Indian Nation under Dockets 772–71, 773–71, 774–71, and 775–71 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest accrued to the date of disbursement, shall be distributed by the Secretary and deposited into 3 separate accounts to be established and maintained by the Quinault Indian Nation (referred to in this title as the ''Tribe'') in accordance with this subsection.

[(2) ACCOUNT FOR PRINCIPAL AMOUNT.—

[(A) IN GENERAL.—The Tribe shall—

[(i) establish an account for the principal amount of the judgment funds; and

[(ii) use those funds to establish a Permanent Fisheries Fund.

[(B) USE AND INVESTMENT.—The principal amount described in subparagraph (A)(i)—

[(i) except as provided in subparagraph (A)(ii), shall not be expended by the Tribe; and

[(ii) shall be invested by the Tribe in accordance with the investment policy of the Tribe.

[(3) ACCOUNT FOR INVESTMENT INCOME.—

[(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on amounts in the Permanent Fisheries Fund established under paragraph (2)(A)(ii) after the date of

distribution of the funds to the Tribe under paragraph (1).

[(B) USE OF FUNDS.—Funds deposited in the account established under subparagraph (A) shall be available to the Tribe—

[(i) subject to subparagraph (C), to carry out fisheries enhancement projects; and

[(ii) pay expenses incurred in administering the Permanent Fisheries Fund established under paragraph (2)(A)(ii).

[(C) SPECIFICATION OF PROJECTS.—Each fisheries enhancement project carried out under subparagraph (B)(i) shall be specified in the approved annual budget of the Tribe.

[(4) ACCOUNT FOR INCOME ON JUDGMENT FUNDS.—

[(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on the judgment funds described in subsection (a) during the period beginning on September 19, 1989, and ending on the date of distribution of the funds to the Tribe under paragraph (1).

[(B) USE OF FUNDS.—

[(i) IN GENERAL.—Subject to clause (ii), funds deposited in the account established under subparagraph (A) shall be available to the Tribe for use in carrying out tribal government activities.

[(ii) SPECIFICATION OF ACTIVITIES.—Each tribal government activity carried out under clause (i) shall be specified in the approved annual budget of the Tribe.

[(b) DETERMINATION OF AMOUNT OF FUNDS AVAILABLE.—Subject to compliance by the Tribe with paragraphs (3)(C) and (4)(B)(ii) of subsection (a), the Quinault Business Committee, as the governing body of the Tribe, may determine the amount of funds available for expenditure under paragraphs (3) and (4) of subsection (a).

[(c) ANNUAL AUDIT.—The records and investment activities of the 3 accounts established under subsection (a) shall—

[(1) be maintained separately by the Tribe; and

[(2) be subject to an annual audit.

[(d) REPORTING OF INVESTMENT ACTIVITIES AND EXPENDITURES.—Not later than 120 days after the date on which each fiscal year of the Tribe ends, the Tribe shall make available to members of the Tribe a full accounting of the investment activities and expenditures of the Tribe with respect to each fund established under this section (which may be in the form of the annual audit described in subsection (c)) for the fiscal year.

[SEC. 302. CONDITIONS FOR DISTRIBUTION.

[(a) UNITED STATES LIABILITY.—On disbursement to the Tribe of the funds under section 301(a), the United States shall bear no trust responsibility or liability for the investment, supervision, administration, or expenditure of the funds.

[(b) APPLICATION OF OTHER LAW.—All funds distributed under this title shall be subject to section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407).]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Technical Corrections Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITION OF SECRETARY.

In this Act, except as otherwise provided in this Act, the term ''Secretary'' means the Secretary of the Interior.

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A—Technical Amendments

SEC. 101. BOSQUE REDONDO MEMORIAL ACT.

Section 206 of the Bosque Redondo Memorial Act (16 U.S.C. 431 note; Public Law 106–511) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''2000'' and inserting ''2004''; and

(B) in paragraph (2), by striking ''2001 and 2002'' and inserting ''2005 and 2006''; and

(2) in subsection (b), by striking ''2002'' and inserting ''2007,''.

SEC. 102. NAVAJO-HOPI LAND SETTLEMENT ACT.

Section 25(a)(8) of Public Law 93–531 (commonly known as the ''Navajo-Hopi Land Settlement Act of 1974'') (25 U.S.C. 640d–24(a)(8)) is amended by striking ''annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000'' and inserting ''for each of fiscal years 2003 through 2008''.

SEC. 103. TRIBAL SOVEREIGNTY.

Section 16 of the Act of June 18, 1934 (25 U.S.C. 476), is amended by adding at the end the following:

''(h) TRIBAL SOVEREIGNTY.—Notwithstanding any other provision of this Act—

''(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

''(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).''.

SEC. 104. COW CREEK BAND OF UMPQUA INDIANS.

Section 7 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712e) is amended in the third sentence by inserting before the period at the end the following: '', and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust''.

SEC. 105. PUEBLO DE COCHITI; MODIFICATION OF SETTLEMENT.

Section 1 of Public Law 102–358 (106 Stat. 960) is amended—

(1) by striking ''implement the settlement'' and inserting the following: ''implement—

''(1) the settlement;'';

(2) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(2) the modifications regarding the use of the settlement funds as described in the agreement known as the 'First Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution', executed—

''(A) on October 22, 2001, by the Army Corps of Engineers;

''(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

''(C) on November 8, 2001, by the Secretary of the Interior.''.

SEC. 106. FOUR CORNERS INTERPRETIVE CENTER.

Section 7 of the Four Corners Interpretive Center Act (113 Stat. 1706) is amended—

(1) in subsection (a)(2), by striking ''2005'' and inserting ''2008'';

(2) in subsection (b), by striking ''2002'' and inserting ''2005''; and

(3) in subsection (c), by striking ''2001'' and inserting ''2004''.

SEC. 107. CHIPPEWA CREE TRIBE; MODIFICATION OF SETTLEMENT.

(a) IN GENERAL.—Section 101(b)(3) of the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163; 113 Stat. 1782) is amended by striking ''3 years'' and inserting ''6 years''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any decree described in section 101(b)(1) of the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163; 113 Stat. 1782) entered into on or after December 9, 1999.

SEC. 108. MISSISSIPPI BAND OF CHOCTAW INDIANS.

Section 1(a)(2) of Public Law 106–228 (114 Stat. 462) is amended by striking ''report entitled'' and all that follows through ''is hereby declared'' and inserting the following: ''report entitled 'Report of May 17, 2002, Clarifying and Correcting Legal Descriptions or Recording Information for Certain Lands placed into Trust and Reservation Status for the Mississippi Band of Choctaw Indians by section 1(a)(2) of Public Law 106–228, as amended by title VIII, section 811 of Public Law 106–568', on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is declared''.

SEC. 109. REHABILITATION OF CELILO INDIAN VILLAGE.

Section 401(b)(3) of Public Law 100–581 (102 Stat. 2944) is amended by inserting ''and Celilo Village'' after ''existing sites''.

SEC. 110. INHERITANCE OF CERTAIN TRUST OR RESTRICTED LAND.

(a) IN GENERAL.—Section 5 of Public Law 98–513 (98 Stat. 2413) is amended to read as follows:

''SEC. 5. INHERITANCE OF CERTAIN TRUST OR RESTRICTED LAND.

''(a) IN GENERAL.—Notwithstanding any other provision of this Act—

''(1) the owner of an interest in trust or restricted land within the reservation may not devise an interest (including a life estate under section 4) in the land that is less than 2.5 acres to more than 1 tribal member unless each tribal member already holds an interest in that land; and

''(2) any interest in trust or restricted land within the reservation that is less than 2.5 acres that would otherwise pass by intestate succession (including a life estate in the land under section 4), or that is devised to more than 1 tribal member that is not described in paragraph (1), shall revert to the Indian tribe, to be held in the name of the United States in trust for the Indian tribe.

''(b) NOTICE.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Indian Probate Reform Act of 2003, the Secretary shall provide notice to owners of trust or restricted land within the Lake Traverse Reservation of the provisions of this section by—

''(A) direct mail;

''(B) publication in the Federal Register; or

''(C) publication in local newspapers.

''(2) CERTIFICATION.—After providing notice under paragraph (1), the Secretary shall—

''(A) certify that the requirements of this subsection have been met; and

''(B) shall publish notice of that certification in the Federal Register.''.

(b) APPLICABILITY.—This section and the amendment made by this section shall not apply with respect to the estate of any person who dies before the date that is 1 year after the date on which the Secretary makes the required certification under section 5(b) of Public Law 98–513 (98 Stat. 2413) (as amended by subsection (a)).

Subtitle B—Other Provisions Relating to Native Americans

SEC. 121. BARONA BAND OF MISSION INDIANS; FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, and to any easements or similar restrictions which may be granted to the city of San Diego, California, for the construction, operation and maintenance of a pipeline and related appurtenances and facilities for conveying water from the San Vicente Reservoir to the Barona Indian Reservation, or for conservation, wildlife or habitat protection, or related purposes, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the ''Band'')—

(1) is declared to be held in trust by the United States for the benefit of the Band; and

(2) shall be considered to be a portion of the reservation of the Band.

(b) LAND.—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California, and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W½ SE¼, 68 acres; NW¼ NW¼, 17 acres.

(c) GAMING.—The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

SEC. 122. CONVEYANCE OF NATIVE ALASKAN OBJECTS.

Notwithstanding any provision of law affecting the disposal of Federal property, on the request of the Chugach Alaska Corporation or Sealaska Corporation, the Secretary of Agriculture shall convey to whichever of those corporations that has received title to a cemetery site or historical place on National Forest System land conveyed under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) all artifacts, physical remains, and copies of any available field records that—

(1)(A) are in the possession of the Secretary of Agriculture; and

(B) have been collected from the cemetery site or historical place; but

(2) are not required to be conveyed in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) or any other applicable law.

SEC. 123. OGLALA SIOUX TRIBE; WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS.

Notwithstanding any other provision of law—

(1) the balances of all outstanding expert assistance loans made to the Oglala Sioux Tribe under Public Law 88–168 (77 Stat. 301), and relating to Oglala Sioux Tribe v. United States (Docket No. 117 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

(2) the Secretary shall take such action as is necessary to—

(A) document the cancellation under paragraph (1); and

(B) release the Oglala Sioux Tribe from any liability associated with any loan described in paragraph (1).

SEC. 124. PUEBLO OF ACOMA; LAND AND MINERAL CONSOLIDATION.

(a) DEFINITION OF BIDDING OR ROYALTY CREDIT.—The term ''bidding or royalty credit'' means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other monetary payment for—

(1) a bonus bid for a lease sale on the outer Continental Shelf; or

(2) a royalty due on oil or gas production;

for any lease located on the outer Continental Shelf outside the zone defined and governed by section 8(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(2)).

(b) AUTHORITY.—Notwithstanding any other provision of law, the Secretary may acquire any nontribal interest in or to land (including an interest in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation for the purpose of carrying out Public Law 107–138 (116 Stat. 6) by issuing bidding or royalty credits under this section in an amount equal to the value of the interest acquired by the Secretary, as determined under section 1(a) of Public Law 107–138 (116 Stat. 6).

(c) USE OF BIDDING AND ROYALTY CREDITS.—On issuance by the Secretary of a bidding or royalty credit under subsection (b), the bidding or royalty credit—

(1) may be freely transferred to any other person (except that, before any such transfer, the transferor shall notify the Secretary of the transfer by such method as the Secretary may specify); and

(2) shall remain available for use by any other person during the 5-year period beginning on the date of issuance by the Secretary of the bidding or royalty credit.

SEC. 125. PUEBLO OF SANTO DOMINGO; WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS.

Notwithstanding any other provision of law—

(1) the balances of all expert assistance loans made to the Pueblo of Santo Domingo under Public Law 88–168 (77 Stat. 301), and relating to Pueblo of Santo Domingo v. United States (Docket No. 355 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

(2) the Secretary shall take such action as is necessary to—

(A) document the cancellation under paragraph (1); and

(B) release the Pueblo of Santo Domingo from any liability associated with any loan described in paragraph (1).

SEC. 126. QUINAULT INDIAN NATION; WATER FEASIBILITY STUDY.

(a) IN GENERAL.—The Secretary is authorized to carry out, in accordance with Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), a water source, quantity, and quality feasibility study for land of the Quinault Indian Nation to identify ways to meet the current and future domestic and commercial water supply and distribution needs of the Quinault Indian Nation on the Olympic Peninsula, Washington.

(b) PUBLIC AVAILABILITY OF RESULTS.—As soon as practicable after completion of a feasibility study under subsection (a), the Secretary shall—

(1) publish in the Federal Register a notice of the availability of the results of the feasibility study; and

(2) make available to the public, on request, the results of the feasibility study.

SEC. 127. SANTEE SIOUX TRIBE; STUDY AND REPORT.

(a) STUDY.—Pursuant to reclamation laws, the Secretary, acting through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the ''Tribe''), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) REPORT.—Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $500,000, to remain available until expended.

SEC. 128. SEMINOLE TRIBE OF OKLAHOMA; WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS.

Notwithstanding any other provision of law—

(1) the balances of all outstanding expert assistance loans made to the Seminole Tribe of Oklahoma under Public Law 88–168 (77 Stat. 301), and relating to Seminole Tribe of Oklahoma v. United States (Docket No. 247 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

(2) the Secretary shall take such action as is necessary to—

(A) document the cancellation under paragraph (1); and

(B) release the Seminole Tribe of Oklahoma from any liability associated with any loan described in paragraph (1).

SEC. 129. SHAKOPEE MDEWAKANTON SIOUX COMMUNITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, without further authorization by the United States, the Shakopee Mdewakanton Sioux Community in the State of Minnesota (referred to in this section as the ''Community'') may lease, sell, convey, warrant, or otherwise transfer all or any part of the interest of the Community in or to any real property that is not held in trust by the United States for the benefit of the Community.

(b) NO EFFECT ON TRUST LAND.—Nothing in this section—

(1) authorizes the Community to lease, sell, convey, warrant, or otherwise transfer all or part of an interest in any real property that is held in trust by the United States for the benefit of the Community; or

(2) affects the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in that trust land.

SEC. 130. AGUA CALIENTE BAND OF CAHUILLA INDIANS.

(a) IN GENERAL.—Notwithstanding any other provision of law (including any restrictive covenant in effect under, or required by operation of, a State law), title to land to be acquired by the United States in accordance with the Act of June 18, 1934 (25 U.S.C. 465), for the Agua Caliente Band of Cahuilla Indians shall be taken in the name of the United States.

(b) COVENANTS.—A restrictive covenant referred to in subsection (a) shall be unenforceable against the United States if the land to which the restrictive covenant is attached was held in trust by the United States for, or owned by, the Agua Caliente Band of Cahuilla Indians, or an individual member of the Band, before the date on which the restrictive covenant attached to the land.

SEC. 131. SAGINAW CHIPPEWA TRIBAL COLLEGE.

Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103–382) is amended—

(1) by redesignating paragraphs (22) through (31) as paragraphs (23) through (32), respectively; and

(2) by inserting after paragraph (21) the following:

''(22) Saginaw Chippewa Tribal College.''.

SEC. 132. UTE INDIAN TRIBE; OIL SHALE RESERVE.

Section 3405(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261) is amended by striking paragraph (3) and inserting the following:

''(3) With respect to the land conveyed to the Tribe under subsection (b)—

''(A) the land shall not be subject to any Federal restriction on alienation; and

''(B) notwithstanding any provision to the contrary in the constitution, bylaws, or charter of the Tribe, the Act of May 11, 1938 (commonly known as the 'Indian Mineral Leasing Act of 1938') (25 U.S.C. 396a et seq.), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.), section 2103 of the Revised Statutes (25 U.S.C. 81), or section 2116 of the Revised Statutes (25 U.S.C. 177), or any other law, no purchase, grant, lease, or other conveyance of the land (or any interest in the land), and no exploration, development, or other agreement relating to the land that is authorized by resolution by the governing body of the Tribe, shall require approval by the Secretary of the Interior or any other Federal official.''.

TITLE II—PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

SEC. 201. DEFINITIONS.

In this title:

(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled ''Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract'', entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term ''boundary line'' means the boundary line established under section 204(a).

(3) GOVERNORS.—The term ''Governors'' means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PUEBLOS.—The term ''Pueblos'' means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) TRUST LAND.—The term ''trust land'' means the land held by the United States in trust under section 202(a) or 203(a).

SEC. 202. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 203. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 204. SURVEY AND LEGAL DESCRIPTIONS.

(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 3102(b) and 3103(b), the boundaries of the trust land.

(b) LEGAL DESCRIPTIONS.—

(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 3102(b) and 3103(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 205. ADMINISTRATION OF TRUST LAND.

(a) IN GENERAL.—Effective beginning on the date of enactment of this Act—

(1) the land held in trust under section 202(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 203(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the ''Pueblo Lands Act'') (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) USE OF TRUST LAND.—

(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

SEC. 206. EFFECT.

Nothing in this title—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this Act;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this Act;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

SEC. 207. GAMING.

Land taken into trust under this title shall neither be considered to have been taken into trust for, nor be used for, gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

TITLE III—DISTRIBUTION OF QUINAULT PERMANENT FISHERIES FUNDS

SEC. 301. DISTRIBUTION OF JUDGMENT FUNDS.

(a) FUNDS TO BE DEPOSITED INTO SEPARATE ACCOUNTS.—

(1) IN GENERAL.—Subject to section 302, not later than 30 days after the date of enactment of this Act, the funds appropriated on September 19, 1989, in satisfaction of an award granted to the Quinault Indian Nation under Dockets 772–71, 773–71, 774–71, and 775–71 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest accrued to the date of disbursement, shall be distributed by the Secretary and deposited into 3 separate accounts to be established and maintained by the Quinault Indian Nation (referred to in this title as the ''Tribe'') in accordance with this subsection.

(2) ACCOUNT FOR PRINCIPAL AMOUNT.—

(A) IN GENERAL.—The Tribe shall—

(i) establish an account for the principal amount of the judgment funds; and

(ii) use those funds to establish a Permanent Fisheries Fund.

(B) USE AND INVESTMENT.—The principal amount described in subparagraph (A)(i)—

(i) except as provided in subparagraph (A)(ii), shall not be expended by the Tribe; and

(ii) shall be invested by the Tribe in accordance with the investment policy of the Tribe.

(3) ACCOUNT FOR INVESTMENT INCOME.—

(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on amounts in the Permanent Fisheries Fund established under paragraph (2)(A)(ii) after the date of distribution of the funds to the Tribe under paragraph (1).

(B) USE OF FUNDS.—Funds deposited in the account established under subparagraph (A) shall be available to the Tribe—

(i) subject to subparagraph (C), to carry out fisheries enhancement projects; and

(ii) pay expenses incurred in administering the Permanent Fisheries Fund established under paragraph (2)(A)(ii).

(C) SPECIFICATION OF PROJECTS.—Each fisheries enhancement project carried out under subparagraph (B)(i) shall be specified in the approved annual budget of the Tribe.

(4) ACCOUNT FOR INCOME ON JUDGMENT FUNDS.—

(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on the judgment funds described in subsection (a) during the period beginning on September 19, 1989, and ending on the date of distribution of the funds to the Tribe under paragraph (1).

(B) USE OF FUNDS.—

(i) IN GENERAL.—Subject to clause (ii), funds deposited in the account established under subparagraph (A) shall be available to the Tribe for use in carrying out tribal government activities.

(ii) SPECIFICATION OF ACTIVITIES.—Each tribal government activity carried out under clause (i) shall be specified in the approved annual budget of the Tribe.

(b) DETERMINATION OF AMOUNT OF FUNDS AVAILABLE.—Subject to compliance by the Tribe with paragraphs (3)(C) and (4)(B)(ii) of subsection (a), the Quinault Business Committee, as the governing body of the Tribe, may determine the amount of funds available for expenditure under paragraphs (3) and (4) of subsection (a).

(c) ANNUAL AUDIT.—The records and investment activities of the 3 accounts established under subsection (a) shall—

(1) be maintained separately by the Tribe; and

(2) be subject to an annual audit.

(d) REPORTING OF INVESTMENT ACTIVITIES AND EXPENDITURES.—Not later than 120 days after the date on which each fiscal year of the Tribe ends, the Tribe shall make available to members of the Tribe a full accounting of the investment activities and expenditures of the Tribe with respect to each fund established under this section (which may be in the form of the annual audit described in subsection (c)) for the fiscal year.

SEC. 302. CONDITIONS FOR DISTRIBUTION.

(a) UNITED STATES LIABILITY.—On disbursement to the Tribe of the funds under section 301(a), the United States shall bear no trust responsibility or liability for the investment, supervision, administration, or expenditure of the funds.

(b) APPLICATION OF OTHER LAW.—All funds distributed under this title shall be subject to section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407).

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be withdrawn; that the Campbell substitute be agreed to; that the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was withdrawn.

The amendment (No. 1435) was agreed to, as follows:

S . 523

Strike all after the enacting clause and insert the following:

SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Technical Corrections Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. DEFINITION OF SECRETARY.

In this Act, except as otherwise provided in this Act, the term ''Secretary'' means the Secretary of the Interior.

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A—Technical Amendments

SEC. 101. BOSQUE REDONDO MEMORIAL ACT.

Section 206 of the Bosque Redondo Memorial Act (16 U.S.C. 431 note; Public Law 106–511) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''2000'' and inserting ''2004''; and

(B) in paragraph (2), by striking ''2001 and 2002'' and inserting ''2005 and 2006''; and

(2) in subsection (b), by striking ''2002'' and inserting ''2007,''.

SEC. 102. NAVAJO-HOPI LAND SETTLEMENT ACT.

Section 25(a)(8) of Public Law 93–531 (commonly known as the ''Navajo-Hopi Land Settlement Act of 1974'') (25 U.S.C. 640d–24(a)(8)) is amended by striking ''annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000'' and inserting ''for each of fiscal years 2003 through 2008''.

SEC. 103. TRIBAL SOVEREIGNTY.

Section 16 of the Act of June 18, 1934 (25 U.S.C. 476), is amended by adding at the end the following:

''(h) TRIBAL SOVEREIGNTY.—Notwithstanding any other provision of this Act—

''(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

''(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).''.

SEC. 104. COW CREEK BAND OF UMPQUA INDIANS.

Section 7 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712e) is amended in the third sentence by inserting before the period at the end the following: '', and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust''.

SEC. 105. PUEBLO DE COCHITI; MODIFICATION OF SETTLEMENT.

Section 1 of Public Law 102–358 (106 Stat. 960) is amended—

(1) by striking ''implement the settlement'' and inserting the following: ''implement—

''(1) the settlement;'';

(2) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(2) the modifications regarding the use of the settlement funds as described in the agreement known as the 'First Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution', executed—

''(A) on October 22, 2001, by the Army Corps of Engineers;

''(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

''(C) on November 8, 2001, by the Secretary of the Interior.''.

SEC. 106. FOUR CORNERS INTERPRETIVE CENTER.

Section 7 of the Four Corners Interpretive Center Act (113 Stat. 1706) is amended—

(1) in subsection (a)(2), by striking ''2005'' and inserting ''2008'';

(2) in subsection (b), by striking ''2002'' and inserting ''2005''; and

(3) in subsection (c), by striking ''2001'' and inserting ''2004''.

SEC. 107. MISSISSIPPI BAND OF CHOCTAW INDIANS.

Section 1(a)(2) of Public Law 106–228 (114 Stat. 462) is amended by striking ''report entitled'' and all that follows through ''is hereby declared'' and inserting the following: ''report entitled 'Report of May 17, 2002, Clarifying and Correcting Legal Descriptions or Recording Information for Certain Lands placed into Trust and Reservation Status for the Mississippi Band of Choctaw Indians by Section 1(a)(2) of Pub. L. 106–228, as amended by Title VIII, Section 811 of Pub. L. 106–568', on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is declared''.

SEC. 108. REHABILITATION OF CELILO INDIAN VILLAGE.

Section 401(b)(3) of Public Law 100–581 (102 Stat. 2944) is amended by inserting ''and Celilo Village'' after ''existing sites''.

Subtitle B—Other Provisions Relating to Native Americans

SEC. 121. BARONA BAND OF MISSION INDIANS; FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, and to any easements or similar restrictions which may be granted to the city of San Diego, California, for the construction, operation and maintenance of a pipeline and related appurtenances and facilities for conveying water from the San Vicente Reservoir to the Barona Indian Reservation, or for conservation, wildlife or habitat protection, or related purposes, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the ''Band'')—

(1) is declared to be held in trust by the United States for the benefit of the Band; and

(2) shall be considered to be a portion of the reservation of the Band.

(b) LAND.—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California, and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W½ SE¼, 68 acres; NW¼ NW¼, 17 acres.

(c) GAMING.—The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

SEC. 122. CONVEYANCE OF NATIVE ALASKAN OBJECTS.

Notwithstanding any provision of law affecting the disposal of Federal property, on the request of the Chugach Alaska Corporation or Sealaska Corporation, the Secretary of Agriculture shall convey to whichever of those corporations that has received title to a cemetery site or historical place on National Forest System land conveyed under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) all artifacts, physical remains, and copies of any available field records that—

(1)(A) are in the possession of the Secretary of Agriculture; and

(B) have been collected from the cemetery site or historical place; but

(2) are not required to be conveyed in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) or any other applicable law.

SEC. 123. PUEBLO OF ACOMA; LAND AND MINERAL CONSOLIDATION.

(a) DEFINITION OF BIDDING OR ROYALTY CREDIT.—The term ''bidding or royalty credit'' means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other monetary payment for—

(1) a bonus bid for a lease sale on the outer Continental Shelf; or

(2) a royalty due on oil or gas production; for any lease located on the outer Continental Shelf outside the zone defined and governed by section 8(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(2)).

(b) AUTHORITY.—Notwithstanding any other provision of law, the Secretary may acquire any nontribal interest in or to land (including an interest in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation for the purpose of carrying out Public Law 107–138 (116 Stat. 6) by issuing bidding or royalty credits under this section in an amount equal to the value of the interest acquired by the Secretary, as determined under section 1(a) of Public Law 107–138 (116 Stat. 6).

(c) USE OF BIDDING AND ROYALTY CREDITS.—On issuance by the Secretary of a bidding or royalty credit under subsection (b), the bidding or royalty credit—

(1) may be freely transferred to any other person (except that, before any such transfer, the transferor shall notify the Secretary of the transfer by such method as the Secretary may specify); and

(2) shall remain available for use by any person during the 5-year period beginning on the date of issuance by the Secretary of the bidding or royalty credit.

SEC. 124. QUINAULT INDIAN NATION; WATER FEASIBILITY STUDY.

(a) IN GENERAL.—The Secretary is authorized to carry out, in accordance with Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), a water source, quantity, and quality feasibility study for land of the Quinault Indian Nation to identify ways to meet the current and future domestic and commercial water supply and distribution needs of the Quinault Indian Nation on the Olympic Peninsula, Washington.

(b) PUBLIC AVAILABILITY OF RESULTS.—As soon as practicable after completion of a feasibility study under subsection (a), the Secretary shall—

(1) publish in the Federal Register a notice of the availability of the results of the feasibility study; and

(2) make available to the public, on request, the results of the feasibility study.

SEC. 125. SANTEE SIOUX TRIBE; STUDY AND REPORT.

(a) STUDY.—Pursuant to reclamation laws, the Secretary, acting through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the ''Tribe''), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) REPORT.—Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $500,000, to remain available until expended.

SEC. 126. SHAKOPEE MDEWAKANTON SIOUX COMMUNITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, without further authorization by the United States, the Shakopee Mdewakanton Sioux Community in the State of Minnesota (referred to in this section as the ''Community'') may lease, sell, convey, warrant, or otherwise transfer all or any part of the interest of the Community in or to any real property that is not held in trust by the United States for the benefit of the Community.

(b) NO EFFECT ON TRUST LAND.—Nothing in this section—

(1) authorizes the Community to lease, sell, convey, warrant, or otherwise transfer all or part of an interest in any real property that is held in trust by the United States for the benefit of the Community; or

(2) affects the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in that trust land.

SEC. 127. AGUA CALIENTE BAND OF CAHUILLA INDIANS.

(a) IN GENERAL.—Notwithstanding any other provision of law (including any restrictive covenant in effect under, or required by operation of, a State law), title to land that the Secretary of the Interior agrees is to be acquired by the United States in accordance with the Act of June 18, 1934 (25 U.S.C. 465), for the Agua Caliente Band of Cahuilla Indians shall be taken in the name of the United States.

(b) COVENANTS.—A restrictive covenant referred to in subsection (a) shall be unenforceable against the United States if the land to which the restrictive covenant is attached was held in trust by the United States for, or owned by, the Agua Caliente Band of Cahuilla Indians, or an individual member of the Band, before the date on which the restrictive covenant attached to the land.

SEC. 128. SAGINAW CHIPPEWA TRIBAL COLLEGE.

Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103–382) is amended—

(1) by redesignating paragraphs (22) through (31) as paragraphs (23) through (32), respectively; and

(2) by inserting after paragraph (21) the following:

''(22) Saginaw Chippewa Tribal College.''.

SEC. 129. UTE INDIAN TRIBE; OIL SHALE RESERVE.

Section 3405(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261) is amended by striking paragraph (3) and inserting the following:

''(3) With respect to the land conveyed to the Tribe under subsection (b)—

''(A) the land shall not be subject to any Federal restriction on alienation; and

''(B) notwithstanding any provision to the contrary in the constitution, bylaws, or charter of the Tribe, the Act of May 11, 1938 (commonly known as the 'Indian Mineral Leasing Act of 1938') (25 U.S.C. 396a et seq.), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.), section 2103 of the Revised Statutes (25 U.S.C. 81), or section 2116 of the Revised Statutes (25 U.S.C. 177), or any other law, no purchase, grant, lease, or other conveyance of the land (or any interest in the land), and no exploration, development, or other agreement relating to the land that is authorized by resolution by the governing body of the Tribe, shall require approval by the Secretary of the Interior or any other Federal official.''.

TITLE II—PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

SEC. 201. DEFINITIONS.

In this title:

(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled ''Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract'', entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term ''boundary line'' means the boundary line established under section 204(a).

(3) GOVERNORS.—The term ''Governors'' means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PUEBLOS.—The term ''Pueblos'' means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) TRUST LAND.—The term ''trust land'' means the land held by the United States in trust under section 202(a) or 203(a).

SEC. 202. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 203. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 204. SURVEY AND LEGAL DESCRIPTIONS.

(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 3102(b) and 3103(b), the boundaries of the trust land.

(b) LEGAL DESCRIPTIONS.—

(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 3102(b) and 3103(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 205. ADMINISTRATION OF TRUST LAND.

(a) IN GENERAL.—Effective beginning on the date of enactment of this Act—

(1) the land held in trust under section 202(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 203(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the ''Pueblo Lands Act'') (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) USE OF TRUST LAND.—

(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

SEC. 206. EFFECT.

Nothing in this title—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this Act;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this Act;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

SEC. 207. GAMING.

Land taken into trust under this title shall neither be considered to have been taken into trust for, nor be used for, gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

TITLE III—DISTRIBUTION OF QUINAULT PERMANENT FISHERIES FUNDS

SEC. 301. DISTRIBUTION OF JUDGMENT FUNDS.

(a) FUNDS TO BE DEPOSITED INTO SEPARATE ACCOUNTS.—

(1) IN GENERAL.—Subject to section 302, not later than 30 days after the date of enactment of this Act, the funds appropriated on September 19, 1989, in satisfaction of an award granted to the Quinault Indian Nation under Dockets 772–71, 773–71, 774–71, and 775–71 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest accrued to the date of disbursement, shall be distributed by the Secretary and deposited into 3 separate accounts to be established and maintained by the Quinault Indian Nation (referred to in this title as the ''Tribe'') in accordance with this subsection.

(2) ACCOUNT FOR PRINCIPAL AMOUNT.—

(A) IN GENERAL.—The Tribe shall—

(i) establish an account for the principal amount of the judgment funds; and

(ii) use those funds to establish a Permanent Fisheries Fund.

(B) USE AND INVESTMENT.—The principal amount described in subparagraph (A)(i)—

(i) except as provided in subparagraph (A)(ii), shall not be expended by the Tribe; and

(ii) shall be invested by the Tribe in accordance with the investment policy of the Tribe.

(3) ACCOUNT FOR INVESTMENT INCOME.—

(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on amounts in the Permanent Fisheries Fund established under paragraph (2)(A)(ii) after the date of distribution of the funds to the Tribe under paragraph (1).

(B) USE OF FUNDS.—Funds deposited in the account established under subparagraph (A) shall be available to the Tribe—

(i) subject to subparagraph (C), to carry out fisheries enhancement projects; and

(ii) pay expenses incurred in administering the Permanent Fisheries Fund established under paragraph (2)(A)(ii).

(C) SPECIFICATION OF PROJECTS.—Each fisheries enhancement project carried out under subparagraph (B)(i) shall be specified in the approved annual budget of the Tribe.

(4) ACCOUNT FOR INCOME ON JUDGMENT FUNDS.—

(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on the judgment funds described in subsection (a) during the period beginning on September 19, 1989, and ending on the date of distribution of the funds to the Tribe under paragraph (1).

(B) USE OF FUNDS.—

(i) IN GENERAL.—Subject to clause (ii), funds deposited in the account established under subparagraph (A) shall be available to the Tribe for use in carrying out tribal government activities.

(ii) SPECIFICATION OF ACTIVITIES.—Each tribal government activity carried out under clause (i) shall be specified in the approved annual budget of the Tribe.

(b) DETERMINATION OF AMOUNT OF FUNDS AVAILABLE.—Subject to compliance by the Tribe with paragraphs (3)(C) and (4)(B)(ii) of subsection (a), the Quinault Business Committee, as the governing body of the Tribe, may determine the amount of funds available for expenditure under paragraphs (3) and (4) of subsection (a).

(c) ANNUAL AUDIT.—The records and investment activities of the 3 accounts established under subsection (a) shall—

(1) be maintained separately by the Tribe; and

(2) be subject to an annual audit.

(d) REPORTING OF INVESTMENT ACTIVITIES AND EXPENDITURES.—Not later than 120 days after the date on which each fiscal year of the Tribe ends, the Tribe shall make available to members of the Tribe a full accounting of the investment activities and expenditures of the Tribe with respect to each fund established under this section (which may be in the form of the annual audit described in subsection (c)) for the fiscal year.

SEC. 302. CONDITIONS FOR DISTRIBUTION.

(a) UNITED STATES LIABILITY.—On disbursement to the Tribe of the funds under section 301(a), the United States shall bear no trust responsibility or liability for the investment, supervision, administration, or expenditure of the funds.

(b) APPLICATION OF OTHER LAW.—All funds distributed under this title shall be subject to section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407).

The bill (S. 523) as amended, was read the third time and passed.

MAX CLELAND OVER-THE-ROAD BUS SECURITY AND SAFETY ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 210, S. 929.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 929) to direct the Secretary of Transportation to make grants for security improvements to over-the-road bus operations, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 929

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 ''*Max Cleland* Over-the-Road Bus Security and Safety Act of 2003''.

SEC. 2. EMERGENCY OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary of [Transportation,] *Homeland Security* acting through the Administrator of the [Federal Motor Carrier Safety Administration,] *Transportation Security Administration,* shall establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including—

(1) constructing and modifying terminals, garages, facilities, or over-the-road buses to assure their security;

(2) protecting or isolating the driver;

(3) acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise, and information links with government agencies;

(4) training employees in recognizing and responding to security threats, evacuation procedures, passenger screening procedures, and baggage inspection;

(5) hiring and training security officers;

(6) installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities;

(7) creating a program for employee identification or background investigation;

(8) establishing an emergency communications system linked to law enforcement and emergency personnel; and

(9) implementing and operating passenger screening programs at terminals and on over-the-road buses.

(b) REIMBURSEMENT.—A grant under this Act may be used to provide reimbursement to private operators of over-the-road buses for extraordinary security-related costs for improvements described in paragraphs (1) through (9) of subsection (a), determined by the Secretary to have been incurred by such operators since September 11, 2001.

(c) FEDERAL SHARE.—The Federal share of the cost for which any grant is made under this Act shall be 90 percent.

(d) DUE CONSIDERATION.—In making grants under this Act, the Secretary shall give due consideration to private operators of over-the-road buses that have taken measures to enhance bus transportation security from those in effect before September 11, 2001.

(e) GRANT REQUIREMENTS.—A grant under this Act shall be subject to all the terms and conditions that a grant is subject to under section 3038(f) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 393).

SEC. 3. PLAN REQUIREMENT.

(a) IN GENERAL.—The Secretary may not make a grant under this Act to a private operator of over-the-road buses until the operator has first submitted to the Secretary—

(1) a plan for making security improvements described in section 2 and the Secretary has approved the plan; and

(2) such additional information as the Secretary may require to ensure accountability for the obligation and expenditure of amounts made available to the operator under the grant.

(b) COORDINATION.—To the extent that an application for a grant under this section proposes security improvements within a specific terminal owned and operated by an entity other than the applicant, the applicant shall demonstrate to the satisfaction of the Secretary that the applicant has coordinated the security improvements for the terminal with that entity.

SEC. 4. OVER-THE-ROAD BUS DEFINED.

In this Act, the term ''over-the-road bus'' means a bus characterized by an elevated passenger deck located over a baggage compartment.

SEC. 5. BUS SECURITY ASSESSMENT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of [Transportation] *Homeland Security* shall transmit to the Committee on

Commerce, Science, and Transportation of the [Senate and] *Senate*, the Committee on Transportation and Infrastructure of the House of [Representatives] *Representatives, and the Select Committee on Homeland Security of the House of Representatives*, a preliminary report in accordance with the requirements of this section.

(b) CONTENTS OF PRELIMINARY REPORT.—The preliminary report shall include—

(1) an assessment of the over-the-road bus security grant program;

(2) an assessment of actions already taken to address identified security issues by both public and private entities and recommendations on whether additional safety and security enforcement actions are needed;

(3) an assessment of whether additional legislation is needed to provide for the security of Americans traveling on over-the-road buses;

(4) an assessment of the economic impact that security upgrades of buses and bus facilities may have on the over-the-road bus transportation industry and its employees;

(5) an assessment of ongoing research and the need for additional research on over-the-road bus security, including engine shut-off mechanisms, chemical and biological weapon detection technology, and the feasibility of compartmentalization of the driver; and

(6) an assessment of industry best practices to enhance security.

(c) CONSULTATION WITH INDUSTRY, LABOR, AND OTHER GROUPS.—In carrying out this section, the Secretary shall consult with over-the-road bus management and labor representatives, public safety and law enforcement officials, and the National Academy of Sciences.

SEC. 6. FUNDING.

There are authorized to be appropriated to the Secretary of [Transportation] *Homeland Security* to carry out this Act [$35,000,000] *$25,000,000* for fiscal year 2003 and $99,000,000 for fiscal year 2004. Such sums shall remain available until expended.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported amendments be agreed to; the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The committee amendments were agreed to.

The bill (S. 929), as amended, was read the third time and passed, as follows:

S. 929

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 ''Max Cleland Over-the-Road Bus Security and Safety Act of 2003''.

SEC. 2. EMERGENCY OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary of Homeland Security acting through the Administrator of the Transportation Security Administration, shall establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including—

(1) constructing and modifying terminals, garages, facilities, or over-the-road buses to assure their security;

(2) protecting or isolating the driver;

(3) acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise, and information links with government agencies;

(4) training employees in recognizing and responding to security threats, evacuation procedures, passenger screening procedures, and baggage inspection;

(5) hiring and training security officers;

(6) installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities;

(7) creating a program for employee identification or background investigation;

(8) establishing an emergency communications system linked to law enforcement and emergency personnel; and

(9) implementing and operating passenger screening programs at terminals and on over-the-road buses.

(b) REIMBURSEMENT.—A grant under this Act may be used to provide reimbursement to private operators of over-the-road buses for extraordinary security-related costs for improvements described in paragraphs (1) through (9) of subsection (a), determined by the Secretary to have been incurred by such operators since September 11, 2001.

(c) FEDERAL SHARE.—The Federal share of the cost for which any grant is made under this Act shall be 90 percent.

(d) DUE CONSIDERATION.—In making grants under this Act, the Secretary shall give due consideration to private operators of over-the-road buses that have taken measures to enhance bus transportation security from those in effect before September 11, 2001.

(e) GRANT REQUIREMENTS.—A grant under this Act shall be subject to all the terms and conditions that a grant is subject to under section 3038(f) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 393).

SEC. 3. PLAN REQUIREMENT.

(a) IN GENERAL.—The Secretary may not make a grant under this Act to a private operator of over-the-road buses until the operator has first submitted to the Secretary—

(1) a plan for making security improvements described in section 2 and the Secretary has approved the plan; and

(2) such additional information as the Secretary may require to ensure accountability for the obligation and expenditure of amounts made available to the operator under the grant.

(b) COORDINATION.—To the extent that an application for a grant under this section proposes security improvements within a specific terminal owned and operated by an entity other than the applicant, the applicant shall demonstrate to the satisfaction of the Secretary that the applicant has coordinated the security improvements for the terminal with that entity.

SEC. 4. OVER-THE-ROAD BUS DEFINED.

In this Act, the term ''over-the-road bus'' means a bus characterized by an elevated passenger deck located over a baggage compartment.

SEC. 5. BUS SECURITY ASSESSMENT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall transmit to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Select Committee on Homeland Security of the House of Representatives, a preliminary report in accordance with the requirements of this section.

(b) CONTENTS OF PRELIMINARY REPORT.—The preliminary report shall include—

(1) an assessment of the over-the-road bus security grant program;

(2) an assessment of actions already taken to address identified security issues by both public and private entities and recommendations on whether additional safety and security enforcement actions are needed;

(3) an assessment of whether additional legislation is needed to provide for the security of Americans traveling on over-the-road buses;

(4) an assessment of the economic impact that security upgrades of buses and bus facilities may have on the over-the-road bus transportation industry and its employees;

(5) an assessment of ongoing research and the need for additional research on over-the-road bus security, including engine shut-off mechanisms, chemical and biological weapon detection technology, and the feasibility of compartmentalization of the driver; and

(6) an assessment of industry best practices to enhance security.

(c) CONSULTATION WITH INDUSTRY, LABOR, AND OTHER GROUPS.—In carrying out this section, the Secretary shall consult with over-the-road bus management and labor representatives, public safety and law enforcement officials, and the National Academy of Sciences.

SEC. 6. FUNDING.

There are authorized to be appropriated to the Secretary of Homeland Security to carry out this Act $25,000,000 for fiscal year 2003 and $99,000,000 for fiscal year 2004. Such sums shall remain available until expended.

FEDERAL EMPLOYEE STUDENT LOAN ASSISTANCE ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 220, S. 926.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 926) to amend section 5379 of title 5, United States Code, to increase the annual and aggregate limits on student loan repayments by Federal agencies.

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

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 926) was read the third time and passed, as follows:

S. 926

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 ''Federal Employee Student Loan Assistance Act''.

SEC. 2. STUDENT LOAN REPAYMENTS.

Section 5379(b)(2) of title 5, United States Code, is amended—

(1) in subparagraph (A), by striking ''$6,000'' and inserting ''$10,000''; and

(2) in subparagraph (B), by striking ''$40,000'' and inserting ''$60,000''.

HONORING THE MEMORY OF DR. WILLIAM R. BRIGHT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 206, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

S. Res. 206, honoring the memory of Dr. William R. ''Bill'' Bright, commending his life as an example to succeeding generations.

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

Mr. BROWNBACK. Mr. President, I rise today to honor the memory of one of the great spiritual leaders of the twentieth century, Dr. William R. Bright. Dr. Bright, or Bill, as a number of us in this Chamber knew him, was a man of great faith, great heart, and great strength. Bill Bright's passing on Saturday, July 19, 2003, leaves a hole in my heart and the hearts of the many individual lives he touched. For this reason, I would like to take a few moments to remember the life and work of Dr. Bright.

Bill was born in Coweta, Oklahoma, in 1921. He graduated from Northeastern State University in Oklahoma with a Bachelor of Arts degree in economics and a minor in sociology. While a student, Bill already showed promise as an energetic community leader. He served as editor of the university yearbook, was elected student body president, was chosen as a member of Who's Who in American Colleges and Universities, and was selected by students and faculty as the year's outstanding graduate. After graduation, he joined the extension faculty of Oklahoma State University for a time, and then moved to Los Angeles to launch a business career.

While in California, Bill attended the First Presbyterian Church in Hollywood, where he became a Christian in 1945 and began an intensive study of the Bible. Never one who lacked commitment to those endeavors he felt were of great importance, Bill engaged in 5 years of graduate work at Princeton and Fuller theological seminaries, while still continuing his business interests. During his studies at Fuller, young Bright became convinced that he personally needed to be working to help fulfill Christ's Great Commission to spread the Gospel to those around him. Looking for opportunity to act on this calling, Bright began by sharing his faith in Christ with students on campus at UCLA, and activity which gave birth to the present worldwide ministry of Campus Crusade for Christ International.

Bill worked faithfully to lead Campus Crusade for Christ from its infancy in 1951 to its current size. Campus Crusade has grown to be one of the world's largest Christian ministries, serving individuals in 191 countries through a staff of 26,000 full-time employees and more than 225,000 trained volunteers. What began as a campus ministry now covers almost every segment of society with more than 70 special ministries and projects which reach out to students, inner cities, governments, prisons, families, the military, executives, musicians, athletes, and many others.

In addition to touching so many lives by the work of Campus Crusade, Bright reached out to others through the print and visual media. Bill authored more than 100 books and booklets, as well as thousands of articles and pamphlets, which have been distributed by the millions in most major languages. In particular, his 1956 booklet title The Four Spiritual Laws has been printed in over 200 languages and distributed to mre than 2.5 billion people. Bright also commissioned the JESUS film, a documentary of the life of Christ, which has been viewed by over 5.1 billion people in 234 countries and has been translated into 786 languages.

While Bill focused on serving others and would not like attention to be drawn to himself, he could certainly not avoid attracting praise for his great works of religious and community service. Dr. Bright held six honorary doctorate degrees: a Doctor of Laws from the Jeonbug National University of Korea, a Doctor of Divinity from John Brown University, a Doctor of Letters from Houghton University, a Doctor of Divinity from the Los Angeles Bible College and Seminary, a Doctor of Divinity from Montreat-Anderson College, and a Doctor of Laws from Pepperdine University. In 1971, he was named outstanding alumnus of his alma mater, Northeastern State University. He is listed in Who's Who in Religion and England's Who's Who in Community Service, and has received numerous other recognitions. Among the most prestigious of these awards was the Templeton Prize for Progress in Religion in 1996, which is worth over $1 million. Bill, in his charity, donated all of this prize money to ministries training Christians internationally in the spiritual benefits of fasting and prayer.

Bill Bright was a man of determination and spiritual vigor, a man who had great faith, great hope, and great love for his Lord and for his fellow man. He was a man worthy of respect and emulation. I, and I know many of my colleagues in this Chamber, extend our deepest condolences to Bill's wife, Vonetta, his sister, Florence, his brother, Forest, his two sons, Zachary and Brad, and his four grandchildren. We know that Bill is now in a place of greater peace than ever he was on earth. We commend him to his eternal rest and we thank him for his many years of faithful service.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD as if read.

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

The resolution (S. Res. 206) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 206

Whereas Dr. Bright died on July 19, 2003, at age 81 in Orlando, Florida from complications related to pulmonary fibrosis, a lung disease for which there is no known cure or effective treatment;

Whereas Dr. Bright was an agnostic humanist and materialist, and successful Hollywood businessman, until he became ''overcome by the love of our great Creator God and Savior'' in 1945, whereupon he spent 5 years in theological studies at Princeton and Fuller Theological Seminaries;

Whereas Dr. Bright, with his wife Vonette, in 1951 founded Campus Crusade for Christ International, which now serves people in 191 countries through a staff of 27,000 full-time employees and up to 500,000 trained volunteers;

Whereas his life focus was on students and laypersons, and from the first he emphasized the role of women as full partners in leadership in the various ministries;

Whereas Dr. Billy Graham, a long-time friend of the Brights, has said: ''He is a man whose sincerity and integrity and devotion to our Lord have been an inspiration and a blessing to me ever since the early days of my ministry'';

Whereas Dr. Bright lived simply, owning neither houses nor land, and receiving no honoraria or donations for his thousands of appearances across the world, and the scores of writings and video presentations he developed;

Whereas when the Berlin Wall came down in 1989, he fulfilled a dream of more than 40 years of praying for Russia by donating his entire pension to establish a ministry to the students of Moscow State University;

Whereas Campus Crusade for Christ International operates more than 70 ministries and projects which offer hope and spiritual enlightenment across the globe to students on hundreds of campuses, urban residents, including minorities, the well-known Athletes-in-Action ministry, leaders of governments, inmates of prisons, aid to families, aid to health and education programs, aid to families of military personnel, executives, entertainers and musicians, and many others;

Whereas in 1979, Dr. Bright commissioned the JESUS film, a feature-length documentary on the life of Christ, directed by John Heyman, which has since been viewed by more than 5,100,000,000 people in 234 countries and has become the most widely viewed, as well as most widely translated, in 786 languages, film in history;

Whereas Dr. Bright is author of more than 100 books and booklets, as well as thousands of articles and pamphlets that have been distributed by the millions in most major languages, including the widely regarded Four Spiritual Laws of which 2,500,000,000 copies have been distributed;

Whereas Dr. Bright received 8 honorary degrees from universities in the United States and other nations, and numerous awards and honors from higher education, his home

state of Oklahoma, and his peers in religious, radio, and television broadcasting;

Whereas, Dr. Bright was awarded the unique and prestigious Templeton Prize for Progress in Religion in 1996, presented by Prince Phillip at Buckingham Palace in London, and was received by Pope John Paul II in Rome where he addressed world spiritual leaders in accepting its $1,100,000 prize, which he directed be given to worldwide fasting for peace and spiritual enlightenment;

Whereas Dr. Bright sought ecumenical and trans-denominational cooperation throughout the world by building more than 1,000 partnerships with other ministries, and in 1983, he and former President Ronald Reagan, along with Jewish, Catholic, and Protestant members of the clergy, informed Congress which voted to establish The Year of the Bible to help focus on timeless truths for the Nation;

Whereas he helped create what media reports describe as the largest non-denominational Christian ministry in the world, and he rejected appeals to establish a single religious denomination and would not allow his name to be attached to any single denominational enterprise;

Whereas he urged followers to be ''salt and light,'' to seek civility in society, and to be active in ministry to prisons, hospitals, orphanages, and he declared the duties of citizenship to be reliably informed, active in the study of issues, voter registration and get-out-the-vote drives, and personal voting;

Whereas he never endorsed individual candidates or parties, and encouraged laypersons to seek public service and often called upon people in all lands to study American History, declaring President George Washington as his secular hero after Jesus of Nazareth and the Apostle Paul;

Whereas in response to a suggestion from a Member of the United States Senate, he helped establish the Evangelical Council for Financial Accountability to set high standards and monitor their compliance, setting an example for all charitable organizations;

Whereas Money magazine has often cited Campus Crusade for Christ International as best or one of the top 5 non-profit ministries for effective stewardship of donor dollars; and

Whereas in his last months he co-founded the Global Pastors Network, a separate ministry to pastors worldwide with helpful resources and a goal to start 5,000,000 home-based studies of the attributes of God: Now, therefore, be it

Resolved, That the Senate—

(1) sends its condolences to Mrs. Vonette Zachary Bright, their grandchildren, their sons, Zac and Brad, and their wives, Terry and Katherine, all of whom are also in full-time Christian ministry; and

(2) does hereby honor the memory of Dr. William R. (''Bill'') Bright, an ambassador of spiritual goodwill, whose 58 years of dedicated and effective service stand as an outstanding example of selfless leadership to all humankind.

UNANIMOUS CONSENT AGREEMENT—S. 3

Mr. FRIST. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the Democratic leader, the Senate proceed to the House message with respect to S. 3, the partial-birth abortion bill, and that it be considered under the following limitations:

That the only motion in order be a motion to disagree to the House amendment to the Senate bill; that there be 8 hours of debate with respect to that motion, with the time equally divided and controlled between the majority and Democratic leaders or their designees; that upon the use or yielding back of time, the Senate proceed to vote on the motion to disagree; that upon disposition of that motion, the Senate agree to the request for a conference, and that the Chair be authorized to appoint conferees on the part of the Senate with a ratio of 3-to-2, without further intervening action or debate.

Mr. REID. Mr. President, reserving the right to object. I ask the majority leader this through the Chair: Senator BOXER has asked that she be in charge of this 8 hours of debate, which the Democratic leader certainly has agreed to. We would like some commitment from the majority leader that these 8 hours won't start in the middle of the night sometime and that she will be able to use her 8 hours at a reasonable time, during the day or early evening. We hope the majority leader could give us that assurance.

Mr. FRIST. Mr. President, indeed it is in the unanimous consent request that a time will be determined by the majority leader in consultation with the Democratic leader. It will not be in the middle of the night. We will find a mutually appropriate time.

Mr. REID. I have no objection.

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

MEASURE READ THE FIRST TIME—S. 1504

Mr. FRIST. Mr. President, I understand that S. 1504, introduced by Senator GREGG earlier today, is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (S. 1504) to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents.

Mr. FRIST. Mr. President, I ask for its second reading and object to further proceeding.

The PRESIDING OFFICER. Objection is heard. The bill will remain at the desk.

ORDERS FOR THURSDAY, JULY 31, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Thursday, July 31. I further ask that following the prayer and pledge, the Journal of proceedings be approved, the time for the two leaders be reserved for their use later in the day, and the Senate then begin debate in relation to the motion to invoke cloture on the nomination of William Pryor, to be U.S. Circuit Judge for the Eleventh Circuit, with the time until 10 a.m. equally divided between the chairman and the ranking member of the Judiciary Committee, or their designees; provided that at 10 a.m. the Senate proceed to the vote on the motion to invoke cloture.

I further ask unanimous consent that following the cloture vote, regardless of the outcome, the Senate resume consideration of S. 14, the Energy bill.

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

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow morning the Senate will debate the cloture motion relating to the Pryor nomination until 10 a.m. Following that debate, the Senate will proceed with the cloture vote. Therefore, the first vote of tomorrow's session will be at 10 a.m.

Following the cloture vote, the Senate will resume consideration of S. 14, the Energy bill. It is the chairman's intention to continue to work through amendments tomorrow, and Senators should expect votes throughout the day. As a reminder, cloture was filed in relation to the bill tonight, and that cloture vote will occur on Friday morning.

We have a lot of work to complete prior to adjourning for the scheduled recess. I encourage all Members to make themselves available for a busy day tomorrow.

Mr. REID. Mr. President, if I can say briefly to the majority leader—I am speaking only for this Senator; the ultimate decision will be made, of course, by the distinguished Democratic leader—from what has gone on today and the fact the distinguished majority leader has filed cloture on still another judge, I do not think there will be much done in the way of the Energy bill tomorrow on this side. We have to get ready for the Kuhl nomination, about which the two Senators from California feel very strongly.

I know it is the chairman's intention to work through amendments tomorrow on S. 14, but I think there will be a lot of other issues done and there will not be amendments offered on that bill. As I indicated when I started this brief statement, the ultimate decision will be made by Senator DASCHLE, but I am giving the majority my thoughts this evening.

Mr. FRIST. Mr. President, I thank the Senator. I have talked to both the Democratic leader and the chairman, and we agree after the cloture vote to

go to the bill to work through the amendments. I am very hopeful over the course of the morning and over the course of the day that we will be able to make substantial progress on this important bill.

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate recess under the previous order.

There being no objection, the Senate, at 10:17 p.m., recessed until Thursday, July 31, 2003, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate July 30, 2003:

DEPARTMENT OF STATE

JAMES CASEY KENNY, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO IRELAND.

PAMELA P. WILLEFORD, OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWITZERLAND, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PRINCIPALITY OF LIECHTENSTEIN.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CRISTINA BEATO, OF NEW MEXICO, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, SUBJECT TO THE QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS, AND TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, VICE EVE SLATER, RESIGNED.

THE JUDICIARY

GEORGE W. MILLER, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR THE TERM OF FIFTEEN YEARS, VICE JAMES T. TURNER, TERM EXPIRED.

F. DENNIS SAYLOR IV, OF MASSACHUSETTS, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS, VICE ROBERT E. KEETON, RETIRED.

ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JERRY M. RIVERA

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS AND FOR REGULAR APPOINTMENT UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064.

To be major

STEPHEN W. AUSTIN
PATRICK R. BASAL
DAVID S. BOWERMAN
CLAUDE W. BRITTIAN
STEPHEN L. BROADUS
ANDREW W. CHOI
JOHN CHUN
DOYLE M. COFFMAN
CLOYD L. COLBY
TAMMIE E. CREWS
STEPHEN G. CRUYS
PETER O. DISSMORE
BETH M. ECHOLS
STEVEN R. FIRTKO
MARK A. FREDERICK
ALBERT J. GHERGICH JR.
ROBERT B. GILLETTE
WILLIAM C. HARRISON
DARRYL E. HOLLOWELL
MILTON JOHNSON
MARK R. JOHNSTON
GARRY R. KERR
WILLIAM R. KILMER
JOHN W. KISER JR.
JOSEPH H. KO
VICTORIO S. LANUEVO
DOUGLAS R. LAX JR.
SAMUEL S. LEE
DAVID M. LOCKHART
GIAN S. MARTIN
TIMOTHY S. MEADOR
DENISE S. MERRITT
MARK E. MOSS
SAMUEL H. MURRAY
ROBERT NAY
LEE W. NELSON
DARIN A. NIELSEN
PABLO PEREZMAISONET
KEVIN M. PIES
SCOTT RIEDEL
CHARLES B. RIZER
STEVEN J. ROBERTS
PERRY J. SCHMITT
DAVID L. SHOFFNER
JERRY C. SIEG
DAVID L. SPEARS
SID A. TAYLOR SR.
HENRY T. VAKOC
EARL W. VANDERHOFF
JOSEPH F. VIEIRA III
DAVID E. WAKE
DALLAS M. WALKER
DAVID G. WAWERU
NATHAN L. ZIMMERMAN

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203 AND 12211:

To be colonel

MICHAEL J BULLOCK
DANIEL E CAMERON
STEPHEN M DOYLE
SHERYL E GORDON
LEODIS T JENNINGS
CHRISTOPHER R KEMP
ELTON LEWIS
JAMES F MULVEHILL
RAYMOND F SHIELDS JR.
PAUL A TRAPANI

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be captain

STEPHEN M. SAIA

To be commander

LINDA C. C. CHAN
CHRISTOPHER J. COBB
KENNETH J. KELLY
FERNANDO MORENO
JOHN T. NEFF
LOREN J. STEENSON

To be lieutenant commander

RICHARD D BERGTHOLD
VORRICE J. BURKS
JACK L CARVER
LAURIE A. HALE
MELVIN J. HENDRICKS
SCOTT D. LOESCHKE
MICHAEL J LYDON
WAYNE A. MACRAE
JAMES F. MCALLISTER
CARLOS B. ORTIZ
JOHN A. RALPH
MICHAEL J. RECKLING
RANDALL H. RUSSELL
JEFFREY N. SAVILLE
MICHAEL S. SEXTON
BRIAN J. STAMM
JOHN A. SWANSON
SCOTT A SWOPE
DAVID A. TUBLEY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

ROLAND E. ARELLANO
LEA A. BEILMAN
JO A. J. BLANDO
LANNY L. BOSWELL JR.
MARK J. BOURNE
JAMES C. BRENNAN
CHRISTINE L. CONGDON
GLENN C. CONTE
ALBERT E. COOMBS
ANTHONY P. DORAN
MICHAEL E. EBY
DEMETRI ECONOMOS
ANTHONY W. FRABUTT
DAVID L. HAMMELL
LINDA S. HITE
PHILLIP E. JACKSON
WILSON G. KNIGHT
TRACY J. KOLOSIK
KIM L. LEFEBVRE
MARGARET A. LLUY
GARY W. MOSMAN
RONALD A. NOSEK JR.
REGINA P. ONAN
KELLY S. PAUL
JAMES B. POINDEXTER III
MARY C. POLKOSKI
CELIA A. QUIVERS
ROBERT A. RAHAL
DARIN P. ROGERS
MARK C. RUSSELL
WILLIAM E. SCHUTT
ALAN V. SIEWERTSEN
LESLIE L. SIMS
ANNA H. STALCUP
CARL V. TRESNAK
RESA L. WARNER
DANIEL W. WATTS
MARVA L. WHEELER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

VIDA M. ANTOLINJENKINS
STEVEN M. BARNEY
MICHAEL M. BATES
KEVIN M. BREW
KENNETH B. BROWN
FRANCIS J. BUSTAMANTE
JAMES R. CRISFIELD JR.
JEFFREY A. FISCHER
STEPHEN A. JAMROZY
RANDALL G. JOHNSON
TODD M. KRAFT
SCOTT J. LAURER
PAUL C. LEBLANC
JONATHAN S. THOW
JONATHAN H. WAGSHUL
DOMINICK G. YACONO JR.

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

JAMES J. ANDERSON
CHARLES R. BAILEY
PATRICK W. BLESCH
GEORGE D. BOWLING
CATHERINE L. BUTLER
WILBERT R. BYNUM
JAMES F. COONEY
MARK P. DIBBLE
TEDDIE L. DYSON
ANDREW C. ESCRIVA
DIONISIO S. GAMBOA
MICHAEL J. GARDELLA
RUDOLPH K. GEISLER
PAUL A. GODEK
SHAWN D. GRUNZKE
MICHAEL S. HANSEN
ERNEST D. HARDEN JR.
CARL R. HERRON
SCOTT J. HOFFMAN
ARISTIDES ILIAKIS
MICHAEL P. KOLSTER
RICKY A. KUSTURIN
THOMAS J. LACOSS
JEFFREY S. LECLAIRE
JAMES M. LOWTHER
JOSEPH F. MAHAN
MATTHEW K. MARTIN
PAUL E. MARTIN
KENNETH W. MCKINLEY
JAMES W. MELONE
MIGUEL D. MIRANO II
JOSEPH D. NOBLE JR.
DAVID C. NYSTROM
JOAN R. OLDMIXON
TIMOTHY L. PHILLIPS
MARK R. PIMPO
FRANK M. RENDON
DAWN D. RICHARDSON
WALTER W. ROBOHN
RICHARD P. RUIZ
DANIEL P. SEEP
MARCOS A. SEVILLA
MELVIN A. SHAFER
ANTHONY A. SORELL
DEBORAH A. STARK
VAUGHN L. STOCKER
KEITH E. SYKES
MICHAEL L. TAYLOR
TIMOTHY J. THATE
HARRY T. THETFORD JR.
MICHAEL E. THOMAS
BARBARA D. TUCKER
JOSEPH M. VITELLI
DEREK K. WEBSTER
DONALD J. WILLIAMS
JOHN F. ZOLLO

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

MICHAEL T. AKIN
KARLYNA L. D. ANDERSEN
JOEL M. APIDES
THOMAS E. BATES
LYNN L. BEACH
WALTER S. BEW
HEATHER I. BLOMELEY
CARLOS V. BROWN
WILLIAM C. BRUNNER
MARGARET CALLOWAY
BRETT B. CARMICHAEL
WAYNE A. CAROLEO
DAVID T. CARPENTER

BROOKS D. CASH
TIMOTHY L. CLENNEY
DAVID W. CLINE
JOHN P. COLMENARES
MICHAEL J. COLSTON
CATHERINE S. COPENHAVER
GLEN C. CRAWFORD
RHODEL F. DACANAY
MASON X. DANG
SUBRATO J. DEB
JOHN E. DEORDIO
JUDITH M. DICKERT
JEROME G. ENAD
JOSEPH W. FLANAGAN
JONATHAN T. FLEENOR
BRYAN A. FOX
MICHAEL I. FREW
DARIN S. GARNER
MARILYN L. GATES
WILLIAM R. GRAF
WALTER M. GREENHALGH
MICHAEL N. HABIBE
MARK E. HAMMETT
KEITH A. HANLEY
JENIFER L. HENDERSON
ERIC P. HOFMEISTER
MICHAEL T. HOPKINS
THANH T. HUYNH
MICHAEL M. JACOBS
GREGORY W. JONES
BENJAMIN W. JORDAN
FREDERICK C. KASS
DAVID J. KEBLISH
JOHN S. KENNEDY
WILLIAM J. KLORIG
MARK A. KOBELJA
KAREN J. KOPMANN
CHARLES S. KUZMA
PATRICK R. LARABY
CATHY T. LARRIMORE
THOMAS R. LATENDRESSE
JOSEPH T. LAVAN
PATRICK L. LAWSON
NORMAN LEE
GREGORY S. LEPKOWSKI
CON Y. LING
FRANCESCA K. LITOW
JASON D. MAGUIRE
RICHARD T. MAHON
MARTIN A. MAKELA
CHRISTOPHER J. MCARTHUR
JOHN M. MCCURLEY
FREDERICK J. MCDONALD
MICHAEL T. MCHALE
DAVID B. MCLAREN
ROBERT D. MENZIES
MARK E. MICHAUD
ALLEN O. MITCHELL
MELISSA A. MOHON
JOHN B. NEWMAN
SANDOR S. NIEMANN
DONALD E. OLOFSSON
JOHN J. PAPE
RICHARD J. PAVER
TODD B. PETERSON
DAVID S. PLURAD
TIMOTHY J. POREA
MAE M. POUGET
KENNETH G. PUGH
SCOTT W. PYNE
CHRISTOPHER S. QUARLES
RICHARD D. QUATTRONE
TIMOTHY R. QUINER
JEFFREY D. QUINLAN
JUAN P. RIVERA
STACY J. ROGERS
MARY A. RONALD
JASON J. ROSS
MARY K. RUSHER
JOHN W. SANDERS III
ELIZABETH K. SATTER
BRYAN P. SCHUMACHER
JAVAID A. SHAD
RICHARD L. SIEMENS
ANDREW E. SIMAYS
ROBERT C. STABLEY
ZSOLT T. STOCKINGER
MICHAEL J. STRUNC
KEITH A. STUESSI
WILLIAM SUKOVICH
DAVID A. TARANTINO JR.
GREGORY J. TARMAN
MICHAEL D. THOMAS
WILLIAM E. TODD
JOHN M. TRAMONT
SAMUEL K. TSANG
GUIDO F. VALDES
PETER WECHGELAER
CHRISTOPHER WESTROPP
PERRY N. WILLETTE
ROBERT O. WOODBURY
CLIFTON WOODFORD
JON S. WOODS
PETER G. WOODSON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

RICHARD E. AGUILA
MARC E. A. ARENA
ELDON G. BLOCH
SIDNEY L. BOURGEOIS
JERRY N. BURTON JR.
STEPHEN L. CHRISTOPHER
SCOTT A. CURTICE
TODD L. EVANS
RODNEY L. GUNNING
BRADLEY H. HAJDIK
SHEHERAZAD A. HARTZELL
MILAN J. JUGAN JR.
DONALD A. LONERGAN
THOMAS F. MOONEY III
BRENT E. NEUBAUER
CHARLES W. PATTERSON
THOMAS M. PRATER
SCOTT D. THOMAS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LINDA M. ACOSTA
UNKYONG S. ARCHER
KHIN AUNGTHEIN
EDWARD S. BATES JR.
ALLISON R. BEATTY
TERRY V. BOLA
ELIZABETH N. BOULETTE
JANET M. BRADLEY
MARY A. BRANTLEY
CATHALEEN A. CANLER
DAVID T. CASTELLANO
JAY E. CHAMBERS
KATHERINE H. CONNOLLY
RACHELE A. CRUZ
DEBRA A. DELEO
DAVID A. FARMER
TRISHA L. FARRELL
TERENCE FINNERTY
SHELLY A. FOLTZ
ANN L. FORREST
JEAN B. FREEMAN
CYNTHIA J. GANTT
DEBRA C. GARDNER
JANET M. K. GEHRING
KIRSTEN L. HARVISON
SANDRA HEARN
JAMES T. HOSACK
LORETTA A. HOWERTON
RICHARD W. JOHNSON
RICHELLE L. KAY
TINA L. KEY
LORI J. KRAYER
RICHARD S. MAFFEO
JOHN T. MANNING
SANDRA A. MASON
CAROLYN R. MCGEE
BRADLEY A. MCGLOIN
MICHELLE L. MCKENZIE
CHRISTINE T. MILLER
ANNE M. MITCHELL
JOLENE M. MOORE
ALICIA A. MORRISON
JOHN H. NAGELSCHMIDT
IRENE M. NIEDERHUT
ANGELA S. NIMMO
MARY K. NUNLEY
MARIA E. PERRY
SABRINA L. PUTNEY
ANN RAJEWSKI
SHIRLEY L. RUSSELL
AMANDA G. SIERRA
HARRY F. SMITH III
MARK E. SNIDER
CONSTANCE E. STAMATERIS
JAMES X. STOBINSKI
THOMAS A. SWEET
SARA J. THELIN
NELIDA R. TOLEDO
CYNTHIA D. TURNER
VICKIE A. WEAVER
RAYMOND D. WILSON
HILARY V. WONG
ANNA L. WRIGHT
JOAN L. WRIGHT

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LEANNE K. AABY
TONY L. AMMONS JR.
SHAWN J. BERGAN
KEVIN L. BROWN
DAVID R. BUSTAMANTE
LEONARD W. W. COOKE
THOMAS F. GEORGE
JOSEPH E. GREALISH
BETH L. HARTMANN
LEWIS S. HURST
STEPHANIE M. JONES
CHRISTOPHER J. LACARIA
IAN C. LANGE
CHRISTOPHER S. LAPLATNEY
CHRISTINE W. LONIE
SCOTT W. LOWE
MARKO MEDVED
ROBERT N. MORRISON
SHARON B. OBY
PAUL J. ODENTHAL
KENNETH T. OGAWA
LAURENCE J. READAL
CHARLES R. REUNING
DAVID J. ROBILLARD
DALE M. ROHRBACH
THOMAS P. SCHEUERMANN
EDWARD G. SEWESTER
CHARLES M. SMITH
SCOTT G. SMITH
MATTHEW E. SUESS
MARSHALL T. SYKES
DANIEL J. THERRIEN
ROBERT B. TOMIAK
DEAN A. TUFTS
RICHARD L. WHIPPLE
GARY L. WICK
MICHAEL J. ZUCCHERO

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

LEE A. AXTELL
MILES J. BARRETT
ROBERT A. CALLISON
JOHN D. DENTON
TIMOTHY R. EICHLER
BRYAN K. FINCH
WAYNE R. FREIBERG
MILTON D. GIANULIS
DAVID L. GIBSON
THOMAS P. HALL
VAL J. JENSEN
RONALD KAWCZYNSKI
MICHAEL S. KLEPACKI
TIMOTHY J. KOESTER
GLEN A. KRANS
GUY M. LEE
ARTHUR H. LOGAN
ROBERT K. MCGAHA
MICHAEL A. MIKSTAY
DAVID A. MUDD
WESLEY B. SLOAT
JOHN A. SWANSON
GREGORY N. TODD
DALE C. WHITE
DENNIS W. YOUNG

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, July 31, 2003 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

AUGUST 1

9:15 a.m.
Commission on Security and Cooperation in Europe
To hold hearings to examine issues with respect to missing persons in Southeast Europe.
334 CHOB

9:30 a.m.
Judiciary
To hold hearings to examine the Greater Access to Affordable Pharmaceuticals Act.
SD–226

SEPTEMBER 16

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to receive the legislative presentation of The American Legion.
SH–216

POSTPONEMENTS

SEPTEMBER 9

2:30 p.m.
Energy and Natural Resources
National Parks Subcommittee
To hold hearings to examine S. 808, to provide for expansion of Sleeping Bear Dunes National Lakeshore, S. 1107, to enhance the Recreational Fee Demonstration Program for the National Park Service, and H.R. 620, to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist the State of California or local educational agencies in California in providing educational services for students attending schools located within the Park.
SD–366