H.R. 4133. An act to designate the United States courthouse to be constructed at the corner of Superior and Huron Roads, in Cleveland, Ohio, as the ''Carl B. Stokes United States Courthouse.''

H.J. Res. 70. Joint Resolution authorizing the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr. in the District of Columbia or its environs.

At 2 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3219. An act to provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.

H.R. 4088. An act to provide for the conveyance of certain property from the United States to Stanislaus County, California.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 229. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 1004.

The message further announced that the House agrees to the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1004) to authorize appropriations for the United States Coast Guard, and for other purposes.

At 2:52 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 543. An act to reauthorize the National Marine Sanctuaries Act, and for other purposes.

H.R. 3632. An act to amend title XIX of the Social Security Act to repeal the requirement for annual resident review for nursing facilities under the Medicaid program and to require resident reviews for mentally ill or mentally retarded residents when there is a significant change in physical or mental condition.

H.R. 4165. An act to provide for certain changes with respect to requirements for a Canadian border boat landing permit pursuant to section 235 of the Immigration and Nationality Act.

At 5:54 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H. J. Res. 197. Joint resolution waiving certain enrollment requirements with respect to any bill or joint resolution of the One Hundred Fourth Congress making general or continuing appropriations for fiscal year 1997.

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

H.R. 3452. An act to make certain laws applicable to the Executive Office of the President, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on September 28, 1996 he had presented to the President of the United States, the following enrolled bills:

S. 1675. An act to provide for the nationwide tracking of convicted sexual predators, and for other purposes.

S. 1802. An act to direct the Secretary of the Interior to convey certain property containing a fish and wildlife facility to the State of Wyoming, and for other purposes.

S. 1970. An act to amend the National Museum of the American Indian Act to make improvements in the Act, and for other purposes.

S. 2085. An act to authorize the Capitol Guide Service to accept voluntary services.

S. 2101. An act to provide educational assistance to the dependents of Federal law enforcement officials who are killed or disabled in the performance of their duties.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. COHEN:

S. 2153. A bill to designate the United States Post Office building located in Brewer, Maine, as the ''Joshua Lawrence Chamberlain Post Office Building'', and for other purposes; considered and passed.

By Mr. SPECTER (for himself, Mr. JOHNSTON, Mr. HEFLIN, and Mr. SANTORUM):

S. 2154. A bill to provide equitable treatment for pharmaceutical patents on certain pipeline drugs in order to encourage continued development of new drugs, and for other purposes; to the Committee on the Judiciary.

By Mr. LEAHY (for himself, Mr. MCCONNELL, and Mr. HARKIN):

S. 2155. A bill to authorize the Secretary of Agriculture to transfer funds to the farmers' market nutrition program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. STEVENS:

S. 2156. A bill to protect the rights of the States and the people from abuse by the Federal Government; to stregthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the Tenth Amendment to the Constitution; and for other purposes; to the Committee on Governmental Affairs.

By Mr. SMITH:

S. 2157. A bill to amend the Solid Waste Disposal Act to provide for the efficient collection and recycling of spent lead-acid batteries and educate the public concerning the collection and recycling of such batteries, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LOTT:

S. 2158. A bill to set the time for counting electoral votes; considered and passed.

S. 2159. A bill to set the time for the convening of the 105th Congress; considered and passed.

By Mr. LIEBERMAN:

S. 2160. A bill to provide for alternative procedures for achieving superior environmental performance, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWN (for himself and Mr. SIMON):

S. Res. 303. A resolution commending the Governments of Hungary and Romania on the occasion of the signing of a Treaty of Understanding, Cooperation and Good Neighborliness; considered and agreed to.

By Mr. LOTT (for himself and Mr. GRASSLEY):

S. Res. 304. A resolution approving certain regulations to implement provisions of the Congressional Accountability Act of 1995 relating to labor-management relations with respect to employing offices of the Senate and employees of the Senate, and for other purposes; considered and agreed to.

By Mr. PRYOR (for himself, Mr. BUMPERS, Mr. JOHNSTON, Mr. BREAUX, and Mr. FORD):

S. Res. 305. A resolution to designate Saturday, November 30, 1996, as ''National Duck Calling Day''; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself, Mr. JOHNSTON, Mr. HEFLIN and Mr. SANTORUM):

S. 2154. A bill to provide equitable treatment for pharmaceutical patents on certain pipeline drugs in order to encourage continued development of new drugs, and for other purposes; to the Committee on the Judiciary.

THE PHARMACEUTICAL EQUITY ACT OF 1996

Mr. SPECTER. Mr. President, Pennsylvania is proud to host some of the world's most innovative pharmaceutical, biotechnology, medical device and health care product companies. The United States, of course, is the world's leader. These companies are developing the new medicines and new products that are extending and improving life for people around the world.

Current law often unnecessarily slows the introduction of new technologies and new medicines and increases costs to producers, and therefore, ultimately, to consumers. I have consulted with consumer and other patient advocacy representatives, as well as pharmaceutical manufacturers and the biotechnology industry, in an effort to gather sufficiently diverse and constructive suggestions for meaningfully addressing this problem.

While this is certainly an issue critical to Pennsylvania's economic future, it is most of all a critical issue for our citizens who suffer from costly and debilitating conditions for which no adequate drug therapies exist today, including Alzheimer's, AIDS, heart disease, cancer, et cetera. We cannot, and should not, keep these patients waiting any longer than absolutely necessary.

We have a very basic problem in America about research expenditures for drugs that benefit sick people. These drugs benefit everybody, particularly the elderly and the young. We need medical research. We need these

wonder drugs to be produced. It is a matter of fairness as to how we are going to compensate those who produce them. If we are to have these drugs for consumers, we will have to be able to pay for them. If we are to have the kind of research, productivity, and the great miraculous advances in medical science, we are simply going to have to ensure a reasonable rate of return on the patent period.

The purpose of the legislation I am introducing today, the Pharmaceutical Equity Act of 1996, is to provide a one-time adjustment to the patent terms of certain drugs that received unfair treatment as a result of the Drug Price Competition and Patent Term Restoration Act of 1984 (the Hatch–Waxman Act). Where applicable, these drugs would receive a 2-year extension of their patent terms. My legislation is intended to provide regulatory relief on a principled basis, as opposed to a piecemeal effort to address these concerns.

Under the Hatch–Waxman Act, Congress provided patent term extensions to restore part of the patent lives of drugs that were lost due to approval time lags at the FDA. The Hatch–Waxman Act provides up to 5-year extensions for most drugs. However, the statute also limited the patent term extension to 2 years for any drugs that had already begun clinical trials before September 24, 1984, and for which a patent had already been issued. Drugs falling into this category are often referred to as the pipeline drugs because they were in the regulatory pipeline at the FDA upon enactment of the Hatch–Waxman Act.

In making the distinction between pipeline drugs and other drugs in 1984, Congress believed that pipeline drugs would receive FDA approval shortly after 1984 and would not require lengthy patent term extensions. Although FDA approval times improved generally, for several drugs the delays were inordinantly long, in some cases involving over 10 years of FDA review time. As a result, these drugs lost critical portions of their patent terms. Therefore, the limited 2-year Hatch–Waxman patent extension for these drugs simply does not adequately compensate these companies for the lengthy regulatory delays incurred, particularly when other similarly situated companies with non-pipeline drugs could receive patent extensions as long as 5 years for such delays.

The Pharmaceutical Equity Act covers any pipeline drug patent where the New Drug Application [NDA] for the drug was reviewed by the FDA for more than 5 years and where the total review time at the FDA, which includes the clinical trials for investigational new drugs [IND], exceeded 10 years. This limited extension period would thus only apply in those egregious cases where FDA approval times far exceeded average approval delays for other drugs. Even if granted, the additional patent extension would also still be less than the maximum 5-year extension allowable for post-pipeline drugs suffering FDA delays.

This legislation is not intended to grant an extension to scores of drug patents. Rather, it will only apply in limited circumstances where FDA delays were inordinate long.

One of the fundamental powers assigned to Congress under article I, section 8 of the Constitution, is the power to promote the progress of science by securing for limited times to inventors the exclusive right to their discoveries. This is a power which carries with it a tremendous obligation.

In the pharmaceutical arena, for example, this obligation includes the need to ensure that our laws encourage the development of life-saving and life-enhancing new drugs and technologies. My legislation fulfills this obligation by providing equitable treatment for pharmaceutical innovators, including the appropriate degree of market incentives for new innovation.

Unless we have an equitable system of patent protection, including a mechanism for remedying delays by the FDA which deprive patent holders of their full patent terms, we will undermine the very incentives the law intends to give to research and development companies that undertake the enormously expensive and risky process of searching for the wonder cures of tomorrow.

There should be no misunderstanding about the source of drug innovation. The vast majority of new drugs are discovered and developed by private for-profit research-based pharmaceutical companies. Incredibly, 90 percent of FDA-approved drugs that consumers use for every type of disease, from cholera to cancer, were first synthesized by private industry.

A recent survey by the Pharmaceutical Research & Manufacturer's Association [PhRMA] shows that research-based pharmaceutical companies are in the process of developing 215 drugs for over 20 different types of cancer. There is also an enormous research and development effort aimed at combating AIDS and AIDS-related conditions, with more than 110 products at various stages of development. Many more medicines for a wide range of diseases and human afflictions are also being developed, including 132 drugs for major diseases of aging, 118 for neurological disorders, 107 for heart disease and strokes, and 64 for mental illness. The list for other major medical ailments is virtually endless.

Such innovation does not come cheaply. A recent study by the Boston Consulting Group found that pharmaceutical companies expend approximately $500 million and 15 years bringing a new drug to market. These innovative drug research companies will spend nearly $16 billion in research and development costs this year. That is more than the entire government budget for biomedical research, and represents an increase of 9.6 percent over 1995 levels. These pharmaceutical companies spend an average of almost 20 percent of their income from sales on research.

Part of this research and development expense is due to the complexity of the diseases being fought—for every 6,000 new drugs that are researched and developed, only a single drug emerges as an approved new product. A large portion of the expense, however, is also due to the sheer volume and duration of FDA approval requirements for safety and efficacy. New drug applications by pharmaceutical innovators typically require hundreds of thousands of pages of information and years of clinical trials to complete. The time required to complete the clinical trials for new drugs has ballooned from an average of 2.5 years in the 1960's to nearly 6 years in the 1990's.

The high cost of drug development and the limited numbers of drugs that receive approval and actually are available to the public combine to create a system where the few successful drugs must pay for all the research and development expended on those drugs that did not succeed. More significant from a consumer standpoint, however, these successful drugs provide profits and incentives which support the research and development of the new cures for the diseases of tomorrow.

Apart from the immeasurable benefits people around the world enjoy from improved health and the new cures made possible by pharmaceutical innovation, we must also realize that the pharmaceutical producers themselves provide great economic benefits to communities across the United States. One of these benefits is through high-paying, quality jobs.

Recent data indicate that pharmaceutical companies employ over 33,000 people in my State of Pennsylvania. Nationally, these companies provide over 150,000 jobs. A large portion of these jobs are scientific jobs in research and development, exactly the types of jobs we are trying to create to maintain American competitiveness in a global marketplace.

Another economic benefit is through expanded exports. In 1994, the U.S. exported $7.565 billion in pharmaceutical products around the world.

Use of proper drug treatments can also save consumers and the government millions if not billions of dollars every year. Experts have calculated that pharmaceutical products are often far more cost-effective at treating disease than alternative treatments such as surgery or hospitalization. Several examples illustrate just how much money families can save through drug therapy in particular circumstances.

Cancer patients whose immune systems are weakened by chemotherapy have been helped by a drug containing a colony stimulating factor. The treatment saves $30,000 per patient in hospitalization costs for bone marrow transplants.

For heart disease, a New England Journal of Medicine study showed that

patients on ACE inhibitor drugs for heart failure avoided nearly $9,000 per patient in hospitalization costs over a 3-year period. Nationwide, the potential savings from these drug treatments are up to $2 billion per year. More importantly, however, the drug also reduced patient deaths by over 15 percent.

Drug therapy for schizophrenia, according to a 1990 study, has enabled many patients to receive treatment in nonhospital settings. Although annual drug costs for such treatment are approximately $4,500, the savings are tremendous when compared with annual costs of over $73,000 for treatment in state mental hospitals.

Post-surgical recuperation is another area where the use of immuno-suppressive drugs has improved the effectiveness of treatment and reduced costs. In organ transplants, for example, success rates were dramatically higher with the use of these drugs. One drug was found to reduce average hospital stays by as much as 10 days, and also reduced re-hospitalizations after surgery.

In the case of ulcers, the advent of antacids and other products have led to a decline in surgeries from 97,000 in 1977 to 19,000 in 1987. The annual cost of drug therapy for each patient amounted to $900, versus approximately $28,000 for surgery. In the aggregate, use of these antacids and other products reduced medical costs by approximately $224 million per year.

The evidence is irrefutable about the tremendous benefit our society enjoys, from the physiological to the financial, from pharmaceutical innovation. Without a strong and fair patent system which provides the necessary incentives to continue this innovation, we will lose these benefits. The Pharmaceutical Equity Act, with its narrowly-targeted fix of an unanticipated problem, will take an important step toward restoring the equity and incentives to ensure that we enjoy those benefits for many years to come.

Mr. President, to reiterate, this legislation would provide fairness to pharmaceutical companies which research and develop lifesaving and health-improving pharmaceutical products. I am offering this legislation, and I do so at the very end of the legislative session.

The point of this legislation is to deal with the problem which arises when the Food and Drug Administration [FDA] delays approval on patented pharmaceutical products for sometimes as long as 17 years, 11 years, very lengthy periods of time. As I said earlier, these delays affect not only the companies which produce these drugs, but they also affect the consumers—people suffering from heart ailments, schizophrenia, ulcers, AIDS, Alzheimer's disease—the whole panoply of ailments that are affected when these products are not brought to market.

It takes $500 million and 15 years to bring a new drug to market, and out of every 6,000 drugs subjected to research and development, only one new product is produced. In 1996 alone, some $16 billion will be spent in private investments by the pharmaceutical industry.

I speak as a U.S. Senator, because it is a national issue. I also speak as a Pennsylvania Senator, where we have so many companies in my State which are involved in developing and producing new pharmaceutical products.

Quite a number of Senators have expressed an interest in cosponsoring this legislation, but we have not had a chance to work through all the details. I wanted to put it in the RECORD at this time so it may be considered on all sides, by consumer groups, by the pharmaceutical industry and by my colleagues. I do so in the wake of a contentious issue which was raised on a product called Lodine, manufactured by my constituent, American Home Products, in a place I visited recently in the Philadelphia suburbs.

The extension was added for Lodine in a way that was not known to the managers of the recent health reform bill and was stricken on the floor of the Senate. Some had contended that it was done secretly. I said at that time that I was not a party to that and would not be a party to that and, in fact, had raised this issue in a public way in the Agriculture appropriations conference report. What should be done is this issue should be tackled in a principled way by considering, not simply one product, but by considering the industry as a whole. This legislation seeks to advance and extend the patent time for some 2 years, not 5 years, which is present under other circumstances by Hatch–Waxman, but for a more limited period of only 2 years.

This is a matter of enormous importance to consumers. My record of protecting consumer interests is second to none in the U.S. Congress. In looking out for the protection and encouragement of pharmaceutical advances, I have the consumers at the top of the list. That is what the advances are for—for people to extend lives and to save lives. If we are to have these products, we are going to have to have a return on the enormous capital investment. When market approval on a patented drug is delayed for as long as 17 years, 11 years, other protracted periods of time, these products simply cannot be produced.

Mr. President, I ask unanimous consent that the full text of my bill be printed in the RECORD.

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

S. 2154

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 ''Pharmaceutical Equity Act of 1996''.

SEC. 2. EXTENSION OF PATENTS RELATING TO CERTAIN PIPELINE DRUGS.

(a) IN GENERAL.—The term of any patent in force on September 24, 1984, and on the effective date of this Act, that claims a drug product, a method of using a drug product, or a method of manufacturing a drug product, shall be extended pursuant to subsection (b) from the expiration date determined pursuant to section 154 of title 35, United States Code, if:

(1) an exemption described in section 156(g)(1)(B)(i) or section 156(g)(4)(B)(i) of title 35, United States Code, became effective for the drug product before September 24, 1984;

(2) the regulatory review period set forth in section 156(g)(1)(B) or section 156(g)(4)(B) of title 35, United States Code, for the drug product, exceeded 120 months; and

(3) the regulatory review period described in section 156(g)(1)(B)(ii) or section 156(g)(4)(B)(ii) of title 35, United States Code, for the drug product, exceeded 60 months.

(b) TERM.—The term of any patent described in subsection (a) shall be extended by a period of two years.

(c) INFRINGEMENT.—During any extension granted pursuant to subsection (b), the rights in the patent so extended shall be determined in accordance with section 156(b) of title 35, United States Code.

(d) DEFINITION.—For the purpose of the Act, the term ''drug product'' shall be defined in accordance with section 156(f)(2) of title 35, United States Code.

(e) NOTIFICATION.—No later than 90 days after the date of enactment of this Act, the patentee of a patent extended pursuant to subsection (b) shall notify the Commissioner of Patents and Trademarks of the number of any patent extended pursuant to subsection (b). On receipt of this notice, the Commissioner shall confirm the patent extension by placing a notice thereof in the official file of the patent, and publishing an appropriate notice of this extension in the Official Gazette of the Patent and Trademark Office.

By Mr. LEAHY (for himself, Mr. MCCONNELL and Mr. HARKIN):

S. 2155. A bill to authorize the Secretary of Agriculture to transfer funds to the farmers' market nutrition program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE FARMERS' MARKET NUTRITION PROGRAM ACT OF 1996

Mr. LEAHY. Mr. President, I am very happy to join with Senator MCCONNELL, who is chairman of the Nutrition Subcommittee of the Senate Agriculture Committee, in introducing this bill to permit the Secretary of Agriculture to transfer up to $2 million of additional funding to the WIC Farmers' Market Program upon consultation with the Appropriations Committees of the other body and of the Senate.

This program was funded up to $6.75 million in this year's appropriations bill. We greatly appreciate that the appropriations committees were able to provide that funding.

We are advised by the Department of Agriculture that because of the way the language is technically worded that USDA cannot reprogram additional funds into that WIC Farmers' Market Program. As it turns out some states need additional funding as my colleague Senator MCCONNELL points out in his floor statement and that a few States need funding to set up a WIC Farmers' Market Program.

We recognize that we will need the support of all Senators to pass this bill at this stage. This bill does not mandate the spending of additional funds,

it simply permits USDA to transfer up to $2 million to this program if the Secretary determines that such transfer is a good idea. We assume they will fully consult with the appropriate members of the Appropriations Committees to assure that this is done in a manner that is satisfactory to them.

It is important to us that this consultation take place.

The WIC Farmers' Market Program provides vouchers to low-income families who are on the WIC program. They can use the vouchers to buy fresh fruits and vegetables or other farm products at farmers' markets. The authorizing law, passed without objection in the Senate, mandates that States contribute a significant share of the cost of the program. It thus leverages Federal money with State and local funding to provide farm products to children and their parents on the WIC program.

This program has been an incentive in my home State of Vermont for farmers to work together and set up additional farmers' markets. This has been good for local communities, for the farmers selling their products and for families on the WIC program.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2155

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

SECTION 1. AUTHORITY TO TRANSFER FUNDS TO FARMERS' MARKET NUTRITION PROGRAM.

For fiscal year 1997, the Secretary of Agriculture may transfer after consultation with the appropriations committees of the House of Representatives and the Senate, from any funds available to the Secretary, up to $2,000,000 to the farmers' market nutrition program under section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). Amounts authorized to be transferred under the preceding sentence shall be in addition to any amounts authorized to be made available to the program under title IV of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (110 Stat. 1590).

Mr. MCCONNELL. Mr. President, today along with my colleague Senator LEAHY, we are introducing legislation that will permit the Secretary of Agriculture authority to transfer funds to the WIC Farmers' Market Nutrition Program.

The WIC Farmers' Market Nutrition Program [FMNP] has become a very successful program in assisting low-income families, farmers, and local economies.

A total of 28 States and three Indian tribal organizations now participate in the FMNP. Because of the limitation on funding, several States, including Kentucky, have been restricted in the size of the program that they can offer. Several States would like the opportunity to expand this program based on their experience and feedback from farmers that participate.

For a State to have a FMNP requires the filing of an application in the fall with USDA, a commitment that the State will match 30 percent of the total Federal funds with either cash or in-kind services and support.

The benefits of FMNP are significant. WIC participants enhance the nutrition in their diet from of fresh fruits and vegetables. In fiscal year 1995 the FMNP served nearly 1 million low-income mothers and children participating in the WIC program. As a result of the FMNP: 71 percent of the WIC participants ate more fresh fruits and vegetables; 40 percent tried fruits and vegetables they had never eaten before; 48 percent spent cash and/or food stamps in addition to their FNMP coupons; 66 percent plan to continue shopping at farmers markets and; 72 percent plan to eat more fresh fruits and vegetables year round.

Farmers' incomes will increase because of the new market for their products. A survey of participants in 1995 revealed that: 84 percent of farmers increased their sales; 23 percent increased their fruit and vegetable production; 36 percent grew additional types of fruits and vegetables and; 37 percent said they would increase their production in 1996.

The Kentucky Farm Bureau has initiated a new program to boost sales of Kentucky farm products involving 25 roadside farm markets. Studies confirm that consumers prefer to buy locally-grown produce.

This is another example of organizations and State agencies working together to provide a service to consumers, it introduces fresh fruit and vegetables that are locally grown, and it enhances farmer income.

Mr. President, this is a good bill that benefits everyone and I hope we are able to pass this important legislation before we adjourn.

Mr. HARKIN. Mr. President, this legislation providing transfer authority to the Secretary of Agriculture is designed to help address the wide gap that exists between the need within the WIC Farmers' Market Nutrition Program and the level of resources that we have been able to appropriate for it. I welcome this opportunity to join as an original cosponsor of this bill.

The WIC Farmers' Market Nutrition Program has been an immensely popular and successful initiative, benefiting both farmers and WIC recipients. In fiscal 1995, nearly 1 million low-income mothers and children received benefits allowing them to purchase fresh, nutritious unprepared foods at 1,143 qualifying farmers' markets that were supplied by over 8,000 farmers. Currently, 27 States, including my State of Iowa, along with the District of Columbia and three American Indian tribal organizations, participate in the WIC Farmers' Market Nutrition Program. To take part, States must agree to provide at least 30 percent of the total cost of the program through State, local, or private funds.

The nutritional benefits of the WIC Farmers' Market Nutrition Program are excellent. The 1995 survey showed that among WIC participants receiving farmers' market benefits, 71 percent ate more fresh fruits and vegetables, 40 percent tried fruits and vegetables they had never eaten before, 48 percent spent cash or food stamps in addition to their WIC farmers' Market coupons or checks, 66 percent planned to continue shopping at farmers' markets, and 72 percent planned to eat more fresh fruits and vegetables year round.

The benefits to farmers are also substantial. Over $9 million was earned in 1995 by the more than 8,000 participating farmers. The 1995 survey also showed that 84 percent of participating farmers increased their sales, 23 percent increased their fruit and vegetable production, 36 percent grew additional types of fruits and vegetables, and 37 percent planned to increase their production in 1996.

In my State of Iowa the WIC Farmers' Market Nutrition Program has been very popular and successful. There is a great deal of interest in expanding the number of WIC recipients and farmers' markets that may take part, but the limited available Federal funding has prevented expansion. This situation also exists in the other States now in the program. Of any additional Federal funding provided for the Farmers' Market Nutrition Program, 75 percent would go to States that currently participate in it, with 25 percent to be used for adding new States.

Unfortunately, the lack of needed Federal funding has prevented a number of States from joining the WIC Farmers' Market Nutrition Program. Thirteen other States, along with other American Indian tribal organizations, have expressed interest in offering the program.

This legislation would allow, but not require, the Secretary of Agriculture to transfer funds within the Department of Agriculture budget to provide up to $2 million in additional funding for the WIC Farmers' Market Nutrition Program, where it could be put to very good use in expanding the number of WIC recipients, farmers, and farmers' markets participating in this outstanding program.

I urge my colleagues to support this important bill.

By Mr. STEVENS:

S. 2156. A bill to protect the rights of the States and the people from abuse by the Federal Government; to strengthen the partnership and the intergovernmental relationship between State and Federal Governments; to restrain Federal agencies from exceeding their authority; to enforce the 10th amendment to the Constitution; and for other purposes; to the Committee on Governmental Affairs.

THE TENTH AMENDMENT ENFORCEMENT ACT OF 1996

Mr. STEVENS. Mr. President, the 10th amendment was a promise to the

States and to the American people that the Federal Government would be limited, and that the people of the States could, for the most part, govern themselves as they saw fit.

Unfortunately, in the last half century, that promise has been broken. The American people have asked us to start honoring that promise again: to return power to State and local governments which are closer to and more sensitive to the needs of the people.

The 104th Congress and in particular, the Unfunded Mandates Reform Act, started to shift power out of Washington by returning it to our States and to the American people. As chairman of the Governmental Affairs Committee, I wanted to continue its shift of power. More than a dozen colleagues and I introduced S. 1629 on March 20 of this year. Within 5 months of its introduction, the bill had 32 cosponsors. On May 8 of this year, a House companion bill was also introduced.

I want to introduce a bill today which is the product of work by the Governmental Affairs Committee over the past several months. Unfortunately, the session is ending before we can complete action. However, before adjourning I wanted to provide a summary of the committee's consideration of this issue, and put forward a bill that reflects revisions made as a result of our hearings and discussions with interested parties. The legislation that I offer today is a starting point for when we reconvene next year. This is an important issue and I intend to pursue it in the next Congress.

The purpose of out legislation is to return power to the States and to our people by placing safeguards in the legislative process, by restricting the power of Federal agencies and by instructing the Federal courts to enforce the 10th amendment.

This would be accomplished in five ways. The act includes a specific congressional finding that the 10th amendment means what it says: The Federal Government has no powers not delegated by the Constitution, and the States may exercise all powers not withheld by the Constitution.

The act states that Federal laws may not interfere with State or local powers unless Congress declares its intent to do so and Congress cites its specific Constitutional authority to do so.

The act gives Members of the House and Senate the ability to raise a point of order challenging a bill that lacks such a declaration or that cites insufficient constitutional authority.

The act requires that Federal agency rules and regulations not interfere with State or local powers without Constitutional authority cited by Congress. Agencies must allow States notice an opportunity to be heard in the rulemaking process.

The act, further, directs courts to strictly construe Federal laws and regulations that interfere with State powers, with a presumption in favor of State authority and against Federal preemption.

During the course of the past year, we received bipartisan expressions of support from many Governors and State attorneys general, State legislatures, groups including the National Conference of State Legislatures [NCSL] and the Council of State Governments [CSG].

As the Supreme Court stated in 1991 when Justice Sandra Day O'Connor delivered the majority opinion of the court in the case Gregory versus Aschroft:

> If Congress intends to alter the usual constitutional balance between the states and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute. Congress should make its intention clear and manifest if it intends to preempt the historic powers of the States. In traditionally sensitive areas such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.

The Tenth Amendment Enforcement Act that I have introduced will prevent overstepping by all three branches of the Federal Government, and will focus attention on what State and local officials have been advocating for so long: the need to return the power of our democracy to the States and to our people.

The Governmental Affairs Committee held three hearings on the Tenth Amendment Enforcement Act:

March 21, 1996, featured Senators Dole, HATCH, and NICKLES. Attorneys general from Virginia and South Carolina, the solicitor general of Colorado, and elected representatives from Alaska, Ohio, and New York appeared, as well as Professors Nelson Lund and John Kincaid. Senator Dole said:

> I don't care what your party is. This isn't a Republican or a Democratic issue. Even the President has said ''The era of big government is over.'' . . . This is a bipartisan issue and this is a bipartisan bill.

June 3, 1996 in Nashville, TN, cochaired by Senator THOMPSON, included elected representatives for Tennessee State and local governments, as well as the director of the Tennessee Advisory Council on Intergovernmental Relations and the deputy director of the Tennessee Division of Water Supply. This hearing enlightened us to the wisdom that resides in Tennessee. State legislators, mayors, and administrators know how to solve most problems, but Federal overreaching often prevents them from doing that. One of our witnesses offered an update on a familiar saying in Washington. To this Tennessean, it's not just all politics that are local, ''All solutions are local.''

July 16, 1996, testimony was presented by NCSL President-Elect Michael Box and constitutional lawyer Roger Marzulla speaking in favor of the bill, while Professors Mary Brigid McManamon and Ed Rubin spoke in opposition. Mr. Marzulla pointed out that Congress is the only branch of the Federal Government that does not analyze the source of its power before it acts. Courts and Federal agencies both do. We in Congress can do our jobs better by looking at our constitutional jurisdiction and authority first, then exercising or power appropriately to solve the Nation's problems.

Let me conclude by saving, as a result of our work throughout this year and with input form the National Conference of State Legislatives, we have made the following changes to the Tenth Amendment Enforcement Act.

We have removed the supermajority requirement on the point of order. It would take a simple majority to remove the point of order, not just a supermajority.

It will require the Congressional Research Service to report on Federal preemption at the close of each Congress. It will exempt participation by State officials in agency rulemaking from the Federal Advisory Committee Act and allow State and Federal officials to work together on preemption issues without following the Federal Advisory Committee Act's detailed notice and reporting procedures. It would make funds received by States under Federal law subject to appropriation by the State legislatures.

I ask unanimous consent, Mr. President, the text of this bill be printed in the RECORD.

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

S. 2156

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 referred to as the ''Tenth Amendment Enforcement Act of 1996''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) in most areas of governmental concern, State governments possess both the Constitutional authority and the competence to discern the needs and the desires of the People and to govern accordingly;

(2) Federal laws and agency regulations, which have interfered with State powers in areas of State jurisdiction, should be restricted to powers delegated to the Federal Government by the Constitution;

(3) the framers of the Constitution intended to bestow upon the Federal Government only limited authority over the States and the people;

(4) under the Tenth Amendment to the Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people; and

(5) the courts, which have in general construed the Tenth Amendment not to restrain the Federal Government's power to act in areas of State jurisdiction, should be directed to strictly construe Federal laws and regulations which interfere with State powers with a presumption in favor of State authority and against Federal preemption.

SEC. 3. CONGRESSIONAL DECLARATION.

(a) IN GENERAL.—On or after January 1, 1997, any statute enacted by Congress shall include a declaration—

(1) that authority to govern in the area addressed by the statute is delegated to Congress by the Constitution, including a citation to the specific Constitutional authority relied upon;

(2) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically finds that the Federal Government is the better level of government to govern in the area addressed by the statute; and

(3) if the statute interferes with State powers or preempts any State or local government law, regulation or ordinance, that Congress specifically intends to interfere with State powers or preempt State or local government law, regulation, or ordinance, and that such preemption is necessary.

(b) FACTUAL FINDINGS.—The Congress shall make specific factual findings in support of the declarations described in this section.

SEC. 4. POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order in either the Senate or House of Representatives to consider any bill, joint resolution, or amendment that does not include a declaration of Congressional intent as required under section 3.

(b) RULEMAKING.—This section is enacted—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, and as such, it is deemed a part of the rules of the Senate and House of Representatives, but is applicable only with respect to the matters described in section 3 and supersedes other rules of the Senate or House of Representatives only to the extent that such sections are inconsistent with such rules; and

(2) with full recognition of the constitutional right of the Senate or House of Representatives to change such rules at any time, in the same manner as in the case of any rule of the Senate or House of Representatives.

SEC. 5. ANNUAL REPORT ON STATUTORY PREEMPTION.

(a) REPORT.—Within 90 days after each Congress adjourns sine die, the Congressional Research Service shall prepare and make available to the public a report on the extent of Federal statutory preemption of State and local government powers enacted into law during the preceding Congress or adopted through judicial interpretation of Federal statutes.

(b) CONTENTS.—The report shall contain—

(1) a cumulative list of the Federal statutes preempting, in whole or in part, State and local government powers;

(2) a summary of Federal legislation enacted during the previous Congress preempting, in whole or in part, State and local government powers;

(3) an overview of recent court cases addressing Federal preemption issues; and

(4) other information the Director of the Congressional Research Service determines appropriate.

(c) TRANSMITTAL.—Copies of the report shall be sent to the President and the chairman of the appropriate committees in the Senate and House of Representatives.

SEC. 6. EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

''SEC. 560. PREEMPTION OF STATE LAW.

''(a) No executive department or agency or independent agency shall construe any statutory authorization to issue regulations as authorizing preemption of State law or local ordinance by rulemaking or other agency action unless—

''(1) the statute expressly authorizes issuance of preemptive regulations; and

''(2) the executive department, agency or independent agency concludes that the exercise of State power directly conflicts with the exercise of Federal power under the Federal statute, such that the State statutes and the Federal rule promulgated under the Federal statute cannot be reconciled or consistently stand together.

''(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated and shall explicitly describe the scope of preemption.

''(c)(1) When an executive department or agency or independent agency proposes to act through rulemaking or other agency action to preempt State law, the department or agency shall provide all affected States notice and an opportunity for meaningful and timely input by duly elected or appointed State and local government officials or their designated representatives in the proceedings.

''(2) The notice of proposed rulemaking shall be forwarded to the Governor, the Attorney General and the presiding officer of each chamber of the legislature of each State setting forth the extent and purpose of the preemption.

''(3) In the table of contents of each Federal Register, there shall be a separate list of preemptive regulations contained within that Register.

''(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to participation in rulemaking or other agency action by duly elected or appointed State and local government officials or their designated representatives acting in their official capacities.

''(d) Unless a final executive department or agency or independent agency rule or regulation contains an explicit provision declaring the Federal Government's intent to preempt State or local government powers and an explicit description of the extent and purpose of that preemption, the rule or regulation shall not be construed to preempt any State or local government law, ordinance or regulation.

''(e)(1) Each executive department or agency or independent agency shall review the rules and regulations issued by the department or agency that preempt, in whole or in part, State or local government powers. Each executive department or agency or independent agency shall publish in the Federal Register a plan for such review. Such plan may be amended by the department or agency at any time by publishing a revision in the Federal Register.

''(2) The purpose of the review under paragraph (1) shall be to determine whether and to what extent such rules are to continue without change, consistent with the stated objectives of the applicable statutes, or are to be altered or repealed to minimize the effect of the rules on State or local government powers.

''(3) The plan under paragraph (1) shall provide for the review of all such department or agency rules and regulations within 10 years after the date of publication of such rules and regulations as final rules. For rules and regulations in effect more than 10 years on the effective date of this section, the plan shall provide for review within 3 years after such effective date.

''(f) Any Federal rule or regulation promulgated after January 1, 1997, that is promulgated in a manner inconsistent with this section shall not be binding on any State or local government, and shall not preempt any State or local government law, ordinance, or regulation.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

''560. Preemption of State law.''.

SEC. 7. CONSTRUCTION.

(a) IN GENERAL.—No statute, or rule promulgated under such statute, enacted after the date of enactment of this Act, shall be construed by courts or other adjudicative entities to preempt, in whole or in part, any State or local government law, ordinance or regulation unless the statute, or rule promulgated under such statute, contains an explicit declaration of intent to preempt, or unless there is a direct conflict between such statute and a State or local government law, ordinance, or regulation, such that the two cannot be reconciled or consistently stand together.

(b) CONSTRUCTION IN FAVOR OF STATES AND PEOPLE.—Notwithstanding any other provisions of law, any ambiguities in this Act, or in any other law of the United States, shall be construed in favor of preserving the authority of the States and the people.

(c) SEVERABILITY.—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 8. APPROPRIATION BY STATE LEGISLATURES.

Any funds received by a State under Federal law shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such applicable provisions of law.

By Mr. SMITH:

S. 2157. A bill to amend the Solid Waste Disposal Act to provide for the efficient collection and recycling of spent lead-acid batteries and educate the public concerning the collection and recycling of such batteries, and for other purposes; to the Committee on Environment and Public Works.

THE LEAD ACID BATTERY RECYCLING ACT

Mr. SMITH. Mr. President, I introduce lead-acid battery recycling legislation. This legislation, entitled the ''Lead-Acid Battery Recycling Act,'' is intended to strengthen and make uniform the existing lead-acid battery recycling infrastructure by establishing a mandatory recycling program for lead-acid batteries.

This legislation would prohibit the incineration and landfill disposal of used lead-acid batteries and require that these batteries be managed through a reverse distribution system. Under this legislation, used lead-acid batteries would have to be delivered in reverse order to battery retailers, wholesalers, manufacturers, recycling facilities or automotive dismantlers and ultimately to secondary smelters for recycling.

There is little doubt that lead-acid batteries are an extremely useful product. They are used in a variety of applications ranging from lighting and ignition systems for automobiles, power sources for electric vehicles, emergency lighting, and standby telecommunication systems. The lead contained in these batteries is, however, a cause for concern. Furthermore, given the fact that lead-acid batteries account for approximately 80 percent of all the lead consumed in the United States, they merit special attention.

This special attention has resulted in implementation of aggressive lead-acid battery recycling programs by many State and local governments as well as

the battery industry. Lead-acid batteries have now become the Nation's most successfully recycled commodity. According to the most recent statistics, over the last 5 years the lead-acid battery recycling rate in the United States has been at least 95 percent. This rate is unparalleled among any other recyclable commodity.

Forty-two States have adopted lead battery recycling legislation similar to this legislation. These 42 States account for over 85 percent of the Nation's population. However, there are variations among the State programs that create problems for the free flow of batteries in interstate commerce. My bill would reenforce the existing lead-acid battery recycling infrastructure now in place throughout the United States while making it more uniform nationwide.

This legislation is self-implementing, and does not require further development through regulation. Rather, this legislation builds upon the existing lead-acid battery collection and recycling system now in place in many States.

Upon enactment, the incineration and landfill disposal of used lead-acid batteries will be expressly prohibited. However, owners and operators of a municipal solid waste landfills, incinerators or collection programs that inadvertently receive used lead-acid batteries that are not readily removable from municipal solid waste would not be liable for violating the recycling provisions of this bill.

In general, this legislation would require used lead-acid batteries to be delivered to battery retailers, wholesalers, manufacturers, automotive dismantlers, secondary lead smelters, or recycling facilities regulated by a State or subject to regulation by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.). Used lead-acid batteries could continue to be lawfully collected through community collection and recycling programs set up by States and localities.

Although recycling is becoming an every day fact of life in the minds of the public, to ensure further consumer participation in the program, retailers are required to accept used lead acid batteries from consumers without requiring the purchase of a new lead-acid battery. In addition, battery manufacturers or their authorized representatives—such as shippers delivering new batteries—will be required to accept used lead-acid batteries from their customers.

I have included provisions for labeling and notification that are intended to ensure that consumers are aware of the recycling requirements under law. These provisions are not intended to affect or limit in any way the battery industry's efforts to display recycling symbols intended to encourage recycling.

Mr. President, as I discussed above, my legislation is substantially similar to battery recycling legislation adopted in 42 States. The bill is strongly supported by the Battery Council International. I believe this legislation provides a substantial improvement in our ability to remove these batteries from our Nation's solid waste stream and I would encourage all of my colleagues to cosponsor this legislation.

Mr. President, I realize that, in the twilight of this legislative session, there is virtually no chance of this bill will become law before this Congress adjourns. Yet, I am introducing it today with the desire that the States, the Environmental Protection Agency, environmental groups, and the regulated entities will have a chance to review it, judge its merits, and provide me with comments on how this legislation could be improved. It is my desire, that upon our return in January, to hold hearings on this legislation and to move it to the full Senate for passage early in 1997.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2157

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 ''Lead-Acid Battery Recycling Act''.

SEC. 2. RECYCLING OF LEAD-ACID BATTERIES.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

''SEC. 4011. RECYCLING OF LEAD-ACID BATTERIES.

''(a) DEFINITIONS.—In this section:

''(1) LEAD-ACID BATTERY.—The term 'lead-acid battery' means a battery that—

''(A) contains lead and sulfuric acid;

''(B) is used as a power source; and

''(C) is not a rechargeable battery.

''(2) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means—

''(A) solid waste generated by the general public or from a residential, commercial, institutional, or industrial source, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible material and noncombustible material such as metal and glass, including residue remaining after recyclable material has been separated from waste destined for disposal, and including waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); but

''(B) does not include—

''(i) waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

''(ii) waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604, 9606) or any corrective action taken under this Act;

''(iii) medical waste listed in section 11002;

''(iv) industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling;

''(v) recyclable material; or

''(vi) sludge.

''(3) RECHARGEABLE BATTERY.—The term 'rechargeable battery'—

''(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

''(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack; but

''(C) does not include—

''(i) a battery that is used to start an internal combustion engine or is used as the principal electrical power source for a vehicle, such as an automobile, truck, construction equipment, motorcycle, garden tractor, golf cart, wheelchair, or boat;

''(ii) a battery that is used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

''(iii) a battery that is used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

''(iv) a rechargeable alkaline battery.

''(b) PROHIBITION.—

''(1) IN GENERAL.—A person shall not—

''(A) place a lead-acid battery in a landfill;

''(B) incinerate a lead-acid battery; or

''(C) otherwise dispose of a lead-acid battery in a manner other than in accordance with subsection (c).

''(2) COMMINGLED WASTE.—A person that is an owner or operator of a municipal solid waste landfill, incinerator, or collection program that receives a lead-acid battery that—

''(A) is commingled with municipal solid waste (other than lead-acid batteries); and

''(B) is not readily removable from the waste stream,

shall not be considered to violate paragraph (1) if the owner or operator has established contractual requirements or other appropriate notification or inspection procedures that are reasonably designed to ensure that no lead-acid battery is received at, or burned in, the landfill or incinerator facility or accepted through the collection program.

''(c) LAWFUL DISPOSAL.—

''(1) BY PERSONS IN GENERAL.—

''(A) IN GENERAL.—A person (other than a person described in paragraph (2), (3), or (4)) shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

''(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

''(i) a person that sells lead-acid batteries at retail or wholesale;

''(ii) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.);

''(iii) an automotive dismantler or scrap dealer (as defined by the Administrator);

''(iv) a collection entity, program, or facility designated by a State to accept spent lead-acid batteries; and

''(v) a manufacturer of lead-acid batteries of the same general type as the type delivered.

''(2) BY RETAILERS.—

''(A) IN GENERAL.—A person that sells lead-acid batteries at retail shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

''(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

''(i) a person that sells lead-acid batteries at wholesale;

''(ii) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.);

''(iii) an automotive dismantler or scrap dealer (as defined by the Administrator);

''(iv) a manufacturer of lead-acid batteries of the same general type as the type delivered; and

''(v) a collection entity, program, or facility designated by a State to accept spent lead-acid batteries.

''(3) BY WHOLESALERS, AUTOMOTIVE DISMANTLERS, AND COLLECTION PROGRAMS, ENTITIES AND FACILITIES.—

''(A) IN GENERAL.—A person that sells lead-acid batteries at wholesale, an automotive dismantler, and a collection entity, program, or facility designated by a State to accept spent lead-acid batteries shall return a spent lead-acid battery by delivering the battery to 1 of the authorized recipients described in subparagraph (B).

''(B) AUTHORIZED RECIPIENTS.—The authorized recipients described in this subparagraph are—

''(i) a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.); and

''(ii) a manufacturer of lead-acid batteries of the same general type as the type delivered.

''(4) BY MANUFACTURERS.—

''(A) IN GENERAL.—A person that manufactures lead-acid batteries shall return a spent lead-acid battery by delivering the battery to the authorized recipient described in subparagraph (B).

''(B) AUTHORIZED RECIPIENT.—The authorized recipient described in this subparagraph is a lead smelter regulated by a State or the Administrator under this Act or the Clean Air Act (42 U.S.C. 7401 et seq.).

''(d) COLLECTION REQUIREMENTS.—

''(1) RETAILERS.—

''(A) IN GENERAL.—A person that sells or offers for sale lead-acid batteries at retail shall accept spent lead-acid batteries of the same general type as the batteries sold in a quantity that is approximately equal to the number of batteries sold.

''(B) EXEMPTION.—Subparagraph (A) shall not apply to a retailer that sells not more than 5 lead-acid batteries per month on average over a calendar year, if a collection entity, program, or facility is in operation for the collection of spent lead-acid batteries in the locality of the retailer.

''(2) WHOLESALERS.—

''(A) IN GENERAL.—A person that sells or offers for sale lead-acid batteries at wholesale shall accept spent lead-acid batteries of the same general type as the batteries sold and in a quantity approximately equal to the number of batteries sold.

''(B) ACCEPTANCE FROM RETAILERS.—A wholesaler that sells or offers for sale lead-acid batteries to a retailer shall provide for the removal of spent lead-acid batteries at the place of business of the retailer—

''(i) not later than 90 days after the retailer notifies the wholesaler of the existence of the spent lead-acid batteries for removal; or

''(ii) if the quantity of batteries to be removed is less than 5, not later than 180 days after notification.

''(3) MANUFACTURERS.—A person that manufactures lead-acid batteries shall accept spent lead-acid batteries of the same general type as the batteries sold and in a quantity approximately equal to the number of batteries sold.

''(e) NOTICE REQUIREMENTS.—

''(1) POSTED NOTICE BY RETAILERS.—A person that sells or offers for sale lead-acid batteries at retail shall post a written notice that—

''(A) is clearly visible in a public area of the establishment in which the lead-acid batteries are sold or offered for sale;

''(B) is at least 8½ inches by 11 inches in size; and

''(C) contains the following text:

''(i) It is illegal to throw away a motor vehicle battery or other lead-acid battery.

''(ii) Recycle your used lead-acid batteries.

''(iii) Federal (or State) law requires battery retailers to accept used lead-acid batteries for recycling when a lead-acid battery is purchased.

''(2) STATE REQUIREMENTS.—Nothing in paragraph (1) shall be construed to prohibit a State from requiring the posting of substantially similar notice in lieu of that required under paragraph (1).

''(3) LABELING.—

''(A) IN GENERAL.—Each lead-acid battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall bear a label comprised of—

''(i) the 3 chasing arrow recycling symbol; and

''(ii) immediately adjacent to the recycling symbol, the words 'LEAD', 'RETURN', 'RECYCLE'.

''(B) INTERNATIONAL SYMBOLS.—

''(i) APPLICATION.—On application by a person subject to the labeling requirements of this paragraph, the Administrator shall certify that a different label meets the requirements of this paragraph if the label conforms with a recognized international standard that is consistent with the overall purposes of this section.

''(ii) FAILURE TO ACT.—If the Administrator fails to act on an application under clause (i) within 120 days after the date on which the application is filed, the Administrator shall be considered to have certified that the label proposed in the application meets the requirements of this paragraph.

''(4) UNIFORMITY.—No State or political subdivision of a State may enforce any labeling requirement intended to communicate information about the recyclability of lead-acid batteries that is not identical to the requirements contained in paragraph (3).

''(5) RECYCLING INFORMATION.—Nothing in this subsection shall be construed to prohibit the display on a label of a lead-acid battery of any other information intended by the manufacturer to encourage recycling or warn consumers of the potential hazards associated with lead-acid batteries.

''(f) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this section, the Administrator shall publish in the Federal Register a notice of the requirements of this section and such other related information as the Administrator determines to be appropriate.

''(g) EXPORT FOR PURPOSES OF RECYCLING.—Notwithstanding any other provision of this section, a person may export a spent lead-acid battery for the purposes of recycling.

''(h) ENFORCEMENT.—The Administrator may issue a warning or citation to any person that fails to comply with the requirements of this section.

''(i) CIVIL PENALTY.—

''(1) IN GENERAL.—When on the basis of any information the Administrator determines that a person is in violation of this section, the Administrator—

''(A) in the case of a willful violation, may issue an order assessing a civil penalty of not more than $1,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

''(B) in the case of any violation, may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

''(2) CONTENTS OF ORDER.—An order under paragraph (1) shall State with reasonable specificity the nature of the violation.

''(3) CONSIDERATIONS.—In assessing a civil penalty under paragraph (1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

''(4) FINALITY OF ORDER; REQUEST FOR HEARING.—An order under paragraph (1) shall become final unless, not later than 30 days after the date on which the order is served, a person named in the order requests a hearing on the record.

''(5) HEARING.—On receiving a request under paragraph (4), the Administrator shall promptly conduct a hearing on the record.

''(6) SUBPOENA POWER.—In connection with any hearing on the record under this subsection, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

''(7) CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.—If a violator fails to take corrective action within the time specified in an order under paragraph (1), the Administrator may assess a civil penalty of not more than $1,000 for the continued noncompliance with the order.''.●

By Mr. LIEBERMAN:

S. 2160. A billto provide for alternative procedures for achieving superior environmental performance, and for other purposes; to the Committee on Environment and Public Works.

THE INNOVATIVE COMPLIANCE ACT

● Mr. LIEBERMAN. Mr. President, I am pleased to introduce today the Innovative Compliance Act of 1996. Title I of this legislation authorizes the Environmental Protection Agency to approve a demonstration program allowing companies who show superior environmental performance to use flexible methods of achieving environmental goals. Title II of the legislation requires the EPA, when developing a new program to control a pollutant to consider, where appropriate, basing the regulatory scheme on market-based trading programs. The legislation builds on President Clinton's project XL which stands for excellence and leadership, and on the successful market-based program for controlling acid rain established under the Clean Air Act Amendments of 1990.

Mr. President, I am introducing this bill at the end of this session in the hope that it will lead to a continued dialog among interested parties on the best way to implement these two programs. I view this bill as an initial draft, discussion draft and welcome all proposals and suggestions on how to alter and improve it. I hope to resubmit the bill reflecting suggestions made over the next few months early next session.

This Congress has been marked by debate about the future of Government's role in environmental protection. At times, it appeared that the bipartisan support of environmental laws and regulation that has evolved over the past three decades was at serious risk. Efforts to undermine our environmental laws initially had support from some in this Congress, despite the absence of any public demand for retrenchment on the environmental

front. Those efforts have been stemmed.

In fact, our laws and regulations have performed remarkably well in improving the quality of America's environment. As Gregg Easterbrook has pointed out, environmental protection is probably the single greatest success story of American Government in the period since World War II.

In many cases, however, we need to do more to provide the level of environmental protection most Americans expect from Government. For example, 62 million Americans still live in neighborhoods where the air does not meet Federal health-based standards. Forty percent of our rivers and lakes still do not fully meet water quality standards. The number of people suffering from asthma has increased 40 percent in the past decade. In some communities, it has reached epidemic proportions, especially among children. Health advisories for eating fish increased by 14 percent between 1994 and 1995. In light of these serious problems, there is clearly a need to improve protection of our environment. But there is just as clearly a need to review our methods of environmental protection in order to find better, more efficient, more innovative and fairer ways to achieve greater progress toward meeting our environmental goals. In some cases, the traditional approaches to environmental protection have hindered companies from developing more innovative approaches, such as pollution prevention, that can result in larger benefits for the environment.

While combining these two goals may appear illusive, a significant consensus has emerged that alternative compliance and market-based trading programs can form the basis for a new approach to environmental protection that will achieve superior results at less cost while encouraging innovation. This consensus can be seen, for example, in the work of the President's Council on Sustainable Development which brought together leaders from government, business, environmental, civil rights, labor and Native American organizations in an effort to achieve consensus national environmental, economic and social goals. The Council's report supports both these approaches. The Aspen Institute also undertook a 3-year effort to reach consensus among a wide group of divergent interests on an alternative path to achieving a cleaner, cheaper way to protect and enhance the environment. This legislation seeks to adopt many of the principles agreed to by the participants in the Aspen process.

Title I of this bill establishes an alternative compliance program at EPA. The Administrator of EPA is authorized to consider up to 50 petitions from companies seeking modifications or waivers from environmental rules and to grant petitions if certain criteria are met. The basic premise of this title is that superior environmental performance can be achieved by allowing environmental managers at companies, in partnership with an active group of community stakeholders, to devise their own means of reaching environmental goals. This approach recognizes that the regulated industry is now in an excellent position to experiment and decide what approaches will yield better environmental results than can be achieved under existing or reasonably foreseeable regulation. Allowing flexibility can substantially reduce compliance costs and make industries more competitive, provide for much greater community involvement in the decisions of their neighboring industrial plants, foster more cooperative partnerships, and encourage greater innovation in meeting environmental goals.

Let me discuss a few important provisions of the bill.

First, the Administrator may only grant flexibility if a company demonstrates that it will achieve better overall environmental results under the alternative compliance strategy than would be achieved under existing or reasonably anticipated rules. The bill establishes benchmarks from which to determine whether better environmental results will be achieved under the alternative compliance strategies. For example, for existing facilities, the benchmark generally will be either the level of releases into the environment actually being achieved by the facility or the level of releases allowed under the applicable regulatory requirements and reasonably foreseeable future requirements, whichever is lower. The bill also sets forth benchmarks for existing facilities being modified to significantly expand production and for new facilities, section 105(b). In addition to determining if the benchmark is met, the Administrator must find, based on a well-accepted, documented methodology, that the alternative compliance strategy will not result in a significant increase in the risk of adverse effects or shift any significant risks of adverse effects, to the health of an individual, population, or natural resource affected by the strategy.

There are a number of different types of alternative compliance strategies. For example, in some cases, a facility may demonstrate better overall environmental results by showing a reduction in releases of all pollutants and, in exchange, seek a modification of reporting or other paperwork requirements. In other cases, a facility may demonstrate better overall environmental results by showing a reduction in releases of all pollutants, but seek modification of a rule to allow for flexibility with respect to emission levels at different sources within the facility. There may be some cases where the alternative compliance strategy would result in very large decreases in one pollutant while resulting in a very small increase in another pollutant. But it is particularly important that the Administrator only approve such a strategy upon a finding, based on a well-accepted, documented methodology, that there will be no significant increase in the risk of adverse effects resulting from the strategy.

As I've described, before granting a petition, the Administrator must find that certain quantitative requirements for measuring better environmental performance have been met by the petitioner. After making this determination, the Administrator may also consider other significant environmental, economic and social benefits that the petitioner offers in the petition, section 105(b)(2).

Under the bill, the alternative compliance strategy must provide accountability, monitoring, enforceability and public access to information at least equal to that provided by the rule that is being modified or waived. A related and very important requirement is that adequate information must be made accessible so that any member of the public can determine if a company is complying with an alternative compliance agreement, sections 105(b) (4), (5). Other requirements that must be met by the petitioner are set forth in section 105.

Another critical provision of the bill, section 104 establishes that any company submitting a petition must undertake a stakeholder participation process and work to ensure that adequate resources exist to make the process effective. Involving citizens, particularly members of the local community, in the development of an alternative compliance strategy is absolutely critical. Companies that have formulated successful alternative compliance strategies have told me that without the support of the local community these strategies simply will not work. Empowerment of the local community through stakeholder processes will help build trust and make implementation of the agreement easier. It is also important that State and local regulators be part of the stakeholder process.

Under the bill, a more structured stakeholder process is set out for more complex agreements—those involving more than one pollutant or one medium. The stakeholders have a greater decisional role in more complex agreements. Nevertheless, in all cases, stakeholder acceptance will be critical to success of the alternative compliance strategy.

Title II of the legislation seeks to build on the successful acid rain program established under the Clean Air Act Amendments of 1990. It requires that prior to promulgating a new program for controlling emissions or discharges of a pollutant, EPA consider, where appropriate, the adoption of a market-based trading program. The program would include a cap on total emissions or discharges of the pollutant. Each source of a pollutant would be required to meet an emission or discharge limit based on a share of the total limit on emissions or discharges

allowed from all sources. Sources could meet their performance objective though a variety of methods, including by acquiring excess emission or discharge reductions from other sources that have achieved levels of performance beyond that required to meet their discharge or emission limits.

The bill recognizes that trading programs are not appropriate in every case. Trading programs should only be implemented where they would result in levels of emissions or discharges greater than those that would be achieved under alternative programs. Additionally, there are circumstances where a trading program is not appropriate because the environmental or human health reasons for which the pollutant is regulated can only be addressed through source-specific emission controls.

As I have mentioned, this title is intended to build on the success of the acid rain program of the Clean Air Act. That program set a cap on the total amount of emissions of sulfur dioxide that electric utilities can emit and allows flexibility for individual units to select their own method of compliance. The mechanism for allocating reductions is a comprehensive permit and emission allowance system. An allowance is a limited authorization to emit a ton of sulfur dioxide. Facilities receive allowance based on a specific formula contained in the law. Allowances may be traded or banked for future use or sale. Thirty days after the end of the year, each utility must have a number of allowances equal to the tonnage actually emitted during the previous year. Allowances may be purchased to cover each unit's emissions for the year. The system rewards utilities that go beyond the law's requirement by enabling them to earn profits from the sale of their extra allowances.

The program is being implemented in two phases: Phase I began in l995 and will last until 1999. It covers 445 utility units.

In July, EPA issued a report on the compliance results of phase I. The results are extremely impressive and far exceed the expectations of those of us involved in the drafting of the legislation—both in terms of emission reductions achieved and cost of those reductions.

First, EPA reports that the compliance level for all the units under Phase I was l00 percent. Second, EPA reports that the emissions for these units was 39 percent below what the law allowed for l995. Third, EPA and the U.S. Geological Survey report environmental success—reductions in sulfur dioxide emissions have resulted in rainfall being less acidic in l995 as a result of the first year of the acid rain program. The U.S. Geological Survey study reports a 10–25 percent drop in rainfall acidity, particularly at some sites located in the mid-west, northeast and mid-Atlantic regions. Fourth, the cost of reducing a ton of sulfur dioxide continues to decline. In just two years, allowance prices have dropped from $150 a ton to less than $80 a ton. At the time of enactment of the Clean Air Act Amendments, it was estimated that the cost of an allowance would be $500 to $600 a ton. The General Accounting Office has estimated that $2 to $3 billion will be saved with the implementation of the acid rain program through its allowance trading program.

In other words, the acid rain program has achieved greater reductions than anticipated at far lower costs than anticipated. This is a win-win—for the environment and the regulated community. The legislation I am introducing today would require EPA, where appropriate, to consider basing future environmental programs on the same type of successful program established for acid rain.

Mr. President, I ask unanimous consent that the full text of the legislation be included in the RECORD.

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

S. 2160

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 ''Innovative Compliance Act of 1996''.

SEC. 2. FINDINGS.

Congress finds that—

(1) superior environmental performance can be achieved in some cases by granting regulated industries the flexibility to develop alternative strategies for achieving environmental results;

(2) alternative strategies also have the potential to—

(A) substantially reduce compliance costs;

(B) foster cooperative partnerships among industry, government, and local communities;

(C) encourage greater innovation and greater pollution prevention in meeting environmental goals; and

(D) increase the involvement of members of the local community and citizens in decisions relating to the approach taken by a facility for achieving environmental goals; and

(3) the acid deposition control program established under title IV of the Clean Air Act (42 U.S.C. 7651 et seq.), the stratospheric ozone protection program established under title VI of the Act (42 U.S.C. 7671 et seq.), and other initiatives demonstrate that properly designed market-based approaches can achieve greater environmental performance and encourage innovation while saving money for regulated industries and government when compared with more traditional control approaches.

TITLE I—ALTERNATIVE STRATEGIES FOR ACHIEVING SUPERIOR ENVIRONMENTAL PERFORMANCE

SEC. 101. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) AGENCY.—The term ''Agency'' means the Environmental Protection Agency.

(3) AGENCY RULE.—The term ''Agency rule''—

(A) means a rule (as defined in section 551 of title 5, United States Code) issued by the Agency; but

(B) does not include any emissions reduction requirement of any rule under title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651 et seq.) or any other requirement pursuant to any other enforceable trading program.

SEC. 102. PETITION.

A person that owns or operates a facility that is subject to an Agency rule may petition the Administrator to modify or waive the Agency rule with respect to the facility and to enter into an enforceable compliance agreement with the person establishing an alternative compliance strategy with respect to the facility in accordance with this title.

SEC. 103. CONTENTS OF PETITION.

A petition under section 102 shall—

(1) identify the Agency rule for which the modification or waiver is sought and the alternative compliance strategy that is proposed;

(2) identify the facility to which the modification or waiver would pertain; and

(3) demonstrate that the alternative compliance strategy meets the requirements of section 105.

SEC. 104. STAKEHOLDER PARTICIPATION PROCESS.

(a) IN GENERAL.—A person that submits a petition under section 102 shall—

(1) undertake a stakeholder participation process in accordance with this section; and

(2) work to ensure that there is adequate technical support for an effective process.

(b) REQUIREMENTS.—The stakeholder participation process shall—

(1) be balanced and representative of interests likely to be affected by the proposed alternative compliance strategy;

(2) ensure options for public access to the process and make publicly available the proceedings of the stakeholder participation process, except with respect to confidential information of the petitioner;

(3) establish procedures for conducting the stakeholder participation process, including open meetings as appropriate; and

(4) if necessary, provide for appropriate agreements to protect confidential information of the petitioner proposing the alternative compliance strategy.

(c) PUBLIC NOTICE OF PETITION.—A person that submits a petition under section 102 shall provide effective public notice of the intent of the petitioner to pursue the alternative compliance strategy to—

(1) community groups;

(2) environmental groups;

(3) potentially affected employees;

(4) persons living near the facility; and

(5) Federal, State, and local government agencies in areas that may be affected by the alternative compliance strategy, including areas that may be affected by transport of a pollutant.

(d) PARTICIPATION.—

(1) IN GENERAL.—Any person may participate in the stakeholder participation process, except that a person that has a business interest in competition with that of the petitioner may be excluded.

(2) GOVERNMENT OFFICIALS.—Federal, State, and local government officials in areas that may be affected by the proposed alternative compliance strategy may participate in the stakeholder participation process.

(3) LIMITATION ON NUMBER OF PARTICIPANTS.—In order to provide for a manageable stakeholder process, a petitioner may propose a limit on the number of stakeholder participants if the petitioner demonstrates to the satisfaction of the Administrator that the stakeholder participants adequately represent, in a balanced manner, the full range of interests (excluding competitive business interests) that may be affected by the alternative compliance strategy.

(e) MODIFICATION OR WAIVER OF PROCESS.—

(1) REQUEST.—A petitioner may request that the Administrator modify or waive 1 or more of the requirements of this section.

(2) CRITERIA.—The Administrator may grant a request under paragraph (1) if, after notice and opportunity for public comment, the Administrator determines that—

(A) there is insufficient interest in convening stakeholder participants; and

(B) the stakeholder participation process would not be useful in view of the routine or noncontroversial nature of the proposal.

SEC. 105. REQUIREMENTS FOR APPROVAL.

(a) IN GENERAL.—The Administrator may approve a petition under section 107 if the Administrator determines that—

(1) the facility is in compliance with all applicable environmental and public health regulations and other requirements;

(2) the alternative compliance strategy will achieve better overall environmental results than would be achieved under the current regulatory requirements and any reasonably anticipated future regulatory requirements;

(3) the alternative compliance strategy will not result in adverse cross-media impacts;

(4) the alternative compliance strategy provides accountability, monitoring, enforceability, and public and Agency access to information at least equal to that provided under the Agency rule that is modified or waived;

(5) the alternative compliance strategy provides for access to information adequate to enable verification of environmental performance by any interested person;

(6) the alternative compliance strategy ensures worker health and safety;

(7) no person or population would be subjected to unjust or disproportionate environmental impacts as a result of implementation of the alternative compliance strategy;

(8) the alternative compliance strategy will not result in transport of a pollutant to another area;

(9) the alternative compliance strategy will not result in a violation of a national environmental or health standard;

(10) all State and local environmental agencies in areas that may be affected by the alternative compliance strategy support the petition;

(11) the stakeholder participation process met the requirements of section 104;

(12) as determined on the basis of a well accepted, documented methodology, the alternative compliance strategy will not result in any significant increase in the risks of adverse effects, or shift any significant risks of adverse effects, to the health of an individual, population, or natural resource affected by the alternative compliance strategy;

(13) the agreement is for a specified term not to exceed 10 years; and

(14) in the case of a petition involving more than 1 pollutant or more than 1 medium, a broad consensus of the stakeholder participants has approved the alternative compliance strategy.

(b) BETTER OVERALL RESULTS.—

(1) CRITERIA.—For the purposes of subsection (a)(2), the achievement of better overall environmental results shall be measured as follows:

(A) For existing facilities, the benchmark shall be the lesser of—

(i) the level of releases of pollutants into the environment being achieved prior to the date of submission of the petition; or

(ii) the level of releases of pollutants into the environment allowed under the current regulatory requirements and any reasonably anticipated future regulatory requirements;

except that the Administrator may modify the benchmark on a case-by-case basis for a facility that has reduced releases significantly below applicable regulatory requirements prior to the date of submission of the petition.

(B) For existing facilities being modified to significantly expand production, the benchmark shall be the lesser of—

(i) the level of releases of pollutants into the environment being achieved (on a per unit of production basis) prior to the date of submission of the petition; or

(ii) the level of releases of pollutants into the environment allowed under the current regulatory requirements and any reasonably anticipated future regulatory requirements on a per unit of production basis.

(C) For new facilities, the benchmark shall be based on the lesser of—

(i) the level of releases of pollutants into the environment allowed under the current regulatory requirements and any reasonably anticipated future regulatory requirements; or

(ii) the level of releases of pollutants into the environment being achieved by the best performance practices of similarly situated facilities.

(2) OTHER CONSIDERATIONS.—In addition to determining that the criteria of paragraph (1) are met, the Administrator may consider other factors supporting superior environmental, social, and economic benefits set forth in the petition.

(c) OBJECTION BY STAKEHOLDER.—Notwithstanding subsection (a)(14), the Administrator shall deny a petition involving more than 1 pollutant or more than 1 medium if—

(1) 1 or more stakeholders object to the alternative compliance strategy; and

(2) the Administrator determines, based on the objection, any response to the objection, and all other relevant facts, that—

(A) the objection relates to any of the criteria stated in paragraphs (1) through (13) of subsection (a); and

(B) the objection has a clear and reasonable foundation.

SEC. 106. PRIORITY.

The Administrator shall give priority to petitions with alternative compliance strategies using pollution prevention approaches and to petitions submitted by persons with a strong record of outstanding environmental performance and worker health and safety protection.

SEC. 107. DETERMINATION OF PETITION.

Not later than 180 days after receiving a petition under section 102, the Administrator, subject to section 112, shall—

(1) propose to approve the petition and enter into an enforceable compliance agreement; or

(2) submit a written explanation to the petitioner of the basis for determining that the requirements of section 105 are not met.

SEC. 108. PUBLIC NOTICE OF INTENT TO APPROVE PETITION.

The Administrator shall publish notice of the intent to approve a petition in the Federal Register at least 60 days prior to approving the petition.

SEC. 109. ENFORCEABILITY.

(a) IN GENERAL.—If the Administrator and a person enter into an enforceable compliance agreement under this title, the person shall comply with the agreement in lieu of any Agency rule modified or waived by the agreement, and compliance with the agreement shall be considered to be compliance with the Agency rule for all purposes.

(b) SPECIFICATION OF AGENCY RULES TO WHICH AGREEMENT APPLIES.—An agreement under subsection (a) shall specify each Agency rule that is modified or waived.

SEC. 110. PRELIMINARY COMMENT PROCESS.

The Administrator shall establish a process for providing preliminary comments by the Administrator on a petition.

SEC. 111. JUDICIAL REVIEW.

A decision by the Administrator to approve or disapprove a petition under this title shall constitute final agency action and shall be subject to judicial review.

SEC. 112. LIMITATION ON PETITIONS CONSIDERED.

The Administrator shall not consider more than 50 petitions for alternative compliance strategies unless—

(1) a petitioner demonstrates that, because the petitioner is situated in a position that is virtually identical to that of another person that has been granted approval of a petition, the petitioner may be at a substantial competitive disadvantage if the petition is not considered; or

(2) at the sole discretion of the Administrator and taking into account the full range of the Agency's obligations, the Administrator determines that adequate resources exist to evaluate a greater number of petitions and to oversee implementation of a greater number of enforceable compliance agreements.

SEC. 113. SMALL BUSINESS PROPOSALS.

The Administrator shall establish a program to facilitate development of proposals for alternative means of compliance from groups of small businesses and to provide expedited review of proposals for alternative means of compliance from groups of small businesses.

SEC. 114. REPORT AND EVALUATION.

Not later than 3 years after the date of enactment of this Act, the Administrator shall submit a report to Congress on the aggregate effect of the enforceable compliance agreements entered into under this title, including—

(1) the number and characteristics of the agreements;

(2) estimates of the environmental and public health benefits, including any reduction in quantities or types of emissions and wastes generated;

(3) estimates of the effect on compliance costs and jobs creation;

(4) the degree and nature of public participation and accountability;

(5) the incidence of noncompliance with the agreements entered into under this title compared to the incidence of noncompliance with relevant Agency rules by similarly situated facilities;

(6) conclusions on the functioning of stakeholder participation processes; and

(7) recommendations for legislative action.

SEC. 115. SAVINGS CLAUSE.

A decision by the Administrator to enter into an enforceable compliance agreement under this title shall not create any obligation of the Agency to modify any Agency rule insofar as the rule applies to any facility other than the facility subject to the enforceable compliance agreement. Nothing in this title shall affect the ability of the Administrator to enter into or carry out enforceable alternative compliance agreements under other law.

SEC. 116. COMPUTER ACCESS.

The Administrator shall establish, and provide on-line computer access to, a national repository of enforceable compliance agreements entered into under this title.

SEC. 117. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Agency to carry out this title such sums as are necessary for fiscal years 1997 through 2000.

(b) AUTHORIZATION OF FEES.—

(1) IN GENERAL.—The Administrator may assess reasonable fees for consideration of petitions.

(2) OFFSET.—Fees assessed under paragraph (1) shall offset the expenses incurred by the

Administrator and may be used only for processing, administering, implementing, and enforcing enforceable compliance agreements.

(3) OTHER FEES.—Fees assessed under this subsection shall be collected in lieu of fees associated with otherwise applicable rules or requirements modified by an enforceable compliance agreement.

(4) WAIVER.—The Administrator may waive any fees under this subsection for any proposal for an alternative means of compliance from a small entity (as defined under section 601 of title 5, United States Code) or group of small entities.

TITLE II—ENVIRONMENTAL MARKET-BASED STRATEGIES

SEC. 201. CONSIDERATION OF MARKET-BASED MECHANISMS.

Before issuing a rule establishing a new program intended to limit the discharge or emission of a pollutant into the environment, the Administrator of the Environmental Protection Agency shall, in appropriate circumstances, consider including market-based mechanisms in the design and implementation of the program.

SEC. 202. MARKET-BASED MECHANISMS.

(a) IN GENERAL.—Subject to subsection (b), a market-based mechanism shall include—

(1) the imposition, on each regulated person, of express legal accountability for an explicit performance objective expressed as a quantity of actual discharges or emissions (and each such person's emissions or discharge limit shall represent a share of a total limit on emissions or discharges from all sources affected by the rule); and

(2) the authorization of the regulated person to comply with the requirements described in paragraph (1) by transferring or acquiring increments of emissions or discharge reductions, which shall represent reductions in emissions or discharges in excess of those required to be made by a regulated entity to meet its emissions or discharge limits.

(b) OTHER APPROPRIATE FACTORS.—

(1) IN GENERAL.—If the Administrator of the Environmental Protection Agency determines that a program with the elements specified in subsection (a) is not appropriate, the Administrator may include in a market-based mechanism a method by which a regulated person subject to emissions or discharge limits that are not expressed as a quantity of total emissions or discharges may—

(A) elect to meet the applicable emissions or discharge limits by limiting the person's total emissions or discharges to a specified quantity that corresponds to the regulated person's initial emissions or discharge limits; and

(B) achieve compliance with the emissions or discharge limits established under subparagraph (A) by acquiring or transferring increments of emissions or discharge reductions.

(2) INCREMENTAL REDUCTIONS.—Subject to paragraph (3), increments described in paragraph (1)(B) shall—

(A) represent reductions in emissions or discharges in excess of reductions required to be made by a regulated entity to meet its emissions or discharge limits; and

(B) be permanent, enforceable, and nondiscrete.

(3) EXCLUSION AS PART OF MECHANISM.—A rule permitting sources to acquire increments of emissions or discharge reductions when increments represent reductions that are discrete, nonpermanent, or discontinuous and are generated by sources the total emissions or discharges of which are not subject to a quantified emissions or discharge limitation requirement shall not be part of a market-based mechanism.

(c) LIMITATION.—Notwithstanding any other provision of this title, the Administrator of the Environmental Protection Agency may not consider market-based mechanisms for a program if—

(1) the program would result in levels of emissions or discharges of the pollutant regulated by the rule in excess of those that would be achieved under an alternative program, taking into account any incentives for generating and retaining excess reductions created by the opportunity to acquire and transfer increments of emissions or discharge reductions as a means of meeting the emissions or discharge limitation requirement applicable to the source; or

(2) the program pertains to a pollutant the properties of which are such that the environmental or human health purposes for which the pollutant is subject to regulation, taking into account any disproportionate or unjust environmental impacts to an individual, population, or natural resource, and any transport of the pollutant that may result, may be achieved only through the imposition of nontransferable source-specific emissions or discharge limitation requirements.●

ADDITIONAL COSPONSORS

S. 1911

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from Washington [Mrs. MURRAY] was added as a consponsor of S. 1911, a bill to amend the Internal Revenue Code of 1986 to encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites.

S. 2123

At the request of Mr. BAUCUS, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Nebraska [Mr. EXON], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from New Hampshire [Mr. SMITH] were added as a consponsor of S. 2123, a bill to require the calculation of Federal-aid highway apportionments and allocations for fiscal year 1997 to be determined so that States experience no net effect from a credit to the Highway Trust Fund made in correction of an accounting error made in fiscal year 1994, and for other purposes.

S. 2150

At the request of Mr. MURKOWSKI, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a consponsor of S. 2150, a bill to prohibit extension or establishment of any national monument on public land without full compliance with the National Environmental Policy Act and the Endangered Species act, and an express act of Congress, and for other purposes.

SENATE RESOLUTION 303—COMMENDING THE GOVERNMENTS OF HUNGARY AND ROMANIA

Mr. BROWN (for himself and Mr. SIMON) submitted the following resolution; which was considered and agreed to:

S. RES. 303

Whereas on September 16, 1996, ''Treaty of Understanding, Cooperation and Good Neighborliness between Romania and the Republic of Hungary'' was signed by Gyula Horn, Prime Minister of Hungary, and by Nicolae Vacaroiu, Prime Minister of Romania, in Timisoara/Temesvar, Romania;

Whereas this agreement between the two governments is an important step in contributing to the stability of that region and to reconciliation and cooperation among the nations of Central and Eastern Europe;

Whereas this agreement will enhance the participation of both countries in the Partnership for Peace program and will contribute to and facilitate their closer cooperation with the members of the North Atlantic Treaty Organization and the eventual entry of these countries into full NATO participation; and

Whereas this agreement is a further significant step in the process of reconciliation between Hungary and Romania reflects the desire and effort of both countries to improve their economic cooperation, to foster the free movement of people between their countries, to expand military relationships, and to increase cultural and educational cooperation.

It is resolved by the Senate, The Senate—

(1) commends the farsighted leadership shown by both the government of Hungary and the government of Romania in reaching agreement on the Treaty of Understanding, Cooperation and Good Neighborliness signed on September 16, 1996;

(2) commends the frank, open, and reasoned political dialogue between officials of Hungary and Romania which led to the treaty;

(3) commends the two countries for their efforts to foster improved relations in all fields; and

(4) calls upon the President to utilize all available and appropriate means on behalf of the United States to support the implementation of the provisions of the ''Treaty of Understanding, Cooperation and Good Neighborliness between Romania and the Republic of Hungary'' and to promote their efforts for regional cooperation as the best means of bringing these two countries into NATO and to ensure lasting security in the region.

SENATE RESOLUTION 304—APPROVING PROVISIONS OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

Mr. LOTT (for himself and Mr. GRASSLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 304

Resolved,

SECTION 1. APPROVAL OF REGULATIONS.

(a) IN GENERAL.—The regulations described in subsection (b) are hereby approved, insofar as such regulations apply to employing offices of the Senate and employees of the Senate under the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) and to the extent such regulations are consistent with the provisions of such Act.

SENATE RESOLUTION 305—RELATIVE TO NATIONAL DUCK CALLING DAY

Mr. PRYOR (for himself, Mr. BUMPERS, Mr. JOHNSTON, Mr. BREAUX, and Mr. FORD) submitted the following resolution; which was considered and agreed to: