''(5) 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, United States Code, except that the term shall include schoolbus, charter, and sightseeing transportation;

''(6) 'serious bodily injury' has the meaning given to that term in section 1365 of this title; and

''(7) 'State' has the meaning given to that term in section 2266 of this title.''.

(b) The analysis of chapter 97 of title 18, United States Code, is amended by adding at the end thereof:

''1994. Terrorist attacks against mass transportation.''.

SEC. 604. INVESTIGATIVE JURISDICTION.

The Federal Bureau of Investigation shall lead the investigation of all offenses under sections 1192 and 1994 of title 18, United States Code. The Federal Bureau of Investigation shall cooperate with the National Transportation Safety Board and with the Department of Transportation in safety investigations by these agencies, and with the Treasury Department's Bureau of Alcohol, Tobacco and Firearms concerning an investigation regarding the possession of firearms and explosives.

SEC. 605. SAFETY CONSIDERATIONS IN GRANTS OR LOANS TO COMMUTER RAILROADS.

Section 5329 is amended by adding at the end the following:

''(c) COMMUTER RAILROAD SAFETY CONSIDERATIONS.—In making a grant or loan under this chapter that concerns a railroad subject to the Secretary's railroad safety jurisdiction under section 20102 of this title, the Federal Transit Administrator shall consult with the Federal Railroad Administrator concerning relevant safety issues. The Secretary may use appropriate authority under this chapter, including the authority to prescribe particular terms or covenants under section 5334 of this title, to address any safety issues identified in the project supported by the loan or grant.''.

SEC. 606. RAILROAD ACCIDENT AND INCIDENT REPORTING.

Section 20901(a) is amended to read as follows:

''(a) GENERAL REQUIREMENTS.—On a periodic basis as specified by the Secretary of Transportation, a railroad carrier shall file a report with the Secretary on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during that period. The report shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.''.

SEC. 607. VEHICLE WEIGHT LIMITATIONS—MASS TRANSPORTATION BUSES.

Section 1023(h)(1) of the Intermodal Surface Transportation Efficiency Act of 1991, as amended (23 U.S.C. 127 note), is amended by striking ''the date on which'' and all that follows through ''1995'' and inserting ''January 1, 2003''.

By Mr. ROBB:

S. 1270. A bill to amend section 8339(p) of title 5, United States Code, to clarify the computations of certain civil service retirement system annuities based on part-time service, and for other purposes; to the Committee on Governmental Affairs.

CIVIL SERVICE RETIREMENT SYSTEM ANNUITIES CLARIFICATION LEGISLATION

Mr. ROBB. Mr. President, I rise today to introduce legislation to correct a wrong that has been done to an unknown number of Federal retirees in computing their annuities.

Through a letter from Mr. L. David Jones, I was informed that the 1986 Civil Service amendments contained in the Consolidated Omnibus Budget Reconciliation Act were being misapplied to penalize career Federal civil servants who had some part-time service at the end of their careers. Mr. Jones, and I'm sure many others, was encouraged to transition to retirement by working part-time for several years rather than just retiring after a 30-year career. Imagine Mr. Jones' surprise when he calculated his annuity after 30 years of full-time service and five years of part-time service and realized that he would have been better off if he had just retired after 30 years.

At first I believed this problem was simply a matter of the Office of Personnel Management misunderstanding the intent of Congress and that the situation could be corrected through administrative action. The Office of Personnel Management, however, has firmly stated that they are carrying out the letter of the law, and any change to the current annuity calculation will require congressional action.

That is why I am here today. Mr. Jones, and any others who are in a similar situation, deserve to have an annuity that accurately reflects their many years of service. This bill will allow those retirees to have their annuities recalculated to ensure that they are not penalized for not retiring outright. Realize also, however, that this bill does not authorize back payments for any lost annuity—the legislation simply tries to put things right for future payments to retirees affected by this previous error and to ensure that no future retirees are similarly penalized.

We must also look ahead and realize that any policy which discourages part-time service in these situations threatens to lead to a ''brain drain'' as baby boomers begin to retire. Many agencies have already expressed concern about their graying workforce and the difficulties they will face as these experienced workers retire. One option often mentioned is to encourage part-time service, so that the experience remains and allows for a transition of responsibilities to younger workers. As it stands now, a civil servant would be ill-advised to agree to that part-time transition to retirement.

For both of these reasons, I encourage all of my colleagues to support this legislation, and I will work with my colleagues on the Governmental Affairs Committee to see that this bill is considered as quickly as possible.

By Mr. GRAHAM:

S. 1273. A bill to amend title 10, United States Code, to expand the National Mail Order Pharmacy Program of the Department of Defense to include covered beneficiaries under the military health care system who are also entitled to Medicare; to the Committee on Armed Services.

THE NATIONAL MAIL ORDER PHARMACY PROGRAM EXPANSION ACT OF 1997

Mr. GRAHAM. Mr. President, today, I stand before you to highlight an injustice which has been done to the men and women who have served this country with selfless dedication. They have devoted themselves to the mission of protecting our country while promoting peace and democracy around the world. For this contribution to our country, we reward their performance with a retirement package which includes health care. Unfortunately, through a series of independent laws, we have created a disjointed health care benefits package which treats retirees differently depending on their age and where they happen to live.

I am introducing a bill to correct this disjointed health care policy. There is clearly a double standard affecting our veterans. Under the current provisions of the law, military retirees are eligible to receive health care under the CHAMPUS program until they become 65 years old. After that time, their health care is provided by Medicare. Under the CHAMPUS program, retirees have access to a program known as the mail-order pharmacy program which allows military members and retirees to obtain prescription drugs through the mail. Retirees over the age of 65 years old cannot be supported through the CHAMPUS program under current legislative restrictions. Medicare has no such pharmacy benefit. This means that once retirees become 65 years old, they lose the benefit and convenience of a mail-order pharmacy program. This comes at a time in their lives when they are more likely to need prescription drugs.

I commend the Department of Defense on their initiative to develop the mail-order pharmacy program. This new program was established to provide better service to the military community and to enable them to maximize that level of service within their decreasing available resources.

Military retirees and their dependents are eligible to receive free medical care from military installations on a space available basis. However, as the military continues to downsize their medical corps, ''space available'' is becoming more and more elusive for retirees. Pharmacy services are likewise available to retirees at military installations on a space available basis. For those retirees who were receiving their medical care, including prescription services, from a military installation which was closed by Base Realignment and Closure [BRAC] decisions, we have made an exception to the law which allows these retirees to participate in the mail-order pharmacy program. We have created a conglomeration of rules

which apply to military retirees depending on their personal circumstances.

My proposal is very simple. All military retirees, including their dependents, should have access to the same health care benefits. We should not differentiate between medical benefits based only on a retiree's age or where a retiree happens to live. All retirees should be allowed to use the mail-order pharmacy program.

The General Accounting Office estimates that this proposal will cost approximately $229 million. While I remain committed to reducing the budget deficit and maintaining a balanced budget, I feel that the current legislation has created an inequity in the retirement benefits provided to our military personnel which must be corrected. It is the right thing to do.

This Nation owes a debt of gratitude to our military retirees. They have endured many hardships during their careers, including separation from their families for extended periods of time and frequent moves to all corners of the globe. They have also risked their lives in the name of freedom and democracy.

Military retirees have given tirelessly of themselves throughout their careers, and this proposal is an opportunity to correct an unjust situation.

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. 1273

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

SECTION 1. INCLUSION OF MEDICARE-ELIGIBLE COVERED BENEFICIARIES IN DEPARTMENT OF DEFENSE NATIONAL MAIL ORDER PHARMACY PROGRAM.

Section 1086 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(i) Notwithstanding subsection (d)(1), the Secretary of Defense shall ensure that any program to make prescription pharmaceuticals available by mail to covered beneficiaries does not exclude covered beneficiaries who are entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) Such covered beneficiaries shall be eligible to receive pharmaceuticals available under the mail order program on the same terms and conditions as other covered beneficiaries included in the program.''.

By Mr. CAMPBELL:

S. 1274. A bill to amend the Internal Revenue Code of 1986 to prohibit the Internal Revenue Service from using the threat of audit to compel agreement with the Tip Reporting Alternative Commitment or the Tip Rate Determination.

THE CITIZENS VOLUNTARY COMPLIANCE PARTNERSHIP ACT OF 1997

Mr. CAMPBELL. Mr. President, last week the Senate passed the Treasury and general Government appropriations bill for fiscal year 1998. Included in the final conference report to that bill was language regarding the Tip Reporting Alternative Commitment Program [TRAC].

TRAC is a voluntary agreement entered into by the Internal Revenue Service and restaurant employers across the country. Under TRAC, employers agree to better educate their employees on tip reporting and also to monitor the tips received by employees. Developed just a few short years ago, TRAC is seen as a way to combat the instances of underreporting and nonreporting of tips.

However, it has come to the attention of many in Congress that the IRS may be using the threat of an audit to compel restaurant owners to enter into this agreement. While the IRS does have the authority to perform audits, I do not feel it is appropriate for this agency to be utilizing this right as a means of intimidation.

The report language pertaining to TRAC, which I ask unanimous consent be printed in the RECORD, states that the IRS ''should ensure compliance with tip reporting by stressing its customer service role while working with restaurant owners.'' The legislation I am introducing today would simply put some teeth into this report language.

All my bill does is prohibit the IRS from using the threat of making an examination or issuing a summons to compel a restaurant owner to enter into TRAC. It does not limit the IRS' authority to perform such functions. It simply prohibits the agency from using these tools as a means of forcing compliance.

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

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

S. 1274

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

SECTION 1. FINDINGS.

Congress finds that—

(1) the Tip Reporting Alternative Commitment Agreement and the tip Rate Determination Agreement are voluntary agreements developed by the Internal Revenue Service and the restaurant industry as a means of improving the reporting of tip income;

(2) there have been reports that the Internal Revenue Service may be compelling members of the restaurant industry to accept such voluntary agreement by using the possibility of audit to intimidate; and

(3) the Internal Revenue Service has the authority to perform audits to assure taxpayer compliance with the internal revenue laws.

SEC. 2. PROHIBITION ON USING THE THREAT OF AUDIT TO COMPEL AGREEMENT WITH THE TIP REPORTING ALTERNATIVE COMMITMENT.

Section 7602 of the Internal Revenue Code of 1986 (relating to examination of books and witnesses) is amended by adding at the end the following new subsection:

''(d) NO THREAT OF SUMMONS OR EXAMINATIONS TO COMPEL AGREEMENT WITH TIP REPORTING ALTERNATIVE COMMITMENT OR THE TIP RATE DETERMINATION AGREEMENT.—The Secretary shall not use the threat of making an examination or issuing a summons under subsection (1) to compel a taxpayer to agree to or sign the Tip Reporting Alternative Commitment Agreement (TRAC) or the Tip Rate Determination Agreement (TRDA).''

TIP REPORTING ALTERNATIVE COMMITMENT PROGRAM

The conferees agree with the House position that the IRS should work with taxpayers to ensure compliance with the Tip Reporting Alternative Commitment Agreement (TRAC). In too many instances, restaurant owners perceive that the IRS may be overzealous in their pursuit of voluntary agreement with TRAC by intimating that the business will be audited if there is no agreement. The conferees agree that IRS should ensure compliance with tip reporting by stressing its customer service role while working with the restaurant owners.

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

S. 1275. A bill to implement further the Act (Public Law 94–241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes; to the Committee on Energy and Natural Resources.

THE NORTHERN MARIANA ISLANDS CONVENANT IMPLEMENTATION ACT

Mr. MURKOWSKI. Mr. President, I send to the desk, for appropriate reference, legislation on behalf of myself and Senator AKAKA that the administration has provided me in response to my request for a drafting service. This legislation represents the language that the administration believes will implement its recommendations contained in the most recent report on the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement in the Commonwealth of the Northern Mariana Islands.

In 1994, Congress directed this Initiative in Public Law 103–332 and provided $7 million for fiscal years 1995 and 1996 with an additional $3 million for fiscal year 1997. In testimony before the Committee on Energy and Natural Resources, the administration committed to provide an annual report on the progress of the Initiative.

Partially in response to concerns that had been raised about conditions in the Commonwealth, Senator AKAKA and I visited Saipan in February of last year. In addition to extensive briefings and meetings with Commonwealth officials, we also met with Federal agency personnel and the U.S. attorney. We also visited a garment factory and talked with some Bangladesh workers who had not been paid and who were living in appalling conditions. We were assured that corrective action would be taken. I want to note that my concerns were not exclusively with the Commonwealth government, but also went to the willingness of the administration to commit the needed resources to address the problems that we saw. I specifically asked the Attorney General for the appointment of a full-time U.S.

attorney for the Northern Marianas rather than having the U.S. attorney for Guam also serve the Northern Marianas. The Attorney General responded that there wasn't enough work to justify a U.S. attorney.

On June 26 of last year, I chaired a hearing that examined what progress had been made. In addition to the administration, the acting Attorney General of the Commonwealth appeared and requested that the committee delay any action until the Commonwealth could complete a study on minimum wage and assured me that the study would be completed by January. I agreed to the delay. My intention was to revisit this issue in the April-May period after the administration had transmitted its annual report. While the CNMI study was not finally transmitted until April, the Administration did not transmit its annual report, which was due in April, until July. On May 30, 1997, the President wrote the Governor of the Northern Marianas that he was concerned over activities in the Commonwealth and had concluded that Federal immigration, naturalization, and minimum wage laws should apply. That letter provoked a flurry of statements, letters, articles, stories, and legislation, most of which generated more heat than light.

It quickly became clear that unless there was some definition as to exactly what the problem was and what solution was being proposed, little would happen other than a series of bewildering and increasingly hostile statements. The atmosphere also made the possibility of a useful oversight hearing increasingly remote. I must say that I have not been particularly impressed by either the advocates of Federal legislation or the opponents. One side responds to concerns over workers living in barracks, abuse of domestics, prostitution, and other problems by suggesting that the answer is to raise the minimum wage. The response to allegations of abuse of workers, especially women, is not to propose raising the minimum wage. Paying a person more does not justify abuse. The other side of the argument seems to me to also miss the point. The last time we heard a justification that economic advances would be jeopardized if workers were treated properly was shortly before Appomattox. Whatever economic benefits some may have realized, that does not justify worker abuse, indentured servants, or the conditions that I saw those Bangladesh workers living in.

There are certain issues that I believe need a full hearing and careful review. The minimum wage study that the Commonwealth commissioned noted at one point that the Marianas has used its control over immigration and minimum wage to import foreign workers who would be paid more than they would receive in their home countries, but less than the Federal minimum wage. These workers would produce garments that would be subject to quotas if produced in their home country, but which could be imported duty free into the mainland United States since the Marianas is outside the customs territory of the U.S. but subject to preferential treatment under General Note 3(a) of the Tariff Schedules. That is an issue that the Congress should review.

When we considered the Covenant for the Marianas, we were sensitive to the fact that the Marianas had been under the minimum wage provisions of the Trust Territory and that immediate introduction of the Federal minimum wage might have an adverse effect on a developing economy that was still heavily dependent on annual Federal grants for basic Government services. We also recognized the concern expressed by the negotiators for the Northern Marianas that their small population could be overrun easily by migration. In response, we permitted the Marianas to control the timing of minimum wage and to exercise control over immigration. We also provided restraints on land alienation to protect the population. We did not consider that entrepreneurs would discover a loophole that would allow a lower minimum wage and immigration to create a non-indigenous industry that is Marianas in name only. Congress should examine whether this is a situation that should be permitted under the tariff schedules.

There are also legitimate questions concerning minimum wage and immigration. We should now have sufficient experience to assess whether the Marianas is capable of providing the preclearance for any persons who attempt to enter the Marianas. The United States routinely does this in foreign countries as part of our visa process. The situation that I saw with the Bangladesh workers should never have happened. Reports of other workers who arrive only to find no jobs should also never happen. There should be no unemployment among the guest workers. These are legitimate immigration related issues. They do not necessarily lead to a Federal takeover, but they are legitimate issues and it serves no purpose to distort history and pretend that the current situation was the goal of the Covenant negotiators.

Minimum wage is also a fairly straightforward issue. It does not appear that any U.S. citizens in the Northern Marianas are paid less than the current Federal minimum wage. Is there a justification and a need to pay foreign workers less and to what extent does the ability to import skilled foreign labor at less than Federal minimum wages contribute to the unemployment rate in the Marianas? Is there a reason to pay less than the minimum wage to attract skilled positions? There are issues that should be reviewed in a hearing.

Given the furor that followed the President's letter, I decided to ask the administration to provide me with a drafting service of the language that would implement whatever the recommendations were in their report. The report was finally submitted in July, and I received the drafting service on October 6, 1997. On July 16, 1997, I wrote the Governor of the Commonwealth to inform him that I had made the request and the schedule that I intended to follow. I want to reiterate my statement. I am committed to holding hearings on this legislation. I am not wedded to any particular provision in the legislation, but I am not happy with the situation in the Commonwealth. I ask unanimous consent that a copy of my letter be printed in the RECORD as well as a copy of the transmittal letter from the administration, the text of the legislation, and a section-by-section analysis.

Mr. President, I appreciate that elections are only a few weeks away in the Marianas. I do not think that hearings prior to the elections would be particularly productive. Our committee has tried to be nonpartisan in our approach to our responsibilities for the territories and we have tried to avoid local politics. Given the seriousness of these issues, I think they should be raised after the elections. I want to make it clear, however, that whatever the results of the elections in the Marianas, the Energy and Natural Resources Committee intends to proceed impartially and expeditiously.

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

S. 1275

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

SECTION 1. SHORT TITLE AND REFERENCE.

This Act may be cited as the ''Northern Mariana Islands Covenant Implementation Act''. Public Law 94–241 (90 Stat. 263, 48 U.S.C. 1801), which approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as amended, hereinafter is referred to as the ''Covenant Act''.

SEC. 2. IMMIGRATION REFORM FOR THE NORTHERN MARIANA ISLANDS.

(a) COVENANT ACT AMENDMENTS.—The Covenant Act is amended to add the following new section 6 after section 5:

''SEC. 6. TRANSITION PROGRAM FOR IMMIGRATION.

''Pursuant to section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved in Public Law 94–241, 90 Stat. 263)—

''(a) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Effective on the first day of the first full month commencing one year after the date of enactment of this section, the provisions of the Immigration and Nationality Act, as amended, shall apply to the Commonwealth of the Northern Mariana Islands, with a transition period not to exceed ten years thereafter, during which the Attorney General, in consultation with the Secretaries of State, Labor, and Interior, shall establish, administer, and enforce a transition program for immigration to the Commonwealth of the Northern Mariana Islands (the ''transition program''). The transition program established pursuant to this section shall provide for the issuance of nonimmigrant temporary alien worker visas

pursuant to subsection (b), and, under the circumstances set forth in subsection (c), for family-sponsored and employment-based immigrant visas. The transition program shall be implemented pursuant to regulations to be promulgated as appropriate by each agency having responsibilities under the transition program.

''(b) TEMPORARY ALIEN WORKERS.—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and Nationality Act, as amended:

''(1) Aliens admitted under this subsection shall be treated as aliens seeking classification as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act, as amended, including the right to apply, if otherwise eligible, for a change of nonimmigrant status under section 248 of the Immigration and Nationality Act, as amended, or adjustment of status, if eligible therefor, under subsection (c) of this section and section 245 of the Immigration and Nationality Act, as amended.

''(2)(A) The Secretary of Labor shall establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers for each temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act, as amended. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, over a period not to exceed ten years. In no event shall a permit be valid beyond the expiration of the transition period. This system may be based on any reasonable method and criteria determined by the Secretary of Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, United States labor and lawfully admissible freely associated state citizen labor.

''(B) The Secretary of Labor is authorized to establish and collect appropriate user fees for the purpose of this section. Amounts collected pursuant to this section shall be deposited to a special fund of the Treasury. Such amounts shall be available, to the extent and in the amounts as provided in advance in appropriations acts, for the purposes of administering this section. Such amounts are authorized to be appropriated to remain available until expended.

''(3) The Attorney General shall set the conditions for admission of nonimmigrant temporary alien workers under the transition program, and the Secretary of State shall authorize the issuance of nonimmigrant visas for aliens to engage in employment only as authorized in this subsection: *Provided,* That such visas shall not be valid for admission to the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act, as amended, except the Northern Mariana Islands. An alien admitted to the Northern Mariana Islands on the basis of such a nonimmigrant visa shall be permitted to engage in employment only as authorized pursuant to the transition program. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under paragraph (2) of this subsection have been met.

''(4) An alien admitted as a nonimmigrant pursuant to this subsection shall be permitted to transfer between employers in the Northern Mariana Islands during the period of such alien's authorized stay therein, provided that such transfer is authorized by the Attorney General in accordance with criteria established by the Attorney General and the Secretary of Labor.

''(c) *Immigrants.*—With the exception of immediate relatives, as defined in section 201(b)(2) of the Immigration and Nationality Act, as amended, and except as provided in paragraph (1) and (2) of this subsection, no alien shall be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Northern Mariana Islands.

''(1) FAMILY-SPONSORED IMMIGRANT VISAS.—The Attorney General, based on a joint recommendation of the Governor and Legislature of the Commonwealth of the Northern Mariana Islands, and in consultation with appropriate federal agencies, may establish a specific number of additional initial admissions as a family-sponsored immigrant at a port-of-entry in the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Northern Mariana Islands, pursuant to section 202 and 203(a) of the Immigration and Nationality Act, as amended, during the following fiscal year.

''(2) EMPLOYMENT-BASED IMMIGRANT VISAS.—

''(A) If the Secretary of Labor, upon receipt of a joint recommendation of the Governor and Legislature of the Commonwealth of the Northern Mariana Islands, finds that exceptional circumstances exist with respect to the inability of employers in the Northern Mariana Islands to obtain sufficient work-authorized labor, the Attorney General may establish a specific number of employment-based immigrant visas to be made available during the following fiscal year under section 203(b) of the Immigration and Nationality Act, as amended.

''(B) Upon notification by the Attorney General that a number has been established pursuant to subparagraph (A) of this paragraph, the Secretary of State may allocate up to that number of visas without regard to the numerical limitations set forth in sections 202 and 203(b)(3)(B) of the Immigration and Nationality Act, as amended. Visa numbers allocated under this subparagraph shall be allocated first from the number of visas available under section 203(b)(3) of the Immigration and Nationality Act, as amended, or, if such visa numbers are not available, from the number of visas available under section 203(b)(5) of such Act.

''(C) Persons granted employment-based immigrant visas under the transition program may be admitted initially at a port-of-entry in the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Northern Mariana Islands, as lawful permanent residents of the United States.

''(D) Any immigrant visa issued pursuant to this paragraph shall be valid only for application for initial admission to the Northern Mariana Islands. The admission of any alien pursuant to such an immigrant visa shall be an admission for lawful permanent residence and employment only in the Northern Mariana Islands during the first five years after such admission. Such admission shall not authorize permanent residence or employment in any other part of the United States during such five-year period. An alien admitted for permanent residence pursuant to this paragraph shall be issued appropriate documentation identifying the person as having been admitted pursuant to the terms and conditions of this transition program, and shall be required to comply with a system for the registration and reporting of aliens admitted for permanent residence under the transition program, to be established by the Attorney General, by regulation, consistent with the Attorney General's authority under Chapter 7 of Title II of the Immigration and Nationality Act, as amended.

''(E) Nothing in this paragraph shall preclude an alien who has obtained lawful permanent resident status pursuant to this paragraph from applying, if otherwise eligible under this section and under the Immigration and Nationality Act, as amended, for an immigrant visa or admission as a lawful permanent resident under the Immigration and Nationality Act, as amended.

''(F) Any alien admitted under this subsection, who violates the provisions of this paragraph, or who is found removable or inadmissible under section 237(a), or paragraphs (1), (2), (3), (4)(A), (4)(B), (6), (7), (8), or (9) of section 212(a), shall be removed from the United States pursuant to sections 239, 240, and 241 of the Immigration and Nationality Act, as amended.

''(G) The Attorney General may establish by regulation a procedure by which an alien who has obtained lawful permanent resident status pursuant to this paragraph may apply for a waiver of the limitations on the terms and conditions of such status. The Attorney General may grant the application for waiver, in the discretion of the Attorney General, if: (1) the alien is not in removal proceedings, (2) the alien has been a person of good moral character for the preceding five years, (3) the alien has not violated the terms and conditions of the alien's permanent resident status, and (4) the alien would suffer exceptional and extremely unusual hardship were such terms and conditions not waived.

''(H) The limitations on the terms and conditions of an alien's permanent residence set forth in this paragraph shall expire at the end of five years after the alien's admission to the Northern Mariana Islands as a permanent resident and the alien is thereafter fully subject to the provisions of the Immigration and Nationality Act, as amended. Following the expiration of such limitations, the permanent resident alien may engage in any lawful activity, including employment, anywhere in the United States. Such an alien, if otherwise eligible for naturalization, may count the five-year period in the Northern Mariana Islands towards time in the United States for purposes of meeting the residence requirements of Title III of the Immigration and Nationality Act, as amended.

''(d) INVESTOR VISAS.—The following requirements shall apply to aliens who have been admitted to the Northern Mariana Islands in long-term investor status under the immigration laws of the Commonwealth of the Northern Mariana Islands on or before the effective date of this Act and who have continuously maintained residence in the Northern Mariana Islands pursuant to such status:

''(1) Such aliens may apply to the Attorney General or a consular officer for classification as a nonimmigrant under the transition program. Any nonimmigrant status granted as a result of such application shall terminate not later than December 31, 2008.

''(2) During the six-month period beginning January 1, 2008, and ending June 30, 2008, any alien granted nonimmigrant status pursuant to paragraph (1) of this subsection shall be permitted to apply to the Attorney General for status as a lawful permanent resident of the United States effective on or after January 1, 2009, and may be granted such status if otherwise admissible. Upon granting permanent residence to any such alien, the Attorney General shall advise the Secretary of State who shall reduce by one number, during the fiscal year in which the grant of status becomes effective, the total number of immigrant visas available to natives of the country of the alien's chargeability under section 202(b) of the Immigration and Nationality Act, as amended.

''(e) PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IMMIGRATION LAW.—Subject to subsection (d) of this section, persons who would have been lawfully present in the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the effective date of this subsection, shall be permitted to remain in the Northern Mariana Islands for the completion of the period of admission under such laws, or for two years, whichever is less.

''(f) TRAVEL RESTRICTIONS FOR CERTAIN APPLICANTS FOR ASYLUM.—Any alien admitted to the Northern Mariana Islands pursuant to the immigrant laws of the Commonwealth of the Northern Mariana Islands or pursuant to subsections (b) or (c) of this section who files an application seeking asylum in the United States shall be required, pursuant to regulations established by the Attorney General, to remain in the Northern Mariana Islands, during the period of time the application is being adjudicated or during any appeals filed subsequent to such adjudication. An applicant for asylum who, during the time his application is being adjudicated or during any appeals filed subsequent to such adjudication, leaves the Northern Mariana Islands of his own will without prior authorization by the Attorney General thereby abandons the application.

''(g) EFFECT ON OTHER LAWS.—Effective on the first day of the first full month commencing one year after the date of enactment of this section, the provisions of this section and the Immigration and Nationality Act, as amended, shall supersede and replace all laws, provisions, or programs of the Commonwealth of the Northern Mariana Islands relating to the admission of aliens and the removal of aliens from the Northern Mariana Islands.

''(h) ACCRUAL OF TIME.—No time of 'unlawful presence' in the Northern Mariana Islands shall accrue for purposes of the ground of inadmissibility in section 212(a)(9)(B) prior to the date of enactment of this subsection.''.

(b) CONFORMING AMENDMENTS.—(1) Effective on the first day of the first full month commencing one year after the date of enactment of this section, section 101(a) of the Immigration and Nationality Act, as amended, is amended as follows:

(A) in paragraph (36), by deleting ''and the Virgin Islands of the United States.'' and substituting ''the Virgin Islands of the United States, and the Northern Mariana Islands.'', and;

(B) in paragraph (38), by deleting ''and the Virgin Islands of the United States'' and substituting ''the Virgin Islands of the United States, and the Northern Mariana Islands.''.

(2) Effective on the first day of the first full month commencing on date of enactment of this section, subsection (l) of section 212 of the Immigration and Nationality Act, as amended, is amended, as follows:

(A) in paragraph (1)—

(i) strike the words ''stay on Guam'', and insert the words ''stay on Guam and the Northern Mariana Islands'',

(ii) after the word ''exceed'' insert the words ''a total of'', and,

(iii) strike the words ''after consultation with the Governor of Guam,'' and insert the words ''after respective consultation with the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands,'';

(B) in subparagraph (A) of paragraph (1), strike the words ''on Guam'', and insert the words ''on Guam or the Northern Mariana Islands, respectively,'';

(C) in subparagraph (A) of paragraph (2), strike the words ''into Guam'', and insert the words ''into Guam or the Northern Mariana Islands, respectively,'';

(D) in paragraph (3), strike the words ''Government of Guam'' and insert the words ''Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands''.

(c) TECHNICAL ASSISTANCE PROGRAM.—The Secretaries of Interior and Labor, in consultation with the Commonwealth of the Northern Mariana Islands, shall develop a program of technical assistance, including recruitment and training, to aid employers in securing employees from among United States labor or lawfully admissible freely associated state citizen labor.

(d) DEPARTMENT OF JUSTICE AND DEPARTMENT OF LABOR OPERATIONS.—The Attorney General and the Department of Labor are authorized to establish and maintain Immigration and Naturalization Service, Executive Office of Immigration Review, and Department of Labor operations in the Northern Mariana Islands for the purpose of performing their responsibilities under the Immigration and Naturalization Act, as amended, and under the transition program. To the extent practicable and consistent with the satisfactory performance of their assigned responsibilities under applicable law, the Departments of Justice and Labor shall recruit and hire from among qualified applicants resident in the Northern Mariana Islands for staffing such operations.

(e) REPORT TO THE CONGRESS.—The President shall report to the Senate Committee on Energy and Natural Resources, and the House Committee on Resources, within six months after the fifth anniversary of the enactment of this Act, evaluating the overall effect of the transition program and the Immigration and Naturalization Act on the Northern Mariana Islands, and at other times as the President deems appropriate.

(f) LIMITATION ON NUMBER OF TEMPORARY WORKERS PRIOR TO APPLICATION OF THE IMMIGRATION AND NATURALIZATION ACT AND ESTABLISHMENT OF THE TRANSITION PROGRAM.—During the period between enactment of this section and the effective date of the transition program, the government of the Commonwealth of the Northern Mariana Islands shall not permit an increase in the total number of temporary alien workers who were present in the Northern Mariana Islands on the date of enactment of this section.

(g) APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section and of the Immigration and Naturalization Act, as amended, with respect to the Northern Mariana Islands.

SEC. 3. MINIMUM WAGE.

The Covenant Act is amended to add the following new section 7 after section 6:

''SEC. 7. MINIMUM WAGE.

''Pursuant to section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved in Public Law 94–241, 90 Stat. 263)—

''(a) Effective thirty days after enactment of this Act, the minimum wage provisions of section 6 of the Fair Labor Standards Act of June 25, 1938 (52 Stat. 1062), as amended, shall apply to the Commonwealth of the Northern Mariana Islands, except—

''(1) the minimum wage rate applicable to the Commonwealth of the Northern Mariana Islands shall be $3.35 per hour; and

''(2) effective January 1, 1999, and every January 1 thereafter, the minimum wage rate applicable to the Commonwealth of the Northern Mariana Islands shall be raised by thirty cents per hour or the amount necessary to raise the applicable minimum wage rate to the wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act, whichever is less.

''(b) Once the minimum wage rate applicable to the Commonwealth of the Northern Mariana Islands is equal to the wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act, the minimum wage rate applicable to the Commonwealth of the Northern Mariana Islands shall thereafter be the wage set forth in section 6(a)(1) of the Fair Labor Standards Act.''.

SEC. 4. LABELING REQUIREMENTS FOR TEXTILE AND APPAREL PRODUCTS.

The Covenant Act is amended to add the following new section 8 after section 7:

''SEC. 8. LABELING OF TEXTILE AND APPAREL PRODUCTS.

''(a) No textile or apparel product that is produced in the Northern Mariana Islands shall have a stamp, tag, label, or other means of identification or substitute thereof on or affixed to the product stating 'Made in USA' or otherwise stating or implying that the product was produced in the United States unless the product is produced in a factory certified by the United States Department of Labor, in accordance with regulations issued by the Secretary of Labor, to use full-time employee equivalents of labor in the required percentage of qualified hours.

''(b) A textile or apparel product that does not meet the requirements of subsection (a), or where the certification by the United States Department of Labor is based on false or incomplete information provided to the United States Department of Labor, shall be deemed to be misbranded for the purposes of the Textile Fiber Products Identification Act (Public Law 85–897, 72 Stat. 1717).

''(c) In this section:

''(1) FREELY ASSOCIATED STATE.—The term 'freely associated state' means the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia.

''(2) QUALIFIED HOURS.—The term 'qualified hours' means the hours of labor performed by a person who is a citizen, national, or other protected individual as defined in section 274B(a)(3) of the Immigration and Nationality Act, as amended (without regard to application for naturalization), or who is a citizen of a freely associated state (as long as section 141 in the respective Compacts of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia or the Republic of Palau (Public Law 99–239 or Public Law 99–658) or equivalent provisions are in effect).

''(3) REQUIRED PERCENTAGE.—The term 'required percentage' means—

''(A) 20 percent, for the period beginning January 1, 1998, through December 31, 1998;

''(B) 35 percent, for the period beginning January 1, 1999, through December 31, 1999; and

''(C) 50 percent, for the period beginning January 1, 2000, and thereafter.''.

SEC. 5 TARIFFS.

General Note 3(a)(iv) of the Harmonized Tariff Schedules of the United States is amended to add at the end the following:

''(E) No textile or apparel product that is produced in the Northern Mariana Islands shall be admitted duty-free into the customs territory of the United States as the product of an insular possession, unless the product is produced in a factory certified by the United States Department of Labor, in accordance with regulations issued by the Secretary of Labor, to use full-time employee equivalents of labor in the required percentage of qualified hours. In this subparagraph:

''(i) FREELY ASSOCIATED STATE.—The term 'freely associated state' means the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia.

''(ii) QUALIFIED HOURS.—The term 'qualified hours' means the hours of labor performed by a person who is a citizen, national, or other protected individual as defined in section 274B(a)(3) of the Immigration and Nationality Act, as amended (without regard to application for naturalization), or who is a citizen of a freely associated state (as long as section 141 in the respective Compacts of Free Association with the Republic of the Marshall Islands, the Federated Stats of Micronesia or the Republic of Palau (Public Law 99–239 or Public Law 99–658) or equivalent provisions are in effect).

''(iii) REQUIRED PERCENTAGE—The term 'required percentage; means—

''(A) 20 percent, for the period beginning January 1, 1998, through December 31, 1998;

''(B) 35 percent, for the period beginning January 1, 1999, through December 31, 1999; and

''(C) 50 percent, for the period beginning January 1, 2000, and thereafter.''.

SECTION-BY-SECTION ANALYSIS

Section 1 would provide that this Act may be cited as the ''Northern Mariana Islands Covenant Implementation Act.'' It further would provide that Public Law 94–241 (90 Stat. 263, 48 U.S.C. 1801) which approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America would be referred in the Act as the ''Covenant Act.''

Section 2, entitled ''Immigration Reform for the Northern Mariana Islands'' contains a subsection (a) that would amend the Covenant Act by adding a new section 6 at the end of the Covenant Act with the following preamble and subsections:

Preamble: the immigration provisions in the new section 6 of the Covenant Act would be enacted pursuant to section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved in Public Law 94–241, 90 Stat. 263), which provides that the Congress may enact immigration legislation regarding the Northern Mariana Islands after the termination of the Trusteeship Agreement with respect to the Northern Mariana Islands, which occurred on November 3, 1986. (Section 1 of Proclamation No. 5564, dated November 3, 1986. 51 F.R. 40399).

Section 6, subsection (a) would provide that, effective on the first day of the first full month commencing one year after the enactment date of section 6, the Immigration and Nationality Act, as amended (the ''INA''), would apply in full to the Commonwealth of the Northern Mariana Islands (CNMI). At the same time, a transition program would become effective for the orderly phasing out of the CNMI's current temporary alien worker program. The Attorney General, in consultation with the Secretaries of State, Labor, and Interior, will be charged with establishing, administering, and enforcing this transition program. To implement this program, each agency having responsibilities under the program will be required to promulgate appropriate regulations. The details of this program are set forth in the subsections below.

Section 6, subsection (b) would set forth the requirements under the transition program for the admission of temporary alien workers who would not otherwise be eligible for nonimmigrant classification under the INA.

Paragraph (1) would provide that aliens who are admitted under the transition program, like most nonimmigrants admitted under the INA, will have the right to apply, if they are otherwise eligible, for a change of status to a nonimmigrant classification under the INA, or, if otherwise eligible, for adjustment of status to lawful permanent residence of the United States.

Paragraph (2)(A) would set out the responsibilities of the United States Department of Labor under the transition program. The Secretary of Labor would be charged with establishing, administering, and enforcing a reasonable system for the annual allocation of permits to be issued to prospective employers of temporary alien workers who would not be eligible for admission under the INA. This system would provide for a reduction in the allocation of permits for such workers on an annual basis, over a maximum period of ten years, with no such permit to be valid beyond the expiration of the transition period. The system would be designed to promote the maximum use of, and to prevent adverse effects on, United States labor and lawfully admissible freely associated state citizen labor. In carrying out its responsibilities under the subsection, the Department of Labor would be authorized to collect appropriate user fees. Paragraph (2)(B) would authorize the Secretary of Labor to establish and collect appropriate user fees for the purposes of this section.

Paragraph (3) would assign the Attorney General the responsibility of setting the conditions for admission of temporary alien workers under the transition program. In addition, this subsection would assign to the Secretary of State the responsibility for the issuance of nonimmigrant visas, which would not be valid for admission to other parts of the United States, to such persons. Aliens admitted to the NMI as temporary workers under this program would be permitted to engage in employment only as authorized in this subsection. Such temporary workers, therefore, would not engage open market employment in the NMI, but would be required to work for an employer approved by the Attorney General and the Secretary of Labor in accordance with this subsection.

Paragraph (4) would provide for job transfer rights for otherwise eligible temporary alien workers admitted under the transition program pursuant to criteria established by the Attorney General and the Secretary of Labor.

Section 6, subsection (c), would provide that, with the exception of certain close family relatives, and except as provided in section (6)(c)(1) and (2) aliens seeking to immigrate to the NMI under the INA would not be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the NMI, or at a port-of-entry in Guam for the purpose of immigration to the NMI.

Paragraph (1) would provide that, notwithstanding section 6(c) above, the Attorney General, based on the recommendation of the CNMI Government, and after consultation with appropriate federal agencies, may allow a specific number of additional initial admissions to the NMI (or through Guam to the NMI) as a family-sponsored immigrant under the INA.

Paragraph (2) would provide the Attorney General with the authority to admit to the NMI, under exceptional circumstances, a limited number of employment-based immigrants, without regard to the normal numerical limitations under the INA, during the transition program.

Subparagraph (a) would provide that the Secretary of Labor, upon receipt of a joint recommendation of the Governor and Legislature of the CNMI, may find that exceptional circumstances exist which preclude employers in the NMI from obtaining sufficient work-authorized labor. If the Secretary of Labor makes such a finding, the Attorney General may establish a specific number of employment-based ''third preference'' immigrant visas to be made available during the following fiscal year under the INA.

Subparagraph (B) would permit the Secretary of State to allocate up to the number of visas requested by the Attorney General without regard to the normal per-country or ''other worker'' employment-based third preference numerical limitations and visa issuance. These visas would be allocated first from unused employment-based third preference visa numbers, and then, if necessary, from unused alien entrepreneur visa numbers.

Subparagraph (C) would allow persons granted employment-based immigrant visas under the transition program to be admitted initially at a port-of-entry in the NMI (or through a port-of-entry in Guam to the NMI).

Subparagraph (D) would provide that any immigrant visa issued pursuant to this paragraph shall be valid only for application for initial admission to the NMI. Further, any employment-based immigrant visas issued on the basis of the above finding of ''exceptional circumstances'' would be valid for admission for lawful permanent residence and employment only in the NMI during the first five years after initial admission. Such visas would not authorize permanent residence or employment in any other part of the United States during this five-year period. The subsection also would provide for the issuance of appropriate documentation of such admission, and, consistent with Chapter 7 of Title II of the INA, would require an alien to register and report to the Attorney General during the five-year period.

Subparagraph (E) would provide that an alien who is subject to the five-year limitation under section 6(c) may, if otherwise eligible, apply for an immigrant visa or admission as a lawful permanent resident under the INA.

Subparagraph (F) would provide for the removal from the United States of any alien subject to the five-year limitation if the alien violates the provisions of section 6(c), or if the alien is found to be removable or inadmissible under various provisions of the INA.

Subparagraph (G) would allow certain aliens who have obtained lawful permanent resident status under the transition program to apply for a waiver of the terms and conditions of their status in certain extraordinary situations where the Attorney General finds that the alien would suffer exceptional and extremely unusual hardship were such conditions not waived. An example of such an extraordinary circumstance would be where the alien is a labor organizer and can demonstrate that, as a result of the alien's lawful labor activities, he or she has been ''blacklisted'' by local employers, and is therefore unable to find employment in the Northern Mariana Islands. The benefits of this provision would be unavailable to a person who has violated the terms and conditions of his or her permanent resident status, such as an alien who has engaged in the unauthorized employment.

Subparagrah (H) would provide that the limitations on the terms and conditions of an alien's permanent residence granted under section 6(c) shall expire at the end of five years after the alien's admission to the NMI as a permanent resident. Thereafter, such an alien would be fully subject to the provisions of the INA, and may engage in any lawful activity, including employment, anywhere in the United States. In addition, such an alien, if otherwise eligible for naturalization, may count the five-year period in the NMI towards time in the United States for purposes of meeting the residence requirements of Title III of the INA.

Section 6, subsection (d), would permit, upon the meeting certain requirements, that certain aliens who were admitted to the NMI in long-term investor status under CNMI immigration law on or before the effective date of this Act to remain in the NMI after the effective date of the Act. In order to enjoy the benefits of this subsection, such persons would be required to have continuously maintained residence in the NMI pursuant to such long-term investor status.

Paragraph (1) would provide that such long-term investors may apply to the Attorney General or a consular officer for nonimmigrant classification, to terminate no later than December 31, 2008, under the transition program.

Paragraph (2) would provide that an alien granted nonimmigrant status under this section may apply for adjustment of status to lawful permanent resident of the United States during the six-month period beginning January 1, 2008, and ending June 30, 2008. If otherwise admissible, such an alien would be granted permanent resident status effective on or after January 1, 2009. Each such adjustment of status would be subject to the total per-country numerical limitations on immigrant visa issuance, and therefore would count against the total number of immigrant visas available to natives of the country of the alien's chargeability.

Section 6, subsection (e) would permit persons who would have been lawfully present in the NMI pursuant to local immigration law as of the effective date of this subsection to remain in the NMI for the completion of their period of admission under such local law, as long as such period does not extend beyond two years after such effective date.

Section 6, subsection (f) would impose travel restrictions on asylum aliens admitted to the NMI pursuant to the laws of the CNMI or as temporary workers or employment-based immigrants under the transition program who apply for asylum. Such persons will be required to remain the NMI during the period of time the application is pending or during any appeal period thereafter. An applicant for asylum who during such period leaves the CNMI on his own will without the prior permission of the Attorney General thereby abandons the application.

Section 6, subsection (g) would provide that, effective on the first day of the first full month commencing one year after the enactment date of this section, this section and the INA would supersede all laws, provisions, or programs of the CNMI Government relating to the admission of aliens to and the removal of aliens from the NMI.

Section 6, subsection (h) would provide that no time of ''unlawful presence'' in the NMI would accrue for purposes of the ground of inadmissibility in section 212(a)(9)(B) prior to the date of enactment of section 6.

Section 2, subsection (b) would provide for three ''Conforming Amendments.''

Paragraph (1)(A) would amend section 101(a)(36) of the INA, which defines the term ''state'' for purposes of the INA, to include the Northern Mariana Islands. This amendment would become effective on the first day of the first full month commencing one year after enactment date of section 2 of the Northern Mariana Islands Covenant Implementation Act.

Paragraph (1)(B) would amend section 101(a)(38) of the INA, which defines the term ''United States'' for purposes of the INA, to include the Northern Mariana Islands. This amendment would become effective on the first day of the first full month commencing one year after the enactment date of section 2 of the Northern Mariana Islands Covenant Implementation Act.

Paragraph (2) would amend section 212(l) of the INA to extend the Guam Visa Waiver Program to the CNMI.

Section 2, subsection (c) would obligate the Secretaries of Interior and Labor, in consultation with CNMI, to develop a technical assistance program to aid NMI employers in recruiting, training, and securing employees from among United States labor or lawfully admissible freely associated state citizen labor.

Section 2, subsection (d) would authorize the Attorney General to establish and maintain Immigration and Naturalization Service and Executive Office of Immigration Review operations, and the Secretary of Labor to establish and maintain operations in the NMI in order to perform their respective responsibilities under the INA and the transition program. Subsection (d) further provides for local recruitment and hiring, where appropriate, by the Departments of Justice and Labor.

Section 2, subsection (c) would provide that the President report to the Senate Committee on Energy and Natural Resources, and the House Committee on Resources, evaluating the overall effect of the transition program and the INA on the CNMI.

Section 2, subsection (f) would provide that the CNMI may not increase the total number of temporary alien workers who may be present in the NMI during the one year period after enactment of this section and before the effective date of the transition program from the number present on the date of enactment.

Section 2, subsection (g) would authorize the appropriation of such sums as may be necessary to carry out the purposes of this section and the INA with respect to the CNMI.

Section 3 would add a new section 7 to the Covenant Act that would, beginning thirty days after enactment, raise the minimum wage in the Commonwealth of the Northern Mariana Islands from the current CNMI rate of $3.05 per hour to the Federal minimum wage rate (currently $5.15 per hour), in 30-cent annual increments. This provision would be similar to the minimum wage increase law enacted by the CNMI legislature, but later repealed.

Section 4 would add a new section 8 to the Covenant Act that would require that textile and apparel products produced in the Northern Mariana Islands, which bear a ''Made in USA'' or similar label, be produced in a factory certified by the United States Department of Labor to use United States labor (including citizens, nationals, lawful permanent residents, refugees, or asylees) or freely associated state citizen labor in the following qualified hours of full-time employee equivalents—20 percent for the year beginning January 1, 1998, 35 percent for the year beginning January 1, 1999, and 50 percent beginning January 1, 2000, and thereafter. A textile or apparel product bearing a ''Made in USA'' label that is not produced in a certified factory would be deemed to be misbranded for the purposes of the Textile Fiber Products Identification Act, and sanctions would apply. Additionally, a product would be misbranded if certification by the United States Department of Labor were based on false or incomplete information provided to the Department of Labor.

Section 5 would amend General Note 3(a)(iv) of the Harmonized Tariff Schedules of the United States to prohibit a textile or apparel product produced in the Commonwealth of the Northern Mariana Islands from being admitted duty-free into the customs territory of the United States as a product of an insular possession unless the product is produced in a factory certified by the United States Department of Labor to use United States labor (including citizens, nationals, lawful permanent residents, refugees, or asylees) or freely associated state citizen labor in the following qualified hours of full-time employee equivalents—20 percent for the year beginning January 1, 1998, 35 percent for the year beginning January 1, 1999, and 50 percent beginning January 1, 2000, and thereafter.

U.S. SENATE, COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, July 16, 1997.

Hon. FROILAN C. TENORIO,
Governor of the Northern Mariana Islands, Saipan, MP.

DEAR GOVERNOR TENORIO: I am writing to you concerning the continuing reports of conditions in the Commonwealth of the Northern Mariana Islands and the various measures that have been suggested to address those problems. In February of last year, I had the opportunity to visit the Commonwealth with Senator Akaka. While our visit was brief, we did see conditions that simply should not be allowed to exist in any area under the sovereignty of the United States. In meetings with your staff, we were assured that your Administration was committed to prompt and effective law enforcement, and that we needed to give the joint Federal-CNMI initiative time to work.

On June 26 of last year, the Committee conducted a hearing that in part focused on oversight of the situation in the Northern Marianas. I stated that unless the Commonwealth took action to remedy the problems that existed, federal action was all but inevitable. While I support local authority, that authority must be responsibly exercised. At that hearing, your representative asked that the Committee delay any action until the Commonwealth could complete a report on minimum wage and that the report would be available in January of this year. I agreed. Although the report was not available until April, that delay did not appear to be a major problem since the Department of the Interior was due to submit its report on the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement in April.

Although the Administration's report has still not been submitted, on May 30, 1997 the President wrote you that he had concluded that federal immigration, naturalization, and minimum wage laws should now be applied to the Commonwealth. To date, although the Administration has not transmitted legislation to implement the President's conclusion, legislation extending those laws has been introduced in the House and I am aware of several Members of the Senate who are also considering similar measures.

I intend to schedule a hearing to consider what legislation, if any, should be enacted shortly after the Administration submits its report, which I understand is now under final review by the Office of Management and Budget. I have asked the Secretary of the Interior to draft legislation to implement the final recommendations of the report. I intend to introduce that draft in order to focus the testimony at the hearing. In addition to the measures that have been discussed, I also want the hearing to consider whether changes should be made in the application of Headnote 3(A) and what needs to be done to strengthen enforcement of federal and local laws.

Given the delay in transmittal of the Administration's report, I do not expect that we will be able to schedule a hearing prior to September. I want to be certain that you have had sufficient time to review the Administration's report and any legislation, but I also want to conduct the hearing so that there is sufficient time to consider whatever legislative measures appear warranted during this session of the Congress.

Sincerely,

FRANK H. MURKOSWKI,
Chairman.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, October 6, 1997.
Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of July 16, 1997, requesting a drafting service that would implement the Administration's recommendations for the Commonwealth of the Northern Mariana Islands (CNMI) contained in the Administration's July 1997 report on the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement. Pursuant to your request, I have enclosed a legislative proposal that addresses the recommendations in the Administration's report. The Administration strongly supports the enactment of this proposal.

While we are firm in our commitment to the proposals outlined in the recommendations, the Administration is, however, willing to consider amendments. A Federal policy framework is needed to respond to the use of CNMI as a platform for circumvention of United States' garment duties and quotas, the CNMI's ineffective immigration control, and the unhealthy and unsustainable dependence on temporary low-paid foreign workers in the islands.

President Clinton, in his May 30, 1997 letter to CNMI Governor Froilan Tenorio, stated that his Administration would consult with the Governor and other representatives of the Commonwealth regarding the application of laws to the CNMI. Following through on the President's commitment, the Departments of Labor, Justice (INS), State, Commerce, and Interior sent senior representatives to the CNMI in August to discuss legislative implementation of the recommendations contained in the report. While the Governor did not meet with this Federal delegation, it was able to convey to many local government and business leaders the long-standing concerns of the Federal government regarding the CNMI's garment and foreign labor policies, discuss details of the Administration's recommendations for addressing these problems, and hear local concerns regarding the recommendations. The information gained on the trip was carefully considered. In closing, let me note that the Administration looks forward to working with you and the CNMI to enact legislation that will reconcile Federal responsibilities with the CNMI's needs.

The Office of Management and Budget advises that there is no objection to the presentation of this proposal to Congress, and that its enactment would be in accord with the Administration's program.

Sincerely,
ALLEN P. STAYMAN,
Director,
Office of Insular Affairs.

Mr AKAKA. Mr. President, I am pleased to join Senator MURKOWSKI in introducing the Commonwealth of the Northern Mariana Islands Covenant Implementation Act, legislation to curb trade, immigration, wage, and apparel labeling abuses in the CNMI.

On July 31, 1997, I introduced S. 1100, the CNMI Reform Act, S. 1100 extends the Immigration and Nationality Act to the Commonwealth, limits use of the ''Made in USA'' label, and applies the U.S. minimum wage to the CNMI. The measure we are introducing today is similar to S. 1100, but also imposes duties on CNMI garments unless garment companies employ a sufficient number of U.S. employees and establishes a comprehensive regime for CNMI immigration and naturalization.

This is a bipartisan bill, drafted by the Clinton administration at the request of the Republican chairman of the Senate Energy Committee. It contains more comprehensive reforms than the measure I introduced earlier this year. Under the Murkowski-Akaka bill, the CNMI garment industry will face severe restrictions because of continued abuses.

After a thorough analysis, the Commerce Department recently concluded that the Commonwealth is an ''outpost for Chinese apparel production.'' The Commerce Department found that apparel manufacturers from the People's Republic of China have transplanted their operations to the CNMI, employing bonded and indentured Chinese leaders to sew Chinese fabric into garments labeled ''Made in USA.'' By using the Commonwealth as an apparel manufacturing base, Chinese manufacturers avoid tariffs and escape United States quotas on finished goods.

Despite promises of the American dream if they work in the CNMI, laborers must sign contracts with the People's Republic of China that waive rights guaranteed to U.S. workers, forbid participation in religious and political activities while in the United States, prohibit workers from marrying, and subject employees to penalties in the PRC. Working conditions in the CNMI garment industry hardly justify granting ''Made in USA'' status and preferential duties to CNMI garments.

A recent investigative report by King World Productions-''Inside Edition'' is evidence of the abuses which garment workers suffer. ''Inside Edition'' used hidden cameras to expose the overcrowded and squalid buildings workers are forced to live in. Employees described being confined to barracks ringed by barbed wire and being treated more like prisoners than employees.

IMMIGRATION CONCERNS

I am sure many Senators will find it hard to believe that the Immigration and Nationality Act does not apply to all territories in the United States. As surprising as it may be, the CNMI is exempt from U.S. immigration law and maintains its own policy on immigration.

After 20 years, CNMI immigration policy is a proven failure. In 1980, the Commonwealth's population was 16,780. Of these, 12 percent were alien residents. Today, CNMI's has a population of 59,000, more than half of whom are aliens.

Rather than preventing an influx of immigrants, the CNMI has established an aggressive policy of recruiting low-wage, foreign guest workers to operate an ever-expanding garment and tourism industry. According to the CNMI representative in Washington, local immigration policy has ''no limit. It is wide open, unrestricted.''

The U.S. Immigration and Naturalization Service reports that CNMI authorities have no reliable records of aliens who have entered the CNMI, how long they remain, and when, if ever, they depart. Ninety-one percent of the private sector work force are alien guest workers, and these workers have overwhelmed the CNMI to the point where the unemployment rate among U.S. citizens living in the Commonwealth is 14 percent. There is no justification for an immigration policy that admits foreign workers in such overwhelming numbers that it leads to double-digit unemployment.

Given these circumstances, the application of U.S. immigration law to the CNMI is long overdue.

''MADE IN USA'' ABUSE

The evidence that garments sewn in the CNMI directly and unfairly compete with U.S. apparel manufacturers is very strong. According to the Commerce Department, 85 percent of CNMI apparel is classified as import sensitive. This classification means that CNMI garments compete with segments of the U.S. apparel industry that are experiencing significant decline due to heavy import penetration.

Apparel manufacturers in the CNMI enjoy benefits that far exceed those enjoyed by foreign or domestic manufacturers. CNMI garment factories are not subject to the U.S. minimum wage and pay no duty on fabrics they import. Furthermore, quotas do not apply to either fabric imported into the Commonwealth, or to finished garments cut and sewn in the CNMI using foreign labor. Yet these products are labeled ''Made in the USA'' and compete unfairly with apparel employment elsewhere in the United States.

LABOR ABUSE

The 1976 covenant exempts the CNMI from the Federal minimum wage. This exemption was granted with the understanding that as its economy grew and prospered, the CNMI would raise its minimum wage to the Federal level. Foreign workers typically enter the CNMI under 1-year work permits and are paid a minimum wage of $3.05.

According to the July 1997 report by the Department of the Interior, the lower minimum wage, combined with unlimited access to foreign labor, creates an incentive for employers to hire foreign labor for all jobs, including skilled and entry level jobs at or near the minimum wage. Employment statistics clearly supports the Interior Department's analysis.

The minimum wage is sometimes a lightning-rod for Republicans. However, in a labor market where there is an unlimited supply of guest workers, the low CNMI minimum wage means that low-wage alien laborers are displacing U.S. workers. Any policy that favors foreign workers over the interests of employed and unemployed U.S. citizens is indefensible.

HUMAN RIGHTS AND SEXUAL ABUSE

The Commonwealth's immigration policy results in serious problems in other areas. The Justice Department

has documented numerous cases of women and girls being recruited from the Philippines, China, and other Asian countries expressly for criminal sexual activity. These abuses are a direct consequence the Commonwealth's unrestricted immigration policy.

Typically, these women are told they will work in the CNMI as waitresses, but are forced into nude dancing and prostitution upon their arrival. The Justice Department described this situation as the ''systematic trafficking of women and minors for prostitution,'' which may also involve illegal smuggling, organized crime, immigration document fraud, and pornography. Cases of sexual servitude have also been identified.

The U.S. Justice Department also found cases of female guest workers and aliens living in the CNMI being forced into prostitution through intimidation or threats of physical harm. In some instances, women who resist are kidnapped, raped, and tortured.

I thank Senator MURKOWSKI, the chairman of the Senate Energy and Natural Resources Committee, for his efforts to reform these abuses in the CNMI. I look toward to working with him on moving this bill through our committee so that it can be considered on the Senate floor.

By Mr. BINGAMAN:

S. 1276. A bill to amend the Federal Power Act, to facilitate the transition to more competitive and efficient electric power markets, and for other purposes; to the Committee on Energy and Natural Resources.

THE FEDERAL POWER ACT AMENDMENTS OF 1997

Mr. BINGAMAN. Madam President, I rise today to introduce the Federal Power Act Amendments of 1997. This bill streamlines the Federal regulation of electric power and helps reduce costs for all factories, businesses, and homeowners. The changes in Federal regulation in this bill will also yield savings for consumers by providing new opportunities for competition in the wholesale market for electric power.

This bill improves the way the Federal Government regulates electric power to achieve three important goals. First, it will facilitate the ongoing transition to more competitive and efficient markets. Second, it will assure the continued reliability of the transmission system that carries the power in interstate commerce. And third, it will remove Federal regulatory ambiguities and barriers for those States that elect to give customers a choice in selecting their energy provider. Very importantly, my bill leaves for the States the issues that are best dealt with at that level and provides for Federal authority only over issues raising a clear national interest.

In the last 9 months the Energy and Natural Resources Committee has conducted seven workshops that helped bring forward many of the complex electric power issues facing State and Federal regulators. The debate today remains centered on whether or not the Federal Government should require the utilities in every State to implement competition at the retail level. There are, however, other important issues that underlie this central debate. These include the possible repeal of the Public Utilities Regulatory Policy Act, known as PURPA; changes in the Public Utility Holding Company Act, known to everyone here as PUHCA; and the treatment of past investments in powerplants that may no longer be economical, so called stranded costs, to name just a few.

Our electric power industry has a strong regional and local character with over 3,000 individual utilities, including investor-owned, municipal, Federal, and rural cooperatives. Several comprehensive bills have now been introduced in the House and Senate that promise to deregulate the Nation's electric power industry. Meanwhile, a number of individual States are moving forward with retail competition.

However, in list of the vast difference in the circumstance of 3,000 individual utility companies, it is going to be difficult to develop a consensus on comprehensive Federal legislation. If comprehensive electricity legislation does not move forward, I believe Congress must still address a number of important issues that can only be dealt with at the Federal level. I'd like to take a moment to explain what these issues are and how my bill differs from proposals that require retail competition for all electric utility customers.

Madam President, our electric power industry is made up of three main components: Powerplants that generate the power, high-voltage transmission lines that carry the power over long distances, and the local distribution systems that bring the power into our homes and businesses. Most of the other bills would require States to deregulate their utilities and implement retail competition. Still, for all the talk about deregulation, I hope everyone realizes they are talking about deregulating, only the first piece: The powerplants that use coal, natural gas, or other sources to generate the energy on which we all depend. The other two components of the industry, the transmission and local distribution systems, will remain regulated monopolies.

My bill takes a very different approach. It is not a restructuring bill. It will not overturn the established division between State and Federal regulation, and it does not require States to implement retail competition by a date certain. Rather, my bill forges new ground in the debate by focusing on the middle piece of the electric utility industry: The interstate transmission grid that is the critical link between generators and consumers. The transmission system clearly involves interstate commerce with a distinct national interest that can only be addressed at the Federal level.

Let me explain why it is important that we streamline the Federal regulation of interstate transmission and how that can save consumers money. The Nation's transmission system serves, if you will, like an interstate highway for electric power. We all know what can happen when the highway on-ramps or off-ramps are closed or when bottlenecks or breakdowns occur. The same is true of the electric transmission system. The smooth flow of electric power depends on having sufficient transmission capacity and on the system operating reliably and without disruptions. Problems in the electricity transmission system, like problems on interstate highways, can impede commerce. If some businesses are denied access, or if different highways operate under different rules, competition will suffer.

Madam President, I believe an efficient and reliable electric transmission system will be one of the most important factors in the development of robust regional and national markets for electric power. Over the last 100 years we have developed a complex grid of transmission lines owned by private, government, and cooperative utilities. With the Energy Policy Act of 1992, Congress took the first steps toward providing fair and open access to portions of the transmission system. Today, Federal and State regulators are continuing to push for increased competition. These dramatic changes in regulation are placing new demands on the transmission system. We are asking it to function increasingly like the interstate highways. However, the system we have was never planned to function in this more competitive environment.

Today we have a transmission system with many constraints and bottlenecks, with no uniform system of regulation, with some portions of the system closed to users, and without any assurance that all users of the system will follow the same rules. Clearly, we can't hope to realize the full benefits of competition if buyers and sellers of power can't deal equally in an open and fair market. Without fair competition, the cost of power is higher than it should be. My bill will help correct this situation.

Currently, the regulation of power sales over the Nation's electric power grid is split between various State and Federal jurisdictions. The Federal Energy Regulatory Commission has authority over pricing of transmission service. The States have authority to license and site new transmission facilities. A growing portion of power transmission and sales is taking place on a regional and even a national scale. We are increasingly dependent on long-distance power transmission; sometimes from as far away as 1,000 miles. In the West, every single State from New Mexico to Montana and from California to Washington is electrically interconnected. All of the Eastern States except parts of Texas are similarly interconnected. My bill seeks to

maintain a careful balance of State and national interests that assures the Nation's transmission system operates efficiently, all players are treated equitably, and reliability is maintained.

Madam President, I'd like now to describe briefly some of the key provisions in the bill.

FEDERAL AND STATE JURISDICTION

One of the important goals of this bill is to resolve ambiguities in Federal and State jurisdiction that have arisen since 1992 with the implementation of open transmission access. First, this bill removes once and for all any ambiguity over whether States, indeed, have the authority to implement retail competition. In addition, we used to have a clear line between Federal and State jurisdiction. However, now that some States are electing to implement retail competition, the bright line is increasingly blurred. If we don't clarify these ambiguities we could well find ourselves swamped with litigation that frustrates State and Federal efforts to expand competition.

TRANSMISSION ACCESS

Another provision in the bill requires all transmission systems to be operated under the same regulatory policies. Under current law, FERC's jurisdiction is primarily limited to transmission systems owned by investor-owned utilities. Only these utilities are required to provide open access to anyone who requests it. The goal is to bring all transmission systems, including those owned by Federal entities, municipalities, and rural electric co-ops, under the same system of regulation. My bill also extends fair and open access to transmission lines that cross the borders with Mexico and Canada. A uniform regulatory environment will promote the use of the transmission grid for fair and equitable competition.

RURAL AND LOW-INCOME CONSUMERS

Will all customers be able to benefit from competition? I have heard this concern expressed often. My bill makes sure the States that choose to implement retail competition do not forget about low-income and retired citizens on fixed incomes, or about rural consumers who might otherwise be left out because they are not as profitable to serve as urban consumers.

RECIPROCITY

A provision of this bill deals with the situation where one State elects competition and a neighboring State does not. Utilities in the State without competition could cross the State line and steal customers without fear of losing their own customers. My bill would prevent this practice by allowing a State to protect its own utilities from unfair competition. It also encourages utilities to open up their systems voluntarily so they can participate in the growing competition.

RELIABILITY

Finally, to assure fair and open competition on the Nation's interstate transmission system, the bill gives the Federal Energy Regulatory Commission authority in several new areas. First, to enhance system reliability, we provide the commission with regulatory authority to back up the existing voluntary system with rules and regulations that have the weight of Federal enforcement. The existing system under the National Electric Reliability Council has worked effectively. However, competition is bringing many new players to the interstate transmission grid, and effective enforcement of rules and standards requires there by some teeth in the system.

TRANSMISSION SITING

The bill provides a Federal role, in partnership with States, to assure that transmission lines that cross State boundaries are upgraded and expanded when needed. Any siting decision would be subject to all applicable State and Federal legislation, including the Environmental Protection Act. The interstate transmission system is one of the keys to maintaining system reliability and additional capacity will stimulate competition by allowing new players into the market.

INDEPENDENT SYSTEM OPERATORS

My bill also provides new authority to the Federal Energy Regulatory Commission to assure the transmission system is managed and operated in an open and fair way that does not discriminate against any users. With this new authority, the commission may require the formation of independent operators for regional transmission systems. Having an independent system operator provides greater efficiency in transmission pricing, makes sure there is fair and open access for all users, and that the owners of the transmission system do not use it to their own advantage. In some cases, these independent systems are already developing voluntary or under state mandates.

Madam President, I'd like to say a few words about an issue known as ''stranded costs.'' Stranded costs are investments in powerplants made under past regulatory practices that may no longer be economic in the new competitive environment. Stranded costs are of critical concern to utility investors and to rural electric cooperatives. As I hope I have made clear, my bill focuses on the regulation and use of the interstate transmission system, a national issue that does not compel retail competition or the resulting stranded costs. I believe the States are the proper forum to deal with retail competition and to resolve thorny issues like stranded costs that are not national in nature. We in Congress are monitoring how the States are handling stranded costs from retail competition. If in the future it appears that States are not equitably addressing stranded costs, then I believe Congress should take a very serious look at the subject.

In putting forward the proposals in this bill I have listened to a number of suggestions and evaluated a variety of concepts. Not all of the ideas could be incorporated into the framework of a single bill, even though many of the approaches clearly have merit. As the debate on electricity regulation moves forward, I expect to refine and expand on the proposals I am putting forward today.

In summary, Madam President, this bill will reduce costs for consumers by encouraging the development of robust competition in the interstate market for electric power. We do this by streamlining Federal regulation of the interstate transmission system and by assuring that all transmissions owners and users play by the same rules. In addition, the bill will remove Federal regulatory barriers for those states that allow consumers to choose their source of electric power. I hope all Senators will consider the important proposals in this bill.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 1276

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Power Act Amendments of 1997''.

SEC. 2. CLARIFICATION OF JURISDICTION.

(a) DECLARATION OF POLICY.—Section 201(a) of the Federal Power Act (16 U.S.C. 824(a)) is amended by—

(1) inserting after ''transmission of electric energy in interstate commerce'' the following: '', including the unbundled transmission of electric energy sold at retail,''; and

(2) striking ''such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.'' and inserting the following: ''such Federal regulation shall not extend, however, to the bundled retail sale of electric energy or to unbundled local distribution service, which are subject to regulation by the States.''.

(b) APPLICATION OF PART.—Section 201(b) of the Federal Power Act (16 U.S.C. 824(b)(1)) is amended by—

(1) inserting after ''the transmission of electric energy in interstate commerce'' the following: '', including the unbundled transmission of electric energy sold at retail,''; and

(2) adding at the end the following:

''(3) The Commission, after consulting with the appropriate State regulatory authorities, shall determine, by rule or order, which facilities used for the transmission and delivery of electric energy are used for transmission in interstate commerce subject to the jurisdiction of the Commission under this Part, and which are used for local distribution subject to State jurisdiction.''.

(c) DEFINITION OF INTERSTATE COMMERCE.—Section 201(c) of the Federal Power Act (16 U.S.C. 824(c)) is amended by inserting after ''outside thereof'' the following: ''(including consumption in a foreign country)''.

(d) DEFINITIONS OF TYPES OF SALES.—Section 201(d) of the Federal Power Act (16 U.S.C. 824(d)) is amended by—

(1) inserting ''(1) after the subsection designation;

(2) adding at the end the following:

''(2) The term ''bundled retail sale of electric energy'' means the sale of electric energy to an ultimate consumer in which the generation and transmission service are not sold separately.

''(3) The term ''unbundled local distribution service'' means the delivery of electric energy to an ultimate consumer if—

''(A) the electric energy and the service of delivering it are sold separately, and

''(B) the delivery uses facilities for local distribution as determined by the Commission under subsection (b)(3).

''(4) The term ''unbundled transmission of electric energy sold at retail'' means the transmission of electric energy to an ultimate consumer if—

''(A) the electric energy and the service of transmitting it are sold separately, and

''(B) the transmission uses facilities for transmission in interstate commerce as determined by the Commission under subsection (b)(3).''.

(e) DEFINITIONS OF PUBLIC UTILITY.—Section 201 of the Federal Power Act (16 U.S.C. 824) is amended by striking subsection (e) and inserting the following:

''(e) The term ''public utility'' when used in this Part or in the Part next following means—

''(1) any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212); or

''(2) any electric utility or Federal power marketing agency not otherwise subject to the jurisdiction of the Commission under this Part, including—

''(A) the Tennessee Valley Authority,

''(B) a Federal power marketing agency,

''(C) a State or any political subdivision of a State, or any agency, authority, or instrumentality of a State or political subdivision,

''(D) a corporation or association that has ever received a loan for the purpose of providing electric service from the Administrator of the Rural Electrification Administration or the Rural Utilities Service under the Rural Electrification Act of 1936; or

''(E) any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing.

but only with respect to determining, fixing, and otherwise regulating the rates, terms, and conditions for the transmission of electric energy under this Part (including sections 217, 218, and 219).''.

(f) APPLICATION OF PART TO GOVERNMENT UTILITIES.—Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by striking ''No provision'' and inserting ''Except as provided in subsection (e)(2) and section 3(23), no provision''.

(g) DEFINITION OF TRANSMITTING UTILITY.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by striking paragraph (23) and inserting the following:

''(23) TRANSMITTING UTILITY.—The term ''transmitting utility'' means any electric utility, qualifying cogeneration facility, qualifying small power production facility, Federal power marketing agency, or any public utility, as defined in section 201(e)(2), that owns or operates electric power transmission facilities which are used for the sale of electric energy.''.

SEC. 3. FEDERAL WHEELING AUTHORITY.

(a) COMMISSION AUTHORITY TO ORDER RETAIL WHEELING.—

(1) Section 211(a) of the Federal Power Act (16 U.S.C. 824k(a)) is amended by striking ''for resale''.

(2) Section 212(a) of the Federal Power Act (16 U.S.C. 824k(a) is amended by striking ''wholesale transmission services'' each place it appears and inserting ''transmission services''.

(3) Section 212(g) of the Federal Power Act (16 U.S.C. 824k(g)) is repealed.

(b) LIMITATION ON COMMISSION AUTHORITY TO ORDER RETAIL WHEELING.—Section 212 of the Federal Power Act (16 U.S.C. 824k) is further amended by striking subsection (h) and inserting the following:

''(h) LIMITATION ON COMMISSION AUTHORITY TO ORDER RETAIL WHEELING.—No rule or order issued under this Act shall require or be conditioned upon the transmission of electric energy:

''(1) directly to an ultimate consumer in connection with a sale of electric energy to the consumer unless the seller of such energy is permitted or required under applicable State law to make such sale to such consumer, or

''(2) to, or for the benefit of, an electric utility if such electric energy would be sold by such utility directly to an ultimate consumer, unless the utility is permitted or required under applicable State law to sell electric energy to such ultimate consumer.''.

(c) CONFORMING AMENDMENT.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by striking paragraph (24) and inserting the following:

''(24) TRANSMISSION SERVICES.—The term ''transmission services'' means the transmission of electric energy in interstate commerce.''.

SEC. 4. STATE AUTHORITY TO ORDER RETAIL ACCESS.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 215. STATE AUTHORITY TO ORDER RETAIL ACCESS.

''(a) STATE AUTHORITY.—Neither silence on the part of Congress nor any Act of Congress shall be construed to preclude a State or State commission, acting under authority of state law, from requiring an electric utility subject to its jurisdiction to provide unbundled local distribution service to any electric consumer within such State.

''(b) NONDISCRIMINATORY SERVICE.—If a State or State commission permits or requires an electric utility subject to its jurisdiction to provide unbundled local distribution service to any electric consumer within such State, the electric utility shall provide such service on a not unduly discriminatory basis. Any law, regulation, or order of a State or State commission that results in unbundled local distribution service that is unjust, unreasonable, unduly discriminatory, or preferential is hereby preempted.

''(c) RECIPROCITY.—Notwithstanding subsection (b), a State or State commission may bar an electric utility from selling electric energy to an ultimate consumer using local distribution facilities in such State if such utility or any of its affiliates owns or controls local distribution facilities and is not itself providing unbundled local distribution service.

''(d) STATE CHARGES.—Nothing in this Act shall prohibit a State or State regulatory authority from assessing a nondiscriminatory charge on unbundled local distribution service within the State, the retail sale of electric energy within the State, or the generation of electric energy for consumption by the generator within the State.''.

SEC. 5. UNIVERSAL AND AFFORDABLE SERVICE.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 216. UNIVERSAL AND AFFORDABLE SERVICE.

''(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

''(1) every consumer of electric energy should have access to electric energy at reasonable and affordable rates, and

''(2) the Commission and the States should ensure that competition in the electric energy business does not result in the loss of service to rural, residential, or low-income consumers.

''(b) CONSIDERATION AND REPORTS.—Any State or State commission that requires an electric utility subject to its jurisdiction to provide unbundled local distribution service shall—

''(1) consider adopting measures to—

''(A) ensure that every consumer of electric energy within such State shall have access to electric energy at reasonable and affordable rates, and

''(B) prevent the loss of service to rural, residential, or low-income consumers; and

''(2) report to the Commission on any measures adopted under paragraph (1).''.

SEC. 6. NATIONAL ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 217. NATIONAL ELECTRIC RELIABILITY STANDARDS.

''(a) RELIABILITY STANDARDS.—The Commission shall establish and enforce national electric reliability standards to ensure the reliability of the electric transmission system.

''(b) DESIGNATION OF NATIONAL AND REGIONAL COUNCILS.—

''(1) For purposes of establishing and enforcing national electric reliability standards under subsection (a), the Commission may designate an appropriate number of regional electric reliability councils composed of electric utilities or transmitting utilities, and one national electric reliability council composed of designated regional electric reliability councils, whose mission is to promote the reliability of electric transmission system.

''(2) The Commission shall not designate a regional electric reliability council unless the Commission determines that the council—

''(A) permits open access to membership from all entities engaged in the business of selling, generating, transmitting, or delivering electric energy within its region;

''(B) provides fair representation of its members in the selection of its directors and the management of its affairs, and

''(C) adopts and enforces appropriate standards of operation designed to promote the reliability of electric transmission system.

''(c) INCORPORATION OF COUNCIL STANDARDS.—The Commission may incorporate, in whole or in part, the standards of operation adopted by the regional and national electric reliability councils in the national electric reliability standards adopted by the Commission under subsection (a).

''(d) ENFORCEMENT.—The Commission may, by rule or order, require any public utility or transmitting utility to comply with any standard adopted by the Commission under this section.

SEC. 7. SITING NEW INTERSTATE TRANSMISSION FACILITIES.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 218. SITING NEW INTERSTATE TRANSMISSION FACILITIES.

''(a) COMMISSION AUTHORITY.—Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may order a transmitting utility to enlarge, extend, or improve its facilities for the interstate transmission of electric energy.

''(b) PROCEDURE.—The Commission may commence a proceeding for the issuance of an order under subsection (a) upon the application of an electric utility, transmitting utility, or state regulatory authority, or upon its own motion.

''(c) COMPLIANCE WITH OTHER LAWS.—Commission action under this section shall be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable state and federal laws.

''(d) USE OF JOINT BOARDS.—Before issuing an order under subsection (a), the Commission shall refer the matter to joint board appointed under section 209(a) for advice and

recommendations on the need for, design of, and location of the proposed enlargement, extension, or improvement. The Commission shall consider the advice and recommendations of the Board before ordering such enlargement, extension, or improvement.

''(e) LIMITATION ON AUTHORITY.—The Commission shall have no authority to compel a transmitting utility to extend or improve its transmission facilities if such enlargement, extension, or improvement would unreasonably impair the ability of the transmitting utility to render adequate service to its customers.''.

SEC. 8. REGIONAL INDEPENDENT SYSTEM OPERATORS.

Part II of the Federal Power Act is further amended by adding at the end the following:

''SEC. 219. REGIONAL INDEPENDENT SYSTEM OPERATORS.

''(a) Regional Transmission Systems.—Whenever the Commission finds such action necessary or desirable in the public interest to ensure the fair and non-discriminatory access to transmission services within a region, the Commission may order the formation of a regional transmission system and may order any transmitting utility operating within such region to participate in the regional transmission system.

''(b) OVERSIGHT BOARD.—The Commission shall appoint a regional oversight board to oversee the operation of the regional transmission system. Such oversight board shall be composed of a fair representation of all of the transmitting utilities participating in the regional transmission system, electric utilities and consumers served by the system, and State regulatory authorities within the region. The regional oversight board shall ensure that the independent system operator formulates policies, operates the system, and resolves disputes in a fair and nondiscriminatory manner.

''(c) INDEPENDENT SYSTEM OPERATOR.—The regional oversight board shall appoint an independent system operator to operate the regional transmission system. No independent system operator shall—

''(1) own generating facilities or sell electric energy, or

''(2) be subject to the control of, or have a financial interest in, any electric utility or transmitting utility within the region served by the independent system operator.

''(d) COMMISSION RULES.—The Commission shall establish rules necessary to implement this section.''.

SEC. 9. ENFORCEMENT.

(a) GENERAL PENALTIES.—Section 316(c) of the Federal Power Act (16 U.S.C. 825o(c)) is amended buy—

(1) striking ''subsection'' and inserting ''section''; and

(2) striking ''or 214'' and inserting: ''214, 217, 218, or 219''.

(b) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended by striking ''or 214'' each place it appears and inserting: ''214, 217, 218, or 219''.

SEC. 10. AMENDMENT TO THE PUBLIC UTILITY REGULATORY POLICIES ACT.

Section 10 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

''(m) PROTECTION OF EXISTING WHOLESALE POWER PURCHASE CONTRACTS.—No State or State regulatory authority may bar a State regulated electric utility from recovering the cost of electric energy the utility is required to purchase from a qualifying cogeneration facility or qualifying small power production facility under this section.''.

THE FEDERAL POWER ACT AMENDMENTS OF 1997

(Federal Legislation Focused on Federal Regulation of Interstate Transmission and Wholesale Sales)

SECTION-BY-SECTION SUMMARY

Section 1. Short Title

This act may be cited as the ''Federal Power Act Amendments of 1997.'' This bill does not mandate retail competition. The purpose is to facilitate the transition to more competitive and efficient markets for bulk power and to foster the development of state-directed efforts to establish retail competition.

Section 2. Clarification of Federal and State Jurisdiction

This section resolves ambiguities in federal and state jurisdiction that have arisen with the implementation of Title VII of the Energy Policy Act of 1992 and the ensuing trend to state-implemented retail competition. Unless clarified, these ambiguities could spawn protracted litigation and frustrate federal and state efforts to expand competition. This section also extends FERC's jurisdiction over the remaining 22% of interstate transmission systems not currently covered.

(a)(1) Clarifies that transmission of electric energy in interstate commerce, which is under FERC jurisdiction, includes the unbundled transmission of electric energy sold at retail. FERC has proceeded under the assumption it has authority to order transmission necessary to implement state-ordered retail competition, and utilities have filed transmission tariffs required to implement retail competition. Paragraph (2) reinforces existing state jurisdiction over the bundled retail sale of electric energy and the unbundled local distribution of electric energy.

(b) In Order No. 888, FERC took the position that the transmission component of unbundled sales is subject to FERC jurisdiction. Paragraph (1) establishes FERC's authority under Part II of the Federal Power Act over the transmission in interstate commerce of electric power as part of an unbundled sale of energy sold at retail. Paragraph (2) authorizes FERC, in consultation with state regulators, to draw the line between interstate transmission, which is subject to FERC authority, and local distribution, which is subject to state jurisdiction. FERC's jurisdiction over unbundled transmission necessitates a process for determining where FERC jurisdiction ends and state jurisdiction over unbundled distribution begins.

(c) Extends FERC's jurisdiction over transmission of electric energy in interstate commerce if the energy will be consumed in a foreign country. The ambiguity in existing law was raised in FERC's October 4, 1996, order on complaint in Docket No. EL96–74–000.

(d) Adds definitions to Part II for ''bundled retail sale of electric energy,'' ''unbundled local distribution service,'' and ''unbundled transmission of electric energy sold at retail.''

(e) Redefines ''public utility'' so as to extend FERC's authority to regulate transmission services (and only transmission) of non-jurisdictional utilities, including TVA, Power Marketing agencies, municipal utilities, and rural electric cooperatives. Currently, FERC's FPA jurisdiction is limited primarily to investor-owned utilities. Nonjurisdictional utilities control a significant portion of the nation's existing transmission capacity. The full benefits of wholesale competition may not be realized unless all transmitting utilities are subject to the same regulatory policies.

(f) Continues exemption of TVA, PMAs, municipal utilities and rural electric cooperatives from FERC jurisdiction under Part II, except with respect to regulation of transmission. This section leaves intact the exemption from FERC jurisdiction for any wholesale sales of power made by non-jurisdictional utilities.

(g) Redefines ''transmitting utility'' to cover all transmission systems, including any electric utility, qualifying cogeneration facility, qualifying small power production facility, federal power marketing agency, public utility (as redefined by subsection (e)) that owns or operates transmission facilities used for the sale of electric energy.

Section 3. Limitations on Federal Wheeling Authority

Sections 211 and 212 of the FPA currently prohibit FERC from ordering retail wheeling. This section clarifies FERC's authority to order interstate transmission service for wholesale sales and as part of a retail sale, but the latter only if authorized by state law.

(a) Clarifies FERC's authority to order transmission access under sections 211 and 212 for transmission in interstate commerce for both wholesale sales for resale and unbundled transmission of electric energy sold at retail.

(b) Limits FERC's authority to order unbundled transmission of electric energy sold at retail under sections 211 and 212 only if such sales are permitted or required under applicable state law.

(c) Conforming amendment that broadens the definition of transmission services to include both wholesale transmission and unbundled transmission of electric energy sold at retail.

Section 4. State Authority To Order Retail Access

Adds a new section 215 at the end of Part II to clarify and extend state authority over access to retail customers.

New subsection (a) recognizes state authority to require an electric utility to provide unbundled local distribution service to any consumer. The Energy Policy Act of 1992 included in the FPA a savings clause at the end of subsection 212(h) that preserves whatever state authority may exist to order retail wheeling; however, it does not affirm conclusively that the states do in fact have such authority. Because retail wheeling is in interstate commerce, it could be argued states lack authority to order retail wheeling. This subsection removes the statutory ambiguity.

New subsection (b) requires states that authorize utilities to provide unbundled local distribution service to assure the utilities provide distribution service on a nondiscriminatory basis. This subsection will help assure that local distribution companies do not use state-regulated monopolies to favor, for example, their un-regulated subsidiaries.

New subsection (c) provides for retail reciprocity. States may bar an electric utility from selling power at retail in the state unless the utility is itself providing unbundled local distribution service. Currently, a state may not condition access to its retail markets without facing a challenge as an unlawful burden on interstate commerce. This subsection eliminates the inequity of out-of-state utilities competing for retail customers in states with open access without having to provide similar access to their own customers. This provision may also create an incentive for utilities to open their markets to retail competition.

New subsection (d) assures state authority to impose a nondiscriminatory charge on the unbundled local distribution service, retail sale, or generation for consumption of electric energy. Such a charge might be used to

fund, for example, competitive transition costs, universal and affordable service under section 216, demand side-management programs, etc.

Section 5. Universal and Affordable Service

Adds a new section 216 at the end of Part II that puts Congress on record that every consumer should have access to electric power at reasonable and affordable rates and that FERC and the states should assure that competition does not result in the loss of service to rural, residential, or low-income customers. Requires states that adopt retail competition to consider adopting measures to assure universal and affordable service and to report to FERC on the measures adopted. Funds to cover the cost of such measures may be assessed under new section 215(d).

Section 6. National Electric Reliability Standards

Adds a new section 217 at the end of Part II to establish national electric reliability standards under FERC jurisdiction. Competition is bringing many new players to the interstate transmission grid. Such competition will place new and conflicting requirements on NERC's existing voluntary system, which lacks enforcement powers. There is a clear and legitimate federal role in ensuring system reliability. This section is consistent with the draft recommendations of the Secretary of Energy Advisory Board Task Force on Electric-System Reliability.

New subsection (a) authorizes FERC to establish and enforce national electric reliability standards to ensure the reliability of the electric transmission system.

New subsection (b) authorizes FERC to designate an appropriate number of regional reliability councils composed of electric utilities and transmitting utilities, and one national electric reliability council composed of the regional councils. The mission of the councils is to promote the reliability of the electric transmission system. FERC shall not designate a regional council unless the commission determines the council permits open access to membership from all electric utilities (IOUs, NUGs, power marketers, municipal utilities or TVA) and transmitting utilities in the region, provides fair representation in the selection of its directors and management, and adopts and enforces appropriate standards of operation.

New subsection (c) authorizes FERC to incorporate standards of operation adopted by the councils into the standards adopted under subsection (a).

New subsection (d) authorizes FERC, by rule or order, to require any public utility (electric utility plus the PMAs) or any transmitting utility to comply with the standards.

Section 7. Siting New Interstate Transmission Facilities

Adds a new section 218 at the end of Part II to authorize FERC to work with the states on siting new interstate transmission facilities. An integrated and well planned national transmission grid is a critical element in the development of open and fair competition, maintaining system reliability, reducing market power, and mitigating stranded costs. This section does not preempt the states' exclusive authority over siting of transmission lines.

New subsection (a) gives FERC authority, after notice and opportunity for hearing, to order a transmitting utility to extend, enlarge or improve its facilities for the interstate transmission of electric energy.

New subsection (b) defines when FERC may commence a proceeding under subsection (a).

New subsection (c) requires FERC to comply with the National Environmental Policy Act of 1969 and all other applicable state and federal laws.

New subsection (d) requires FERC to refer the matter to a joint board appointed under subsection (a) of section 209 for advice on the need for, design of, and location of the proposed extension or improvement. The Commission shall consider the advice and recommendations of the board before ordering such extension or improvement.

New subsection (e) limits FERC's authority to compel a transmitting utility to extend or improve its interstate transmission facilities if it would impair the utility's ability to serve its existing customers.

Section 8. Regional Independent System Operators

Adds a new section 219 at the end of Part II to allow for the establishment of regional independent system operators. Formation of ISOs could be a valuable tool in limiting market power and maintaining reliability. FERC in order 888 strongly encouraged the formation of ISOs, but did not address the issue of its authority to compel participation. This section authorizes FERC to require participation in an ISO to assure nondiscriminatory access to the transmission grid for all parties. ISOs could also play a role in siting of new transmission lines under Section 7.

New subsection (a) authorizes the commission to order the formation of a regional independent transmission system and to compel utilities in the region to participate. The FERC may order the formation of an ISO if such action is necessary or desirable in the public interest to ensure the fair and non-discriminatory access to transmission services.

New subsection (b) authorizes FERC to appoint a regional oversight board to oversee the operation of the regional transmission system. The board shall have fair representation of all utilities, consumers, and state regulators in the region.

New subsection (c) authorizes the oversight board to appoint an independent system operator to operate the regional transmission system. The operator may not own generating facilities, sell electric energy, or be subject to the control, or have a financial interest in, any utility in the region served by the independent system operator.

New subsection (d) authorizes FERC to establish rules necessary to implement this section.

Section 9. Enforcement

(a) Extends the exemption from general penalties (section 316) to sections 217, 218, and 219.

(b) Extends the enforcement provisions for violations and civil penalties in section 316A to sections 217, 218, and 219.

Section 10. Amendment to PURPA

Adds new subsection (m) at the end of section 210 of PURPA to protect wholesale contracts entered into in accordance with federal legislation. States may not bar a regulated utility from recovering the cost of any PURPA contracts. Such costs may be recovered, for example, through rates, charges assessed under section 215(d), exit fees, etc.

ADDITIONAL COSPONSORS

S. 89

At the request of Ms. SNOWE, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 358

At the request of Mr. DEWINE, the names of the Senator from New Jersey [Mr. LAUTENBERG] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 358, a bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

S. 412

At the request of Mr. LAUTENBERG, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Hawaii [Mr. AKAKA], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 412, a bill to provide for a national standard to prohibit the operation of motor vehicles by intoxicated individuals.

S. 621

At the request of Mr. D'AMATO, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 621, a bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes.

S. 657

At the request of Mr. DASCHLE, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 657, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with veterans' disability compensation.

S. 803

At the request of Mr. THURMOND, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 803, a bill to permit the transportation of passengers between United States ports by certain foreign-flag vessels and to encourage United States-flag vessels to participate in such transportation.

S. 1096

At the request of Mr. GRASSLEY, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Wyoming [Mr. ENZI], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Kansas [Mr. ROBERTS], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 1096, a bill to restructure the Internal Revenue Service, and for other purposes.

S. 1133

At the request of Mr. COVERDELL, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 1133, a bill to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses and to increase the maximum annual amount of contributions to such accounts.

S. 1180

At the request of Mr. KEMPTHORNE, the name of the Senator from Alaska