STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3298. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3299. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3300. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3301. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3302. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3303. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3304. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3305. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3306. Mr. SMITH, of Oregon submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3307. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3308. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3309. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3310. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, supra; which was ordered to lie on the table.

SA 3311. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, supra; which was ordered to lie on the table.

SA 3312. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, supra; which was ordered to lie on the table.

SA 3313. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3281 submitted by Mr. SCHUMER and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3314. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3203 submitted by Mr. JEFFORDS (for himself and Mr. SMITH of New Hampshire) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3315. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3275 submitted by Ms. CANTWELL and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3316. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3317. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr . HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3318. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3319. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3320. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3321. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3322. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3323. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3324. Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. CHAFEE, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3239 submitted by Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. LIEBERMAN, Mr. MCCAIN, Mr. JEFFORDS, Mr. CHAFEE, Mr. NELSON of Nebraska, and Mr. REID) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3325. Mr. SHELBY (for himself, Mr. AKAKA, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3326. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3327. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes.

SA 3328. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, supra.

SA 3329. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3330. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3331. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3293. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3294. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 103, line 19, strike all through page 104, line 7, and insert the following:

''(i) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(ii) has an electricity-only generation efficiency greater than 30 percent.

''(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, or

''(ii) $500 for each 0.5 kilowatt of capacity of such property.

SA 3295. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction is consistent with the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The term ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a, 79z-5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established

by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(A) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall maintain, and shall produce for the Commission's examination, such books, accounts, memoranda, records, and any other materials the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an affiliate or associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

SA 3296. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-base rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect

(b) REMEDIAL MEASURES FOR MARKET POWER.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either

alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall maintain, and shall produce for the Commission's examination, such books accounts, memoranda, records, and any other materials the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an affiliate or associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

SA 3297. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.)(as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution

only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—the term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or the State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and records.

SA 3298. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2. . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transition.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) results in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(a) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in the sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever names designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company an each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or the State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and records.

SEC. 225. TRANSACTION TRANSPARENCY.

(a) PROHIBITED ACTIVITIES.—No holding company or affiliate thereof, shall enter into any—

(1) transaction for the purchase, sale, lease, or other transfer or assets, goods, or services (other than the sale of electricity or gas) or into any financial transaction (including the issuance of securities, loans, or guarantees or indebtedness or value) with a public utility company that is an affiliate of that holding company, unless—

(A) the transaction is clearly and fully disclosed by the public utility company in a financial statement or other report that is available to the public; and

(B) prior to such transaction, the Commission has determined that the transaction will not be detrimental to the public interest or the interests of electricity and natural gas consumers or competition; or

(2) financial transaction (including the issuance, purchase, or sale of securities, loans, or guarantees of indebtedness or value) that does not appear in the financial statements or reports maintained by that holding company or affiliate for accounting purposes, unless the transaction is clearly and fully disclosed by that holding company or affiliate in a financial statement or other report that is made available to the public.

(b) COMMISSION RULES.—Notwithstanding section 236, the Commission shall promulgate final rules prior to the effective date of this subtitle, providing for the expeditions review of transactions referred to in subsection (a)(1) on a case by case basis and protection of electricity and natural gas consumers from holding company diversification.

(c) REQUIREMENTS.—Rules required under subsection (c) shall ensure, at a minimum, that—

(1) no asset of a public utility company shall be used as collateral for indebtedness incurred by the holding company of, or any affiliate of, such public utility company;

(2) no public utility company shall make any loan to, or guarantee the indebtedness or value of, any holding company or affiliate thereof;

(3) any sale, lease, or transfer of assets, goods or services to a public utility company by its holding company or any affiliate thereof shall be at terms that are no less favorable to the public utility company than the cost to such holding company or affiliate;

(4) any sale, lease, or transfer of assets, goods, or services by a public utility company to its holding company or any affiliate thereof, or the provision of assets, goods, or services for the use by, or benefit of, such holding company or affiliate, shall be at terms that are no less favorable to the public utility company than the market price of such assets, goods or services;

(5) any loan to, or guarantee of, the indebtedness or value of, a public utility company by a holding company or affiliate thereof, shall be at terms that are no less favorable than the cost to such holding company or affiliate;

(6) information necessary to monitor and regulate a holding company or affiliate thereof is made available to the Commission;

(7) electricity and natural gas consumers are protected against the financial risks of holding company diversification and transactions with and among any holding company or affiliate thereof; and

(d) LIMITATION ON AUTHORITY.—Nothing in this section or the regulations promulgated under this section shall limit the authority of any State to prevent holding company diversification from adversely affecting electricity or natural gas consumers.

SA 3299. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will advance the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

''(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.c. 824d) is amended by adding at the end the following:

''(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

''(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(A) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); or

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISIONS.—

Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKET POWER.—In this section, the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILIATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) PERSON.—The term ''person'' means an individual or company.

(13) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(15) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in

the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) Is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or the State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and record.

SEC. 225. TRANSACTION TRANSPARENCY.

(a) PROHIBITIED ACTIVITIES.—No holding company or affiliate thereof, shall enter into any—

(1) transaction for the purchase, sale, lease, or other transfer of assets, goods, or services (other than the sale of electricity or gas) or into any financial transaction (including the issuance of securities, loans, or guarantees of indebtedness or value) with a public utility company that is an affiliate of that holding company, unless—

(A) the transaction is clearly and fully disclosed by the public utility company in a financial statement or other report that is available to the public; and

(B) prior to such transaction, the Commission has determined that the transaction will not be detrimental to the public interests or the interests of electricity and natural gas consumers or competition; or

(2) financial transaction (including the issuance, purchase, or sale of securities, loans, or guarantees of indebtedness or value) that does not appear in the financial statements or reports maintained by that holding company or affiliate for accounting purposes, unless the transaction is clearly and fully disclosed by that holding company or affiliate in a financial statement or other report that is made available to the public.

(b) COMMISSION RULES.—Notwithstanding section 236, the Commission shall promulgate final rules prior to the effective date of this subtitle, providing for the expeditions review of transactions referred to in subsection (a)(1) on a case by case basis and protection of electricity and natural gas consumers from holding companies diversification.

(c) REQUIREMENTS.—Rules required under subsection (c) shall ensure, at a minimum, that—

(1) no asset of a public utility company shall be used as collateral for indebtedness incurred by the holding company of, or any affiliate of, such public utility company;

(2) no public utility company shall make any loan to, or guarantee the indebtedness or value of, any holding company or affiliate thereof;

(3) any sale, lease, or transfer of assets, goods or services to a public utility company by its holding company or any affiliate thereof shall be at terms that are no less favorable to the public utility company than the cost to such holding company or affiliate;

(4) any sale, lease, or transfer of assets, goods, or services by a public utility company to its holding company or any affiliate thereof, or the provision of assets, goods, or services for the use by, or benefit of, such holding company or affiliate, shall be at terms that are no less favorable to the public utility company than the market price of such assets, goods or services;

(5) any loan to, or guarantee of, the indebtedness or value of, a public utility company by a holding company or affiliate thereof, shall be at terms that are no less favorable than the cost to such holding company or affiliate;

(6) information necessary to monitor and regulate a holding company or affiliate thereof is made available to the Commission;

(7) electricity and natural gas consumers are protected against the financial risks of holding company diversification and transactions with and among any holding company or affiliate thereof; and

(d) LIMITATION ON AUTHORITY.—Nothing in this section or the regulations promulgated under this section shall limit the authority of any State to prevent holding company diversification from adversely affecting electricity or natural gas consumers.

SA 3300. Ms. CANTWELL (for herself, Mrs. BOXER, Mr. WYDEN, Mrs. MURRAY, Ms. STABENOW, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3097 proposed by Mr. DAYTON (for himself, Mr. WELLSTONE, and Mr. FEINGOLD) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding for Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal year 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2 . ELECTRIC UTILITY MERGER PROVISIONS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b(a)) (as amended by section 202) is amended by striking paragraph (4) and inserting the following:

''(4) APPROVAL.—

''(A) IN GENERAL.—After notice and opportunity for hearing, if the Commission finds that the proposed transaction will serve the public interest, the Commission shall approve the transaction.

''(B) MINIMUM REQUIRED FINDINGS.—In making the finding under subparagraph (A) with respect to a proposed transaction, the Commission shall, at a minimum, find that the proposed transaction will—

''(i)(I) enhance competition in wholesale electricity markets; and

''(II) if a State commission requests the Commission to consider the effect of the proposed transaction on competition in retail electricity markets, enhance competition in retail electricity markets;

''(ii) produce significant gains in operational and economic efficiency; and

''(iii) include employee protective arrangements, as defined in Sec. 222 of the Public Utility Holding Company Act of 2002, that the Commission concludes will fairly and equitable protect the interests of employees affected by the proposed transaction; and

''(iv) result in a corporate and capital structure that facilitates effective regulatory oversight.''.

SEC. 2 . WHOLESALE MARKETS AND MARKET POWER.

(a) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended by adding at the end the following:

(g) RULES AND PROCEDURES TO ENSURE COMPETITIVE WHOLESALE MARKETS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this subsection, the Commission shall adopt such rules and procedures as the Commission determines are necessary to define and determine the conditions necessary—

''(A) to maintain competitive wholesale markets;

''(B) to effectively monitor market conditions and trends;

''(C) to prevent the abuse of market power and market manipulation;

''(D) to protect the public interest; and

''(E) to ensure the maintenance of just and reasonable wholesale rates.

''(2) CONDITIONS ON GRANTS OF AUTHORITY.—The Commission shall—

''(2) ensure that any grant of authority by the Commission to a public utility to charge market-based rates for any sale of electric energy subject to the jurisdiction of the Commission is consistent with the rules and procedures adopted by the Commission under paragraph (1); and

''(B) establish and impose remedies applicable to a public utility that—

''(i) violates a rule or procedures adopted under paragraph (1); and

''(ii) by any other means uses a grant of authority to exercise market power or manipulate the market.

''(3) NO LIMITATION ON FEDERAL ANTITRUST REMEDIES.—The filing with the Commission of a request for authorization to charge market-based rates, and the acceptance or approval by the Commission of such a request, shall not affect the availability of any remedy under Federal antitrust law with respect to any rate, charge, or service that is subject to the authorization.''.

(2) INEFFECTIVENESS OF OTHER PROVISION.—Section 203 of this Act (relating to market-based rates) shall be of no effect.

(b) REMEDIAL MEASURES FOR MARKET POWER.—

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by Section 209) is amended by adding at the end the following:

''SEC. 218. REMEDIAL MEASURES FOR MARKET POWER.

''(a) DEFINITION OF MARKER POWER.—(In this section the term 'market power' with respect to a public utility, means the ability of the public utility to maintain energy prices above competitive levels.

''(b) COMMISSION JURISDICTIONAL SALES.—If the Commission, on receipt of a complaint by any person or on a motion of the Commission, determines that there exist markets for any service or use of a facility subject to the

jurisdiction of the Commission under this Act in which a public utility has exercised market power, the Commission, in accordance with this Act, shall issue such orders as are necessary to mitigate and remedy the adverse competitive effects of the market power exercised.''.

Subtitle B—Amendments to the Public Utility Holding Company Act

SEC. 221. SHORT TITLE.

This subtitle may be cited as the ''Public Utility Holding Company Act of 2002''.

SEC. 222. DEFINITIONS.

In this subtitle:

(1) AFFILATE.—The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) ASSOCIATE COMPANY.—The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) COMMISSION.—The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) COMPANY.—The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) ELECTRIC UTILITY COMPANY.—The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) EMPLOYEE PROTECTIVE ARRANGEMENT.—The term ''employee protective arrangement'' means a provision that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired companies;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(7) EXEMPT WHOLESALE GENERATOR AND FOREIGN UTILITY COMPANY.—The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meaning as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(8) GAS UTILITY COMPANY.—The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(9) HOLDING COMPANY.—The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(10) HOLDING COMPANY SYSTEM.—The term ''holding company system'' means a holding company, together with its subsidiary companies.

(11) JURISDICTIONAL RATES.—The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(12) NATURAL GAS COMPANY.—The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(13) PERSON.—The term ''person'' means an individual or company.

(14) PUBLIC UTILITY.—The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(15) PUBLIC UTILITY COMPANY.—The term ''public utility company'' means an electric utility company or a gas utility company.

(16) STATE COMMISSION.—The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(17) SUBSIDIARY COMPANY.—The term ''subsidiary company'' of a holding company means—

(a) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(18) VOTING SECURITY.—The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 223. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) Is repealed.

SEC. 224. ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each affiliate or associate company thereof shall produce for examination such personnel, books, accounts, memoranda, records, and any other materials upon an order of the Commission or any State commission finding that the production of such materials will assist the Commission or State commission in carrying out its responsibilities.

(b) COURT JURISDICTION.—Any United States district court located within the State in which the State commission is seeking to examine personnel or materials described in subsection (a), or within the District of Columbia or within any State in which the public utility is headquartered, shall have the jurisdiction to enforce compliance with this section.

(c) COST RECOVERY.—The cost of any audit of a holding company or any affiliate or associate company ordered by the Commission or a State commission under this section shall be borne by the holding company and the associate or affiliate company thereof.

(d) CONFIDENTIALITY.—Information provided to the Commission or State commission shall be treated as confidential only if the holding company or affiliate or associate company thereof demonstrates to the court that such information should not be made public.

(e) AUDITING.—The Commission, in consultation with appropriate State commissions, shall conduct an audit every 3 years of the books and records of each holding company and each affiliate or associate company thereof.

(f) PREEMPTION.—Nothing in this section shall preempt any State law obligating a holding company or any associate or affiliate company thereof to produce books and records.

SEC. 225. TRANSACTION TRANSPARENCY.

(a) PROHIBITED ACTIVITIES.—No holding company or affiliate thereof, shall enter into any—

(1) transaction for the purchase, sale, lease, or other transfer of assets, goods, or services (other than the sale of electricity or gas) or into nay financial transaction (including the issuance of securities, loans, or guarantees of indebtedness or value) with a public utility company that is an affiliate of that holding company, unless—

(A) the transaction is clearly and fully disclosed by the public utility company in a financial statement or other report that is available to the public; and

(B) prior to such transaction, the Commission has determined that the transaction will not be detrimental to the public interest or the interests of electricity and natural gas consumers or competition; or

(2) financial transaction (including the issuance, purchase, or sale of securities, loans, or guarantees of indebtedness or value) that does not appear in the financial statements or reports maintained by that holding company or affiliate for accounting purposes, unless the transaction is clearly and fully disclosed by that holding company or affiliate in a financial statement or other report that is made available to the public.

(b) COMMISSION RULES.—Notwithstanding section 236, the Commission shall promulgate final rules prior to the effective date of this subtitle, providing for the expeditious review of transactions referred to in subsection (a)(1) on a case by case basis and protection of electricity and natural gas consumers from holding company diversification.

(c) REQUIREMENTS.—Rules required under subsection (c) shall ensure, at a minimum, that—

(1) no asset of a public utility company shall be used as collateral for indebtedness incurred by the holding company of, or any affiliate of, such public utility company;

(2) no public utility company shall make any loan to, or guarantee the indebtedness or value of, any holding company or affiliate thereof;

(3) any sale, lease, or transfer of assets, goods or services to a public utility company by its holding company or any affiliate

thereof shall be at terms that are no less favorable to the public utility company than the cost to such holding company or affiliate;

(4) any sale, lease, or transfer of assets, goods, or services by a public utility company to its holding company or any affiliate thereof, or the provision of assets, goods or services for the use by, or benefit of, such holding company or affiliate, shall be at terms that are no less favorable to the public utility company than the market price of such assets, goods or services.

(5) any loan to, or guarantee of, the indebtedness or value of, a public utility company by a holding company of affiliate thereof, shall be at terms that are no less favorable than the cost to such holding company or affiliate;

(6) information necessary to monitor and regulate a holding company or affiliate thereof is made available to the Commission;

(7) electricity and natural gas consumers are protected against the financial risks of holding company diversification and transactions with and among any holding company or affiliate thereof; and

(8) the interest of employees affected by a proposed transaction shall be protected under employee protective arrangements the Commission concludes are fair and equitable.

(d) LIMITATION ON AUTHORITY.—Nothing in this section or the regulations promulgated under this section shall limit the authority of any State to prevent holding company diversification from adversely affecting electricity or natural gas consumers.

SA 3301. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

(a) ALTERNATIVE CONDITIONS.—The Federal Power Act is amended by inserting after section 4 (16 U.S.C. 797) the following:

''SEC. 4A. ALTERNATIVE CONDITIONS.

''(a) DEFINITION OF SECRETARY.—In this section, the term 'Secretary', with respect to an application under subsection (e) of section 4 for a license for a project works within a reservation of the United States, means the Secretary of the department under whose supervision the reservation falls.

''(b) PROPOSAL OF ALTERNATIVE CONDITION.—When a person applies for a license for any project works within a reservation of the United States under subsection (e) of section 4, and the Secretary deems a condition to the license to be necessary under the first proviso of that subsection, the license applicant or any other interested person may propose an alternative condition.

''(c) ACCEPTANCE OF PROPOSED ALTERNATIVE CONDITION.—Notwithstanding the first proviso of section 4(e), the Secretary may accept an alternative condition proposed under subsection (b), and the Commission shall include in the license that alternative condition, if the Secretary determines, based on substantial evidence, that the alternative condition—

''(1) provides for the adequate protection and use of the reservation; and

''(2) will cost less to implement, or result in improved operation of the project works for electricity production, as compared with the condition initially deemed necessary by the Secretary.

''(d) WRITTEN STATEMENT.—The Secretary shall submit into the public record of the Commission proceeding, with any condition under section 4(e) or alternative condition that the Secretary accepts under subsection (c), a written statement explaining the basis for the condition or alternative condition, and each reason for not accepting any alternative condition under this subsection, including—

''(1) a statement of the goals, objectives, or applicable management requirements established by the Secretary for protection and use of the reservation;

''(2) the consideration by the Secretary of all studies, data, and other factual information made available to the Secretary that are relevant to the decision of the Secretary; and

''(3) any information made available to the Secretary regarding the effects of the condition or alternative condition on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply (including information voluntarily provided in a timely manner by the applicant and any other person).

''(e) PROCEDURE.—Not later than 1 year after the date of enactment of this section, the Secretary of each department that exercises supervision over a reservation of the United States shall, by regulation, establish a procedure to expeditiously resolve any conflict arising under this section.''.

(b) ALTERNATIVE PRESCRIPTIONS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended—

(1) by striking ''SEC. 18. The Commission'' and inserting the following:

''SEC. 18. OPERATION OF NAVIGATION FACILITIES.

''(a) IN GENERAL.—The Commission''; and

(2) by adding at the end the following:

''(b) ALTERNATIVE PRESCRIPTIONS.—

''(1) IN GENERAL.—When the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under subsection (a), the license applicant or licensee, or any other interested person, may propose an alternative condition.

''(2) ACCEPTANCE OF PROPOSED ALTERNATIVE CONDITION.—Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, may accept an alternative condition proposed under paragraph (1), and the Commission shall include in the license the alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence, that the alternative condition—

''(A) will be no less effective to meet the goals, objectives, or applicable management requirements identified by the Secretary under this section, than the fishway initially prescribed by the Secretary; and

''(B) will cost less to implement, or result in improved operation of the project works for electricity production, as compared to the fishway initially prescribed by the Secretary.

''(3) WRITTEN STATEMENT.—The Secretary shall submit into the public record of the Commission proceeding, with any prescription under subsection (a) or alternative condition that the Secretary accepts under paragraph (2), a written statement explaining the basis for the prescription or alternative condition, and reason for not accepting any alternative condition under this subsection, including—

''(A) a statement of the biological and other goals, objectives, or applicable management requirements identified by the Secretary under this section;

''(B) the consideration by the Secretary of all studies, data, and other factual information made available to the Secretary and relevant to the decision of the Secretary; and

''(C) any information made available to the Secretary regarding the effects of the prescription or alternative condition on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply (including information voluntarily provided in a timely manner by the applicant and any other person).

''(4) PROCEDURE.—Not later than 1 year after the date of enactment of this subsection, each Secretary concerned shall, by regulation, establish a procedure to expeditiously any resolve conflict arising under this subsection.''.

SEC. 302. RELICENSING STUDY.

(a) DEFINITION OF NEW LICENSING CONDITION.—In this section, the term ''new license condition'' means any condition imposed under—

(1) section 4(e) of the Federal Power Act (16 U.S.C. 797(e));

(2) section 10(a) of the Federal Power Act (16 U.S.C. 803(a));

(3) section 10(e) of the Federal Power Act (16 U.S.C. 803(e));

(4) section 10(j) of the Federal Power Act (16 U.S.C. 803(j));

(5) section 18 of the Federal Power Act (16 U.S.C. 811); or

(6) section 401(d) of the Clean Water Act (33 U.S.C. 1341(d)).

(b) STUDY.—The Federal Energy Regulatory Commission shall, jointly with the Secretary of Commerce, the Secretary of the Interior, and the Secretary of Agriculture, conduct a study of all new licenses issued for existing projects under section 15 of the Federal Power Act (16 U.S.C. 808) since January 1, 1994.

(c) SCOPE.—The study shall analyze—

(1) the length of time the Commission has taken to issue each new license for an existing project;

(2) the additional cost to the licensee attributable to new license conditions;

(3) the change in generating capacity attributable to new license conditions;

(4) the environmental benefits achieved by new license conditions;

(5) significant unmitigated environmental damage of the project and costs to mitigate such damage; and

(6) litigation arising from the issuance or failure to issue new licenses for existing projects under section 15 of the Federal Power Act or the imposition or failure to impose new license conditions.

(d) CONSULTATION.—The Commission shall give interested persons and licensees an opportunity to submit information and views in writing.

(e) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes findings made as a result of the study.

SEC. 302. DATA COLLECTION PROCEDURES.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall jointly develop procedures for ensuring complete and accurate data concerning the time and cost to parties in the hydroelectric

licensing process under part I of the Federal Power Act (16 U.S.C. 791 et seq.).

(b) PUBLICATION OF DATA.—Data described in subsection (a) shall be published regularly, but not less frequently than every 3 years.

SA 3302. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, after line 25, add the following:

''(v) NONAPPLICATION OF CERTAIN RULES.—For purposes of determining if the term 'combined heat and power system property' includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves or which make use of waste heat from industrial processes such as by using organic rankin, stirling, or kalina heat engine systems, subparagraph (A) shall be applied without regard to clauses (iii) and (iv) thereof.

SA 3303. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In the amendment strike all after the first word and insert the following:

SEC. ___. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3304. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—

(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking ''2007, 2008, and 2009'' and inserting ''2007 and thereafter''.

(B) The table contained in section 2010(c) of such Code is amended by striking ''2009'' and inserting ''2009 and thereafter''.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking ''this Act'' and all that follows through ''2010.'' in subsection (a) and inserting ''this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.'', and

(ii) by striking '', estates, gifts, and transfers'' in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking ''$3,500,000'' and inserting ''$4,000,000''.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking ''GENERAL RULE.—'' and all that follows through ''For purposes'' and inserting ''ALLOWANCE OF DEDUCTION.—For purposes''.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

SA 3305. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 202, between lines 22 and 23, insert the following:

(b) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—Paragraph (2) of section 29(f) (relating to application of section) is amended by inserting ''(January 1, 2005, in the case of any coke or coke gas produced in a facility described in paragraph (1)(B))'' after ''January 1, 2003''.

SA 3306. Mr. SMITH of Oregon submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Strike Title III and insert the following:

''SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

''(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

'(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the 'Secretary') shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

'(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

'(A) provides for the adequate protection and utilization of the reservation; and

'(B) will either—

'(i) cost less to implement, or

'(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

'(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the effects of the condition accepted and alternatives not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

'(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions.'

''(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 881) is amended by—

''(1) inserting ''(a)'' before the first sentence; and

''(2) adding at the end the following:

'(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

'(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of

commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee, that the alternative—

'(A) will be no less protective of the fish resources that the fishway initially prescribed by the Secretary; and

'(B) will either—

'(i) cost less to implement, or

'(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

'(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

'(4) Nothing in this subsection shall prohibit other interested parties form proposing alternative prescriptions.' ''

''(c) TIME OF FILING APPLICATION.—Section 15(c)(1) of the Federal Power Act (16 U.S.C. 808(c)(1)) is amended by striking the first sentence and inserting the following:

'(1) Each application for a new license pursuant to this section shall be filed with the Commission—

'(A) at least 24 months before the expiration of the term of the existing license in the case of licenses that expire prior to 2008; and

'(B) at least 36 months before the expiration of the term of the existing license in the case of licenses that expire in 2008 or any year thereafter.' ''

SA 3307. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. _____. RECYCLED OIL LIABILITY.

Section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(c)) is amended by adding at the end the following:

''(5) PRIOR TO EFFECTIVE DATE.—

''(A) IN GENERAL.—Except on occurrence of a condition described in subparagraph (B), with respect to any period before the effective date described in paragraph (4), no person (including the United States or any State) may—

''(i) recover, under paragraph (3) or (4) of section 107(a), from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil; or

''(ii) use the authority of section 106 against a service station dealer (other than a person described in paragraph (1) or (2) of section 107(a)).

''(B) CONDITIONS.—A condition referred to in subparagraph (A) is that a service station dealer—

''(i) mixes recycled oil with any other hazardous substance; or

''(ii) fails to store, treat, transport, or otherwise manage the recycled oil in compliance with any applicable standard in effect on the date on which the storage, treatment, transportation, or management activity occurred.

''(C) NO EFFECT ON JUDICIAL OR ADMINISTRATIVE ACTION.—Nothing in this paragraph affects any final judicial or administrative action.''.

SA 3308. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION H—MISCELLANEOUS

TITLE _____—COMPREHENSIVE SUPERFUND REAUTHORIZATION AND REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Superfund Amendments and Reauthorization Act of 2002''.

Subtitle A—State Delegation

SEC. ___11. DELEGATION TO STATES OF AUTHORITY WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

''SEC. 129. DELEGATION TO STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

''(a) DELEGATION OF AUTHORITY.—

''(1) IN GENERAL.—A State that seeks to administer this Act at facilities in the State that are listed on the National Priorities List may, after providing notice and an opportunity for a public hearing, submit to the Administrator for approval under subsection (b) an application, in such form as the Administrator may require, for delegation to the State of the authority described in paragraph (2).

''(2) AUTHORITY.—

''(A) IN GENERAL.—In accordance with an application of a State approved under subsection (b), the Administrator shall delegate to the State (referred to in this section as an 'authorized State') sole administrative authority to administer this Act at facilities in the State that are listed on the National Priorities List.

''(B) INCLUSIONS.—A delegation of authority to a State under subparagraph (A) includes the authority to—

''(i) collect information;

''(ii) allocate liability;

''(iii) conduct technical investigation, evaluations, and risk assessments;

''(iv) develop response alternatives;

''(v) select responses;

''(vi) carry out remedial design, remedial action, and operation and maintenance;

''(vii) recover response costs;

''(viii) require potentially responsible parties to carry out response actions; and

''(ix) otherwise compel implementation of a response action.

''(C) SCOPE.—An authorized State shall administer this Act, in lieu of the President or the Administrator, as applicable, at facilities in the State to which the application of the State approved under subsection (b) applies.

''(b) APPROVAL OF APPLICATION.—

''(1) IN GENERAL.—Not later than the deadline determined under paragraph (3), the Administrator shall—

''(A) issue a notice of approval of the application; or

''(B) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the disapproval.

''(2) FAILURE TO ACT.—If the Administrator fails to issue a notice of approval or disapproval of an application by the deadline determined under paragraph (3), the application shall be deemed to have been approved.

''(3) DEADLINE.—The deadline referred to in paragraphs (1) and (2) is—

''(A)(i) in the case of a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), 60 days after the date on which the Administrator receives an application under subsection (a) from the State; and

''(ii) in the case of a State that is not authorized to administer and enforce the corrective action requirements described in clause (i), 120 days after the date on which the Administrator receives an application under subsection (a) from the State; or

''(B) in the case of a State that agrees to a greater period of time than the applicable period described in subparagraph (A), that greater period.

''(c) NO DUPLICATION OF RESPONSE EFFORTS.—

''(1) NO DUPLICATION OF DOCUMENTS.—If, as of the date of delegation of authority to a State over a facility under subsection (a), an investigational or other response document relating to the facility has been completed at the facility in coordination with the Administrator, the authorized State shall not require the document to be modified.

''(2) PARITY WITH CORRECTIVE ACTION PROGRAM.—A response action carried out under this Act that is approved by an authorized State shall be deemed to satisfy corrective action requirements under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(d) INCREASED COSTS OF RESPONSE ACTION.—

''(1) IN GENERAL.—An authorized State may select a remedial action based on remedy selection criteria that are more stringent than the criteria identified in section 121(b) if the authorized State agrees to pay any increased costs resulting from selection of the remedial action.

''(2) NO COST RECOVERY.—If an authorized State selects a remedial action under paragraph (1) that results in increased costs, the authorized State shall neither seek nor accept from any person, under this Act or any other Federal or State law, assistance to pay the increased costs.

''(e) JUDICIAL REVIEW.—An order that is issued by an authorized State under section

106 shall be reviewable only in an appropriate United States district court in accordance with section 113.

''(f) COST RECOVERY.—

''(1) BY A DELEGATED STATE.—Of the amount of any response costs recovered by an authorized State from a responsible party under section 107 with respect to a facility listed on the National Priorities List—

''(A) the authorized State may retain an amount equal to the sum of—

''(i) 25 percent of the response costs; and

''(ii) the amount of response costs incurred by the authorized State with respect to the facility; and

''(B) any remaining amount shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

''(2) BY THE ADMINISTRATOR.—The Administrator shall carry out cost recovery efforts of the Administrator—

''(A) in States that are not authorized States; and

''(B) in authorized States, in any case in which an authorized State requests in writing that the Administrator continue cost recovery efforts in the authorized State.

''(g) FUNDING.—

''(1) IN GENERAL.—The Administrator shall provide grants to, or enter into cooperative agreements with, each authorized State to carry out this section.

''(2) FACILITY-SPECIFIC GRANTS.—A grant under paragraph (1) shall be—

''(A) made to an authorized State on a facility-specific basis; and

''(B) funded by the Administrator as costs relating to each facility covered by the grant arise.

''(3) PERMITTED USE OF GRANT FUNDS.—An authorized State may use grant funds, in accordance with this Act and the National Contingency Plan, to take any action or perform any duty necessary to implement the authority delegated to the authorized State.

''(4) PROHIBITED USE OF GRANT FUNDS.—An authorized State to which a grant is made under this section may not use grant funds to pay any amount required under section 104(c)(3).

''(5) NO CLAIM AGAINST FUND.—Notwithstanding any other provision of law, funds that may be provided under this subsection shall not constitute a claim against the Hazardous Substances Fund or the United States.

''(h) INSUFFICIENT FUNDS.—If funds made available in any fiscal year are insufficient to fund all commitments made by the Administrator under this section, the Administrator shall have sole authority and discretion to establish priorities and delay payments until such time as sufficient funds are available.

''(i) COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—Nothing in this section affects the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.

''(2) PARTIAL AND FACILITY-SPECIFIC DELEGATIONS.—The Administrator may use authority provided under paragraph (1) to make partial or facility-specific delegations of authority under this section (including the authority to select a remedy).''.

(b) CONFORMING AMENDMENT.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

''(7) Making grants to authorized States under section 129(g).''.

Subtitle B—Selection of Remedial Actions

SEC. ___21. SELECTION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended by striking subsection (b) and inserting the following:

''(b) GENERAL RULES.—

''(1) REMEDY SELECTION CRITERIA.—In selecting a remedy under this section, subject to paragraph (3), the President shall take into consideration each of the factors described in paragraph (2).

''(2) FACTORS.—The factors referred to in paragraph (1) are—

''(A) factors described in section 300.430 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Superfund Amendments and Reauthorization Act of 2002), consisting of—

''(i) the threshold criterion of protection of human health and the environment (as described in clauses (i) and (ii) of paragraph (3)(B));

''(ii) balancing criteria, including—

''(I) long-term effectiveness and permanence;

''(II) reduction of toxicity, mobility, or volume of hazardous substances or pollutants or contaminants, through treatment;

''(III) short-term effectiveness;

''(IV) implementability; and

''(V) cost; and

''(iii) modifying criteria, including—

''(I) State acceptance of the remedy; and

''(II) community acceptance of the remedy; and

''(B) the additional threshold criterion of compliance with all applicable environmental and siting laws (as described in paragraph (3)(B)(iii)).

''(3) REMEDY SELECTION.—

''(A) IN GENERAL.—The President shall select a remedial action from among alternatives that achieve the threshold criteria described in paragraph (2)(A) in accordance with—

''(i) the goals described in subparagraph (B); and

''(ii) a facility-specific risk assessment under paragraph (4).

''(B) GOALS OF THRESHOLD CRITERIA.—With respect to the selection of a remedial action under this section, the goals of the threshold criteria described in paragraph (2)(A) shall be as follows:

''(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to be protective of human health if, taking into consideration any expected exposures associated with the actual, planned, or reasonably anticipated future use of the land and water resources covered by the remedial action, and on the basis of a facility-specific risk evaluation conducted in accordance with this section, the remedial action achieves—

''(I) from exposure to nonthreshold carcinogenic hazardous substances, or pollutants or contaminants, at the facility, concentration levels that represent a cumulative lifetime additional cancer risk from 10^{-4} to 10^{-6} for a representative exposed population; and

''(II) from exposure to threshold carcinogenic and noncarcinogenic hazardous substances, or pollutants or contaminants, at the facility, a residual risk that does not exceed a hazard index of 1.

''(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to be protective of the environment if the remedial action—

''(I) protects ecosystems from significant threats to sustainability arising from exposure resulting from a release of 1 or more hazardous substances at a site; and

''(II) does not cause a greater threat to the sustainability of the ecosystems than would be caused by a release of a hazardous substance.

''(iii) COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS.—

''(I) IN GENERAL.—A remedial action shall comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under—

''(aa) each Federal environmental law that is legally applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

''(bb) any State law relating to the environment, or to the siting of facilities, that is more stringent than Federal law, is legally applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions, and is demonstrated by the State to be generally applicable and consistently applied to other remedial actions in the State.

''(II) CONTAMINATED MEDIA.—With respect to a remedial action, compliance with section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924) shall not be required with respect to the return, replacement, or disposal of contaminated media (including residuals of contaminated media and other solid wastes generated onsite in the conduct of a remedial action) into the same media in or near areas of contamination onsite at a facility (as those areas exist as of the date of the return, replacement, or disposal of the contaminated media).

''(4) RISK ASSESSMENT.—

''(A) IN GENERAL.—A facility-specific risk assessment relating to a remedial action selected under this section shall be based on known levels or scientific estimates of exposure, developed by taking into consideration the actual, planned, or reasonably anticipated future use of the land and water resources covered by the remedial action.

''(B) REGULATIONS.—Not later than 18 months after the date of enactment of this subparagraph, the Administrator shall promulgate final regulations that—

''(i) implement this section; and

''(ii) promote a realistic characterization of the risks posed by a facility or a proposed remedial action that neither minimizes nor exaggerates the risks.

''(C) USES.—A facility-specific risk assessment shall be used to—

''(i) determine the need for remedial action;

''(ii) evaluate the current and potential hazards, exposures, and risks at a facility;

''(iii) identify potential contaminants, areas, or exposure pathways from further study at a facility;

''(iv) evaluate the protectiveness of alternative remedial actions proposed for a facility;

''(v) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment; and

''(vi) establish protective concentration levels, if no applicable requirement relating to concentration levels exists under subsection (d).''.

SEC. ___22. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)(C)) is amended—

(1) by striking ''consistent with the remedial action to be taken'' and inserting ''not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility,'';

(2) by striking ''$2,000,000'' and inserting ''$4,000,000''; and

(3) by striking ''12 months'' and inserting ''2 years''.

SEC. ___23. CONFORMING AMENDMENTS.

(a) Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by striking ''or relevant and appropriate''.

(b) Section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)) is amended—

(1) in paragraph (1), by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) in the first sentence, by striking ''or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant''; and

(ii) in the second sentence, by striking '', where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release'' and inserting ''in cases in which those goals or criteria are applicable'';

(B) by striking subparagraph (B) and inserting the following:

''(B) ALTERNATE CONCENTRATION LIMITS.—

''(i) IN GENERAL.—Except as provided in clause (ii), for the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable to hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study.

''(ii) EXCEPTION.—Clause (i) shall not apply in any case in which—

''(I) there are known and projected points of entry of groundwater described in clause (i) into surface water;

''(II) on the basis of measurements or projections, there is or will be no statistically significant increase of those constituents from the groundwater in the surface water—

''(aa) at the point of entry; or

''(bb) at any point at which there is reason to believe accumulation of constituents may occur downstream; and

''(III) a remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of the groundwater into surface water.

''(iii) POINTS OF ENTRY.—In a case described in clause (ii), an assumed point of human exposure described in clause (i) may be at each known or projected point of entry described in clause (ii)(III).''; and

(C) in subparagraph (C)(i), by striking ''of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants''; and

(3) in the first sentence of paragraph (4), by striking ''or relevant and appropriate''.

(c) Section 121(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(f)) is amended—

(1) in the second sentence of paragraph (2)(A), by striking ''or relevant and appropriate''; and

(2) in the second sentence of paragraph (3)(A), by striking ''or relevant and appropriate''.

Subtitle C—Recycled Oil Liability

SEC. ___31. RECYCLED OIL LIABILITY.

Section 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(c)) is amended by adding at the end the following:

''(5) PRIOR TO EFFECTIVE DATE.—

''(A) IN GENERAL.—Except on occurrence of a condition described in subparagraph (B), with respect to any period before the effective date described in paragraph (4), no person (including the United States or any State) may—

''(i) recover, under paragraph (3) or (4) of section 107(a), from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil; or

''(ii) use the authority of section 106 against a service station dealer (other than a person described in paragraph (1) or (2) of section 107(a)).

''(B) CONDITIONS.—A condition referred to in subparagraph (A) is that a service station dealer—

''(i) mixes recycled oil with any other hazardous substance; or

''(ii) fails to store, treat, transport, or otherwise manage the recycled oil in compliance with any applicable standard in effect on the date on which the storage, treatment, transportation, or management activity occurred.

''(C) NO EFFECT ON JUDICIAL OR ADMINISTRATIVE ACTION.—Nothing in this paragraph affects any final judicial or administrative action.''.

Subtitle D—Natural Resource Damages

SEC. ___41. RESTORATION OF NATURAL RESOURCES.

Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by striking ''(f)(1) NATURAL RESOURCES LIABILITY.—In the case'' and inserting the following:

''(f) NATURAL RESOURCE DAMAGES.—

''(1) LIABILITY.—

''(A) IN GENERAL.—In the case''; and

(2) in paragraph (1)(A) (as designated by paragraph (1))—

(A) by inserting after the fourth sentence the following: ''Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration, replacement, or acquisition of the equivalent of those natural resources by the Indian tribe. A restoration, replacement, or acquisition conducted by the United States, a State, or an Indian tribe shall proceed only if the restoration, replacement, or acquisition is technologically feasible from an engineering perspective (at a reasonable cost) and consistent with all known or anticipated response actions at or near the facility.''; and

(B) by striking ''The measure of damages in any action'' and all that follows through the end of the paragraph and inserting the following:

''(B) LIMITATIONS ON LIABILITY.—

''(i) MEASURE OF DAMAGES.—The measure of damages in any action for damages for injury to, destruction of, or loss of natural resources shall be limited to—

''(I) the reasonable costs of restoration, replacement, or acquisition of the equivalent of the natural resources that suffer injury, destruction, or loss caused by a release; and

''(II) the reasonable costs of assessing damages.

''(ii) NONUSE OR LOST USE VALUES.—There shall be no recovery under this Act for any impairment of—

''(I) nonuse values; or

''(II) lost use values.

''(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for the costs described in clause (i) shall not be entitled to recovery under this Act or any other Federal or State law for the same injury to or destruction or loss of the natural resource.

''(iv) RESTRICTIONS ON RECOVERY.—There shall be no recovery from any person under this section for the costs of restoration, replacement, or acquisition of the equivalent of a natural resource if the natural resource injury, destruction, or loss for which the restoration, replacement, or acquisition is sought, and the release of the hazardous substance from which the injury resulted, occurred wholly before December 11, 1980.''.

SEC. ___42. ASSESSMENT OF INJURY TO AND RESTORATION OF NATURAL RESOURCES.

Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

''(C) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—

''(i) REGULATION.—A natural resource injury and restoration assessment conducted for the purposes of this Act by a Federal, State, or tribal trustee shall be performed, to the maximum extent practicable, in accordance with—

''(I) the regulations promulgated under section 301(c); and

''(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

''(ii) FACILITY-SPECIFIC CONDITIONS.—Injury assessment, restoration planning, and quantification of restoration costs shall, to the extent practicable, be based on facility-specific information.

''(iii) RECOVERABLE COSTS.—A claim by a trustee for assessment costs—

''(I) may include only—

''(aa) costs that arise from work performed for the purpose of assessing injury to a natural resource to support a claim for restoration of the natural resource; and

''(bb) costs that arise from developing and evaluating a reasonable range of alternative restoration measures; but

''(II) may not include the costs of conducting any type of study relying on the use of contingent valuation methodology.

''(iv) PAYMENT PERIOD.—In a case in which injury to or destruction or loss of a natural resource was caused by a release that occurred over a period of years, payment of damages shall be permitted to be made over a period of years that is appropriate based on—

''(I) the period of time over which the damages occurred;

''(II) the amount of the damages;

''(III) the financial ability of the responsible party to pay the damages; and

''(IV) the period over which, and the pace at which, expenditures are expected to be made for restoration, replacement, and acquisition activities.

''(v) TRUSTEE RESTORATION PLANS.—

''(I) ADMINISTRATIVE RECORD.—

''(aa) IN GENERAL.—A participating natural resource trustees may designate 1 or more lead administrative trustees.

''(bb) RECORD.—A lead administrative trustee may establish an administrative record on which the trustees will base the selection of a plan for restoration of a natural resource.

''(cc) PLAN.—A restoration plan selected under item (bb) shall include a determination of the nature and extent of the natural resource injury.

''(dd) PUBLIC AVAILABILITY.—The administrative record shall be made available to members of the public located at or near the facility at which the release occurred.

''(II) PUBLIC PARTICIPATION.—

''(aa) IN GENERAL.—The Administrator shall promulgate regulations that provide

for procedures under which interested persons (including potentially responsible parties) may participate in the development of the administrative record that is described in subclause (I)(bb) and on which judicial review of restoration plans will be based.

''(bb) MINIMUM REQUIREMENTS.—The procedures described in item (aa) shall include, at a minimum, each of the requirements described in section 113(k)(2)(B).''.

SEC. ___43. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended by adding at the end the following:

''(3) COMPATIBILITY WITH REMEDIAL ACTION.—

''(A) IN GENERAL.—A response action and a restoration measure may be implemented—

''(i) at the same facility; or

''(ii) to address releases from the same facility.

''(B) CONSISTENCY.—A response action and restoration measure described in subparagraph (A)—

''(i) shall not be inconsistent; and

''(ii) shall be implemented, to the maximum extent practicable, in a coordinated and integrated manner.''.

(b) CONSIDERATION OF NATURAL RESOURCES IN RESPONSE ACTIONS.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)) is amended—

(1) in the first sentence, by striking ''The President shall'' and inserting the following:

''(1) IN GENERAL.—The President shall'';

(2) in the second sentence, by striking ''In evaluating'' and inserting the following:

''(2) EVALUATION.—

''(A) COST-EFFECTIVENESS.—In evaluating''; and

(3) by adding at the end the following:

''(B) INJURY TO NATURAL RESOURCES.—In evaluating and selecting remedial actions, the President shall take into account the potential for injury to a natural resource resulting from those actions.''.

SEC. ___44. CONTRIBUTION.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting ''and natural resource damages'' after ''costs''.

Subtitle E—Miscellaneous

SEC. ___51. CLARIFICATION OF TIMING OF REVIEW.

(a) CONGRESSIONAL INTENT.—Congress declares that, contrary to the decision in Fort Ord Toxics Project v. California Environmental Protection Agency, 189 F.3d 828 (9th Cir. 1999), and as recognized by the decisions in Werlein v. United States, 746 F. Supp. 887 (D. Minn. 1990), Heart of America Northwest v. Westinghouse Hanford Co., 820 F. Supp. 1265 (E.D. Wash. 1993), and Worldworks I v. U.S. Army, 22 F. Supp. 1204 (D. Colo. 1998), the challenges to a remedial action ''selected under section 104'' referred to in section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) include a remedial action selected under section 120 of that Act (42 U.S.C. 9620).

(b) CLARIFICATION.—

(1) IN GENERAL.—Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by striking ''section 104,'' and inserting ''section 104 (including under section 120),''.

(2) FEDERAL FACILITIES.—Section 120(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(e)(2)) is amended in the second sentence by inserting ''under section 104'' after ''remedial action''.

SEC. ___52. FAIR SHARE ALLOCATION AND SETTLEMENTS.

Section 122(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)) is amended—

(1) by striking ''(e) SPECIAL'' and all that follows through the end of paragraph (1) and inserting the following:

''(e) FAIR SHARE ALLOCATION.—

''(1) PROCESS.—With respect to a facility listed on the National Priorities List, the President shall notify potentially responsible parties and initiate an impartial fair share allocation conducted by a neutral third party, if—

''(A) there is more than 1 potentially responsible party that is not—

''(i) eligible for an exemption or limitation under section 107;

''(ii) eligible to receive a settlement under subsection (g); or

''(iii) insolvent, bankrupt, or defunct; and

''(B) 1 or more of the potentially responsible parties agree to bear the costs of the allocation (which shall be considered to be response costs under this Act) under such conditions as the President may prescribe.'';

(2) by striking paragraph (4);

(3) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(4) by inserting after paragraph (1) the following:

''(2) ALLOCATION FACTORS.—

''(A) IN GENERAL.—In conducting an allocation under this subsection, the allocator, without regard to any theory of joint and several liability, shall estimate the fair share of each potentially responsible party using—

''(i) principles of equity;

''(ii) the best information reasonably available to the President, including information received from the potentially responsible parties during the allocation process; and

''(iii) the factors described in subparagraph (B).

''(B) FACTORS.—The factors referred to in subparagraph (A)(iii) are—

''(i) the quantity of hazardous substances contributed by each party;

''(ii) the degree of toxicity of hazardous substances contributed by each party;

''(iii) the mobility of hazardous substances contributed by each party;

''(iv) the degree of involvement of each party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

''(v) the degree of care exercised by each party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

''(vi) the cooperation of each party in contributing to any response action and in providing complete and timely information to the United States or the allocator; and

''(vii) such other equitable factors as the President considers appropriate.'';

(5) in paragraph (3) (as redesignated by paragraph (3))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (B); and

(C) in subparagraph (B) (as redesignated by subparagraph (B)), by striking ''negotiation'' each place it appears and inserting ''allocation'';

(6) in paragraph (4) (as redesignated by paragraph (3))—

(A) by striking subparagraphs (A), (D), and (E);

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(C) in subparagraph (A) (as redesignated by subparagraph (B)), by striking ''subparagraph (A) or for otherwise implementing''; and

(D) in subparagraph (B) (as redesignated by subparagraph (B)), by striking ''preliminary'' each place it appears; and

(7) by adding at the end the following:

''(7) SETTLEMENTS BASED ON ALLOCATIONS.—

''(A) AUTHORITY.—

''(i) IN GENERAL.—The President may use the authority under this section to enter into a settlement agreement with respect to any response action that is the subject of an allocation.

''(ii) SETTLEMENT.—A party may settle the liability of the party for response costs under this Act for an amount equal to the sum of—

''(I) the allocated fair share of the party (including a reasonable risk premium that reflects uncertainties existing at the time of settlement); and

''(II) a portion of unfunded and unattributable shares described in subparagraph (B).

''(B) UNFUNDED AND UNATTRIBUTABLE SHARES.—Any share attributable to an insolvent, defunct, or bankrupt party, or a share that cannot be attributed to any particular party, shall be allocated among any responsible parties not exempted under this Act.

''(C) EFFECT ON PRINCIPLES OF LIABILITY.—Except as provided in paragraph (2), the authorization of an allocation process under this section shall not modify or affect the principles of liability under this title, as determined by the courts of the United States.''.

Subtitle F—Funding

SEC. ___61. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking ''not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994'' and inserting ''$8,500,000,000 for the period of fiscal years 2003 through 2007''.

SEC. ___62. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

''(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(A) LIMITATION.—For each of fiscal years 2003 through 2007, not more than $40,000,000 of the amounts available in the Hazardous Substance Superfund may be used for purposes (other than basic research) to carry out the program authorized under section 311(b).

''(B) AVAILABILITY.—Amounts made available under subparagraph (A) shall remain available until expended.

''(2) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 2003 through 2007, not more than $7,000,000 of the amounts available in the Hazardous Substance Superfund may be used to carry out section 311(d).''.

SEC. ___63. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

''(1) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There is authorized to be appropriated to the Hazardous Substance Superfund $850,000,000 for each of fiscal years 2003 through 2007.

''(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year specified in subparagraph (A) an amount, in addition to the amount authorized by subparagraph (A), equal to the portion of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 that is not appropriated before the beginning of the fiscal year.''.

SEC. ___64. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) (as amended by section ___11(b)) is amended by inserting after paragraph (7) the following:

''(8) Payment of orphan shares under section 122.''.

SEC. ___65. LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

''(q) RECOVERIES.—Any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account.''.

SEC. ___66. COEUR D'ALENE RIVER BASIN, IDAHO.

Title III of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651 et seq.) is amended by adding at the end the following:

''SEC. 313. COEUR D'ALENE RIVER BASIN, IDAHO.

''(a) DEFINITION OF COEUR D'ALENE RIVER BASIN.—In this section, the term 'Coeur d'Alene River Basin' means the watersheds in northern Idaho (including the Bunker Hill Superfund Facility) that contain—

''(1) the north and south forks of the Coeur d'Alene River (including tributaries of the forks);

''(2) the main stem of the Coeur d'Alene River (including tributaries and lateral lakes of the main stem);

''(3) Lake Coeur d'Alene; and

''(4) any area in the State downstream of Lake Coeur d'Alene that is or has been affected by mining-related activities.

''(b) FUNDING.—

''(1) IN GENERAL.—There is appropriated to the Coeur d'Alene River Basin Commission established under section 39–3613 of the Idaho Code (or a successor commission) to carry out a pilot program to provide for environmental response, natural resource restoration, and other related activities in the Coeur d'Alene River Basin, $250,000,000, to remain available until expended.

''(2) RECEIPT AND ACCEPTANCE.—The Coeur d'Alene River Basin Commission shall be entitled to receive the funds and shall accept the funds made available under paragraph (1).''.

SA 3309. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 3190 submitted by Mr. TORRICELLI (for himself and Mr. GRAHAM) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION H—COMPREHENSIVE SUPERFUND REAUTHORIZATION AND REFORM

TITLE XIX—SUPERFUND

Subtitle A—State Role

SEC. 1901. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

''SEC. 129. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) COMPREHENSIVE DELEGATION STATE.—The term 'comprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform all of the categories of delegable authority.

''(2) DELEGABLE AUTHORITY.—The term 'delegable authority' means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

''(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

''(i) a preliminary assessment or facility evaluation under section 104;

''(ii) facility characterization under section 104;

''(iii) a remedial investigation under section 104;

''(iv) a facility-specific risk evaluation under section 130;

''(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

''(vi) any other authority identified by the Administrator under subsection (b).

''(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

''(i) a feasibility study under section 104; and

''(ii)(I) remedial action selection under section 121 (including issuance of a record of decision); or

''(II) remedial action planning under section 132(b)(5);

''(iii) enforcement authority related to the authorities described in clauses (i) and (ii); and

''(iv) any other authority identified by the Administrator under subsection (b).

''(C) CATEGORY C.—All authorities necessary to perform remedial design, including—

''(i) remedial design under section 121;

''(ii) enforcement authority related to the authority described in clause (i); and

''(iii) any other authority identified by the Administrator under subsection (b).

''(D) CATEGORY D.—All authorities necessary to perform remedial action and operation and maintenance, including—

''(i) a removal under section 104;

''(ii) a remedial action under section 104;

''(iii) operation and maintenance under section 104(c);

''(iv) enforcement authority related to the authorities described in clauses (i) through (iii); and

''(v) any other authority identified by the Administrator under subsection (b).

''(E) CATEGORY E.—All authorities necessary to perform information collection and allocation of liability, including—

''(i) information collection activity under section 104(e);

''(ii) allocation of liability under section 135;

''(iii) a search for potentially responsible parties under section 104 or 107;

''(iv) settlement under section 122;

''(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

''(vi) any other authority identified by the Administrator under subsection (b).

''(3) DELEGATED AUTHORITY.—The term 'delegated authority' means a delegable authority that has been delegated to a delegated State under this section.

''(4) DELEGATED FACILITY.—The term 'delegated facility' means a non-Federal listed facility with respect to which a delegable authority has been delegated to a State under this section.

''(5) DELEGATED STATE.—The term 'delegated State' means a State to which delegable authority has been delegated under subsection (c), except as may be provided in a delegation agreement in the case of a limited delegation of authority under subsection (c)(5).

''(6) ENFORCEMENT AUTHORITY.—The term 'enforcement authority' means all authorities necessary to recover response costs, require potentially responsible parties to perform response actions, and otherwise compel implementation of a response action, including—

''(A) issuance of an order under section 106(a);

''(B) a response action cost recovery under section 107;

''(C) imposition of a civil penalty or award under subsection (a)(1)(D) or (b)(4) of section 109;

''(D) settlement under section 122; and

''(E) any other authority identified by the Administrator under subsection (b).

''(7) NONCOMPREHENSIVE DELEGATION STATE.—The term 'noncomprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform fewer than all of the categories of delegable authority.

''(8) NONDELEGABLE AUTHORITY.—The term 'nondelegable authority' means authority to—

''(A) make grants to community response organizations under section 117; and

''(B) conduct research and development activities under any provision of this Act.

''(9) NON-FEDERAL LISTED FACILITY.—The term 'non-Federal listed facility' means a facility that—

''(A) is not owned or operated by a department, agency, or instrumentality of the United States in any branch of the Government; and

''(B) is listed on the National Priorities List.

''(b) IDENTIFICATION OF DELEGABLE AUTHORITIES.—

''(1) IN GENERAL.—The President shall by regulation identify all of the authorities of the Administrator that shall be included in a delegation of any category of delegable authority described in subsection (a)(2).

''(2) LIMITATION.—The Administrator shall not identify a nondelegable authority for inclusion in a delegation of any category of delegable authority.

''(c) DELEGATION OF AUTHORITY.—

''(1) IN GENERAL.—Pursuant to an approved State application, the Administrator shall

delegate authority to perform 1 or more delegable authorities with respect to 1 or more non-Federal listed facilities in the State.

''(2) APPLICATION.—An application under paragraph (1) shall—

''(A) identify each non-Federal listed facility for which delegation is requested;

''(B) identify each delegable authority that is requested to be delegated for each non-Federal listed facility for which delegation is requested; and

''(C) certify that the State, supported by such documentation as the State, in consultation with the Administrator, considers to be appropriate—

''(i) has statutory and regulatory authority (including appropriate enforcement authority) to perform the requested delegable authorities in a manner that is protective of human health and the environment;

''(ii) has resources in place to adequately administer and enforce the authorities;

''(iii) has procedures to ensure public notice and, as appropriate, opportunity for comment on remedial action plans, consistent with sections 117 and 132; and

''(iv) agrees to exercise its enforcement authorities to require that persons that are potentially liable under section 107(a), to the extent practicable, perform and pay for the response actions set forth in each category described in subsection (a)(2).

''(3) APPROVAL OF APPLICATION.—

''(A) IN GENERAL.—Not later than 60 days after receiving an application under paragraph (2) by a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), and not later than 120 days after receiving an application from a State that is not authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), unless the State agrees to a greater length of time for the Administrator to make a determination, the Administrator shall—

''(i) issue a notice of approval of the application (including approval or disapproval regarding any or all of the facilities with respect to which a delegation of authority is requested or with respect to any or all of the authorities that are requested to be delegated); or

''(ii) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the determination.

''(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of all or any portion of an application within the applicable time period under subparagraph (A), the application shall be deemed to have been granted.

''(C) RESUBMISSION OF APPLICATION.—

''(i) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

''(ii) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

''(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

''(E) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

''(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter into a delegation agreement that identifies each category of delegable authority that is delegated with respect to each delegated facility.

''(5) LIMITED DELEGATION.—

''(A) IN GENERAL.—In the case of a State that does not meet the requirements of paragraph (2)(C) the Administrator may delegate to the State limited authority to perform, ensure the performance of, or supervise or otherwise participate in the performance of 1 or more delegable authorities, as appropriate in view of the extent to which the State has the required legal authority, financial and personnel resources, organization, and expertise.

''(B) SPECIAL PROVISIONS.—In the case of a limited delegation of authority to a State under subparagraph (A), the Administrator shall specify the extent to which the State shall be considered to be a delegated State for the purposes of this Act.

''(d) PERFORMANCE OF DELEGATED AUTHORITIES.—

''(1) IN GENERAL.—A delegated State shall have sole authority (except as provided in paragraph (6)(B), subsection (e)(4), and subsection (g)) to perform a delegated authority with respect to a delegated facility.

''(2) AGREEMENTS FOR PERFORMANCE OF DELEGATED AUTHORITIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a delegated State may enter into an agreement with a political subdivision of the State, an interstate body comprised of that State and another delegated State or States, or a combination of such subdivisions or interstate bodies, providing for the performance of any category of delegated authority with respect to a delegated facility in the State if the parties to the agreement agree in the agreement to undertake response actions that are consistent with this Act.

''(B) NO AGREEMENT WITH POTENTIALLY RESPONSIBLE PARTY.—A delegated State shall not enter into an agreement under subparagraph (A) with a political subdivision or interstate body that is, or includes as a component an entity that is, a potentially responsible party with respect to a delegated facility covered by the agreement.

''(C) CONTINUING RESPONSIBILITY.—A delegated State that enters into an agreement under subparagraph (A)—

''(i) shall exercise supervision over and approve the activities of the parties to the agreement; and

''(ii) shall remain responsible for ensuring performance of the delegated authority.

''(3) COMPLIANCE WITH ACT.—

''(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

''(B) COMPREHENSIVE DELEGATION STATES.—

''(i) IN GENERAL.—A comprehensive delegation State shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121.

''(ii) COSTLIER REMEDIAL ACTION.—

''(I) IN GENERAL.—A delegated State may select a remedial action for a delegated facility that has a greater response cost (including operation and maintenance costs) than the response cost for a remedial action that would be selected by the Administrator under section 121, if the State pays for the difference in cost.

''(II) NO COST RECOVERY.—If a delegated State selects a more costly remedial action under subclause (I), the State shall not be entitled to seek cost recovery under this Act or any other Federal or State law from any other person for the difference in cost.

''(4) JUDICIAL REVIEW.—An order that is issued under section 106 by a delegated State with respect to a delegated facility shall be reviewable only in United States district court under section 113.

''(5) DELISTING OF NATIONAL PRIORITIES LIST FACILITIES.—

''(A) DELISTING.—After notice and an opportunity for public comment, a delegated State may remove from the National Priorities List all or part of a delegated facility—

''(i) if the State makes a finding that no further action is needed to be taken at the facility (or part of the facility) under any applicable law to protect human health and the environment consistent with paragraphs (1) and (2) of section 121(a);

''(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the cleanup will proceed at the facility under subsection (u) or (v) of section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924); or

''(iii) if the State is a comprehensive delegation State with respect to the facility.

''(B) EFFECT OF DELISTING.—A delisting under clause (ii) or (iii) of subparagraph (A) shall not affect—

''(i) the authority or responsibility of the State to complete remedial action and operation and maintenance;

''(ii) the eligibility of the State for funding under this Act;

''(iii) notwithstanding the limitation on section 104(c)(1), the authority of the Administrator to make expenditures from the Fund relating to the facility; or

''(iv) the enforceability of any consent order or decree relating to the facility.

''(C) NO RELISTING.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not relist on the National Priorities List a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A).

''(ii) CLEANUP NOT COMPLETED.—The Administrator may relist a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A) if cleanup is not completed in accordance with the enforceable agreement under subparagraph (A)(ii).

''(6) COST RECOVERY.—

''(A) RECOVERY BY A DELEGATED STATE.—Of the amount of any response costs recovered from a responsible party by a delegated State for a delegated facility under section 107—

''(i) 25 percent of the amount of any Federal response cost recovered with respect to a facility, plus an amount equal to the amount of response costs incurred by the State with respect to the facility, may be retained by the State; and

''(ii) the remainder shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

''(B) RECOVERY BY THE ADMINISTRATOR.—

''(i) IN GENERAL.—The Administrator may take action under section 107 to recover response costs from a responsible party for a delegated facility if—

''(I) the delegated State notifies the Administrator in writing that the delegated State does not intend to pursue action for recovery of response costs under section 107 against the responsible party; or

''(II) the delegated State fails to take action to recover response costs within a reasonable time in light of applicable statutes of limitation.

''(ii) NOTICE.—If the Administrator proposes to commence an action for recovery of response costs under section 107, the Administrator shall give the State written notice and allow the State at least 90 days after receipt of the notice to commence the action.

''(iii) NO FURTHER ACTION.—If the Administrator takes action against a potentially responsible party under section 107 relating to a release from a delegated facility, the delegated State may not take any other action for recovery of response costs relating to that release under this Act or any other Federal or State law.

''(e) FEDERAL RESPONSIBILITIES AND AUTHORITIES.—

''(1) REVIEW USE OF FUNDS.—

''(A) IN GENERAL.—The Administrator shall review the certification submitted by the Governor under subsection (f)(8) not later than 120 days after the date of its submission.

''(B) FINDING OF USE OF FUNDS INCONSISTENT WITH THIS ACT.—If the Administrator finds that funds were used in a manner that is inconsistent with this Act, the Administrator shall notify the Governor in writing not later than 120 days after receiving the certification of the Governor.

''(C) EXPLANATION.—Not later than 30 days after receiving a notice under subparagraph (B), the Governor shall—

''(i) explain why the finding of the Administrator is in error; or

''(ii) explain to the satisfaction of the Administrator how any misapplication or misuse of funds will be corrected.

''(D) FAILURE TO EXPLAIN.—If the Governor fails to make an explanation under subparagraph (C) to the satisfaction of the Administrator, the Administrator may request reimbursement of such amount of funds as the Administrator finds was misapplied or misused.

''(E) REPAYMENT OF FUNDS.—If the Administrator fails to obtain reimbursement from the State within a reasonable period of time, the Administrator may, after 30 days' notice to the State, bring a civil action in United States district court to recover from the delegated State any funds that were advanced for a purpose or were used for a purpose or in a manner that is inconsistent with this Act.

''(2) WITHDRAWAL OF DELEGATION OF AUTHORITY.—

''(A) DELEGATED STATES.—If at any time the Administrator finds that contrary to a certification made under subsection (c)(2), a delegated State—

''(i) lacks the required financial and personnel resources, organization, or expertise to administer and enforce the requested delegated authorities;

''(ii) does not have adequate legal authority to request and accept delegation; or

''(iii) is failing to materially carry out the delegated authorities of the State,

the Administrator may withdraw a delegation of authority with respect to a delegated facility after providing notice and opportunity to correct deficiencies under subparagraph (D).

''(B) STATES WITH LIMITED DELEGATIONS OF AUTHORITY.—If the Administrator finds that a State to which a limited delegation of authority was made under subsection (c)(5) has materially breached the delegation agreement, the Administrator may withdraw the delegation after providing notice and opportunity to correct deficiencies under subparagraph (D).

''(C) NOTICE AND OPPORTUNITY TO CORRECT.—If the Administrator proposes to withdraw a delegation of authority for any or all delegated facilities, the Administrator shall give the State written notice and allow the State at least 90 days after the date of receipt of the notice to correct the deficiencies cited in the notice.

''(D) FAILURE TO CORRECT.—If the Administrator finds that the deficiencies have not been corrected within the time specified in a notice under subparagraph (C), the Administrator may withdraw delegation of authority after providing public notice and opportunity for comment.

''(E) JUDICIAL REVIEW.—A decision of the Administrator to withdraw a delegation of authority shall be subject to judicial review under section 113(b).

''(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Administrator under this Act to—

''(A) take a response action at a facility listed on the National Priorities List in a State to which a delegation of authority has not been made under this section or at a facility not included in a delegation of authority; or

''(B) perform a delegable authority with respect to a facility that is not included among the authorities delegated to a State with respect to the facility.

''(4) RETAINED AUTHORITY.—

''(A) NOTICE.—Before performing an emergency removal action under section 104 at a delegated facility, the Administrator shall notify the delegated States of the intention of the Administrator to perform the removal.

''(B) STATE ACTION.—If, after receiving a notice under subparagraph (A), the delegated State notifies the Administrator within 48 hours that the State intends to take action to perform an emergency removal at the delegated facility, the Administrator shall not perform the emergency removal action unless the Administrator determines that the delegated State has failed to act within a reasonable period of time to perform the emergency removal.

''(C) IMMEDIATE AND SIGNIFICANT DANGER.—If the Administrator finds that an emergency at a delegated facility poses an immediate and significant danger to human health or the environment, the Administrator shall not be required to provide notice under subparagraph (A).

''(5) PROHIBITED ACTIONS.—Except as provided in subsections (d)(6)(B), (e)(4), and (g) or except with the concurrence of the delegated State, the President, the Administrator, and the Attorney General shall not take any action under section 104, 106, 107, 109, 121, or 122 in performance of a delegable authority that has been delegated to a State with respect to a delegated facility.

''(f) FUNDING.—

''(1) IN GENERAL.—The Administrator shall provide grants to or enter into contracts or cooperative agreements with delegated States to carry out this section.

''(2) NO CLAIM AGAINST FUND.—Notwithstanding any other law, funds to be granted under this subsection shall not constitute a claim against the Fund or the United States.

''(3) INSUFFICIENT FUNDS AVAILABLE.—If funds are unavailable in any fiscal year to satisfy all commitments made under this section by the Administrator, the Administrator shall have sole authority and discretion to establish priorities and to delay payments until funds are available.

''(4) DETERMINATION OF COSTS ON A FACILITY-SPECIFIC BASIS.—The Administrator shall—

''(A) determine—

''(i) the delegable authorities the costs of performing which it is practicable to determine on a facility-specific basis; and

''(ii) the delegable authorities the costs of performing which it is not practicable to determine on a facility-specific basis; and

''(B) publish a list describing the delegable authorities in each category.

''(5) FACILITY-SPECIFIC GRANTS.—The costs described in paragraph (4)(A)(ii) shall be funded as such costs arise with respect to each delegated facility.

''(6) NONFACILITY-SPECIFIC GRANTS.—

''(A) IN GENERAL.—The costs described in paragraph (4)(A)(ii) shall be funded through nonfacility-specific grants under this paragraph.

''(B) FORMULA.—The Administrator shall establish a formula under which funds available for nonfacility-specific grants shall be allocated among the delegated States, taking into consideration—

''(i) the cost of administering the delegated authority;

''(ii) the number of sites for which the State has been delegated authority;

''(iii) the types of activities for which the State has been delegated authority;

''(iv) the number of facilities within the State that are listed on the National Priorities List or are delegated facilities under subsection (d)(5);

''(v) the number of other high priority facilities within the State;

''(vi) the need for the development of the State program;

''(vii) the need for additional personnel;

''(viii) the amount of resources available through State programs for the cleanup of contaminated sites; and

''(ix) the benefit to human health and the environment of providing the funding.

''(7) PERMITTED USE OF GRANT FUNDS.—A delegated State may use grant funds, in accordance with this Act and the National Contingency Plan, to take any action or perform any duty necessary to implement the authority delegated to the State under this section.

''(8) COST SHARE.—

''(A) ASSURANCE.—A delegated State to which a grant is made under this subsection shall provide an assurance that the State will pay any amount required under section 104(c)(3).

''(B) PROHIBITED USE OF GRANT FUNDS.—A delegated State to which a grant is made under this subsection may not use grant funds to pay any amount required under section 104(c)(3).

''(9) CERTIFICATION OF USE OF FUNDS.—

''(A) IN GENERAL.—Not later than 1 year after the date on which a delegated State receives funds under this subsection, and annually thereafter, the Governor of the State shall submit to the Administrator—

''(i) a certification that the State has used the funds in accordance with the requirements of this Act and the National Contingency Plan; and

''(ii) information describing the manner in which the State used the funds.

''(B) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a regulation describing with particularity the information that a State shall be required to provide under subparagraph (A)(ii).

''(g) COOPERATIVE AGREEMENTS.—Nothing in this section shall affect the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a

State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.''.

(b) STATE COST SHARE.—Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)) is amended—

(1) by striking ''(c)(1) Unless'' and inserting the following:

''(c) MISCELLANEOUS LIMITATIONS AND REQUIREMENTS.—

''(1) CONTINUANCE OF OBLIGATIONS FROM FUND.—Unless'';

(2) by striking ''(2) The President'' and inserting the following:

''(2) CONSULTATION.—The President''; and

(3) by striking paragraph (3) and inserting the following:

''(3) STATE COST SHARE.—

''(A) IN GENERAL.—The Administrator shall not provide any remedial action under this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State will pay, in cash or through in-kind contributions, a specified percentage of the costs of the remedial action and operation and maintenance costs.

''(B) ACTIVITIES WITH RESPECT TO WHICH STATE COST SHARE IS REQUIRED.—No State cost share shall be required except for remedial actions under section 104.

''(C) SPECIFIED PERCENTAGE.—

''(i) IN GENERAL.—The specified percentage of costs that a State shall be required to share shall be the lower of 10 percent or the percentage determined under clause (ii).

''(ii) MAXIMUM IN ACCORDANCE WITH LAW PRIOR TO 1996 AMENDMENTS.—

''(I) IN GENERAL.—On petition by a State, the Director of the Office of Management and Budget (referred to in this clause as the 'Director'), after providing public notice and opportunity for comment, shall establish a cost share percentage, which shall be uniform for all facilities in the State, at the percentage rate at which the total amount of anticipated payments by the State under the cost share for all facilities in the State for which a cost share is required most closely approximates the total amount of estimated cost share payments by the State for facilities that would have been required under cost share requirements that were applicable prior to the date of enactment of this subparagraph, adjusted to reflect the extent to which the ability of the State to recover costs under this Act were reduced by reason of enactment of amendments to this Act by division H of the Energy Policy Act of 2002.

''(II) ADJUSTMENT.—The Director may adjust the cost share of a State under this clause not more frequently than every 3 years.

''(D) INDIAN TRIBES.—In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if the land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph shall not apply.''.

(c) USES OF FUND.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

''(7) GRANTS TO DELEGATED STATES.—Making a grant to a delegated State under section 129(f).''.

(d) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Section 114(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(b)) is amended by striking ''removal'' each place it appears and inserting ''response''.

(2) CONFORMING AMENDMENT.—Section 101(37)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(37)(B)) is amended by striking ''section 114(c)'' and inserting ''section 114(b)''.

Subtitle B—Community Participation

SEC. 1911. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

''(e) COMMUNITY RESPONSE ORGANIZATIONS.—

''(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility that is listed or proposed for listing on the National Priorities List—

''(A) if the Administrator determines that a representative public forum will be helpful in promoting direct, regular, and meaningful consultation among persons interested in remedial action at the facility; or

''(B) at the request of—

''(i) 50 individuals residing in, or at least 20 percent of the population of, the area in which the facility is located;

''(ii) a representative group of the potentially responsible parties; or

''(iii) any local governmental entity with jurisdiction over the facility.

''(2) RESPONSIBILITIES.—A community response organization shall—

''(A) solicit the views of the local community on various issues affecting the development and implementation of remedial actions at the facility;

''(B) serve as a conduit of information to and from the community to appropriate Federal, State, and local agencies and potentially responsible parties;

''(C) serve as a representative of the local community during the remedial action planning and implementation process; and

''(D) provide reasonable notice of and opportunities to participate in the meetings and other activities of the community response organization.

''(3) ACCESS TO DOCUMENTS.—The Administrator shall provide a community response organization access to documents in possession of the Federal Government regarding response actions at the facility that do not relate to liability and are not protected from disclosure as confidential business information.

''(4) COMMUNITY RESPONSE ORGANIZATION INPUT.—

''(A) CONSULTATION.—The Administrator (or if the remedial action plan is being prepared or implemented by a party other than the Administrator, the other party) shall—

''(i) consult with the community response organization in developing and implementing the remedial action plan; and

''(ii) keep the community response organization informed of progress in the development and implementation of the remedial action plan.

''(B) TIMELY SUBMISSION OF COMMENTS.—The community response organization shall provide its comments, information, and recommendations in a timely manner to the Administrator (and other party).

''(C) CONSENSUS.—The community response organization shall attempt to achieve consensus among its members before providing comments and recommendations to the Administrator (and other party), but if consensus cannot be reached, the community response organization shall report or allow presentation of divergent views.

''(5) TECHNICAL ASSISTANCE GRANTS.—

''(A) PREFERRED RECIPIENT.—If a community response organization exists for a facility, the community response organization shall be the preferred recipient of a technical assistance grant under subsection (f).

''(B) PRIOR AWARD.—If a technical assistance grant concerning a facility has been awarded prior to establishment of a community response organization—

''(i) the recipient of the grant shall coordinate its activities and share information and technical expertise with the community response organization; and

''(ii) 1 person representing the grant recipient shall serve on the community response organization.

''(6) MEMBERSHIP.—

''(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

''(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response organization to persons who reside in the local community.

''(C) REPRESENTED GROUPS.—The Administrator shall, to the extent practicable, appoint members to the community response organization from each of the following groups of persons:

''(i) Persons who reside or own residential property near the facility.

''(ii) Persons who, although they may not reside or own property near the facility, may be adversely affected by a release from the facility.

''(iii) Persons who are members of the local public health or medical community and are practicing in the community.

''(iv) Representatives of Indian tribes or Indian communities that reside or own property near the facility or that may be adversely affected by a release from the facility.

''(v) Local representatives of citizen, environmental, or public interest groups with members residing in the community.

''(vi) Representatives of local governments, such as city or county governments, or both, and any other governmental unit that regulates land use or land use planning in the vicinity of the facility.

''(vii) Members of the local business community.

''(D) PROPORTION.—Local residents shall comprise not less than 60 percent of the membership of a community response organization.

''(E) PAY.—Members of a community response organization shall serve without pay.

''(7) PARTICIPATION BY GOVERNMENT REPRESENTATIVES.—Representatives of the Administrator, the Administrator of the Agency for Toxic Substances and Disease Registry, other Federal agencies, and the State, as appropriate, shall participate in community response organization meetings to provide information and technical expertise, but shall not be members of the community response organization.

''(8) ADMINISTRATIVE SUPPORT.—The Administrator, to the extent practicable, shall provide administrative services and meeting facilities for community response organizations.

''(9) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a community response organization.

''(f) TECHNICAL ASSISTANCE GRANTS.—

''(1) DEFINITIONS.—In this subsection:

''(A) AFFECTED CITIZEN GROUP.—The term 'affected citizen group' means a group of 2 or more individuals who may be affected by the

release or threatened release of a hazardous substance, pollutant, or contaminant at any facility on the State Registry or the National Priorities List.

''(B) TECHNICAL ASSISTANCE GRANT.—The term 'technical assistance grant' means a grant made under paragraph (2).

''(2) AUTHORITY.—

''(A) IN GENERAL.—In accordance with a regulation issued by the Administrator, the Administrator may make grants available to affected citizen groups.

''(B) AVAILABILITY OF APPLICATION PROCESS.—To ensure that the application process for a technical assistance grant is available to all affected citizen groups, the Administrator shall periodically review the process and, based on the review, implement appropriate changes to improve availability.

''(3) SPECIAL RULES.—

''(A) NO MATCHING CONTRIBUTION.—No matching contribution shall be required for a technical assistance grant.

''(B) AVAILABILITY IN ADVANCE.—The Administrator shall make all or a portion (but not less than $5,000 or 10 percent of the grant amount, whichever is greater) of the grant amount available to a grant recipient in advance of the total expenditures to be covered by the grant.

''(4) LIMIT PER FACILITY.—

''(A) 1 GRANT PER FACILITY.—Not more than 1 technical assistance grant may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action.

''(B) DURATION.—The Administrator shall by regulation limit the number of years for which a technical assistance grant may be made available based on the duration, type, and extent of response action at a facility.

''(5) AVAILABILITY FOR FACILITIES NOT YET LISTED.—Subject to paragraph (6), 1 or more technical assistance grants shall be made available to affected citizen groups in communities containing facilities on the State Registry as of the date on which the grant is awarded.

''(6) FUNDING LIMIT.—

''(A) PERCENTAGE OF TOTAL APPROPRIATIONS.—Not more than 2 percent of the funds made available to carry out this Act for a fiscal year may be used to make technical assistance grants.

''(B) ALLOCATION BETWEEN LISTED AND UNLISTED FACILITIES.—Not more than the portion of funds equal to ⅛ of the total amount of funds used to make technical assistance grants for a fiscal year may be used for technical assistance grants with respect to facilities not listed on the National Priorities List.

''(7) FUNDING AMOUNT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a technical assistance grant may not exceed $50,000 for a single grant recipient.

''(B) INCREASE.—The Administrator may increase the amount of a technical assistance grant, or renew a previous technical assistance grant, up to a total grant amount not exceeding $100,000, to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other non-Federal sources.

''(8) USE OF TECHNICAL ASSISTANCE GRANTS.—

''(A) PERMITTED USE.—A technical assistance grant may be used to obtain technical assistance in interpreting information with regard to—

''(i) the nature of the hazardous substances located at a facility;

''(ii) the work plan;

''(iii) the facility evaluation;

''(iv) a proposed remedial action plan, a remedial action plan, and a final remedial design for a facility;

''(v) response actions carried out at the facility; and

''(vi) operation and maintenance activities at the facility.

''(B) PROHIBITED USE.—A technical assistance grant may not be used for the purpose of collecting field sampling data.

''(9) GRANT GUIDELINES.—

''(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Administrator shall develop and publish guidelines concerning the management of technical assistance grants by grant recipients.

''(B) HIRING OF EXPERTS.—A recipient of a technical assistance grant that hires technical experts and other experts shall act in accordance with the guidelines under subparagraph (A).

''(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—

''(1) IN GENERAL.—

''(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the Administrator shall provide the opportunity for, and publish notice of, public meetings before or during performance of—

''(i) a facility evaluation, as appropriate;

''(ii) announcement of a proposed remedial action plan; and

''(iii) completion of a final remedial design.

''(B) INFORMATION.—A public meeting under subparagraph (A) shall be designed to obtain information from the community, and disseminate information to the community, with respect to a facility concerning the facility activities and pending decisions of the Administrator.

''(2) PARTICIPANTS AND SUBJECT.—The Administrator shall provide reasonable notice of an opportunity for public participation in meetings in which—

''(A) the participants include Federal officials (or State officials, if the State is conducting response actions under a delegated or authorized program or through facility referral) with authority to make significant decisions affecting a response action, and other persons (unless all of such other persons are coregulators that are not potentially responsible parties or are government contractors); and

''(B) the subject of the meeting involves discussions directly affecting—

''(i) a legally enforceable work plan document, or any significant amendment to the document, for a removal, facility evaluation, proposed remedial action plan, final remedial design, or remedial action for a facility on the National Priorities List; or

''(ii) the final record of information on which the Administrator will base a hazard ranking system score for a facility.

''(3) LIMITATION.—Nothing in this subsection—

''(A) provides for public participation in or otherwise affects any negotiation, meeting, or other discussion that concerns only the potential liability or settlement of potential liability of any person, whether prior to or following the commencement of litigation or administrative enforcement action;

''(B) provides for public participation in or otherwise affects any negotiation, meeting, or other discussion that is attended only by representatives of the United States (or of a department, agency, or instrumentality of the United States) with attorneys representing the United States (or of a department, agency, or instrumentality of the United States); or

''(C) waives, compromises, or affects any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

''(4) EVALUATION.—

''(A) IN GENERAL.—To the extent practicable, before and during the facility evaluation, the Administrator shall solicit and evaluate concerns, interests, and information from the community.

''(B) PROCEDURE.—An evaluation under subparagraph (A) shall include, as appropriate—

''(i) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

''(ii) a public meeting;

''(iii) written responses to significant concerns; and

''(iv) other appropriate participatory activities.

''(5) VIEWS AND PREFERENCES.—

''(A) SOLICITATION.—During the facility evaluation, the Administrator (or other person performing the facility evaluation) shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility.

''(B) CONSIDERATION.—The views and preferences of the community shall be described in the facility evaluation and considered in the screening of remedial alternatives for the facility.

''(6) ALTERNATIVES.—Members of the community may propose remedial action alternatives, and the Administrator shall consider such alternatives in the same manner as the Administrator considers alternatives proposed by potentially responsible parties.

''(7) INFORMATION.—

''(A) THE COMMUNITY.—The Administrator, with the assistance of the community response organization under subsection (g) if there is one, shall provide information to the community and seek comment from the community throughout all significant phases of the response action at the facility.

''(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner.

''(C) RESPONSES.—The Administrator shall ensure that reasonable written or other appropriate responses will be made to such information.

''(8) NONPRIVILEGED INFORMATION.—Throughout all phases of response action at a facility, the Administrator shall make all nonprivileged information relating to a facility available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

''(9) PRESENTATION.—

''(A) DOCUMENTS.—

''(i) IN GENERAL.—The Administrator, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative.

''(ii) RISK.—To the extent feasible, documents prepared by the Administrator and made available to the public that purport to describe the degree of risk to human health shall be consistent with the risk communication principles outlined in section 130(c).

''(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered

by the general public through other sources of exposure.

''(10) REQUIREMENTS.—

''(A) LENGTHY REMOVAL ACTIONS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to require more than 180 days to complete, and in any case in which implementation of a removal action is expected to obviate or that in fact obviates the need to conduct a long-term remedial action—

''(i) the Administrator shall, to the maximum extent practicable, allow for public participation consistent with paragraph (1); and

''(ii) the removal action shall achieve the goals of protecting human health and the environment in accordance with section 121(a)(1).

''(B) OTHER REMOVAL ACTIONS.—In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate.''.

(b) ISSUANCE OF GUIDELINES.—The Administrator of the Environmental Protection Agency shall issue guidelines under section 117(e)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 90 days after the date of enactment of this Act.

Subtitle C—Selection of Remedial Actions

SEC. 1921. DEFINITIONS.

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

''(42) ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The term 'actual or planned or reasonably anticipated future use of the land and water resources' means—

''(A) the actual use of the land, surface water, and ground water at a facility on the date of submittal of the proposed remedial action plan; and

''(B)(i) with respect to land—

''(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

''(II) any other reasonably anticipated use that the local land use authority, in consultation with the community response organization (if any), determines to have a substantial probability of occurring based on recent (as of the time of the determination) development patterns in the area in which the facility is located and on population projections for the area; and

''(ii) with respect to water resources, the future use of the surface water and ground water that is potentially affected by releases from a facility that is reasonably anticipated, by the governmental unit that regulates surface or ground water use or surface or ground water use planning in the vicinity of the facility, on the date of submission of the proposed remedial action plan.

''(43) SUSTAINABILITY.—The term 'sustainability'', for the purpose of section 121(a)(1)(B)(ii), means the ability of an ecosystem to continue to function within the normal range of its variability absent the effects of a release of a hazardous substance.''.

SEC. 1922. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

''SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

''(a) GENERAL RULES.—

''(1) SELECTION OF COST-EFFECTIVE REMEDIAL ACTION THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.—

''(A) IN GENERAL.—The Administrator shall select a cost-effective remedial action that achieves the goals of protecting human health and the environment as stated in subparagraph (B), and complies with other applicable Federal and State laws in accordance with subparagraph (C) on the basis of a facility-specific risk evaluation in accordance with section 130 and in accordance with the criteria stated in subparagraph (D) and the requirements of paragraph (2).

''(B) GOALS OF PROTECTING HUMAN HEALTH AND THE ENVIRONMENT.—

''(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to protect human health if, considering the expected exposures associated with the actual or planned or reasonably anticipated future use of the land and water resources and on the basis of a facility-specific risk evaluation in accordance with section 131, the remedial action achieves a residual risk—

''(I) from exposure to nonthreshold carcinogenic hazardous substances, pollutants, or contaminants such that cumulative lifetime additional cancer from exposure to hazardous substances from releases at the facility range from 10^{-4} to 10^{-6} for the affected population; and

''(II) from exposure to threshold carcinogenic and noncarcinogenic hazardous substances, pollutants, or contaminants at the facility, that does not exceed a hazard index of 1.

''(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to be protective of the environment if the remedial action—

''(I) protects ecosystems from significant threats to their sustainability arising from exposure to releases of hazardous substances at a site; and

''(II) does not cause a greater threat to the sustainability of ecosystems than a release of a hazardous substance.

''(iii) PROTECTION OF GROUND WATER.—A remedial action shall prevent or eliminate any actual human ingestion of drinking water containing any hazardous substance from the release at levels—

''(I) in excess of the maximum contaminant level established under the Safe Drinking Water Act (42 U.S.C. 300f et seq.); or

''(II) if no such maximum contaminant level has been established for the hazardous substance, at levels that meet the goals for protection of human health under clause (i).

''(C) COMPLIANCE WITH FEDERAL AND STATE LAWS.—

''(i) SUBSTANTIVE REQUIREMENTS.—

''(I) IN GENERAL.—Subject to clause (iii), subparagraphs (A) and (D), and paragraph (2), a remedial action shall—

''(aa) comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under each Federal law and each State law relating to the environment or to the siting of facilities (including a State law that imposes a more stringent standard, requirement, criterion, or limitation than Federal law) that is applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

''(bb) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State law relating to the environment or siting of facilities, as determined by the State, after the date of enactment of the Energy Policy Act of 2002, through a rulemaking procedure that includes public notice, comment, and written response comment, and opportunity for judicial review, but only if the State demonstrates that the standard, requirement, criterion, or limitation is of general applicability and is consistently applied to remedial actions under State law.

''(II) IDENTIFICATION OF FACILITIES.—Compliance with a State standard, requirement, criterion, or limitation described in subclause (I) shall be required at a facility only if the standard, requirement, criterion, or limitation has been identified by the State to the Administrator in a timely manner as being applicable to the facility.

''(III) PUBLISHED LISTS.—Each State shall publish a comprehensive list of the standards, requirements, criteria, and limitations that the State may apply to remedial actions under this Act, and shall revise the list periodically, as requested by the Administrator.

''(IV) CONTAMINATED MEDIA.—Compliance with this clause shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then-existing areas of contamination onsite at a facility.

''(ii) PROCEDURAL REQUIREMENTS.—Procedural requirements of Federal and State standards, requirements, criteria, and limitations (including permitting requirements) shall not apply to response actions conducted onsite at a facility.

''(iii) WAIVER PROVISIONS.—

''(I) DETERMINATION BY THE PRESIDENT.—The Administrator shall evaluate and determine if it is not appropriate for a remedial action to attain a Federal or State standard, requirement, criterion, or limitation as required by clause (i).

''(II) SELECTION OF REMEDIAL ACTION THAT DOES NOT COMPLY.—The Administrator may select a remedial action at a facility that meets the requirements of subparagraph (B) but does not comply with or attain a Federal or State standard, requirement, criterion, or limitation described in clause (i) if the Administrator makes any of the following findings:

''(aa) IMPROPER IDENTIFICATION.—The standard, requirement, criterion, or limitation, which was improperly identified as an applicable requirement under clause (i)(I)(aa), fails to comply with the rulemaking requirements of clause (i)(I)(bb).

''(bb) PART OF REMEDIAL ACTION.—The selected remedial action is only part of a total remedial action that will comply with or attain the applicable requirements of clause (i) when the total remedial action is completed.

''(cc) GREATER RISK.—Compliance with or attainment of the standard, requirement, criterion, or limitation at the facility will result in greater risk to human health or the environment than alternative options.

''(dd) TECHNICALLY IMPRACTICABILITY.—Compliance with or attainment of the standard, requirement, criterion, or limitation is technically impracticable.

''(ee) EQUIVALENT TO STANDARD OF PERFORMANCE.—The selected remedial action will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation described in clause (i) through use of another approach.

''(ff) INCONSISTENT APPLICATION.—With respect to a State standard, requirement, criterion, limitation, or level, the State has not consistently applied (or demonstrated the intention to apply consistently) the standard, requirement, criterion, or limitation or level in similar circumstances to other remedial actions in the State.

''(gg) BALANCE.—In the case of a remedial action to be undertaken under section 104 or 135 using amounts from the Fund, a selection

of a remedial action that complies with or attains a standard, requirement, criterion, or limitation described in clause (i) will not provide a balance between the need for protection of public health and welfare and the environment at the facility, and the need to make amounts from the Fund available to respond to other facilities that may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of the threats presented by the various facilities.

''(III) PUBLICATION.—The Administrator shall publish any findings made under subclause (II), including an explanation and appropriate documentation.

''(D) REMEDY SELECTION CRITERIA.—In selecting a remedial action from among alternatives that achieve the goals stated in subparagraph (B) pursuant to a facility-specific risk evaluation in accordance with section 130, the Administrator shall balance the following factors, ensuring that no single factor predominates over the others:

''(i) The effectiveness of the remedy in protecting human health and the environment.

''(ii) The reliability of the remedial action in achieving the protectiveness standards over the long term.

''(iii) Any short-term risk to the affected community, those engaged in the remedial action effort, and to the environment posed by the implementation of the remedial action.

''(iv) The acceptability of the remedial action to the affected community.

''(v) The implementability and technical feasibility of the remedial action from an engineering perspective.

''(vi) The reasonableness of the cost.

''(2) TECHNICAL IMPRACTICABILITY.—

''(A) MINIMIZATION OF RISK.—If the Administrator, after reviewing the remedy selection criteria stated in paragraph (1)(D), finds that achieving the goals stated in paragraph (1)(B) is technically impracticable, the Administrator shall evaluate remedial measures that mitigate the risks to human health and the environment and select a technically practicable remedial action that will most closely achieve the goals stated in paragraph (1) through cost-effective means.

''(B) BASIS FOR FINDING.—A finding of technical impracticability may be made on the basis of a determination, supported by appropriate documentation, that, at the time at which the finding is made—

''(i) there is no known reliable means of achieving at a reasonable cost the goals stated in paragraph (1)(B); and

''(ii) it has not been shown that such a means is likely to be developed within a reasonable period of time.

''(3) PRESUMPTIVE REMEDIAL ACTIONS.—A remedial action that implements a presumptive remedial action issued under section 131 shall be considered to achieve the goals stated in paragraph (1)(B) and balance adequately the factors stated in paragraph (1)(D).

''(4) GROUND WATER.—

''(A) IN GENERAL.—The Administrator or the preparer of the remedial action plan shall select a cost effective remedial action for ground water that achieves the goals of protecting human health and the environment as stated in paragraph (1)(B) and with the requirements of this paragraph, and complies with other applicable Federal and State laws in accordance with subparagraph (C) on the basis of a facility-specific risk evaluation in accordance with section 130 and in accordance with the criteria stated in subparagraph (D) and the requirements of paragraph (2). If appropriate, a remedial action for ground water shall be phased, allowing collection of sufficient data to evaluate the effect of any other remedial action taken at the site and to determine the appropriate scope of the remedial action.

''(B) CONSIDERATIONS FOR GROUND WATER REMEDIAL ACTION.—A decision regarding a remedial action for ground water shall take into consideration—

''(i) the actual or planned or reasonably anticipated future use of ground water and the timing of that use; and

''(ii) any attenuation or biodegradation that would occur if no remedial action were taken.

''(C) UNCONTAMINATED GROUND WATER.—A remedial action shall protect uncontaminated ground water that is suitable for use as drinking water by humans or livestock if the water is uncontaminated and suitable for such use at the time of submission of the proposed remedial action plan. A remedial action to protect uncontaminated ground water may utilize natural attenuation (which may include dilution or dispersion, but in conjunction with biodegradation or other levels of attenuation necessary to facilitate the remediation of contaminated ground water) so long as the remedial action does not interfere with the actual or planned or reasonably anticipated future use of the uncontaminated ground water.

''(D) CONTAMINATED GROUND WATER.—

''(i) IN GENERAL.—In the case of contaminated ground water for which the actual or planned or reasonably anticipated future use of the resource is as drinking water for humans or livestock, if the Administrator determines that restoration of some portion of the contaminated ground water to a condition suitable for the use is technically practicable, the Administrator shall seek to restore the ground water to a condition suitable for the use.

''(ii) DETERMINATION OF RESTORATION PRACTICABILITY.—In making a determination regarding the technical practicability of ground water restoration—

''(I) there shall be no presumption of the technical practicability; and

''(II) the determination of technical practicability shall, to the extent practicable, be made on the basis of projections, modeling, or other analysis on a site-specific basis without a requirement for the construction or installation and operation of a remedial action.

''(iii) DETERMINATION OF NEED FOR AND METHODS OF RESTORATION.—In making a determination and selecting a remedial action regarding restoration of contaminated ground water the Administrator shall take into account—

''(I) the ability to substantially accelerate the availability of ground water for use as drinking water beyond the rate achievable by natural attenuation; and

''(II) the nature and timing of the actual or planned or reasonably anticipated use of such ground water.

''(iv) RESTORATION TECHNICALLY IMPRACTICABLE.—

''(I) IN GENERAL.—A remedial action for contaminated ground water having an actual or planned or reasonably anticipated future use as a drinking water source for humans or livestock for which attainment of the levels described in paragraph (1)(B)(iii) is technically impracticable shall be selected in accordance with paragraph (2).

''(II) NO INGESTION.—Selected remedies may rely on point-of-use treatment or other measures to ensure that there will be no ingestion of drinking water at levels exceeding the requirement of subclause (I) or (II) of paragraph (1)(B)(iii).

''(III) INCLUSION AS PART OF OPERATION AND MAINTENANCE.—The operation and maintenance of any treatment device installed at the point of use shall be included as part of the operation and maintenance of the remedy.

''(E) GROUND WATER NOT SUITABLE FOR USE AS DRINKING WATER.—Notwithstanding any other evaluation or determination of the potential suitability of ground water for drinking water use, ground water that is not suitable for use as drinking water by humans or livestock because of naturally occurring conditions, or is so contaminated by the effects of broad-scale human activity unrelated to a specific facility or release that restoration of drinking water quality is technically impracticable or is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring, shall be considered to be not suitable for use as drinking water.

''(F) OTHER GROUND WATER.—Remedial action for contaminated ground water (other than ground water having an actual or planned or reasonably anticipated future use as a drinking water source for humans or livestock) shall attain levels appropriate for the then-current or reasonably anticipated future use of the ground water, or levels appropriate considering the then-current use of any ground water or surface water to which the contaminated ground water discharges.

''(5) OTHER CONSIDERATIONS APPLICABLE TO REMEDIAL ACTIONS.—A remedial action that uses institutional and engineering controls shall be considered to be on an equal basis with all other remedial action alternatives.'';

(2) by redesignating subsection (c) as subsection (b);

(3) by striking subsection (d); and

(4) by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

SEC. 1923. REMEDY SELECTION METHODOLOGY.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1901(a)) is amended by adding at the end the following:

''SEC. 130. FACILITY-SPECIFIC RISK EVALUATIONS.

''(a) USES.—

''(1) IN GENERAL.—A facility-specific risk evaluation shall be used to—

''(A) identify the significant components of potential risk posed by a facility;

''(B) screen out potential contaminants, areas, or exposure pathways from further study at a facility;

''(C) compare the relative protectiveness of alternative potential remedies proposed for a facility; and

''(D) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment considering the actual or planned or reasonably anticipated future use of the land and water resources.

''(2) COMPLIANCE WITH PRINCIPLES.—A facility-specific risk evaluation shall comply with the principles stated in this section to ensure that—

''(A) actual or planned or reasonably anticipated future use of the land and water resources is given appropriate consideration; and

''(B) all of the components of the evaluation are, to the maximum extent practicable, scientifically objective and inclusive of all relevant data.

''(b) RISK EVALUATION PRINCIPLES.—A facility-specific risk evaluation shall—

''(1) be based on actual information or scientific estimates of exposure considering the actual or planned or reasonably anticipated future use of the land and water resources to the extent that substituting such estimates for those made using standard assumptions alters the basis for decisions to be made;

''(2) be comprised of components each of which is, to the maximum extent practicable, scientifically objective, and inclusive of all relevant data;

''(3) use chemical and facility-specific data and analysis (such as bioavailability, exposure, and fate and transport evaluations) in preference to default assumptions when—

''(A) such data and analysis are likely to vary by facility; and

''(B) facility-specific risks are to be communicated to the public or the use of such data and analysis alters the basis for decisions to be made; and

''(4) use a range and distribution of realistic and scientifically supportable assumptions when chemical and facility-specific data are not available, if the use of such assumptions would communicate more accurately the consequences of the various decision options.

''(c) RISK COMMUNICATION PRINCIPLES.—The document reporting the results of a facility-specific risk evaluation shall—

''(1) contain an explanation that clearly communicates the risks at the facility;

''(2) identify and explain all assumptions used in the evaluation, any alternative assumptions that, if made, could materially affect the outcome of the evaluation, the policy or value judgments used in choosing the assumptions, and whether empirical data conflict with or validate the assumptions;

''(3) present—

''(A) a range and distribution of exposure and risk estimates, including, if numerical estimates are provided, central estimates of exposure and risk using—

''(i) the most scientifically supportable assumptions or a weighted combination of multiple assumptions based on different scenarios; or

''(ii) any other methodology designed to characterize the most scientifically supportable estimate of risk given the information that is available at the time of the facility-specific risk evaluation; and

''(B) a statement of the nature and magnitude of the scientific and other uncertainties associated with those estimates;

''(4) state the size of the population potentially at risk from releases from the facility and the likelihood that potential exposures will occur based on the actual or planned or reasonably anticipated future use of the land and water resources; and

''(5) compare the risks from the facility to other risks commonly experienced by members of the local community in their daily lives and similar risks regulated by the Federal Government.

''(d) REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall issue a final regulation implementing this section that promotes a realistic characterization of risk that neither minimizes nor exaggerates the risks and potential risks posed by a facility or a proposed remedial action.

''SEC. 131. PRESUMPTIVE REMEDIAL ACTIONS.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a final regulation establishing presumptive remedial actions for commonly encountered types of facilities with reasonably well understood contamination problems and exposure potential.

''(b) PRACTICABILITY AND COST-EFFECTIVENESS.—Such presumptive remedies must have been demonstrated to be technically practicable and cost-effective methods of achieving the goals of protecting human health and the environment stated in section 121(a)(1)(B).

''(c) VARIATIONS.—The Administrator may issue various presumptive remedial actions based on various uses of land and water resources, various environmental media, and various types of hazardous substances, pollutants, or contaminants.

''(d) ENGINEERING CONTROLS.—Presumptive remedial actions are not limited to treatment remedies, but may be based on, or include, institutional and standard engineering controls.''.

SEC. 1924. REMEDY SELECTION PROCEDURES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1923) is amended by adding at the end the following:

''SEC. 132. REMEDIAL ACTION PLANNING AND IMPLEMENTATION.

''(a) IN GENERAL.—

''(1) BASIC RULES.—

''(A) PROCEDURES.—A remedial action with respect to a facility that is listed or proposed for listing on the National Priorities List shall be developed and selected in accordance with the procedures set forth in this section.

''(B) NO OTHER PROCEDURES OR REQUIREMENTS.—The procedures stated in this section are in lieu of any procedures or requirements under any other law to conduct remedial investigations, feasibility studies, record of decisions, remedial designs, or remedial actions.

''(C) LIMITED REVIEW.—In a case in which the potentially responsible parties prepare a remedial action plan, only the work plan, facility evaluation, proposed remedial action plan, and final remedial design shall be subject to review, comment, and approval by the Administrator.

''(D) DESIGNATION OF POTENTIALLY RESPONSIBLE PARTIES TO PREPARE WORK PLAN, FACILITY EVALUATION, PROPOSED REMEDIAL ACTION, AND REMEDIAL DESIGN AND TO IMPLEMENT THE REMEDIAL ACTION PLAN.—In the case of a facility for which the Administrator is not required to prepare a work plan, facility evaluation, proposed remedial action, and remedial design and implement the remedial action plan—

''(i) if a potentially responsible party or group of potentially responsible parties—

''(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

''(II) demonstrates that the potentially responsible party or group of potentially responsible parties has the financial resources and the expertise to perform those functions;

the Administrator shall designate the potentially responsible party or group of potentially responsible parties to perform those functions; and

''(ii) if more than 1 potentially responsible party or group of potentially responsible parties—

''(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

''(II) demonstrates that the potentially responsible parties or group of potentially responsible parties has the financial resources and the expertise to perform those functions,

the Administrator, based on an assessment of the various parties' comparative financial resources, technical expertise, and histories of cooperation with respect to facilities that are listed on the National Priorities List, shall designate 1 potentially responsible party or group of potentially responsible parties to perform those functions.

''(E) APPROVAL REQUIRED AT EACH STEP OF PROCEDURE.—No action shall be taken with respect to a facility evaluation, proposed remedial action plan, remedial action plan, or remedial design, respectively, until a work plan, facility evaluation, proposed remedial action plan, and remedial action plan, respectively, have been approved by the Administrator.

''(F) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

''(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

''(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies, the Administrator (if the Administrator is conducting the remedial action) or the preparer of the remedial action plan may, after conducting a facility evaluation, propose a presumptive remedial action for the facility, if the Administrator or preparer shows with appropriate documentation that the facility fits the generic classification for which a presumptive remedial action has been issued and performs an engineering evaluation to demonstrate that the presumptive remedial action can be applied at the facility.

''(B) LIMITATION.—The Administrator may not require a potentially responsible party to implement a presumptive remedial action.

''(b) REMEDIAL ACTION PLANNING PROCESS.—

''(1) IN GENERAL.—The Administrator or a potentially responsible party shall prepare and implement a remedial action plan for a facility.

''(2) CONTENTS.—A remedial action plan shall consist of—

''(A) the results of a facility evaluation, including any screening analysis performed at the facility;

''(B) a discussion of the potentially viable remedies that are considered to be reasonable under section 121(a), the respective capital costs, operation and maintenance costs, and estimated present worth costs of the remedies, and how the remedies balance the factors stated in section 121(a)(1)(D);

''(C) a description of the remedial action to be taken;

''(D) a description of the facility-specific risk-based evaluation under section 130 and a demonstration that the selected remedial action will satisfy sections 121(a) and 131; and

''(E) a realistic schedule for conducting the remedial action, taking into consideration facility-specific factors.

''(3) WORK PLAN.—

''(A) IN GENERAL.—Prior to preparation of a remedial action plan, the preparer shall develop a work plan, including a community information and participation plan, which generally describes how the remedial action plan will be developed.

''(B) SUBMISSION.—A work plan shall be submitted to the Administrator, the State, the community response organization, the local library, and any other public facility designated by the Administrator.

''(C) PUBLICATION.—The Administrator or other person that prepares a work plan shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the work plan is available for review at the local library and that comments concerning the work plan can be submitted to the preparer of the work plan, the Administrator, the State, or the local community response organization.

''(D) FORWARDING OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall forward the comments to the preparer of the work plan.

''(E) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a work plan, the Administrator shall—

''(i) identify to the preparer of the work plan, with specificity, any deficiencies in the submission; and

''(ii) require that the preparer submit a revised work plan within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

''(4) FACILITY EVALUATION.—

''(A) IN GENERAL.—The Administrator (or the preparer of the facility evaluation) shall conduct a facility evaluation at each facility to characterize the risk posed by the facility by gathering enough information necessary to—

''(i) assess potential remedial alternatives, including ascertaining, to the degree appropriate, the volume and nature of the contaminants, their location, potential exposure pathways and receptors;

''(ii) discern the actual or planned or reasonably anticipated future use of the land and water resources; and

''(iii) screen out any uncontaminated areas, contaminants, and potential pathways from further consideration.

''(B) SUBMISSION.—A draft facility evaluation shall be submitted to the Administrator for approval.

''(C) PUBLICATION.—Not later than 30 days after submission, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the draft facility evaluation, the Administrator shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the draft facility evaluation is available for review and that comments concerning the evaluation can be submitted to the Administrator, the State, and the community response organization.

''(D) AVAILABILITY OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall make the comments available to the preparer of the facility evaluation.

''(E) NOTICE OF APPROVAL.—If the Administrator approves a facility evaluation, the Administrator shall—

''(i) notify the community response organization; and

''(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

''(F) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a facility evaluation, the Administrator shall—

''(i) identify to the preparer of the facility evaluation, with specificity, any deficiencies in the submission; and

''(ii) require that the preparer submit a revised facility evaluation within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

''(5) PROPOSED REMEDIAL ACTION PLAN.—

''(A) SUBMISSION.—In a case in which a potentially responsible party prepares a remedial action plan, the preparer shall submit the remedial action plan to the Administrator for approval and provide a copy to the local library.

''(B) PUBLICATION.—After receipt of the proposed remedial action plan, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the remedial action plan, the Administrator shall cause to be published in a newspaper of general circulation in the area where the facility is located and posted in other conspicuous places in the local community a notice announcing that the proposed remedial action plan is available for review at the local library and that comments concerning the remedial action plan can be submitted to the Administrator, the State, and the community response organization.

''(C) AVAILABILITY OF COMMENTS.—If comments are submitted to a State or the community response organization, the State or community response organization shall make the comments available to the preparer of the proposed remedial action plan.

''(D) HEARING.—The Administrator shall hold a public hearing at which the proposed remedial action plan shall be presented and public comment received.

''(E) REMEDY REVIEW BOARDS.—

''(i) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Administrator shall establish and appoint the members of 1 or more remedy review boards (referred to in this subparagraph as a ''remedy review board''), each consisting of independent technical experts within Federal and State agencies with responsibility for remediating contaminated facilities.

''(ii) SUBMISSION OF REMEDIAL ACTION PLANS FOR REVIEW.—Subject to clause (iii), a proposed remedial action plan prepared by a potentially responsible party or the Administrator may be submitted to a remedy review board at the request of the person responsible for preparing or implementing the remedial action plan.

''(iii) NO REVIEW.—The Administrator may preclude submission of a proposed remedial action plan to a remedy review board if the Administrator determines that review by a remedy review board would result in an unreasonably long delay that would threaten human health or the environment.

''(iv) RECOMMENDATIONS.—Not later than 180 days after receipt of a request for review (unless the Administrator, for good cause, grants additional time), a remedy review board shall provide recommendations to the Administrator regarding whether the proposed remedial action plan is—

''(I) consistent with the requirements and standards of section 121(a);

''(II) technically feasible or infeasible from an engineering perspective; and

''(III) reasonable or unreasonable in cost.

''(v) REVIEW BY THE ADMINISTRATOR.—

''(I) CONSIDERATION OF COMMENTS.—In reviewing a proposed remedial action plan, a remedy review board shall consider any comments submitted under subparagraphs (B) and (D) and shall provide an opportunity for a meeting, if requested, with the person responsible for preparing or implementing the remedial action plan.

''(II) STANDARD OF REVIEW.—In determining whether to approve or disapprove a proposed remedial action plan, the Administrator shall give substantial weight to the recommendations of the remedy review board.

''(F) APPROVAL.—

''(i) IN GENERAL.—The Administrator shall approve a proposed remedial action plan if the plan—

''(I) contains the information described in section 130(b); and

''(II) satisfies section 121(a).

''(ii) DEFAULT.—If the Administrator fails to issue a notice of disapproval of a proposed remedial action plan in accordance with subparagraph (G) within 180 days after the proposed plan is submitted, the plan shall be considered to be approved and its implementation fully authorized.

''(G) NOTICE OF APPROVAL.—If the Administrator approves a proposed remedial action plan, the Administrator shall—

''(i) notify the community response organization; and

''(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

''(H) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a proposed remedial action plan, the Administrator shall—

''(i) inform the preparer of the proposed remedial action plan, with specificity, of any deficiencies in the submission; and

''(ii) request that the preparer submit a revised proposed remedial action plan within a reasonable time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

''(I) JUDICIAL REVIEW.—A recommendation under subparagraph (E)(iv) and the review by the Administrator of such a recommendation shall be subject to the limitations on judicial review under section 113(h).

''(6) IMPLEMENTATION OF REMEDIAL ACTION PLAN.—A remedial action plan that has been approved or is considered to be approved under paragraph (5) shall be implemented in accordance with the schedule set forth in the remedial action plan.

''(7) REMEDIAL DESIGN.—

''(A) SUBMISSION.—A remedial design shall be submitted to the Administrator, or in a case in which the Administrator is preparing the remedial action plan, shall be completed by the Administrator.

''(B) PUBLICATION.—After receipt by the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall—

''(i) notify the community response organization; and

''(ii) cause a notice of submission or completion of the remedial design to be published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

''(C) COMMENT.—The Administrator shall provide an opportunity to the public to submit written comments on the remedial design.

''(D) APPROVAL.—Not later than 90 days after the submission to the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall approve or disapprove the remedial design.

''(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design, the Administrator shall—

''(i) notify the community response organization; and

''(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

''(F) NOTICE OF DISAPPROVAL.—If the Administrator disapproves the remedial design, the Administrator shall—

''(i) identify with specificity any deficiencies in the submission; and

''(ii) allow the preparer submitting a remedial design a reasonable time (which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator) in which to submit a revised remedial design.

''(c) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

''(1) NOTICE OF SIGNIFICANT DEVIATION.—If the Administrator determines that the implementation of the remedial action plan has deviated significantly from the plan, the Administrator shall provide the implementing party a notice that requires the implementing party, within a reasonable period of time specified by the Administrator, to—

''(A) comply with the terms of the remedial action plan; or

''(B) submit a notice for modifying the plan.

''(2) FAILURE TO COMPLY.—

''(A) CLASS ONE ADMINISTRATIVE PENALTY.—In issuing a notice under paragraph (1), the Administrator may impose a class one administrative penalty consistent with section 109(a).

''(B) ADDITIONAL ENFORCEMENT MEASURES.—If the implementing party fails to either comply with the plan or submit a proposed modification, the Administrator may pursue all additional appropriate enforcement measures pursuant to this Act.

''(d) MODIFICATIONS TO REMEDIAL ACTION.—

''(1) DEFINITION.—In this subsection, the term 'major modification' means a modification that—

''(A) fundamentally alters the interpretation of site conditions at the facility;

''(B) fundamentally alters the interpretation of sources of risk at the facility;

''(C) fundamentally alters the scope of protection to be achieved by the selected remedial action;

''(D) fundamentally alters the performance of the selected remedial action; or

''(E) delays the completion of the remedy by more than 180 days.

''(2) MAJOR MODIFICATIONS.—

''(A) IN GENERAL.—If the Administrator or other implementing party proposes a major modification to the plan, the Administrator or other implementing party shall demonstrate that—

''(i) the major modification constitutes the most cost-effective remedial alternative that is technologically feasible and is not unreasonably costly; and

''(ii) that the revised remedy will continue to satisfy section 121(a).

''(B) NOTICE AND COMMENT.—The Administrator shall provide the implementing party, the community response organization, and the local community notice of the proposed major modification and at least 30 days' opportunity to comment on any such proposed modification.

''(C) PROMPT ACTION.—At the end of the comment period, the Administrator shall promptly approve or disapprove the proposed modification and order implementation of the modification in accordance with any reasonable and relevant requirements that the Administrator may specify.

''(3) MINOR MODIFICATIONS.—Nothing in this section modifies the discretionary authority of the Administrator to make a minor modification of a record of decision or remedial action plan to conform to the best science and engineering, the requirements of this Act, or changing conditions at a facility.''.

SEC. 1925. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1924) is amended by adding at the end the following:

''SEC. 133. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

''(a) IN GENERAL.—

''(1) PROPOSED NOTICE OF COMPLETION AND PROPOSED DELISTING.—Not later than 180 days after the completion by the Administrator of physical construction necessary to implement a response action at a facility, or not later than 180 days after receipt of a notice of such completion from the implementing party, the Administrator shall publish a notice of completion and proposed delisting of the facility from the National Priorities List in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

''(2) PHYSICAL CONSTRUCTION.—For the purposes of paragraph (1), physical construction necessary to implement a response action at a facility shall be considered to be complete when—

''(A) construction of all systems, structures, devices, and other components necessary to implement a response action for the entire facility has been completed in accordance with the remedial design plan; or

''(B) no construction, or no further construction, is expected to be undertaken.

''(3) COMMENTS.—The public shall be provided 30 days in which to submit comments on the notice of completion and proposed delisting.

''(4) FINAL NOTICE.—Not later than 60 days after the end of the comment period, the Administrator shall—

''(A) issue a final notice of completion and delisting or a notice of withdrawal of the proposed notice until the implementation of the remedial action is determined to be complete; and

''(B) publish the notice in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

''(5) FAILURE TO ACT.—If the Administrator fails to publish a notice of withdrawal within the 60-day period described in paragraph (4)—

''(A) the remedial action plan shall be deemed to have been completed; and

''(B) the facility shall be delisted by operation of law.

''(6) EFFECT OF DELISTING.—The delisting of a facility shall have no effect on—

''(A) liability allocation requirements or cost-recovery provisions otherwise provided in this Act;

''(B) any liability of a potentially responsible party or the obligation of any person to provide continued operation and maintenance;

''(C) the authority of the Administrator to make expenditures from the Fund relating to the facility; or

''(D) the enforceability of any consent order or decree relating to the facility.

''(7) FAILURE TO MAKE TIMELY DISAPPROVAL.—The issuance of a final notice of completion and delisting or of a notice of withdrawal within the time required by subsection (a)(3) constitutes a nondiscretionary duty within the meaning of section 310(a)(2).

''(b) CERTIFICATION.—A final notice of completion and delisting shall include a certification by the Administrator that the facility has met all of the requirements of the remedial action plan (except requirements for continued operation and maintenance).

''(c) FUTURE USE OF A FACILITY.—

''(1) FACILITY AVAILABLE FOR UNRESTRICTED USE.—If, after completion of physical construction, a facility is available for unrestricted use and there is no need for continued operation and maintenance, the potentially responsible parties shall have no further liability under any Federal, State, or local law (including any regulation) for remediation at the facility, unless the Administrator determines, based on new and reliable factual information about the facility, that the facility does not satisfy section 121(a).

''(2) FACILITY NOT AVAILABLE FOR ANY USE.—If, after completion of physical construction, a facility is not available for any use or there are continued operation and maintenance requirements that preclude use of the facility, the Administrator shall—

''(A) review the status of the facility every 5 years; and

''(B) require additional remedial action at the facility if the Administrator determines, after notice and opportunity for hearing, that the facility does not satisfy section 121(a).

''(3) FACILITIES AVAILABLE FOR RESTRICTED USE.—The Administrator may determine that a facility or portion of a facility is available for restricted use while a response action is under way or after physical construction has been completed. The Administrator shall make a determination that uncontaminated portions of the facility are available for unrestricted use when such use would not interfere with ongoing operations and maintenance activities or endanger human health or the environment.

''(d) OPERATION AND MAINTENANCE.—The need to perform continued operation and maintenance at a facility shall not delay delisting of the facility or issuance of the certification if performance of operation and maintenance is subject to a legally enforceable agreement, order, or decree.

''(e) CHANGE OF USE OF FACILITY.—

''(1) PETITION.—Any person may petition the Administrator to change the use of a facility described in paragraph (2) or (3) of subsection (c) from that which was the basis of the remedial action plan.

''(2) GRANT.—The Administrator may grant a petition under paragraph (1) if the petitioner agrees to implement any additional remedial actions that the Administrator determines are necessary to continue to satisfy section 121(a), considering the different use of the facility.

''(3) RESPONSIBILITY FOR RISK.—When a petition has been granted under paragraph (2), the person requesting the change in use of the facility shall be responsible for all risk associated with altering the facility and all costs of implementing any necessary additional remedial actions.''.

SEC. 1926. TRANSITION RULES FOR FACILITIES CURRENTLY INVOLVED IN REMEDY SELECTION.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1925) is amended by adding at the end the following:

''SEC. 134. TRANSITION RULES FOR FACILITIES INVOLVED IN REMEDY SELECTION ON DATE OF ENACTMENT.

''(a) NO RECORD OF DECISION.—

''(1) OPTION.—In the case of a facility or operable unit that, as of the date of enactment of this section, is the subject of a remedial investigation and feasibility study (whether completed or incomplete), the potentially responsible parties or the Administrator may elect to follow the remedial action plan process stated in section 132 rather than the remedial investigation and feasibility study and record of decision process under regulations in effect on the date of enactment of this section that would otherwise apply if the requesting party notifies the Administrator and other potentially responsible parties of the election not later than 90 days after the date of enactment of this section.

''(2) SUBMISSION OF FACILITY EVALUATION.—In a case in which the potentially responsible parties have or the Administrator has made an election under subsection (a), the potentially responsible parties shall submit the proposed facility evaluation within 180 days after the date on which notice of the election is given.

''(b) REMEDY REVIEW BOARDS.—

''(1) AUTHORITY.—A remedy review board established under section 132(b)(5)(E) (referred to in this subsection as a 'remedy review board') shall have authority to consider a petition under paragraph (3) or (4).

''(2) GENERAL PROCEDURE.—

''(A) COMPLETION OF REVIEW.—The review of a petition submitted to a remedy review board under this subsection shall be completed not later than 180 days after the receipt of the petition unless the Administrator, for good cause, grants additional time.

''(B) COSTS OF REVIEW.—All reasonable costs incurred by a remedy review board, the Administrator, or a State in conducting a review or evaluating a petition for possible objection shall be borne by the petitioner.

''(C) DECISIONS.—At the completion of the 180-day review period, a remedy review board shall issue a written decision including responses to all comments submitted during the review process with regard to a petition.

''(D) OPPORTUNITY FOR COMMENT AND MEETINGS.—In reviewing a petition under this subsection, a remedy review board shall provide an opportunity for all interested parties, including representatives of the State and local community in which the facility is located, to comment on the petition and, if requested, to meet with the remedy review board under this subsection.

''(E) REVIEW BY THE ADMINISTRATOR.—

''(i) IN GENERAL.—The Administrator shall have final review of any decision of a remedy review board under this subsection.

''(ii) STANDARD OF REVIEW.—In conducting a review of a decision of a remedy review board under this subsection, the Administrator shall accord substantial weight to the decision of the remedy review board.

''(iii) REJECTION OF DECISION.—Any determination to reject a decision of a remedy review board under this subsection must be approved by the Administrator or the Assistant Administrator for Solid Waste and Emergency Response.

''(F) JUDICIAL REVIEW.—A decision of a remedy review board under subparagraph (C) and the review by the Administrator of such a decision shall be subject to the limitations on judicial review under section 113(h).

''(G) CALCULATIONS OF COST SAVINGS.—

''(i) IN GENERAL.—A determination with respect to relative cost savings and whether construction has begun shall be based on operable units or distinct elements or phases of remediation and not on the entire record of decision.

''(ii) ITEMS NOT TO BE CONSIDERED.—In determining the amount of cost savings—

''(I) there shall not be taken into account any administrative, demobilization, remobilization, or additional investigation costs of the review or modification of the remedy associated with the alternative remedy; and

''(II) only the estimated cost savings of expenditures avoided by undertaking the alternative remedy shall be considered as cost savings.

''(3) CONSTRUCTION NOT BEGUN.—

''(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed but construction has not yet begun prior to the date of enactment of this section and which meet the criteria of subparagraph (B), the implementor of the record of decision may file a petition with a remedy review board not later than 90 days after the date of enactment of this section to determine whether an alternate remedy under section 132 should apply to the facility or operable unit.

''(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

''(i) the alternative remedial action proposed in the petition satisfies section 121(a);

''(ii)(I) in the case of a record of decision with an estimated implementation cost of between $5,000,000 and $10,000,000, the alternative remedial action achieves cost savings of at least 25 percent of the total costs of the record of decision; or

''(II) in the case of a record of decision valued at a total cost greater than $10,000,000, the alternative remedial action achieves cost savings of $2,500,000 or more;

''(iii) in the case of a record of decision involving ground water extraction and treatment remedies for substances other than dense, nonaqueous phase liquids, the alternative remedial action achieves cost savings of $2,000,000 or more; or

''(iv) in the case of a record of decision intended primarily for the remediation of dense, nonaqueous phase liquids, the alternative remedial action achieves cost savings of $1,000,000 or more.

''(C) CONTENTS OF PETITION.—For the purposes of facility-specific risk assessment under section 130, a petition described in subparagraph (A) shall rely on risk assessment data that were available prior to issuance of the record of decision but shall consider the actual or planned or reasonably anticipated future use of the land and water resources.

''(D) INCORRECT DATA.—Notwithstanding subparagraphs (B) and (C), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

''(4) ADDITIONAL CONSTRUCTION.—

''(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed and construction has begun prior to the date of enactment of this section and which meets the criteria of subparagraph (B), but for which additional construction or long-term operation and maintenance activities are anticipated, the implementor of the record of decision may file a petition with a remedy review board within 90 days after the date of enactment of this section to determine whether an alternative remedial action should apply to the facility or operable unit.

''(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

''(i) the alternative remedial action proposed in the petition satisfies section 121(a); and

''(ii)(I) in the case of a record of decision valued at a total cost between $5,000,000 and $10,000,000, the alternative remedial action achieves cost savings of at least 50 percent of the total costs of the record of decision;

''(II) in the case of a record of decision valued at a total cost greater than $10,000,000, the alternative remedial action achieves cost savings of $5,000,000 or more; or

''(III) in the case of a record of decision involving monitoring, operations, and maintenance obligations where construction is completed, the alternative remedial action achieves cost savings of $1,000,000 or more.

''(C) INCORRECT DATA.—Notwithstanding subparagraph (B), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information, and the alternative remedial action achieves cost savings of at least $2,000,000.

''(D) MANDATORY REVIEW.—A remedy review board shall not be required to entertain more than 1 petition under subparagraph (B)(ii)(III) or (C) with respect to a remedial action plan.

''(5) DELAY.—In determining whether an alternative remedial action will substantially delay the implementation of a remedial action of a facility, no consideration shall be given to the time necessary to review a petition under paragraph (3) or (4) by a remedy review board or the Administrator.

''(6) OBJECTION BY THE GOVERNOR.—

''(A) NOTIFICATION.—Not later than 7 days after receipt of a petition under this subsection, a remedy review board shall notify the Governor of the State in which the facility is located and provide the Governor a copy of the petition.

''(B) OBJECTION.—The Governor may object to the petition or the modification of the remedy, if not later than 90 days after receiving a notification under subparagraph (A) the Governor demonstrates to the remedy review board that the selection of the proposed alternative remedy would cause an unreasonably long delay that would be likely to result in significant adverse human health impacts, environmental risks, disruption of planned future use, or economic hardship.

''(C) DENIAL.—On receipt of an objection and demonstration under subparagraph (C), the remedy review board shall—

''(i) deny the petition; or

''(ii) consider any other action that the Governor may recommend.

''(7) SAVINGS CLAUSE.—Notwithstanding any other provision of this subsection, in the case of a remedial action plan for which a final record of decision under section 121 has been published, if remedial action was not completed pursuant to the remedial action plan before the date of enactment of this section, the Administrator or a State exercising authority under section 129(d) may modify the remedial action plan in order to conform the plan to the requirements of this Act, as in effect on the date of enactment of this section.''.

SEC. 1927. NATIONAL PRIORITIES LIST.

(a) AMENDMENTS.—Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended—

(1) in subsection (a)(8), by adding at the end the following:

''(C) provision that in listing a facility on the National Priorities List, the Administrator shall not include any parcel of real property at which no release has actually occurred, but to which a released hazardous substance, pollutant, or contaminant has migrated in ground water that has moved through subsurface strata from another parcel of real estate at which the release actually occurred, unless—

''(i) the ground water is in use as a public drinking water supply or was in such use at the time of the release; and

''(ii) the owner or operator of the facility is liable, or is affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.''; and

(2) by adding at the end the following:

''(i) LISTING OF PARTICULAR PARCELS.—

''(1) DEFINITION.—The term 'parcel of real property', as used in subsection (a)(8)(C) and paragraph (2), means a parcel, lot, or tract of land that has a separate legal description from that of any other parcel, lot, or tract of land the legal description and ownership of which has been recorded in accordance with the law of the State in which it is located.

''(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) limits the authority of the Administrator under section 104 to obtain access to, and undertake response actions at, any parcel of real property to which a released hazardous substance, pollutant, or contaminant has migrated in ground water.''.

(b) REVISION OF NATIONAL PRIORITIES LIST.—The President shall revise the National Priorities List to conform with the amendments made by subsection (a) not later that 180 days of the date of enactment of this Act.

Subtitle D—Liability

SEC. 1931. CONTRIBUTION FROM THE FUND.

Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9612) is amended by adding at the end the following:

''(g) CONTRIBUTION FROM THE FUND.—

''(1) COMPLETION OF OBLIGATIONS.—A person that is subject to an administrative order issued under section 106 or has entered into a settlement decree with the United States or a State as of the date of enactment of this subsection shall complete the obligations of the person under the order or settlement decree.

''(2) CONTRIBUTION.—A person described in paragraph (1) shall receive contribution from the Fund for any portion of the costs (excluding attorneys' fees) incurred for the performance of the response action after the date of enactment of this subsection if the person is not liable for such costs by reason of a liability exemption or limitation under this section.

''(3) APPLICATION FOR CONTRIBUTION.—

''(A) IN GENERAL.—Contribution under this section shall be made upon receipt by the Administrator of an application requesting contribution.

''(B) PERIODIC APPLICATIONS.—Beginning with the 7th month after the date of enactment of this subsection, 1 application for each facility shall be submitted every 6 months for all persons with contribution rights (as determined under subparagraph (2)).

''(4) REGULATIONS.—Contribution shall be made in accordance with such regulations as the Administrator shall issue within 180 days after the date of enactment of this section.

''(5) DOCUMENTATION.—The regulations under paragraph (4) shall, at a minimum, require that an application for contribution contain such documentation of costs and expenditures as the Administrator considers necessary to ensure compliance with this subsection.

''(6) EXPEDITION.—The Administrator shall develop and implement such procedures as may be necessary to provide contribution to such persons in an expeditious manner, but in no case shall a contribution be made later than 1 year after submission of an application under this subsection.

''(7) CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.—No contribution shall be made under this subsection unless the Administrator determines that such costs are consistent with the National Contingency Plan.''.

SEC. 1932. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended by section 1926) is amended by adding at the end the following:

''SEC. 135. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) ALLOCATED SHARE.—The term 'allocated share' means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report under subsection (f)(4).

''(2) ALLOCATION PARTY.—The term 'allocation party' means a party named on a list of parties that will be subject to the allocation process under this section, as issued by an allocator.

''(3) ALLOCATOR.—The term 'allocator' means an allocator retained to conduct an allocation for a facility.

''(4) MANDATORY ALLOCATION FACILITY.—The term 'mandatory allocation facility' means—

''(A) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section and at which there are 2 or more potentially responsible persons, if at least 1 potentially responsible person is viable;

''(B) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which 1 or more potentially responsible parties (other that a department, agency, or instrumentality of the United States) are liable or potentially liable; and

''(C) a codisposal landfill listed on the National Priorities List with respect to which costs are incurred after the date of enactment of this section.

''(5) ORPHAN SHARE.—The term 'orphan share' means the total of the allocated shares determined by the allocator under subsection (h).

''(b) ALLOCATIONS OF LIABILITY.—

''(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section.

''(2) REQUESTED ALLOCATIONS.—For a facility (other than a mandatory allocation facility) involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section if the allocation is requested in writing by a potentially responsible party that has—

''(A) incurred response costs with respect to a response action; or

''(B) resolved any liability to the United States with respect to a response action in order to assist in allocating shares among potentially responsible parties.

''(3) PERMISSIVE ALLOCATIONS.—For any facility (other than a mandatory allocation facility or a facility with respect to which a request is made under paragraph (2)) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the Administrator considers it to be appropriate to do so.

''(4) ORPHAN SHARE.—An allocation performed at a vessel or facility identified under paragraph (2) or (3) of subsection (b) shall not require payment of an orphan share under subsection (h) or contribution under subsection (p).

''(5) EXCLUDED FACILITIES.—

''(A) IN GENERAL.—A codisposal landfill listed on the Natural Priorities List at which costs are incurred after January 1, 2002. This section does not apply to a response action at a mandatory allocation facility for which there was in effect as of the date of enactment of this section, a settlement, decree, or order that determines the liability and allocated shares of all potentially responsible parties with respect to the response action.

''(B) AVAILABILITY OF ORPHAN SHARE.—For any mandatory allocation facility that is otherwise excluded by subparagraph (A) and for which there was not in effect as of the date of enactment of this section a final judicial order that determined the liability of all parties to the action for response costs incurred after the date of enactment of this section, an allocation shall be conducted for the sole purpose of determining the availability of orphan share funding pursuant to subsection (h)(2) for any response costs incurred after the date of enactment of this section.

''(6) SCOPE OF ALLOCATIONS.—An allocation under this section shall apply to—

''(A) response costs incurred after the date of enactment of this section, with respect to a mandatory allocation facility described in subparagraph (A), (B), or (C) of subsection (a)(4); and

''(B) response costs incurred at a facility that is the subject of a requested or permissive allocation under paragraph (2) or (3) of subsection (b).

''(7) OTHER MATTERS.—This section shall not limit or affect—

''(A) the obligation of the Administrator to conduct the allocation process for a response action at a facility that has been the subject of a partial or expedited settlement with respect to a response action that is not within the scope of the allocation;

''(B) the ability of any person to resolve any liability at a facility to any other person at any time before initiation or completion of the allocation process, subject to subsection (h)(3);

''(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree, issued prior to the date of enactment of this section with respect to liability under this Act; or

''(D) the validity, enforceability, finality, or merits of any preexisting contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.

''(c) MORATORIUM ON LITIGATION AND ENFORCEMENT.—

''(1) IN GENERAL.—No person may assert a claim for recovery of a response cost or contribution toward a response cost (including a claim for insurance proceeds) under this Act or any other Federal or State law in connection with a response action—

''(A) for which an allocation is required to be performed under subsection (b)(1); or

''(B) for which the Administrator has initiated the allocation process under this section,

until the date that is 120 days after the date of issuance of a report by the allocator under subsection (f)(4) or, if a second or subsequent report is issued under subsection (m), the date of issuance of the second or subsequent report.

''(2) PENDING ACTIONS OR CLAIMS.—If a claim described in paragraph (1) is pending on the date of enactment of this section or on initiation of an allocation under this section, the portion of the claim pertaining to response costs that are the subject of the allocation shall be stayed until the date that is 120 days after the date of issuance of a report by the allocator under subsection (f)(4) or, if a second or subsequent report is issued under subsection (m), the date of issuance of the second or subsequent report, unless the court determines that a stay would result in manifest injustice.

''(3) TOLLING OF PERIOD OF LIMITATION.—

''(A) BEGINNING OF TOLLING.—Any applicable period of limitation with respect to a claim subject to paragraph (1) shall be tolled beginning on the earlier of—

''(i) the date of listing of the facility on the National Priorities List if the listing occurs after the date of enactment of this section; or

''(ii) the date of initiation of the allocation process under this section.

''(B) END OF TOLLING.—A period of limitation shall be tolled under subparagraph (A) until the date that is 180 days after the date of issuance of a report by the allocator under subsection (f)(4), or of a second or subsequent report under subsection (m).

''(4) RETAINED AUTHORITY.—Except as specifically provided in this section, this section does not affect the authority of the Administrator to—

''(A) exercise the powers conferred by section 103, 104, 105, 106, or 122;

''(B) commence an action against a party if there is a contemporaneous filing of a judicial consent decree resolving the liability of the party;

''(C) file a proof of claim or take other action in a proceeding under title 11, United States Code; or

''(D) require implementation of a response action at an allocation facility during the conduct of the allocation process.

''(d) ALLOCATION PROCESS.—

''(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Administrator shall establish by regulation a process for conduct of mandatory, requested, and permissive allocations.

''(2) REQUIREMENTS.—In developing the allocation process under paragraph (1), the Administrator shall—

''(A) ensure that parties that are eligible for an exemption from liability under section 107—

''(i) are identified by the Administrator (before selection of an allocator or by an allocator);

''(ii) at the earliest practicable opportunity, are notified of their status; and

''(iii) are provided with appropriate written assurances that they are not liable for response costs under this Act;

''(B) establish an expedited process for the selection, appointment, and retention by contract of a impartial allocator, acceptable to both potentially responsible parties and a representative of the Fund, to conduct the allocation process in a fair, efficient, and impartial manner;

''(C) permit any person to propose to name additional potentially responsible parties as allocation parties, the costs of any expenses incurred by the nominated party (including reasonable attorney's fees) to be borne by the party that proposes the addition of the party to the allocation process if the allocator determines that there is no adequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the allocator; and

''(D) require that the allocator adopt any settlement that allocates 100 percent of the recoverable costs of a response action at a facility to the signatories to the settlement, if the settlement contains a waiver of—

''(i) a right of recovery from any other party of any response cost that is the subject of the allocation; and

''(ii) a right to contribution under this Act, with respect to any response action that is within the scope of allocation process.

''(3) TIME LIMIT.—The Administrator shall initiate the allocation process for a facility not later than the earlier of—

''(A) the date of completion of the facility evaluation or remedial investigation for the facility; or

''(B) the date that is 60 days after the date of selection of a removal action.

''(4) NO JUDICIAL REVIEW.—There shall be no judicial review of any action regarding selection of an allocator under the regulation issued under this subsection.

''(5) RECOVERY OF CONTRACT COSTS.—The costs of the Administrator in retaining an allocator shall be considered to be a response cost for all purposes of this Act.

''(e) FEDERAL, STATE, AND LOCAL AGENCIES.—

''(1) IN GENERAL.—Other than as set forth in this Act, any Federal, State, or local governmental department, agency, or instrumentality that is named as a potentially responsible party or an allocation party shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination under this section to the same extent as any other party.

''(2) ORPHAN SHARE.—The Administrator or the Attorney General shall participate in the allocation proceeding as the representative of the Fund from which any orphan share shall be paid.

''(f) ALLOCATION AUTHORITY.—

''(1) INFORMATION-GATHERING AUTHORITIES.—

''(A) IN GENERAL.—An allocator may request information from any person in order to assist in the efficient completion of the allocation process.

''(B) REQUESTS.—Any person may request that an allocator request information under this paragraph.

''(C) AUTHORITY.—An allocator may exercise the information-gathering authority of the Administrator under section 104(e), including issuing an administrative subpoena to compel the production of a document or the appearance of a witness.

''(D) DISCLOSURE.—Notwithstanding any other law, any information submitted to the allocator in response to a subpoena issued under subparagraph (C) shall be exempt from disclosure to any person under section 552 of title 5, United States Code.

''(E) ORDERS.—In a case of contumacy or failure of a person to obey a subpoena issued under subparagraph (C), an allocator may request the Attorney General to—

''(i) bring a civil action to enforce the subpoena; or

''(ii) if the person moves to quash the subpoena, to defend the motion.

''(F) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

''(2) ADDITIONAL AUTHORITY.—An allocator may—

''(A) schedule a meeting or hearing and require the attendance of allocation parties at the meeting or hearing;

''(B) sanction an allocation party for failing to cooperate with the orderly conduct of the allocation process;

''(C) require that allocation parties wishing to present similar legal or factual positions consolidate the presentation of the positions;

''(D) obtain or employ support services, including secretarial, clerical, computer support, legal, and investigative services; and

''(E) take any other action necessary to conduct a fair, efficient, and impartial allocation process.

''(3) CONDUCT OF ALLOCATION PROCESS.—

''(A) IN GENERAL.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors described in subsection (g).

''(B) OPPORTUNITY TO BE HEARD.—Each allocation party shall be afforded an opportunity to be heard (orally or in writing, at the option of an allocation party) and an opportunity to comment on a draft allocation report.

''(C) RESPONSES.—The allocator shall not be required to respond to comments.

''(D) STREAMLINING.—The allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

''(4) ALLOCATION REPORT.—The allocator shall provide a written allocation report to the Administrator and the allocation parties that specifies the allocation share of each allocation party and any orphan shares, as determined by the allocator.

''(g) EQUITABLE FACTORS FOR ALLOCATION.—The allocator shall prepare a nonbinding allocation of percentage shares of responsibility to each allocation party and to the orphan share, in accordance with this section and without regard to any theory of joint and several liability, based on—

''(1) the amount of hazardous substances contributed by each allocation party;

''(2) the degree of toxicity of hazardous substances contributed by each allocation party;

''(3) the mobility of hazardous substances contributed by each allocation party;

''(4) the degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

''(5) the degree of care exercised by each allocation party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

''(6) the cooperation of each allocation party in contributing to any response action and in providing complete and timely information to the allocator; and

''(7) such other equitable factors as the allocator determines are appropriate.

''(h) ORPHAN SHARES.—

''(1) IN GENERAL.—The allocator shall determine whether any percentage of responsibility for the response action shall be allocable to the orphan share.

''(2) COMPOSITION OF ORPHAN SHARE.—The orphan share shall consist of—

''(A) any share that the allocator determines is attributable to an allocation party that is insolvent or defunct and that is not affiliated with any financially viable allocation party; and

''(B) the difference between the aggregate share that the allocator determines is attributable to a person and the aggregate share actually assumed by the person in a settlement with the United States otherwise if—

''(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

''(ii) the liability of the person is eliminated, limited, or reduced by any provision of this Act; or

''(iii) the person settled with the United States before the completion of the allocation.

''(3) UNATTRIBUTABLE SHARES.—A share attributable to a hazardous substance that the allocator determines was disposed at the facility that cannot be attributed to any identifiable party shall be distributed among the allocation parties and the orphan share in accordance with the allocated share assigned to each.

''(i) INFORMATION REQUESTS.—

''(1) DUTY TO ANSWER.—Each person that receives an information request or subpoena from the allocator shall provide a full and timely response to the request.

''(2) CERTIFICATION.—An answer to an information request by an allocator shall include a certification by a representative that meets the criteria established in section 270.11(a) of title 40, Code of Federal Regulations (or any successor regulation), that—

''(A) the answer is correct to the best of the representative's knowledge;

''(B) the answer is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

''(C) the answer is based on a reasonable inquiry of the current (as of the date of the answer) officers, directors, employees, and agents of the person to whom the request was directed;

''(D) the answer accurately reflects information obtained in the course of conducting the search and the inquiry;

''(E) the person executing the certification understands that there is a duty to supplement any answer if, during the allocation process, any significant additional, new, or different information becomes known or available to the person; and

''(F) the person executing the certification understands that there are significant penalties for submitting false information, including the possibility of a fine or imprisonment for a knowing violation.

''(j) PENALTIES.—

''(1) CIVIL.—

''(A) IN GENERAL.—A person that fails to submit a complete and timely answer to an information request, a request for the production of a document, or a summons from an allocator, submits a response that lacks the certification required under subsection (i)(2), or knowingly makes a false or misleading material statement or representation in any statement, submission, or testimony during the allocation process (including a statement or representation in connection with the nomination of another potentially responsible party) shall be subject to a civil penalty of not more than $10,000 per day of violation.

''(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

''(2) CRIMINAL.—A person that knowingly and willfully makes a false material statement or representation in the response to an information request or subpoena issued by the allocator under subsection (i) shall be considered to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

''(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

''(1) DOCUMENT REPOSITORY.—

''(A) IN GENERAL.—The allocator shall establish and maintain a document repository containing copies of all documents and information provided by the Administrator or any allocation party under this section or generated by the allocator during the allocation process.

''(B) AVAILABILITY.—Subject to paragraph (2), the documents and information in the document repository shall be available only to an allocation party for review and copying at the expense of the allocation party.

''(2) CONFIDENTIALITY.—

''(A) IN GENERAL.—Each document or material submitted to the allocator or placed in the document repository and the record of any information generated or obtained during the allocation process shall be confidential.

''(B) MAINTENANCE.—The allocator, each allocation party, the Administrator, and the Attorney General—

''(i) shall maintain the documents, materials, and records of any depositions or testimony adduced during the allocation as confidential; and

''(ii) shall not use any such document or material or the record in any other matter or proceeding or for any purpose other than the allocation process.

''(C) DISCLOSURE.—Notwithstanding any other law, the documents and materials and the record shall not be subject to disclosure to any person under section 552 of title 5, United States Code.

''(D) DISCOVERY AND ADMISSIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii), the documents and materials and the record shall not be subject to discovery or admissible in any other Federal, State, or local judicial or administrative proceeding, except—

''(I) a new allocation under subsection (m) or (r) for the same response action; or

''(II) an initial allocation under this section for a different response action at the same facility.

''(ii) OTHERWISE DISCOVERABLE OR ADMISSIBLE.—

''(I) DOCUMENT OR MATERIAL.—If the original of any document or material submitted to the allocator or placed in the document repository was otherwise discoverable or admissible from a party, the original document, if subsequently sought from the party, shall remain discoverable or admissible.

''(II) FACTS.—If a fact generated or obtained during the allocation was otherwise discoverable or admissible from a witness, testimony concerning the fact, if subsequently sought from the witness, shall remain discoverable or admissible.

''(3) NO WAIVER OF PRIVILEGE.—The submission of testimony, a document, or information under the allocation process shall not constitute a waiver of any privilege applicable to the testimony, document, or information under any Federal or State law or rule of discovery or evidence.

''(4) PROCEDURE IF DISCLOSURE SOUGHT.—

''(A) NOTICE.—A person that receives a request for a statement, document, or material submitted for the record of an allocation proceeding, shall—

''(i) promptly notify the person that originally submitted the item or testified in the allocation proceeding; and

''(ii) provide the person that originally submitted the item or testified in the allocation proceeding an opportunity to assert and defend the confidentiality of the item or testimony.

''(B) RELEASE.—No person may release or provide a copy of a statement, document, or material submitted, or the record of an allocation proceeding, to any person not a party to the allocation except—

''(i) with the written consent of the person that originally submitted the item or testified in the allocation proceeding; or

''(ii) as may be required by court order.

''(5) CIVIL PENALTY.—

''(A) IN GENERAL.—A person that fails to maintain the confidentiality of any statement, document, or material or the record generated or obtained during an allocation proceeding, or that releases any information in violation of this section, shall be subject to a civil penalty of not more than $25,000 per violation.

''(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

''(C) DEFENSES.—In any administrative or judicial proceeding, it shall be a complete defense that any statement, document, or material or the record at issue under subparagraph (A)—

''(i) was in, or subsequently became part of, the public domain, and did not become part of the public domain as a result of a violation of this subsection by the person charged with the violation;

''(ii) was already known by lawful means to the person receiving the information in connection with the allocation process; or

''(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

''(l) REJECTION OF ALLOCATION REPORT.—

''(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

''(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

''(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

''(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180 days after the date on which the United States accepts a settlement offer (excluding an expedited settlement under section 122) based on the allocation.

''(3) JUDICIAL REVIEW.—Any determination by the Administrator or the Attorney General under this subsection shall not be subject to judicial review unless 2 successive allocation reports relating to the same response action are rejected, in which case any allocation party may obtain judicial review of the second rejection in a United States district court under subchapter II of chapter 5 of part I of title 5, United States Code.

''(4) DELEGATION.—The authority to make a determination under this subsection may not be delegated to any officer or employee below the level of an Assistant Administrator or Acting Assistant Administrator or an Assistant Attorney General or Acting Assistant Attorney General with authority for implementing this Act.

''(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

''(1) IN GENERAL.—If a report is rejected under subsection (l), the allocation parties shall select an allocator to perform, on an expedited basis, a new allocation based on the same record available to the previous allocator.

''(2) MORATORIUM AND TOLLING.—The moratorium and tolling provisions of subsection (c) shall be extended until the date that is 180 days after the date of the issuance of any second or subsequent allocation report under paragraph (1).

''(3) SAME ALLOCATOR.—The allocation parties may select the same allocator who performed 1 or more previous allocations at the facility, except that the Administrator may determine that an allocator whose previous report at the same facility has been rejected under subsection (l) is unqualified to serve.

''(n) SETTLEMENTS BASED ON ALLOCATIONS.—

''(1) DEFINITION.—In this subsection, the term 'all settlements' includes any orphan share allocated under subsection (h).

''(2) SETTLEMENTS.—Unless an allocation report is rejected under subsection (l), any allocation party at a mandatory allocation facility (including an allocation party whose allocated share is funded partially or fully by orphan share funding under subsection (h)) shall be entitled to resolve the liability of the party to the United States for response actions subject to allocation if, not later than 90 days after the date of issuance of a report by the allocator, the party—

''(A) offers to settle with the United States based on the allocated share specified by the allocator; and

''(B) agrees to the other terms and conditions stated in this subsection.

''(3) PROVISIONS OF SETTLEMENTS.—

''(A) IN GENERAL.—A settlement based on an allocation under this section—

''(i) may consist of a cash-out settlement or an agreement for the performance of a response action; and

''(ii) shall include—

''(I) a waiver of contribution rights against all persons that are potentially responsible parties for any response action addressed in the settlement;

''(II) a covenant not to sue that is consistent with section 122(f) and, except in the case of a cash-out settlement, provisions regarding performance or adequate assurance of performance of the response action;

''(III) a premium, calculated on a facility-specific basis and subject to the limitations on premiums stated in paragraph (5), that reflects the actual risk to the United States of not collecting unrecovered response costs for the response action, despite the diligent prosecution of litigation against any viable

allocation party that has not resolved the liability of the party to the United States, except that no premium shall apply if all allocation parties participate in the settlement or if the settlement covers 100 percent of the response costs subject to the allocation;

''(IV) complete protection from all claims for contribution regarding the response action addressed in the settlement; and

''(V) provisions through which a settling party shall receive prompt contribution from the Fund under subsection (o) of any response costs incurred by the party for any response action that is the subject of the allocation in excess of the allocated share of the party, including the allocated portion of any orphan share.

''(B) RIGHT TO CONTRIBUTION.—A right to contribution under subparagraph (A)(ii)(V) shall not be contingent on recovery by the United States of any response costs from any person other than the settling party.

''(4) REPORT.—The Administrator shall report annually to Congress on the administration of the allocation process under this section, providing in the report—

''(A) information comparing allocation results with actual settlements at multiparty facilities;

''(B) a cumulative analysis of response action costs recovered through post-allocation litigation or settlements of post-allocation litigation;

''(C) a description of any impediments to achieving complete recovery; and

''(D) a complete accounting of the costs incurred in administering and participating in the allocation process.

''(5) PREMIUM.—In each settlement under this subsection, the premium authorized—

''(A) shall be determined on a case-by-case basis to reflect the actual litigation risk faced by the United States with respect to any response action addressed in the settlement;

''(B) shall not exceed—

''(i) 5 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 80 percent and less than 100 percent of responsibility for the response action;

''(ii) 10 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 60 percent and not more than 80 percent of responsibility for the response action;

''(iii) 15 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 40 percent and not more than 60 percent of responsibility for the response action; or

''(iv) 20 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for 40 percent or less of responsibility for the response; and

''(C) shall be reduced proportionally by the percentage of the allocated share for that party paid through orphan funding under subsection (h).

''(o) FUNDING OF ORPHAN SHARES.—

''(1) CONTRIBUTION.—For each settlement agreement entered into under subsection (n), the Administrator shall promptly reimburse the allocation parties for any costs incurred that are attributable to the orphan share, as determined by the allocator.

''(2) ENTITLEMENT.—Paragraph (1) constitutes an entitlement to any allocation party eligible to receive a reimbursement.

''(3) AMOUNTS OWED.—

''(A) DELAY IF FUNDS ARE UNAVAILABLE.—If funds are unavailable in any fiscal year to reimburse all allocation parties pursuant to paragraph (1), the Administrator may delay payment until funds are available.

''(B) PRIORITY.—The priority for reimbursement shall be based on the length of time that has passed since the settlement between the United States and the allocation parties pursuant to subsection (n).

''(C) PAYMENT FROM FUNDS MADE AVAILABLE IN SUBSEQUENT FISCAL YEARS.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable obligations of the United States with a maturity of 1 year.

''(4) DOCUMENTATION AND AUDITING.—The Administrator—

''(A) shall require that any claim for contribution be supported by documentation of actual costs incurred; and

''(B) may require an independent auditing of any claim for contribution.

''(p) POST-ALLOCATION CONTRIBUTION.—

''(1) IN GENERAL.—An allocation party (including a party that is subject to an order under section 106 or a settlement decree) that incurs costs after the date of enactment of this section for implementation of a response action that is the subject of an allocation under this section to an extent that exceeds the percentage share of the allocation party, as determined by the allocator, shall be entitled to prompt payment of contribution for the excess amount, including any orphan share, from the Fund, unless the allocation report is rejected under subsection (l).

''(2) NOT CONTINGENT.—The right to contribution under paragraph (1) shall not be contingent on recovery by the United States of a response cost from any other person.

''(3) TERMS AND CONDITIONS.—

''(A) RISK PREMIUM.—A contribution payment shall be reduced by the amount of the litigation risk premium under subsection (n)(5) that would apply to a settlement by the allocation party concerning the response action, based on the total allocated shares of the parties that have not reached a settlement with the United States.

''(B) TIMING.—

''(i) IN GENERAL.—A contribution payment shall be paid out during the course of the response action that was the subject of the allocation, using reasonable progress payments at significant milestones.

''(ii) CONSTRUCTION.—Contribution for the construction portion of the work shall be paid out not later than 120 days after the date of completion of the construction.

''(C) EQUITABLE OFFSET.—A contribution payment is subject to equitable offset or recoupment by the Administrator at any time if the allocation party fails to perform the work in a proper and timely manner.

''(D) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for contribution.

''(E) WAIVER.—An allocation party seeking contribution waives the right to seek recovery of response costs in connection with the response action, or contribution toward the response costs, from any other person.

''(F) BAR.—An administrative order shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for contribution toward the costs of the response action.

''(q) POST-SETTLEMENT LITIGATION.—

''(1) IN GENERAL.—Subject to subsections (m) and (n), and on the expiration of the moratorium period under subsection (c)(4), the Administrator may commence an action under section 107 against an allocation party that has not resolved the liability of the party to the United States following allocation and may seek to recover response costs not recovered through settlements with other persons.

''(2) ORPHAN SHARE.—The recoverable costs shall include any orphan share determined under subsection (h), but shall not include any share allocated to a Federal, State, or local governmental agency, department, or instrumentality.

''(3) IMPLEADER.—A defendant in an action under paragraph (1) may implead an allocation party only if the allocation party did not resolve liability to the United States.

''(4) CERTIFICATION.—In commencing or maintaining an action under section 107 against an allocation party after the expiration of the moratorium period under subsection (c)(4), the Attorney General shall certify in the complaint that the defendant failed to settle the matter based on the share that the allocation report assigned to the party.

''(5) RESPONSE COSTS.—

''(A) ALLOCATION PROCEDURE.—The cost of implementing the allocation procedure under this section, including reasonable fees and expenses of the allocator, shall be considered as a necessary response cost.

''(B) FUNDING OF ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

''(i) shall be considered as a necessary cost of response cost; and

''(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (n).

''(r) NEW INFORMATION.—

''(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

''(A) the allocator did not have information concerning—

''(i) 35 percent or more of the materials containing hazardous substances at the facility; or

''(ii) 1 or more persons not previously named as an allocation party that contributed 15 percent or more of materials containing hazardous substances at the facility; and

''(B) the information was discovered subsequent to the issuance of the report by the allocator.

''(2) NEW ALLOCATION.—Any new allocation of responsibility—

''(A) shall proceed in accordance with this section;

''(B) shall be effective only after the date of the new allocation report; and

''(C) shall not alter or affect the original allocation with respect to any response costs previously incurred.

''(s) DISCRETION OF ALLOCATOR.—A contract by which the Administrator retain an allocator shall give the allocator broad discretion to conduct the allocation process in a fair, efficient, and impartial manner, and the Administrator shall not issue any rule or order that limits the discretion of the allocator in the conduct of the allocation.

''(t) ILLEGAL ACTIVITIES.—Subsections (s), (t), and (u) of section 107 and section 112(g) shall not apply to any person whose liability for response costs under section 107(a)(1) is otherwise based on any act, omission, or status that is determined by a court or administrative body of competent jurisdiction, within the applicable statute of limitation, to have been a violation of any Federal or State law pertaining to the treatment, storage, disposal, or handling of hazardous substances if the violation pertains to a hazardous substance, the release or threat of release of

which caused the incurrence of response costs at the vessel or facility.''.

SEC. 1933. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF CONTRACTORS.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended by adding at the end the following:

''(H) LIABILITY OF CONTRACTORS.—

''(i) IN GENERAL.—The term 'owner or operator' does not include a response action contractor (as defined in section 119(e)).

''(ii) LIABILITY LIMITATIONS.—A person described in clause (i) shall not, in the absence of negligence by the person, be considered to—

''(I) cause or contribute to any release or threatened release of a hazardous substance, pollutant, or contaminant;

''(II) arrange for disposal or treatment of a hazardous substance, pollutant, or contaminant;

''(III) arrange with a transporter for transport or disposal or treatment of a hazardous substance, pollutant, or contaminant; or

''(IV) transport a hazardous substance, pollutant, or contaminant.

''(iii) EXCEPTION.—This subparagraph does not apply to a person potentially responsible under section 106 or 107 other than a person associated solely with the provision of a response action or a service or equipment ancillary to a response action.''.

(b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—Section 119(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking ''title or under any other Federal law'' and inserting ''title or under any other Federal or State law''; and

(2) in paragraph (2)—

(A) by striking ''(2) NEGLIGENCE, ETC.—Paragraph (1)'' and inserting the following:

''(2) NEGLIGENCE AND INTENTIONAL MISCONDUCT; APPLICATION OF STATE LAW.—

''(A) NEGLIGENCE AND INTENTIONAL MISCONDUCT.—

''(i) IN GENERAL.—Paragraph (1)''; and

(B) by adding at the end the following:

''(ii) STANDARD.—Conduct under clause (i) shall be evaluated based on the generally accepted standards and practices in effect at the time and place at which the conduct occurred.

''(iii) PLAN.—An activity performed in accordance with a plan that was approved by the Administrator shall not be considered to constitute negligence under clause (i).

''(B) APPLICATION OF STATE LAW.—Paragraph (1) shall not apply in determining the liability of a response action contractor under the law of a State if the State has adopted by statute a law determining the liability of a response action contractor.''.

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(1)) is amended by adding at the end the following: ''The agreement may apply to a claim for negligence arising under Federal or State law.''.

(d) INDEMNIFICATION DETERMINATIONS.—Section 119(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)) is amended by striking paragraph (4) and inserting the following:

''(4) DECISION TO INDEMNIFY.—

''(A) IN GENERAL.—For each response action contract for a vessel or facility, the Administrator shall make a decision whether to enter into an indemnification agreement with a response action contractor.

''(B) STANDARD.—The Administrator shall enter into an indemnification agreement to the extent that the potential liability (including the risk of harm to public health, safety, environment, and property) involved in a response action exceed or are not covered by insurance available to the contractor at the time at which the response action contract is entered into that is likely to provide adequate long-term protection to the public for the potential liability on fair and reasonable terms (including consideration of premium, policy terms, and deductibles).

''(C) DILIGENT EFFORTS.—The Administrator shall enter into an indemnification agreement only if the Administrator determines that the response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

''(D) CONTINUED DILIGENT EFFORTS.—An indemnification agreement shall require the response action contractor to continue, not more frequently than annually, to make diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

''(E) LIMITATIONS ON INDEMNIFICATION.—An indemnification agreement provided under this subsection shall include deductibles and shall place limits on the amount of indemnification made available in amounts determined by the contracting agency to be appropriate in light of the unique risk factors associated with the cleanup activity.''.

(e) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting ''or threatened release'' after ''release'' each place it appears.

(f) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(1)) is amended—

(1) in subparagraph (D), by striking ''carrying out an agreement under section 106 or 122''; and

(2) in the matter following subparagraph (D)—

(A) by striking ''any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act,'' and inserting ''any response action,''; and

(B) by inserting before the period at the end the following: ''or to undertake appropriate action necessary to protect and restore any natural resource damaged by the release or threatened release''.

(g) DEFINITION OF RESPONSE ACTION CONTRACTOR.—Section 119(e)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended—

(1) by striking ''and'' at the end; and

(2) by striking ''and is carrying out such contract'' and inserting ''covered by this section and any person (including any subcontractor) hired by a response action contractor''.

(h) NATIONAL UNIFORM STATUTE OF REPOSE.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended by adding at the end the following:

''(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—

''(1) IN GENERAL.—No action may be brought as a result of the performance of services under a response contract against a response action contractor after the date that is 7 years after the date of completion of work at any facility under the contract to recover—

''(A) injury to property, real or personal;

''(B) personal injury or wrongful death;

''(C) other expenses or costs arising out of the performance of services under the contract; or

''(D) contribution or indemnity for damages sustained as a result of an injury described in subparagraphs (A) through (C).

''(2) EXCEPTION.—Paragraph (1) does not bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct.

''(3) INDEMNIFICATION.—This subsection does not affect any right of indemnification that a response action contractor may have under this section or may acquire by contract with any person.

''(i) STATE STANDARDS OF REPOSE.—Subsections (a)(1) and (h) shall not apply in determining the liability of a response action contractor if the State has enacted a statute of repose determining the liability of a response action contractor.''.

SEC. 1934. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended by inserting after ''shall be available to the public'' the following: ''not later than 14 days after the records, reports, or information is obtained''.

(b) REQUIREMENT TO PROVIDE POTENTIALLY RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

(1) ABATEMENT ACTIONS.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended—

(A) by striking ''(a) In addition'' and inserting the following: ''(a) ORDER.—''

''(1) IN GENERAL.—In addition''; and

(B) by adding at the end the following:

''(2) CONTENTS OF ORDER.—An order under paragraph (1) shall provide information concerning the evidence that indicates that each element of liability described in subparagraphs (A) through (D) of section 107(a)(1), as applicable, is present.''.

(2) SETTLEMENTS.—Section 122(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

''(D) For each potentially responsible party, the evidence that indicates that each element of liability contained in subparagraphs (A) through (D) of section 107(a)(1), as applicable, is present.''.

SEC. 1935. CONTRIBUTION PROTECTION.

Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sentence by inserting ''or cost recovery'' after ''contribution''.

SEC. 1936. TREATMENT OF RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS AS OWNERS OR OPERATORS.

(a) DEFINITION.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) (as amended by section 1933(a)) is amended by adding at the end the following:

''(I) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—The term 'owner or operator' includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is organized and operated exclusively for religious, charitable, scientific, or educational purposes and that holds legal or equitable title to a vessel or facility.''.

(b) LIMITATION ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of

1980 (42 U.S.C. 9607) is amended by adding at the end the following:

''(s) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—

''(1) LIMITATION ON LIABILITY.—Subject to paragraph (2), if an organization described in section 101(20)(I) holds legal or equitable title to a vessel or facility as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization.

''(2) CONDITIONS.—In order for an organization described in section 101(20)(I) to be eligible for the limited liability described in paragraph (1), the organization shall—

''(A) provide full cooperation, assistance, and vessel or facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;

''(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

''(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the vessel or facility occurred before the organization acquired the vessel or facility; and

''(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

''(3) LIMITATION.—Nothing in this subsection affects the liability of a person other than a person described in section 101(20)(I) that meets the conditions specified in paragraph (2).''.

SEC. 1937. COMMON CARRIERS.

Section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is amended by striking ''a published tariff and acceptance'' and inserting ''a contract''.

SEC. 1938. LIMITATION ON LIABILITY OF RAILROAD OWNERS.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by section 1936(b)) is amended by adding at the end the following:

''(t) LIMITATION ON LIABILITY OF RAILROAD OWNERS.—Notwithstanding subsection (a)(1), a person that does not impede the performance of a response action or natural resource restoration shall not be liable under this Act to the extent that liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator, if—

''(1) the spur track provides access to a main line or branch line track that is owned or operated by the railroad;

''(2) the spur track is 10 miles long or less; and

''(3) the railroad owner or operator does not cause or contribute to a release or threatened release at the spur track.''.

Subtitle E—Federal Facilities

SEC. 1951. TRANSFER OF AUTHORITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by striking subsection (g) and inserting the following:

''(g) TRANSFER OF AUTHORITIES.—

''(1) DEFINITIONS.—In this section:

''(A) INTERAGENCY AGREEMENT.—The term 'interagency agreement' means an interagency agreement under this section.

''(B) TRANSFER AGREEMENT.—The term 'transfer agreement' means a transfer agreement under paragraph (3).

''(C) TRANSFEREE STATE.—The term 'transferee State' means a State to which authorities have been transferred under a transfer agreement.

''(2) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this Act at any facility located in the State that is—

''(A) owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government); and

''(B) listed on the National Priorities List.

''(3) TRANSFER OF AUTHORITIES.—

''(A) DETERMINATIONS.—The Administrator shall enter into a transfer agreement to transfer to a State the authorities described in paragraph (2) if the Administrator determines that—

''(i) the State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise;

''(ii) the State has demonstrated experience in exercising similar authorities;

''(iii) the State has agreed to be bound by all Federal requirements and standards under section 132 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

''(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities are being transferred in effect at the time of the transfer of authorities.

''(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

''(i) shall incorporate the determinations of the Administrator under subparagraph (A);

''(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes between the State and the Federal department, agency, or instrumentality regarding the selection of a remedial action for the facility; and

''(iii) shall not impose on the transferee State any term or condition other than that the State meet the requirements of subparagraph (A).

''(4) EFFECT OF TRANSFER.—

''(A) STATE AUTHORITIES.—A transferee State—

''(i) shall not be deemed to be an agent of the Administrator but shall exercise the authorities transferred under a transfer agreement in the name of the State; and

''(ii) shall have exclusive authority to exercise authorities that have been transferred.

''(B) EFFECT ON INTERAGENCY AGREEMENTS.—Nothing in this subsection shall require, authorize, or permit the modification or revision of an interagency agreement covering a facility with respect to which authorities have been transferred to a State under a transfer agreement (except for the substitution of the transferee State for the Administrator in the terms of the interagency agreement, including terms stating obligations intended to preserve the confidentiality of information) without the written consent of the Governor of the State and the head of the department, agency, or instrumentality.

''(5) SELECTED REMEDIAL ACTION.—The remedial action selected for a facility under section 132 by a transferee State shall constitute the only remedial action required to be conducted at the facility, and the transferee State shall be precluded from enforcing any other remedial action requirement under Federal or State law, except for—

''(A) any corrective action under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that was initiated prior to the date of enactment of this subsection; and

''(B) any remedial action in excess of remedial action under section 132 that the State selects in accordance with paragraph (10).

''(6) DEADLINE.—

''(A) IN GENERAL.—The Administrator shall make a determination on an application by a State under paragraph (2) not later than 120 days after the date on which the Administrator receives the application.

''(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of an application within the time period stated in subparagraph (A), the application shall be deemed to have been granted.

''(7) RESUBMISSION OF APPLICATION.—

''(A) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

''(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the time period stated in paragraph (6)(A), the resubmitted application shall be deemed to have been granted.

''(8) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

''(9) WITHDRAWAL OF AUTHORITIES.—The Administrator may withdraw the authorities transferred under a transfer agreement in whole or in part if the Administrator determines that the State—

''(A) is exercising the authorities, in whole or in part, in a manner that is inconsistent with the requirements of this Act;

''(B) has violated the transfer agreement, in whole or in part; or

''(C) no longer meets one of the requirements of paragraph (3).

''(10) STATE COST RESPONSIBILITY.—The State may require a remedial action that exceeds the remedial action selection requirements of section 121 if the State pays the incremental cost of implementing that remedial action over the most cost-effective remedial action that would result from the application of section 132.

''(11) DISPUTE RESOLUTION AND ENFORCEMENT.—

''(A) DISPUTE RESOLUTION.—

''(i) FACILITIES COVERED BY BOTH A TRANSFER AGREEMENT AND AN INTERAGENCY AGREEMENTS.—In the case of a facility with respect to which there is both a transfer agreement and an interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in the dispute resolution process provided for in the interagency agreement, except that the final level for resolution of the dispute shall be the head of the Federal department, agency,

or instrumentality and the Governor of the State.

''(ii) FACILITIES COVERED BY A TRANSFER AGREEMENT BUT NOT AN INTERAGENCY AGREEMENT.—In the case of a facility with respect to which there is a transfer agreement but no interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in dispute resolution as provided in paragraph (3)(B)(ii) under which the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

''(iii) FAILURE TO RESOLVE.—If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor in a dispute resolution process under clause (i) or (ii), the Governor of the State shall make the final determination regarding selection of a remedial action. To compel implementation of the selected remedy of the State, the State must bring a civil action in United States district court.

''(B) ENFORCEMENT.—

''(i) AUTHORITY; JURISDICTION.—An interagency agreement with respect to which there is a transfer agreement or an order issued by a transferee State shall be enforceable by a transferee State or by the Federal department, agency, or instrumentality that is a party to the interagency agreement only in the United States district court for the district in which the facility is located.

''(ii) REMEDIES.—The district court shall—

''(I) enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination that has become effective under the interagency agreement;

''(II) impose any appropriate civil penalty provided for any violation of an interagency agreement, not to exceed $25,000 per day;

''(III) compel implementation of the selected remedial action; and

''(IV) review a challenge by the Federal department, agency, or instrumentality to the remedial action selected by the State under this section, in accordance with section 113(j).

''(12) COMMUNITY PARTICIPATION.—If, prior to the date of enactment of this section, a Federal department, agency, or instrumentality had established for a facility covered by a transfer agreement a facility-specific advisory board or other community-based advisory group (designated as a 'site-specific advisory board', a 'restoration advisory board', or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

''(A) shall be considered to be a community response organization for the purposes of—

''(i) paragraphs (2), (3), (4), and (9) of section 117(e);

''(ii) this subsection;

''(iii) section 130; and

''(iv) section 132; but

''(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of—

''(i) paragraph (1), (5), (6), (7), or (8) of section 117(e); or

''(ii) subsection (f).''.

SEC. 1952. LIMITATION ON CRIMINAL LIABILITY OF FEDERAL OFFICERS, EMPLOYEES, AND AGENTS.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by adding at the end the following:

''(k) CRIMINAL LIABILITY.—Notwithstanding any other provision of this Act or any other law, an officer, employee, or agent of the United States shall not be held criminally liable for a failure to comply, in any fiscal year, with a requirement to take a response action at a facility that is owned or operated by a department, agency, or instrumentality of the United States, under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any other Federal or State law unless—

''(1) the officer, employee, or agent has not fully performed any direct responsibility or delegated responsibility that the officer, employee, or agent had under Executive Order 12088 (42 U.S.C. 4321 note) or any other delegation of authority to ensure that a request for funds sufficient to take the response action was included in the President's budget request under section 1105 of title 31, United States Code, for that fiscal year; or

''(2) appropriated funds were available to pay for the response action.''.

SEC. 1953. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) IN GENERAL.—Section 311 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660) is amended by adding at the end the following:

''(h) FEDERAL FACILITIES.—

''(1) DESIGNATION.—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research, development, and application of innovative technologies for remedial action at the facility.

''(2) USE OF FACILITIES.—

''(A) IN GENERAL.—A facility designated under paragraph (1) shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1).

''(B) COORDINATION.—The Administrator—

''(i) shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States; and

''(ii) may approve or deny the use of a particular innovative technology for remedial action at any such facility.

''(3) CONSIDERATIONS.—

''(A) EVALUATION OF SCHEDULES AND PENALTIES.—In considering whether to permit the application of a particular innovative technology for remedial action at a facility designated under paragraph (1), the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into under section 120.

''(B) AMENDMENT OF AGREEMENT OR ORDER.—If, after an evaluation under subparagraph (A), the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of the agreement or order.''.

(b) REPORT TO CONGRESS.—Section 311(e) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

(1) by striking ''At the time'' and inserting the following:

''(1) IN GENERAL.—At the time''; and

(2) by adding at the end the following:

''(2) ADDITIONAL INFORMATION.—A report under paragraph (1) shall include information on the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h).''.

Subtitle F—Natural Resource Damages

SEC. 1961. RESTORATION OF NATURAL RESOURCES.

Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by inserting ''NATURAL RESOURCE DAMAGES.—'' after ''(f)'';

(2) by striking ''(1) NATURAL RESOURCES LIABILITY.—In the case'' and inserting the following:

''(1) LIABILITY.—

''(A) IN GENERAL.—In the case''; and

(3) in paragraph (1)(A) (as designated by paragraph (2))—

(A) by inserting after the fourth sentence the following: ''Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration, replacement, or acquisition of the equivalent of such natural resources by the Indian tribe. A restoration, replacement, or acquisition conducted by the United States, a State, or an Indian tribe shall proceed only if it is technologically feasible from an engineering perspective at a reasonable cost and consistent with all known or anticipated response actions at or near the facility.''; and

(B) by striking ''The measure of damages in any action'' and all that follows through the end of the paragraph and inserting the following:

''(B) LIMITATIONS ON LIABILITY.—

''(i) MEASURE OF DAMAGES.—The measure of damages in any action for damages for injury to, destruction of, or loss of natural resources shall be limited to—

''(I) the reasonable costs of restoration, replacement, or acquisition of the equivalent of natural resources that suffer injury, destruction, or loss caused by a release; and

''(II) the reasonable costs of assessing damages.

''(ii) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of nonuse values.

''(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for the costs of restoring an injury to or destruction or loss of a natural resource (including injury assessment costs) shall not be entitled to recovery under this Act or any other Federal or State law for the same injury to or destruction or loss of the natural resource.

''(iv) RESTRICTIONS ON RECOVERY.—

''(I) LIMITATION ON LOST USE DAMAGES.—There shall be no recovery from any person under this section for the costs of a loss of use of a natural resource for a natural resource injury, destruction, or loss that occurred before December 11, 1980.

''(II) RESTORATION, REPLACEMENT, OR ACQUISITION.—There shall be no recovery from any person under this section for the costs of restoration, replacement, or acquisition of the equivalent of a natural resource if the natural resource injury, destruction, or loss for which the restoration, replacement, or acquisition is sought and the release of the hazardous substance from which the injury resulted occurred wholly before December 11, 1980.''.

SEC. 1962. ASSESSMENT OF INJURY TO AND RESTORATION OF NATURAL RESOURCES.

(a) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

''(C) NATURAL RESOURCE INJURY AND RESTORATION ASSESSMENTS.—

''(i) REGULATION.—A natural resource injury and restoration assessment conducted for the purposes of this Act made by a Federal, State, or tribal trustee shall be performed, to the extent practicable, in accordance with—

''(I) the regulation issued under section 301(c); and

''(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

''(ii) FACILITY-SPECIFIC CONDITIONS.—Injury assessment, restoration planning, and quantification of restoration costs shall, to the extent practicable, be based on facility-specific information.

''(iii) RECOVERABLE COSTS.—A claim by a trustee for assessment costs—

''(I) may include only—

''(aa) costs that arise from work performed for the purpose of assessing injury to a natural resource to support a claim for restoration of the natural resource; and

''(bb) costs that arise from developing and evaluating a reasonable range of alternative restoration measures; but

''(II) may not include the costs of conducting any type of study relying on the use of contingent valuation methodology.

''(iv) PAYMENT PERIOD.—In a case in which injury to or destruction or loss of a natural resource was caused by a release that occurred over a period of years, payment of damages shall be permitted to be made over a period of years that is appropriate in view of the period of time over which the damages occurred, the amount of the damages, the financial ability of the responsible party to pay the damages, and the time period over which and the pace at which expenditures are expected to be made for restoration, replacement, and acquisition activities.

''(v) TRUSTEE RESTORATION PLANS.—

''(I) ADMINISTRATIVE RECORD.—Participating natural resource trustees may designate a lead administrative trustee or trustees. The lead administrative trustee may establish an administrative record on which the trustees will base the selection of a plan for restoration of a natural resource. The restoration plan shall include a determination of the nature and extent of the natural resource injury. The administrative record shall be made available to the public at or near the facility at which the release occurred.

''(II) PUBLIC PARTICIPATION.—The Administrator shall issue a regulation for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the trustees will base selection of a restoration plan and on which judicial review of restoration plans will be based. The procedures for participation shall include, at a minimum, each of the requirements stated in section 113(k)(2)(B).''.

(b) REGULATIONS.—Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651) is amended by striking subsection (c) and inserting the following:

''(c) REGULATIONS FOR INJURY AND RESTORATION ASSESSMENTS.—

''(1) IN GENERAL.—The President, acting through Federal officials designated by the National Contingency Plan under section 107(f)(2), shall issue a regulation for the assessment of injury to natural resources and the costs of restoration of natural resources (including the costs of assessment) for the purposes of this Act and for determination of the time periods in which payment of damages will be required.

''(2) CONTENTS.—The regulation under paragraph (1) shall—

''(A) specify protocols for conducting assessments in individual cases to determine the injury, destruction, or loss of natural resources;

''(B) identify the best available procedures to determine the reasonable costs of restoration and assessment;

''(C) take into consideration the ability of a natural resource to recover naturally and the availability of replacement or alternative resources;

''(D) provide for the designation of a single lead Federal decisionmaking trustee for each facility at which an injury to natural resources has occurred within 180 days after the date of first notice to the responsible parties that an assessment of injury and restoration alternatives will be made; and

''(E) set forth procedures under which—

''(i) all pending and potential trustees identify the injured natural resources within their respective trust responsibilities, and the authority under which such responsibilities are established, as soon as practicable after the date on which a release occurs;

''(ii) assessment of injury and restoration alternatives will be coordinated to the greatest extent practicable between the lead Federal decisionmaking trustee and any present or potential State or tribal trustees, as applicable; and

''(iii) time periods for payment of damages in accordance with section 107(f)(2)(C)(iv) shall be determined.

''(3) DEADLINE FOR ISSUANCE OF REGULATION; PERIODIC REVIEW.—The regulation under paragraph (1) shall be issued not later than 1 year after the date of enactment of the Energy Policy Act of 2002 and shall be reviewed and revised as appropriate every 5 years.''.

SEC. 1963. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended by adding at the end the following:

''(3) COMPATIBILITY WITH REMEDIAL ACTION.—Both response actions and restoration measures may be implemented at the same facility, or to address releases from the same facility. Such response actions and restoration measures shall not be inconsistent with one another and shall be implemented, to the extent practicable, in a coordinated and integrated manner.''.

(b) CONSIDERATION OF NATURAL RESOURCES IN RESPONSE ACTIONS.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)) (as amended by section 1922) is amended by adding at the end the following:

''(6) COORDINATION.—In evaluating and selecting remedial actions, the Administrator shall take into account the potential for injury to a natural resource resulting from those actions.''.

SEC. 1964. CONTRIBUTION.

Subparagraph (A) of section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting ''and natural resource damages'' after ''costs''.

Subtitle G—Miscellaneous

SEC. 1971. RESULT-ORIENTED CLEANUPS.

(a) AMENDMENT.—Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

(1) by striking ''and'' at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting ''; and''; and

(3) by inserting after paragraph (10) the following:

''(11) procedures for conducting response actions, including facility evaluations, remedial investigations, feasibility studies, remedial action plans, remedial designs, and remedial actions, which procedures shall—

''(A) use a results-oriented approach to minimize the time required to conduct response measures and reduce the potential for exposure to the hazardous substances, pollutants, and contaminants in an efficient, timely, and cost-effective manner;

''(B) require, at a minimum, expedited facility evaluations and risk assessments, timely negotiation of response action goals, a single engineering study, streamlined oversight of response actions, and consultation with interested parties throughout the response action process;

''(C) be subject to the requirements of sections 117, 120, 121, and 132 in the same manner and to the same degree as those sections apply to response actions; and

''(D) be required to be used for each remedial action conducted under this Act unless the Administrator determines that their use would not be cost-effective or result in the selection of a response action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).''.

(b) AMENDMENT OF NATIONAL HAZARDOUS SUBSTANCE RESPONSE PLAN.—Not later than 180 days after the date of enactment of this Act, the Administrator, after notice and opportunity for public comment, shall amend the National Hazardous Substance Response Plan under section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) to include the procedures required by the amendment made by subsection (a).

SEC. 1972. NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) (as amended by section 1927(a)(2)) is amended by adding at the end the following:

''(j) NATIONAL PRIORITIES LIST.—

''(1) LIMITATION.—

''(A) IN GENERAL.—After the date of the enactment of this subsection, the President may add vessels and facilities to the National Priorities List only in accordance with the following schedule:

''(i) Not more than 30 vessels and facilities in 2002.

''(ii) Not more than 25 vessels and facilities in 2003.

''(iii) Not more than 20 vessels and facilities in 2004.

''(iv) Not more than 15 vessels and facilities in 2005.

''(v) Not more than 10 vessels and facilities in any year after 2005.

''(B) RELISTING.—The relisting of a vessel or facility under section 129(d)(5)(C)(ii) shall not be considered to be an addition to the National Priorities List for purposes of this subsection.

''(2) PRIORITIZATION.—The Administrator shall prioritize the vessels and facilities added under paragraph (1) on a national basis in accordance with the threat to human health and the environment presented by each of the vessels and facilities, respectively.

''(3) STATE CONCURRENCE.—A vessel or facility may be added to the National Priorities List under paragraph (1) only with the concurrence of the Governor of the State in which the vessel or facility is located.''.

SEC. 1973. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)) is amended—

(1) in subparagraph (C), by striking ''consistent with the remedial action to be taken'' and inserting ''and not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility,'';

(2) by striking ''$2,000,000'' and inserting ''$4,000,000''; and

(3) by striking ''12 months'' and inserting ''2 years''.

Subtitle H—Funding

SEC. 1981. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking ''not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994'' and inserting ''a total of $8,500,000,000 for the period of fiscal years 2003 through 2007''.

SEC. 1982. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), (as amended by section 1901(c)), is amended by inserting after paragraph (7) the following:

''(8) ORPHAN SHARE FUNDING.—Payment of orphan shares under section 135.''.

SEC. 1983. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (m) and inserting the following:

''(m) HEALTH AUTHORITIES.—

''(1) IN GENERAL.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), $50,000,000 for each of fiscal years 2003 through 2007.

''(2) UNOBLIGATED FUNDS.—Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.''.

SEC. 1984. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

''(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

''(A) LIMITATION.—For each of fiscal years 2003 through 2007, not more than $30,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) other than basic research.

''(B) CONTINUING AVAILABILITY.—Amounts described in subparagraph (A) shall remain available until expended.

''(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—

''(A) LIMITATION.—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a):

''(i) For fiscal year 2003, $37,000,000.

''(ii) For fiscal year 2004, $39,000,000.

''(iii) For fiscal year 2005, $41,000,000.

''(iv) For each of fiscal years 2006 and 2007, $43,000,000.

''(B) FURTHER LIMITATION.—No more than 15 percent of those amounts shall be used for training under section 311(a) for any fiscal year.

''(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 2003 through 2007, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d).''.

SEC. 1985. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

''(1) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

''(i) for fiscal year 2003, $250,000,000;

''(ii) for fiscal year 2004, $250,000,000;

''(iii) for fiscal year 2005, $250,000,000;

''(iv) for fiscal year 2006, $250,000,000; and

''(v) for fiscal year 2007, $250,000,000.

''(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each such fiscal year an amount, in addition to the amount authorized by subparagraph (A), equal to so much of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year.''.

SEC. 1986. ADDITIONAL LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

''(q) COMMUNITY RESPONSE ORGANIZATION.—For the period commencing January 1, 2003, and ending September 30, 2007, not more than $15,000,000 of the amounts available in the Fund may be used to make grants under section 117(f) (relating to Community Response Organizations).

''(r) RECOVERIES.—Effective beginning January 1, 2003, any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account.''.

SEC. 1987. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) (as amended by section 1982) is amended by inserting after paragraph (8) the following:

''(9) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.—If—

''(A) a potentially responsible party and the Administrator enter into a settlement under this Act under which the Administrator is reimbursed for the response costs of the Administrator; and

''(B) the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator is reimbursed—

''(i) are unallowable due to contractor fraud;

''(ii) are unallowable under the Federal Acquisition Regulation; or

''(iii) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures,

a potentially responsible party may be reimbursed for those costs.''.

SA 3310. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, strike line 15 on page 204 and all that follows through line 8 on page 205.

SA 3311. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

''(1) IN GENERAL.—Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective of human health, welfare and the environment than any other motor vehicle fuel or fuel additive.

''(2) EFFECTIVE DATE.—This subsection shall be effective one day after the enactment of this Act.''.

SA 3312. Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be stricken, insert the following:

''(e) RENEWABLE FUELS SAFE HARBOR.—Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective of human health, welfare and the environment than any other motor vehicle fuel or fuel additive.''.

SA 3313. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3281 submitted by Mr. SCHUMER and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . AUTHORITY TO CARRY FIREARMS AND MAKE ARRESTS.

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

''k. (1) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties;

''(2) authorize—

''(A) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

''(B) such of those employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors or licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities or operated by a Commission licensee or certificate holder or being transported to or from such facilities—

to carry firearms while in the discharge of their official duties.

''(3) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described in paragraph (2)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons, devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless of whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i. of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the approval of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described under paragraph (2)(B)(ii) shall not be implemented until such guidelines have become effective.

''(4) A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without a warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of—

''(A) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or a licensee or certificate holder of the Commission;

''(B) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

''(C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both.

''(5) The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Nuclear Regulatory Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;''.

SEC. . UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by inserting before the period at the end of the first sentence the following: ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act''.

SEC. . SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

''a. Any person who intentionally and willfully destroys or causes physical damage to, or who attempts or conspires to destroy or cause physical damage to—

''(1) any production facility or utilization facility licensed under this Act;

''(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

''(3) any nuclear fuel for a utilization facility licensed under this act, or any spent nuclear fuel from such a facility;

''(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility—

shall be fined not more than $10,000 or imprisoned for not more than 20 years or both, or shall be imprisoned for any term of years or for life if death results to any person.''.

SA 3314. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3203 submitted by Mr. JEFFORDS for himself and Mr. SMITH of New Hampshire) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes, which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 510. AUTHORITY TO CARRY FIREARMS AND MAKE ARRESTS.

Section 161 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(k)) is amended to read as follows:

''k. (1) authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties;

''(2) authorize—

''(A) such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities as it deems necessary in the interests of the common defense and security; and

''(B) such of those employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors or licensees or certificate holders) engaged in the protection of (i) facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission, or (ii) property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities—

to carry firearms while in the discharge of their official duties.

''(3) authorize employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described in paragraph (2)(B)(ii) to carry and use, where necessary to the discharge of their official duties, such weapons, devices, or ammunition as the Commission may require. Such employees shall have the power to carry and use such weapons while in the discharge of their official duties, regardless of whether such employees have been designated as Federal, State, or local law enforcement officers. Such employees shall have such law enforcement powers as are provided to them under this section and section 161 i. of this Act. The Nuclear Regulatory Commission shall issue guidelines, with the approval of the Attorney General, to implement this paragraph. The authority conferred by this paragraph with respect to employees of persons licensed or certified by the Nuclear Regulatory Commission (including employees of contractors of licensees or certificate holders) who are trained and qualified as guards and whose duty is the protection of facilities designated under paragraph (2)(B)(i) or property described under paragraph (2)(B)(ii) shall not be implemented until such guidelines have become effective.

''(4) A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without a warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractors or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of—

''(A) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or a licensee or certificate holder of the Commission;

''(B) laws applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission pursuant to this subsection, and property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

''(C) any provision of this chapter that may subject an offender to a fine, imprisonment, or both.

''(5) The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary and the Nuclear Regulatory Commission, with the approval of the Attorney General, shall issue guidelines to implement this subsection;''.

SEC. 510A. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended by inserting before the period at the end of the first sentence the following: ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act''.

SEC. 510B. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended to read as follows:

''a. Any person who intentionally and willfully destroys or causes physical damage to, or who attempts or conspires to destroy or cause physical damage to—

''(1) any production facility or utilization facility licensed under this Act;

''(2) any nuclear waste storage, treatment, or disposal facility licensed under this Act;

''(3) any nuclear fuel for a utilization facility licensed under this act, or any spent nuclear fuel from such a facility;

''(4) any uranium enrichment or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission; or

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fabrication facility subject to licensing or certification under this Act during its construction where the destruction or damage caused or attempted to be caused could affect public health and safety during the operation of the facility—

shall be fined not more than $10,000 or imprisoned for not more than 20 years or both, or shall be imprisoned for any term of years or for life if death results to any person.''.

SA 3315. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3275 submitted by Ms. CANTWELL and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE MANDATORY CONDITIONS

(a) REVIEW OF ALTERNATIVE MANDATORY CONDITIONS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of: (1) options for a process whereby license applicants and third parties to a relicensing proceeding being undertaken pursuant to Part I of the Federal Power Act could propose alternative mandatory conditions and alternative mandatory fishway prescriptions to be included in the license in lieu of conditions and prescriptions initially deemed necessary or required pursuant to section 4(e) and section 18, respectively, of the Federal Power Act; (2) the standards which should be applicable in evaluating and accepting such conditions and prescriptions; (3) the nature of participation of parties other than the license applicants in such a process; (4) the advantages and disadvantages of providing for such a process, including the impact of such a process on the length of time needed to complete the relicensing proceedings and the potential economic and operational improvement benefits of providing for such a process; and (5) the level of interest among parties to relicensing proceedings in proposing such alternative conditions and prescriptions and participating in such a process.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section. The report shall contain any legislative or administrative recommendations relating to implementation of the process described in subsection (a).

SEC. 302. STREAMLINING HYDROELECTRIC RELICENSING PROCEDURES

(a) REVIEW OF LICENSING PROCESS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of the process for issuance of a license under section Part I of the Federal Power Act in order to: (1) improve coordination of their respective responsibilities; (2) coordinate the schedule for all major actions by the applicant, the Commission, affected Federal and State agencies, Indian Tribes, and other affected parties; (3) ensure resolution at an early stage of the process of the scope and type of reasonable and necessary information, studies, data, and analysis to be provided by the license applicant; (4) facilitate coordination between the Commission and the resource agencies of analysis under the National Environmental Policy Act; and (5) provide for streamlined procedures.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section and reviewing the responsibilities and procedures of each agency involved in the licensing process. The report shall contain any legislative or administrative recommendations to improve coordination and streamline procedures for the issuance of licenses under Part I of the Federal Power Act. The Commission and each Secretary shall set forth a plan and schedule to implement any administrative recommendations contained in the report, which shall also be contained in the report.

SA 3316. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3140 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE III—HYDROELECTRIC ENERGY

SEC. 301. ALTERNATIVE MANDATORY CONDITIONS.

(a) REVIEW OF ALTERNATIVE MANDATORY CONDITIONS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of: (1) options for a process whereby license applicants and third parties to a relicensing proceeding being undertaken pursuant to Part I of the Federal Power Act could propose alternative mandatory conditions and alternative mandatory fishway prescriptions to be included in the license in lieu of conditions and prescriptions initially deemed necessary or required pursuant to section 4(c) and section 18, respectively, of the Federal Power Act; (2) the standards which should be applicable in evaluating and accepting such conditions and prescriptions; (3) the nature of participation of parties other than the license applicants in such a process; (4) the advantages and disadvantages of providing for such a process, including the impact of such a process on the length of time needed to complete the relicensing proceedings and the potential economic and operational improvement benefits of providing for such a process; and (5) the level of interest among parties to relicensing proceedings in proposing such alternative conditions and prescriptions and participating in such a process.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section. The report shall contain any legislative or administrative recommendations relating to implementation of the process described in subsection (a).

SEC. 302. STREAMLINING HYDROELECTRIC RELICENSING PROCEDURES.

(a) REVIEW OF LICENSING PROCESS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of the process for issuance of a license under section Part I of the Federal Power Act in order to: (1) improve coordination of their respective responsibilities; (2) coordinate the schedule for all major actions by the applicant, the Commission, affected Federal and State agencies, Indian Tribes, and other affected parties; (3) ensure resolution at an early stage of the process of the scope and type of reasonable and necessary information, studies, data, and analysis to be provided by the license applicant; (4) facilitate coordination between the Commission and the resource agencies of analysis under the National Environmental Policy Act; and (5) provide for streamlined procedures.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Commission on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section and reviewing the responsibilities and procedures of each agency involved in the licensing process. The report shall contain any legislative or administrative recommendations to improve coordination and streamline procedures for the issuance of licenses under Part I of the Federal Power Act. The Commission and each Secretary shall set forth a plan and schedule to implement any administrative recommendations contained in the report, which shall also be contained in the report.

SA 3317. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal year 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ___—ENVIRONMENTAL CLEANUP FINANCING AND REINSURANCE AND CORPORATE INVERSION LIMITATIONS

Subtitle A—Environmental Cleanup Financing

SEC. ___01. EXTENSION OF SUPERFUND, OIL SPILL LIABILITY, AND LEAKING UNDERGROUND STORAGE TANK TAXES.

(a) EXCISE TAXES.—

(1) SUPERFUND TAXES.—Section 4611(e) is amended to read as follows:

''(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(2) OIL SPILL LIABILITY TAX.—Section 4611(f) is amended to read as follows:

''(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(3) LEAKING UNDERGROUND STORAGE TANK RATE.—Section 4081(d)(3) is amended by striking ''April 1, 2005'' and inserting ''October 1, 2007.''.

(b) CORPORATE ENVIRONMENTAL INCOME TAX.—Section 59A is amended—

(1) by striking ''0.12 percent'' in subsection (a) and inserting ''0.06 percent'', and

(2) by striking subsection (e) and inserting the following:

''(e) APPLICATION OF TAX.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996, and to taxable years beginning after the date of the enactment of the Energy Policy Act of 2002 and before January 1, 2007.''.

(c) TECHNICAL AMENDMENTS.—

(1) Section 4611(b) is amended—

(A) by striking ''or exported from'' in paragraph (1)(A),

(B) by striking ''or exportation'' in paragraph (1)(B), and

(C) by striking ''AND EXPORTATION'' in the heading.

(2) Section 4611(d)(3) is amended—

(A) by striking ''or exporting the crude oil, as the case may be'' in the text and inserting ''the crude oil'', and

(B) by striking ''OR EXPORTS'' in the heading.

(d) EFFECTIVE DATES.—

(1) EXCISE TAXES.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) INCOME TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle B—Reinsurance Inversion Limitations

SEC. ___11. PREVENTION OF EVASION OF UNITED STATES INCOME TAX ON NONLIFE INSURANCE COMPANIES THROUGH USE OF REINSURANCE WITH FOREIGN PERSONS.

(a) IN GENERAL.—Subparagraph (A) of section 832(b)(4) (relating to insurance company taxable income) is amended to read as follows:

''(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance (except as provided in paragraph (9)).''

(b) TREATMENT OF REINSURANCE WITH RELATED REINSURERS.—Subsection (b) of section 832 is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DEDUCTION UNDER PARAGRAPH (4) FOR REINSURANCE OF U.S. RISKS WITH CERTAIN RELATED PERSONS.—

''(A) IN GENERAL.—No deduction shall be allowed under paragraph (4) for premiums paid for the direct or indirect reinsurance of United States risks with a related reinsurer.

''(B) EXCEPTIONS.—This paragraph shall not apply to any premium to the extent that—

''(i) the income attributable to the reinsurance to which such premium relates is includible in the gross income of—

''(I) such reinsurer, or

''(II) 1 or more domestic corporations or citizens or residents of the United States, or

''(ii) the related insurer establishes to the satisfaction of the Secretary that the taxable income (determined in accordance with this section 832) attributable to such reinsurance is subject to an effective rate of income tax imposed by a foreign country at a rate greater than 20 percent of the maximum rate of tax specified in section 11.

''(C) ELECTION BY REINSURER TO BE TAXED ON INCOME.—Income of a related reinsurer attributable to the reinsurance of United States risks which is not otherwise includible in gross income shall be treated as gross income which is effectively connected with the conduct of a trade or business in the United States if such reinsurer—

''(i) elects to so treat such income, and

''(ii) meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such income are paid.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) UNITED STATES RISK.—The term 'United States risk' means any risk related to property in the United States, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

''(ii) RELATED INSURER.—The term 'related insurer' means any reinsurer owned or controlled directly or indirectly by the same interests (within the meaning of section 482) as the person making the premium payment.''

(c) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(5) is amended by inserting after clause (iii) the following new clause:

''(iv) To the results so obtained, add reinsurance recovered from a related reinsurer to the extent a deduction for the premium paid for the reinsurance was disallowed under paragraph (9).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date that the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate votes to report this bill.

Subtitle C—Corporate Inversion Limitations

SEC. ___21. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 3318. Mr. TORRICELLI (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—ENVIRONMENTAL CLEANUP FINANCING AND REINSURANCE AND CORPORATE INVERSION LIMITATIONS

Subtitle A—Environmental Cleanup Financing

SEC. ____01. EXTENSION OF SUPERFUND, OIL SPILL LIABILITY, AND LEAKING UNDERGROUND STORAGE TANK EXCISE TAXES.

(a) SUPERFUND TAXES.—Section 4611(e) is amended to read as follows:

''(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(b) OIL SPILL LIABILITY TAX.—Section 4611(f) is amended to read as follows:

''(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(c) LEAKING UNDERGROUND STORAGE TANK RATE.—Section 4081(d)(3) is amended by striking ''April 1, 2005'' and inserting ''October 1, 2007.''.

(d) TECHNICAL AMENDMENTS.—

(1) Section 4611(b) is amended—

(A) by striking ''or exported from'' in paragraph (1)(A),

(B) by striking ''or exportation'' in paragraph (1)(B), and

(C) by striking ''AND EXPORTATION'' in the heading.

(2) Section 4611(d)(3) is amended—

(A) by striking ''or exporting the crude oil, as the case may be'' in the text and inserting ''the crude oil'', and

(B) by striking ''OR EXPORTS'' in the heading.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Reinsurance Inversion Limitations

SEC. ____11. PREVENTION OF EVASION OF UNITED STATES INCOME TAX ON NONLIFE INSURANCE COMPANIES THROUGH USE OF REINSURANCE WITH FOREIGN PERSONS.

(a) IN GENERAL.—Subparagraph (A) of section 832(b)(4) (relating to insurance company taxable income) is amended to read as follows:

''(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance (except as provided in paragraph (9)).''

(b) TREATMENT OF REINSURANCE WITH RELATED REINSURERS.—Subsection (b) of section 832 is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DEDUCTION UNDER PARAGRAPH (4) FOR REINSURANCE OF U.S. RISKS WITH CERTAIN RELATED PERSONS.—

''(A) IN GENERAL.—No deduction shall be allowed under paragraph (4) for premiums paid for the direct or indirect reinsurance of United States risks with a related reinsurer.

''(B) EXCEPTIONS.—This paragraph shall not apply to any premium to the extent that—

''(i) the income attributable to the reinsurance to which such premium relates is includible in the gross income of—

''(I) such reinsurer, or

''(II) 1 or more domestic corporations or citizens or residents of the United States, or

''(ii) the related insurer establishes to the satisfaction of the Secretary that the taxable income (determined in accordance with this section 832) attributable to such reinsurance is subject to an effective rate of income tax imposed by a foreign country at a rate greater than 20 percent of the maximum rate of tax specified in section 11.

''(C) ELECTION BY REINSURER TO BE TAXED ON INCOME.—Income of a related reinsurer attributable to the reinsurance of United States risks which is not otherwise includible in gross income shall be treated as gross income which is effectively connected with the conduct of a trade or business in the United States if such reinsurer—

''(i) elects to so treat such income, and

''(ii) meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such income are paid.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) UNITED STATES RISK.—The term 'United States risk' means any risk related to property in the United States, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

''(ii) RELATED INSURER.—The term 'related insurer' means any reinsurer owned or controlled directly or indirectly by the same interests (within the meaning of section 482) as the person making the premium payment.''

(c) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(5) is amended by inserting after clause (iii) the following new clause:

''(iv) To the results so obtained, add reinsurance recovered from a related reinsurer to the extent a deduction for the premium paid for the reinsurance was disallowed under paragraph (9).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date that the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate votes to report this bill.

Subtitle C—Corporate Inversion Limitations

SEC. ____21. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 3319. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ____—CURB TAX ABUSES

Subtitle A—Tax Shelters

SEC. ___01. SHORT TITLE.

This subtitle may be cited as the ''Abusive Tax Shelter Shutdown Act of 2002''.

SEC. ___02. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that:

(1) Many corporate tax shelter transactions are complicated ways of accomplishing nothing aside from claimed tax benefits, and the legal opinions justifying those transactions take an inappropriately narrow and restrictive view of well-developed court doctrines under which—

(A) the taxation of a transaction is determined in accordance with its substance and not merely its form,

(B) transactions which have no significant effect on the taxpayer's economic or beneficial interests except for tax benefits are treated as sham transactions and disregarded,

(C) transactions involving multiple steps are collapsed when those steps have no substantial economic meaning and are merely designed to create tax benefits,

(D) transactions with no business purpose are not given effect, and

(E) in the absence of a specific congressional authorization, it is presumed that Congress did not intend a transaction to result in a negative tax where the taxpayer's economic position or rate of return is better after tax than before tax.

(2) Permitting aggressive and abusive tax shelters not only results in large revenue losses but also undermines voluntary compliance with the Internal Revenue Code of 1986.

(b) PURPOSE.—The purpose of this subtitle is to eliminate abusive tax shelters by denying tax attributes claimed to arise from transactions that do not meet a heightened economic substance requirement and by repealing the provision that permits legal opinions to be used to avoid penalties on tax underpayments resulting from transactions without significant economic substance or business purpose.

PART I—CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE

SEC. ___11. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction are substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law referred to in section 6662(i)(2), and the requirements of this subsection shall be construed as being in addition to any such other rule of law.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act.

PART II—PENALTIES

SEC. ___21. INCREASE IN PENALTY ON UNDERPAYMENTS RESULTING FROM FAILURE TO SATISFY CERTAIN COMMON LAW RULES.

(a) IN GENERAL.—Section 6662 (relating to imposition of accuracy-related penalty) is amended by adding at the end the following new subsection:

''(i) INCREASE IN PENALTY IN CASE OF FAILURE TO SATISFY CERTAIN COMMON LAW RULES.—

''(1) IN GENERAL.—To the extent that an underpayment is attributable to a disallowance described in paragraph (2)—

''(A) subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent', and

''(B) subsection (d)(2)(B) and section 6664(c) shall not apply.

''(2) DISALLOWANCES DESCRIBED.—A disallowance is described in this subsection if such disallowance is on account of—

''(A) a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(m)(2),

''(B) a lack of business purpose for such transaction or because the form of the transaction does not reflect its substance, or

''(C) a failure to meet the requirements of any other similar rule of law.

''(3) INCREASE IN PENALTY NOT TO APPLY IF COMPLIANCE WITH DISCLOSURE REQUIREMENTS.—Paragraph (1)(A) shall not apply if the taxpayer discloses to the Secretary (as such time and in such manner as the Secretary shall prescribe) such information as the Secretary shall prescribe with respect to such transaction.''.

(b) MODIFICATIONS TO PENALTY ON SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX.—

(1) MODIFICATION OF THRESHOLD.—Subparagraph (A) of section 6662(d)(1) is amended to read as follows:

''(A) IN GENERAL.—For purposes of this section, there is a substantial understatement

of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) $500,000, or

''(ii) the greater of 10 percent of the tax required to be shown on the return for the taxable year or $5,000.''

(2) MODIFICATION OF PENALTY ON TAX SHELTERS, ETC.—Clauses (i) and (ii) of section 6662(d)(2)(C) are amended to read as follows:

''(i) IN GENERAL.—Subparagraph (B) shall not apply to any item attributable to a tax shelter.''

''(ii) DETERMINATION OF UNDERSTATEMENTS WITH RESPECT TO TAX SHELTERS, ETC.—In any case in which there are one or more items attributable to a tax shelter, the amount of the understatement under subparagraph (A) shall in no event be less than the amount of understatement which would be determined for the taxable year if all items shown on the return which are not attributable to any tax shelter were treated as being correct. A similar rule shall apply in cases to which subsection (i) applies, whether or not the items are attributable to a tax shelter.''

(c) TREATMENT OF AMENDED RETURNS.—Subsection (a) of section 6664 is amended by adding at the end the following new sentence: ''For purposes of this subsection, an amended return shall be disregarded if such return is filed on or after the date the taxpayer is first contacted by the Secretary regarding the examination of the return.''

SEC. ___22. PENALTY ON PROMOTERS OF TAX AVOIDANCE STRATEGIES WHICH HAVE NO ECONOMIC SUBSTANCE, ETC.

(a) PENALTY.—

(1) IN GENERAL.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) PENALTY ON SUBSTANTIAL PROMOTERS FOR PROMOTING TAX AVOIDANCE STRATEGIES WHICH HAVE NO ECONOMIC SUBSTANCE, ETC.—

''(1) IMPOSITION OF PENALTY.—Any substantial promoter of a tax avoidance strategy shall pay a penalty in the amount determined under paragraph (2) with respect to such strategy if such strategy (or any similar strategy promoted by such promoter) fails to meet the requirements of any rule of law referred to in section 6662(i)(2).

''(2) AMOUNT OF PENALTY.—The penalty under paragraph (1) with respect to a promoter of a tax avoidance strategy is an amount equal to 100 percent of the gross income derived (or to be derived) by such promoter from such strategy.

''(3) TAX AVOIDANCE STRATEGY.—For purposes of this subsection, the term 'tax avoidance strategy' means any entity, plan, arrangement, or transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax.

''(4) SUBSTANTIAL PROMOTER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'substantial promoter' means, with respect to any tax avoidance strategy, any promoter if—

''(i) such promoter offers such strategy to more than 1 potential participant, and

''(ii) such promoter may receive fees in excess of $500,000 in the aggregate with respect to such strategy.

''(B) AGGREGATION RULES.—For purposes of this paragraph—

''(i) RELATED PERSONS.—A promoter and all persons related to such promoter shall be treated as 1 person who is a promoter.

''(ii) SIMILAR STRATEGIES.—All similar tax avoidance strategies of a promoter shall be treated as 1 tax avoidance strategy.

''(C) PROMOTER.—The term 'promoter' means any person who participates in the promotion, offering, or sale of the tax avoidance strategy.

''(D) RELATED PERSON.—Persons are related if they bear a relationship to each other which is described in section 267(b) or 707(b).

''(4) COORDINATION WITH SUBSECTION (a).—No penalty shall be imposed by this subsection on any promoter with respect to a tax avoidance strategy if a penalty is imposed under subsection (a) on such promoter with respect to such strategy.''

(2) CONFORMING AMENDMENT.—Subsection (d) of section 6700 is amended—

(A) by striking ''PENALTY'' and inserting ''PENALTIES'', and

(B) by striking ''penalty'' the first place it appears in the text and inserting ''penalties''.

(b) INCREASE IN PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—The first sentence of section 6700(a) is amended by striking ''a penalty equal to'' and all that follows and inserting ''a penalty equal to the greater of $1,000 or 100 percent of the gross income derived (or to be derived) by such person from such activity.''

SEC. ___23. MODIFICATIONS OF PENALTIES FOR AIDING AND ABETTING UNDERSTATEMENT OF TAX LIABILITY INVOLVING TAX SHELTERS.

(a) IMPOSITION OF PENALTY.—Section 6701(a) (relating to imposition of penalty) is amended to read as follows:

''(a) IMPOSITION OF PENALTIES.—

''(1) IN GENERAL.—Any person—

''(A) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,

''(B) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and

''(C) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person,

shall pay a penalty with respect to each such document in the amount determined under subsection (b).

''(2) CERTAIN TAX SHELTERS.—If—

''(A) any person—

''(i) aids or assists in, procures, or advises with respect to the creation, organization, sale, implementation, management, or reporting of a tax shelter (as defined in section 6662(d)(2)(C)(iii)) or of any entity, plan, arrangement, or transaction that fails to meet the requirements of any rule of law referred to in section 6662(i)(2), and

''(ii) opines, advises, represents, or otherwise indicates (directly or indirectly) that the taxpayer's tax treatment of items attributable to such tax shelter or such entity, plan, arrangement, or transaction and giving rise to an understatement of tax liability would more likely than not prevail or not give rise to a penalty,

''(B) such opinion, advice, representation, or indication is unreasonable,

then such person shall pay a penalty in the amount determined under subsection (b). If a standard higher than the more likely than not standard was used in any such opinion, advice, representation, or indication, then subparagraph (A)(ii) shall be applied as if such standard were substituted for the more likely than not standard.''

(b) AMOUNT OF PENALTY.—Section 6701(b) (relating to amount of penalty) is amended—

(1) by inserting ''or (3)'' after ''paragraph (2)'' in paragraph (1),

(2) by striking ''subsection (a)'' each place it appears and inserting ''subsection (a)(1)'', and

(3) by redesignating paragraph (3) as paragraph (4) and by adding after paragraph (2) the following:

''(3) TAX SHELTERS.—In the case of—

''(A) a penalty imposed by subsection (a)(1) which involves a return, affidavit, claim, or other document relating to a tax shelter or an entity, plan, arrangement, or transaction that fails to meet the requirements of any rule of law referred to in section 6662(i)(2), and

''(B) any penalty imposed by subsection (a)(2),

the amount of the penalty shall be equal to 100 percent of the gross proceeds derived (or to be derived) by the person in connection with the tax shelter or entity, plan, arrangement, or transaction.''

(c) REFERRAL AND PUBLICATION.—If a penalty is imposed under section 6701(a)(2) of the Internal Revenue Code of 1986 (as added by subsection (a)) on any person, the Secretary of the Treasury shall—

(1) notify the Director of Practice of the Internal Revenue Service and any appropriate State licensing authority of the penalty and the circumstances under which it was imposed, and

(2) publish the identity of the person and the fact the penalty was imposed on the person.

(d) CONFORMING AMENDMENTS.—

(1) Section 6701(d) is amended by striking ''Subsection (a)'' and inserting ''Subsection (a)(1)''.

(2) Section 6701(e) is amended by striking ''subsection (a)(1)'' and inserting ''subsection (a)(1)(A)''.

(3) Section 6701(f) is amended by inserting '', tax shelter, or entity, plan, arrangement, or transaction'' after ''document'' each place it appears.

SEC. ___24. FAILURE TO MAINTAIN LISTS.

Section 6708(a) (relating to failure to maintain lists of investors in potentially abusive tax shelters) is amended by adding at the end the following: ''In the case of a tax shelter (as defined in section 6662(d)(2)(C)(iii)) or entity, plan, arrangement, or transaction that fails to meet the requirements of any rule of law referred to in section 6662(i)(2), the penalty shall be equal to 50 percent of the gross proceeds derived (or to be derived) from each person with respect to which there was a failure and the limitation of the preceding sentence shall not apply.''

SEC. ___25. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE TAX SHELTER INFORMATION WITH RETURN.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include with its return of Federal income tax any information required to be included under section 6011 with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b). No penalty shall be imposed on any such failure if it is shown that such failure is due to reasonable cause.

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—The amount of the penalty under subsection (a) shall be equal to the greater of—

''(A) 5 percent of any increase in Federal tax which results from a difference between the taxpayer's treatment (as shown on its return) of items attributable to the reportable transaction to which the failure relates and the proper tax treatment of such items, or

''(B) $100,000.

For purposes of subparagraph (A), the last sentence of section 6664(a) shall apply.

''(2) LISTED TRANSACTION.—If the failure under subsection (a) relates to a reportable transaction which is the same as, or substantially similar to, a transaction specifically

identified by the Secretary as a tax avoidance transaction for purposes of section 6011, paragraph (1)(A) shall be applied by substituting '10 percent' for '5 percent'.

''(c) REPORTABLE TRANSACTION.—For purposes of this section, the term 'reportable transaction' means any transaction with respect to which information is required under section 6011 to be included with a taxpayer's return of tax because, as determined under regulations prescribed under section 6011, such transaction has characteristics which may be indicative of a tax avoidance transaction.

''(d) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under section 6662.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include tax shelter information on return.''

SEC. ___26. REGISTRATION OF CERTAIN TAX SHELTERS WITHOUT CORPORATE PARTICIPANTS.

Section 6111(d)(1)(A) (relating to certain confidential arrangements treated as tax shelters) is amended by striking ''for a direct or indirect participant which is a corporation''.

SEC. ___27. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this part shall apply to transactions after the date of the enactment of this Act.

(b) SECTION ___21.—The amendments made by subsections (b) and (c) of section ___21 shall apply to taxable years ending after the date of the enactment of this Act.

(c) SECTION ___22.—The amendments made by subsection (a) of section ___22 shall apply to any tax avoidance strategy (as defined in section 6700(c) of the Internal Revenue Code of 1986, as amended by this part) interests in which are offered to potential participants after the date of the enactment of this Act.

(d) SECTION ___26.—The amendment made by section ___26 shall apply to any tax shelter interest which is offered to potential participants after the date of the enactment of this Act.

PART III—LIMITATIONS ON IMPORTATION OR TRANSFER OF BUILT-IN LOSSES

SEC. ___31. LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

''(1) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in paragraph (2) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

''(2) PROPERTY DESCRIBED.—For purposes of paragraph (1), property is described in this paragraph if—

''(A) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

''(B) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

''(3) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of paragraph (1), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in paragraph (2) which is transferred in such transaction would (but for this subsection) exceed the fair market value of such property immediately after such transaction.''

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

''(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(2) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after the date of the enactment of this Act.

SEC. ___32. DISALLOWANCE OF PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) if any property so contributed has a built-in loss—

''(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

''(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value immediately after the contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property over its fair market value immediately after the contribution.''

(b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY ON TRANSFER OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period ''or unless the partnership has a substantial built-in loss immediately after such transfer''.

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting ''or with respect to which there is a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BUILT-IN LOSS.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the transferee partner's proportionate share of the adjusted basis of the partnership property exceeds 110 percent of the basis of such partner's interest in the partnership.''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

''SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS.''

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

''Sec. 743. Adjustment to basis of partnership property where section 754 election or substantial built-in loss.''

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period ''or unless there is a substantial basis reduction''.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting ''or unless there is a substantial basis reduction'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BASIS REDUCTION.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds 10 percent of the aggregate adjusted basis of partnership property immediately after the distribution.''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

''SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION.''

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

''Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.''

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (a) shall apply to transfers after the date of the enactment of this Act.

(3) SUBSECTION (c).—The amendments made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

Subtitle B—Reinsurance

SEC. ___41. SHORT TITLE.

This subtitle may be cited as the ''Reinsurance Tax Equity Act of 2002''.

SEC. ___42. PREVENTION OF EVASION OF UNITED STATES INCOME TAX ON NONLIFE INSURANCE COMPANIES THROUGH USE OF REINSURANCE WITH FOREIGN PERSONS.

(a) IN GENERAL.—Subparagraph (A) of section 832(b)(4) (relating to insurance company

taxable income) is amended to read as follows:

''(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance (except as provided in paragraph (9)).''

(b) TREATMENT OF REINSURANCE WITH RELATED REINSURERS.—Subsection (b) of section 832 is amended by adding at the end the following new paragraph:

''(9) DENIAL OF DEDUCTION UNDER PARAGRAPH (4) FOR REINSURANCE OF U.S. RISKS WITH CERTAIN RELATED PERSONS.—

''(A) IN GENERAL.—No deduction shall be allowed under paragraph (4) for premiums paid for the direct or indirect reinsurance of United States risks with a related reinsurer.

''(B) EXCEPTIONS.—This paragraph shall not apply to any premium to the extent that—

''(i) the income attributable to the reinsurance to which such premium relates is includible in the gross income of—

''(I) such reinsurer, or

''(II) 1 or more domestic corporations or citizens or residents of the United States, or

''(ii) the related insurer establishes to the satisfaction of the Secretary that the taxable income (determined in accordance with this section 832) attributable to such reinsurance is subject to an effective rate of income tax imposed by a foreign country at a rate greater than 20 percent of the maximum rate of tax specified in section 11.

''(C) ELECTION BY REINSURER TO BE TAXED ON INCOME.—Income of a related reinsurer attributable to the reinsurance of United States risks which is not otherwise includible in gross income shall be treated as gross income which is effectively connected with the conduct of a trade or business in the United States if such reinsurer—

''(i) elects to so treat such income, and

''(ii) meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such income are paid.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) UNITED STATES RISK.—The term 'United States risk' means any risk related to property in the United States, or liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

''(ii) RELATED INSURER.—The term 'related insurer' means any reinsurer owned or controlled directly or indirectly by the same interests (within the meaning of section 482) as the person making the premium payment.''

(c) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(5) is amended by inserting after clause (iii) the following new clause:

''(iv) To the results so obtained, add reinsurance recovered from a related reinsurer to the extent a deduction for the premium paid for the reinsurance was disallowed under paragraph (9).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to premiums paid after the date that the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate votes to report this bill.

Subtitle C—Corporate Inversions

SEC. ___51. SHORT TITLE.

This subtitle may be cited as the ''Corporate Patriot Enforcement Act of 2002''.

SEC. ___52. PREVENTION OF CORPORATE EXPATRIATION TO AVOID UNITED STATES INCOME TAX.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

''(4) DOMESTIC.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'domestic' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

''(B) CERTAIN CORPORATIONS TREATED AS DOMESTIC.—

''(i) IN GENERAL.—The acquiring corporation in a corporate expatriation transaction shall be treated as a domestic corporation.

''(ii) CORPORATE EXPATRIATION TRANSACTION.—For purposes of this subparagraph, the term 'corporate expatriation transaction' means any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly substantially all of the properties held directly or indirectly by a domestic corporation, and

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation.

''(iii) LOWER STOCK OWNERSHIP REQUIREMENT IN CERTAIN CASES.—Subclause (II) of clause (ii) shall be applied by substituting '50 percent' for '80 percent' with respect to any nominally foreign corporation if—

''(I) such corporation does not have substantial business activities (when compared to the total business activities of the expanded affiliated group) in the foreign country in which or under the law of which the corporation is created or organized, and

''(II) the stock of the corporation is publicly traded and the principal market for the public trading of such stock is in the United States.

''(iv) PARTNERSHIP TRANSACTIONS.—The term 'corporate expatriation transaction' includes any transaction if—

''(I) a nominally foreign corporation (referred to in this subparagraph as the 'acquiring corporation') acquires, as a result of such transaction, directly or indirectly properties constituting a trade or business of a domestic partnership,

''(II) immediately after the transaction, more than 80 percent of the stock (by vote or value) of the acquiring corporation is held by former partners of the domestic partnership (determined without regard to stock of the acquiring corporation which is sold in a public offering related to the transaction), and

''(III) the acquiring corporation meets the requirements of subclauses (I) and (II) of clause (iii).

''(v) SPECIAL RULES.—For purposes of this subparagraph—

''(I) a series of related transactions shall be treated as 1 transaction, and

''(II) stock held by members of the expanded affiliated group which includes the acquiring corporation shall not be taken into account in determining ownership.

''(vi) OTHER DEFINITIONS.—For purposes of this subparagraph—

''(I) NOMINALLY FOREIGN CORPORATION.—The term 'nominally foreign corporation' means any corporation which would (but for this subparagraph) be treated as a foreign corporation.

''(II) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to corporate expatriation transactions completed after September 11, 2001.

(2) SPECIAL RULE.—The amendment made by this section shall also apply to corporate expatriation transactions completed on or before September 11, 2001, but only with respect to taxable years of the acquiring corporation beginning after December 31, 2003.

SA 3320. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 3286 proposed by Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. HATCH, Mr. THOMAS, Mr. HAGEL, and Mrs. CARNAHAN) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''2003'' and inserting ''2012''.

SA 3321. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATIONS TO NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—Subsection (b) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking ''$4,000'' in paragraph (1)(A) and inserting ''$6,000'',

(2) by striking ''$1,000'' in paragraph (2)(A)(i) and inserting ''$2,000'',

(3) by striking ''$1,500'' in paragraph (2)(A)(ii) and inserting ''$2,500'',

(4) by striking ''$2,000'' in paragraph (2)(A)(iii) and inserting ''$3,000'',

(5) by striking ''$2,500'' in paragraph (2)(A)(iv) and inserting ''$3,500'',

(6) by striking ''$3,000'' in paragraph (2)(A)(v) and inserting ''$4,000'',

(7) by striking ''$3,500'' in paragraph (2)(A)(vi) and inserting ''$4,500'',

(8) by striking ''$4,000'' in paragraph (2)(A)(vii) and inserting ''$5,000'', and

(9) by striking the dash and all that follows through ''for 2004'' in paragraph (3)(B) and inserting ''for 2004''.

(b) MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—Subsection (c) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking the table contained in paragraph (2)(A)(i) and inserting the following new table:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 5 percent but less than 10 percent	$500
At least 10 percent but less than 20 percent	$750
At least 20 percent but less than 30 percent	$1,000
At least 30 percent	$1,500.'',

(2) by striking ''$500'' in paragraph (2)(B)(i)(I) and inserting ''$1,000'',
(3) by striking ''$1,000'' in paragraph (2)(B)(i)(II) and inserting ''$1,500'',
(4) by striking ''$1,500'' in paragraph (2)(B)(i)(III) and inserting ''$2,000'',
(5) by striking ''$2,000'' in paragraph (2)(B)(i)(IV) and inserting ''$2,500'',
(6) by striking ''$2,500'' in paragraph (2)(B)(i)(V) and inserting ''$3,000'',
(7) by striking ''$3,000'' in paragraph (2)(B)(i)(VI) and inserting ''$3,500'', and
(8) by striking ''for 2002'' in paragraph (3)(B)(i) and inserting ''for 2003''.

(c) CONFORMING AMENDMENTS FOR VEHICLE CREDITS.—

(1) Section 30B(f)(11)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''September 30, 2002'' and inserting ''the effective date of this section''.

(2) Subsection (h) of section 30B of such Code, as added by this Act, is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle placed in service after December 31, 2003, and purchased before January 1, 2012,

''(2) any new qualified hybrid motor vehicle which is a passenger automobile or a light truck placed in service after December 31, 2002, and purchased before January 1, 2010, and

''(3) any other property placed in service after September 30, 2002, and purchased before January 1, 2007.''.

(d) ADDITIONAL MODIFICATIONS TO CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Section 30 of the Internal Revenue Code of 1986, as amended by this Act, is amended—

(1) by striking ''$3,500'' in subsection (b)(1)(B)(i) and inserting ''$6,000'',
(2) by striking ''$6,000'' in subsection (b)(1)(B)(ii) and inserting ''$9,000'', and
(3) by striking ''2006'' in subsection (e) and inserting ''2007''.

(e) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(f) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(g) EFFECTIVE DATE.—Except as provided in subsection (e)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SA 3322. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATIONS TO NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—Subsection (b) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking ''$4,000'' in paragraph (1)(A) and inserting ''$6,000'',
(2) by striking ''$1,000'' in paragraph (2)(A)(i) and inserting ''$2,000'',
(3) by striking ''$1,500'' in paragraph (2)(A)(ii) and inserting ''$2,500'',
(4) by striking ''$2,000'' in paragraph (2)(A)(iii) and inserting ''$3,000'',
(5) by striking ''$2,500'' in paragraph (2)(A)(iv) and inserting ''$3,500'',
(6) by striking ''$3,000'' in paragraph (2)(A)(v) and inserting ''$4,000'',
(7) by striking ''$3,500'' in paragraph (2)(A)(vi) and inserting ''$4,500'',
(8) by striking ''$4,000'' in paragraph (2)(A)(vii) and inserting ''$5,000'', and
(9) by striking the dash and all that follows through ''for 2004'' in paragraph (3)(B) and inserting ''for 2004''.

(b) MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—Subsection (c) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking the table contained in paragraph (2)(A)(i) and inserting the following new table:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 2.5 percent but less than 5 percent	$250
At least 5 percent but less than 10 percent	$500
At least 10 percent but less than 20 percent	$750
At least 20 percent but less than 30 percent	$1,000
At least 30 percent	$1,500.'',

(2) by striking ''$500'' in paragraph (2)(B)(i)(I) and inserting ''$1,000'',
(3) by striking ''$1,000'' in paragraph (2)(B)(i)(II) and inserting ''$1,500'',
(4) by striking ''$1,500'' in paragraph (2)(B)(i)(III) and inserting ''$2,000'',
(5) by striking ''$2,000'' in paragraph (2)(B)(i)(IV) and inserting ''$2,500'',
(6) by striking ''$2,500'' in paragraph (2)(B)(i)(V) and inserting ''$3,000'',
(7) by striking ''$3,000'' in paragraph (2)(B)(i)(VI) and inserting ''$3,500'', and
(8) by striking ''for 2002'' in paragraph (3)(B)(i) and inserting ''for 2003''.

(c) CONFORMING AMENDMENTS FOR VEHICLE CREDITS.—

(1) Section 30B(f)(11)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''September 30, 2002'' and inserting ''the effective date of this section''.

(2) Subsection (h) of section 30B of such Code, as added by this Act, is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle placed in service after December 31, 2003, and purchased before January 1, 2012,

''(2) any new qualified hybrid motor vehicle which is a passenger automobile or a light truck placed in service after December 31, 2002, and purchased before January 1, 2010, and

''(3) any other property placed in service after September 30, 2002, and purchased before January 1, 2007.''.

(d) ADDITIONAL MODIFICATIONS TO CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Section 30 of the Internal Revenue Code of 1986, as amended by this Act, is amended—

(1) by striking ''$3,500'' in subsection (b)(1)(B)(i) and inserting ''$6,000'',
(2) by striking ''$6,000'' in subsection (b)(1)(B)(ii) and inserting ''$9,000'', and
(3) by striking ''2006'' in subsection (e) and inserting ''2007''.

(e) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(f) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(g) EFFECTIVE DATE.—Except as provided in subsection (e)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SA 3323. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATIONS TO NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—Subsection (b)

of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking ''$4,000'' in paragraph (1)(A) and inserting ''$6,000'',

(2) by striking ''$1,000'' in paragraph (2)(A)(i) and inserting ''$2,000'',

(3) by striking ''$1,500'' in paragraph (2)(A)(ii) and inserting ''$2,500'',

(4) by striking ''$2,000'' in paragraph (2)(A)(iii) and inserting ''$3,000'',

(5) by striking ''$2,500'' in paragraph (2)(A)(iv) and inserting ''$3,500'',

(6) by striking ''$3,000'' in paragraph (2)(A)(v) and inserting ''$4,000'',

(7) by striking ''$3,500'' in paragraph (2)(A)(vi) and inserting ''$4,500'',

(8) by striking ''$4,000'' in paragraph (2)(A)(vii) and inserting ''$5,000'', and

(9) by striking the dash and all that follows through ''for 2004'' in paragraph (3)(B) and inserting ''for 2004''.

(b) MODIFICATIONS TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—Subsection (c) of section 30B of the Internal Revenue Code of 1986, as added by this Act, is amended—

(1) by striking the table contained in paragraph (2)(A)(i) and inserting the following new table:

''If percentage of the maximum available power is:	**The credit amount is:**
At least 4 percent but less than 10 percent	$500
At least 10 percent but less than 20 percent	$750
At least 20 percent but less than 30 percent	$1,000
At least 30 percent	$1,500.'',

(2) by striking ''$500'' in paragraph (2)(B)(i)(I) and inserting ''$1,000'',

(3) by striking ''$1,000'' in paragraph (2)(B)(i)(II) and inserting ''$1,500'',

(4) by striking ''$1,500'' in paragraph (2)(B)(i)(III) and inserting ''$2,000'',

(5) by striking ''$2,000'' in paragraph (2)(B)(i)(IV) and inserting ''$2,500'',

(6) by striking ''$2,500'' in paragraph (2)(B)(i)(V) and inserting ''$3,000'',

(7) by striking ''$3,000'' in paragraph (2)(B)(i)(VI) and inserting ''$3,500'', and

(8) by striking ''for 2002'' in paragraph (3)(B)(i) and inserting ''for 2003''.

(c) CONFORMING AMENDMENTS FOR VEHICLE CREDITS.—

(1) Section 30B(f)(11)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''September 30, 2002'' and inserting ''the effective date of this section''.

(2) Subsection (h) of section 30B of such Code, as added by this Act, is amended to read as follows:

''(h) APPLICATION OF SECTION.—This section shall apply to——

''(1) any new qualified fuel cell motor vehicle placed in service after December 31, 2003, and purchased before January 1, 2012,

''(2) any new qualified hybrid motor vehicle which is a passenger automobile or a light truck placed in service after December 31, 2002, and purchased before January 1, 2010, and

''(3) any other property placed in service after September 30, 2002, and purchased before January 1, 2007.''.

(d) ADDITIONAL MODIFICATIONS TO CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Section 30 of the Internal Revenue Code of 1986, as amended by this Act, is amended—

(1) by striking ''$3,500'' in subsection (b)(1)(B)(i) and inserting ''$6,000'',

(2) by striking ''$6,000'' in subsection (b)(1)(B)(ii) and inserting ''$9,000'', and

(3) by striking ''2006'' in subsection (e) and inserting ''2007''.

(e) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 is amended to read as follows:

''(f) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Worker Assistance Act of 2002, is amended—

(A) by striking ''calendar year 2004'' in clause (i) and inserting ''calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen) '',

(B) by striking ''2005'' in clause (ii) and inserting ''2006 (calendar year 2010 in the case of property relating to hydrogen)'', and

(C) by striking ''2006'' in clause (iii) and inserting ''2007 (calendar year 2011 in the case of property relating to hydrogen)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(f) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

''(l) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2007.''.

(g) EFFECTIVE DATE.—Except as provided in subsection (e)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

SA 3324. Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. CHAFEE, and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 3239 submitted by Mr. BROWNBACK (for himself, Mr. CORZINE, Mr. LIEBERMAN, Mr. MCCAIN, Mr. JEFFORDS, Mr. CHAFEE, Mr. NELSON of Nebraska, and Mr. REID) and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the title heading and insert the following:

SEC. 1101. PURPOSE.

The purpose of this title is to establish a greenhouse gas inventory, reductions registry, and information system that—

(1) are complete, consistent, transparent, and accurate;

(2) will create reliable and accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and

(3) will acknowledge and encourage greenhouse gas emission reductions.

SEC. 1102. DEFINITIONS.

In this title:

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

(2) BASELINE.—The term ''baseline'' means the historic greenhouse gas emission levels of an entity, as adjusted upward by the designated agency to reflect actual reductions that are verified in accordance with—

(A) regulations promulgated under section 1104(c)(1); and

(B) relevant standards and methods developed under this title.

(3) DATABASE.—The term ''database'' means the National Greenhouse Gas Database established under section 1104.

(4) DESIGNATED AGENCY.—The term ''designated agency'' means a department or agency to which responsibility for a function or program is assigned under the memorandum of agreement entered into under section 1103(a).

(5) DIRECT EMISSIONS.—The term ''direct emissions'' means greenhouse gas emissions by an entity from a facility that is owned or controlled by that entity.

(6) ENTITY.—The term ''entity'' means—

(A) a person located in the United States; or

(B) a public or private entity, to the extent that the entity operates in the United States.

(7) FACILITY.—The term ''facility'' means—

(A) all buildings, structures, or installations located on any 1 or more contiguous or adjacent properties of an entity in the United States; and

(B) a fleet of 20 or more motor vehicles under the common control of an entity.

(8) GREENHOUSE GAS.—The term ''greenhouse gas'' means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons;

(F) sulfur hexafluoride; and

(G) any other anthropogenic climate-forcing emissions with significant ascertainable global warming potential, as—

(i) recommended by the National Academy of Sciences under section 1107(b)(3); and

(ii) determined in regulations promulgated under section 1104(c)(1) (or revisions to the regulations) to be appropriate and practicable for coverage under this title.

(9) INDIRECT EMISSIONS.—The term ''indirect emissions'' means greenhouse gas emissions that—

(A) are a result of the activities of an entity; but

(B)(i) are emitted from a facility owned or controlled by another entity; and

(ii) are not reported as direct emissions by the entity the activities of which resulted in the emissions.

(10) REGISTRY.—The term ''registry'' means the registry of greenhouse gas emission reductions established as a component of the database under section 1104(b)(2).

(11) SEQUESTRATION.—

(A) IN GENERAL.—The term ''sequestration'' means the capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere.

(B) INCLUSIONS.—The term ''sequestration'' includes—

(i) soil carbon sequestration;

(ii) agricultural and conservation practices;

(iii) reforestation;

(iv) forest preservation;

(v) maintenance of an underground reservoir; and

(vi) any other appropriate biological or geological method of capture, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator.

SEC. 1103. ESTABLISHMENT OF MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall direct the Secretary of Energy, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Transportation,

and the Administrator to enter into a memorandum of agreement under which those heads of Federal agencies will—

(1) recognize and maintain statutory and regulatory authorities, functions, and programs that—

(A) are established as of the date of enactment of this Act under other law;

(B) provide for the collection of data relating to greenhouse gas emissions and effects; and

(C) are necessary for the operation of the database;

(2)(A) distribute additional responsibilities and activities identified under this title to Federal departments or agencies in accordance with the missions and expertise of those departments and agencies; and

(B) maximize the use of available resources of those departments and agencies; and

(3) provide for the comprehensive collection and analysis of data on greenhouse gas emissions relating to product use (including the use of fossil fuels and energy-consuming appliances and vehicles).

(b) MINIMUM REQUIREMENTS.—The memorandum of agreement entered into under subsection (a) shall, at a minimum, retain the following functions for the designated agencies:

(1) DEPARTMENT OF ENERGY.—The Secretary of Energy shall be primarily responsible for developing, maintaining, and verifying the registry and the emission reductions reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)).

(2) DEPARTMENT OF COMMERCE.—The Secretary of Commerce shall be primarily responsible for the development of—

(A) measurement standards for the monitoring of emissions; and

(B) verification technologies and methods to ensure the maintenance of a consistent and technically accurate record of emissions, emission reductions, and atmospheric concentrations of greenhouse gases for the database.

(3) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator shall be primarily responsible for—

(A) emissions monitoring, measurement, verification, and data collection under this title and title IV (relating to acid deposition control) and title VIII of the Clean Air Act (42 U.S.C. 7651 et seq.), including mobile source emissions information from implementation of the corporate average fuel economy program under chapter 329 of title 49, United States Code; and

(B) responsibilities of the Environmental Protection Agency relating to completion of the national inventory for compliance with the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992.

(4) DEPARTMENT OF AGRICULTURE.—The Secretary of Agriculture shall be primarily responsible for—

(A) developing measurement techniques for—

(i) soil carbon sequestration; and

(ii) forest preservation and reforestation activities; and

(B) providing technical advice relating to biological carbon sequestration measurement and verification standards for measuring greenhouse gas emission reductions or offsets.

(c) DRAFT MEMORANDUM OF AGREEMENT.—Not later than 15 months after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall publish in the Federal Register, and solicit comments on, a draft version of the memorandum of agreement described in subsection (a).

(d) NO JUDICIAL REVIEW.—The final version of the memorandum of agreement shall not be subject to judicial review.

SEC. 1104. NATIONAL GREENHOUSE GAS DATABASE.

(a) ESTABLISHMENT.—As soon as practicable after the date of enactment of this Act, the designated agencies, in consultation with the private sector and nongovernmental organizations, shall jointly establish, operate, and maintain a database, to be known as the ''National Greenhouse Gas Database'', to collect, verify, and analyze information on greenhouse gas emissions by entities.

(b) NATIONAL GREENHOUSE GAS DATABASE COMPONENTS.—The database shall consist of—

(1) an inventory of greenhouse gas emissions; and

(2) a registry of greenhouse gas emission reductions.

(c) COMPREHENSIVE SYSTEM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the designated agencies shall jointly promulgate regulations to implement a comprehensive system for greenhouse gas emissions reporting, inventorying, and reductions registration.

(2) REQUIREMENTS.—The designated agencies shall ensure, to the maximum extent practicable, that—

(A) the comprehensive system described in paragraph (1) is designed to—

(i) maximize completeness, transparency, and accuracy of information reported; and

(ii) minimize costs incurred by entities in measuring and reporting greenhouse gas emissions; and

(B) the regulations promulgated under paragraph (1) establish procedures and protocols necessary—

(i) to prevent the reporting of some or all of the same greenhouse gas emissions or emission reductions by more than 1 reporting entity;

(ii) to provide for corrections to errors in data submitted to the database;

(iii) to provide for adjustment to data by reporting entities that have had a significant organizational change (including mergers, acquisitions, and divestiture), in order to maintain comparability among data in the database over time;

(iv) to provide for adjustments to reflect new technologies or methods for measuring or calculating greenhouse gas emissions; and

(v) to account for changes in registration of ownership of emission reductions resulting from a voluntary private transaction between reporting entities.

SEC. 1105. GREENHOUSE GAS REDUCTION REPORTING.

(a) IN GENERAL.—An entity that participates in the registry shall meet the requirements described in subsection (b).

(b) REQUIREMENTS.—

(1) IN GENERAL.—The requirements referred to in subsection (a) are that an entity (other than an entity described in paragraph (2)) shall—

(A) establish a baseline (including all of the entity's greenhouse gas emissions on an entity-wide basis); and

(B) submit the report described in subsection (c)(1).

(2) REQUIREMENTS APPLICABLE TO ENTITIES ENTERING INTO CERTAIN AGREEMENTS.—An entity that enters into an agreement with a participant in the registry for the purpose of a carbon sequestration project shall not be required to comply with the requirements specified in paragraph (1) unless that entity is required to comply with the requirements by reason of an activity other than the agreement.

(c) REPORTS.—

(1) REQUIRED REPORT.—Not later than April 1 of the third calendar year that begins after the date of enactment of this Act, and not later than April 1 of each calendar year thereafter, subject to paragraph (3), an entity described in subsection (a) shall submit to each appropriate designated agency a report that describes, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the emissions from products manufactured and sold by the entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the designated agency determines in the regulations promulgated under section 1104(c)(1) may be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases.

(2) VOLUNTARY REPORTING.—An entity described in subsection (a) may (along with establishing a baseline and reporting reductions under this section)—

(A) submit a report described in paragraph (1) before the date specified in that paragraph for the purposes of achieving and commoditizing greenhouse gas reductions through use of the registry; and

(B) submit to any designated agency, for inclusion in the registry, information that has been verified in accordance with regulations promulgated under section 1104(c)(1) and that relates to—

(i) with respect to the calendar year preceding the calendar year in which the information is submitted, and with respect to any greenhouse gas emitted by the entity—

(I) project reductions from facilities owned or controlled by the reporting entity in the United States;

(II) transfers of project reductions to and from any other entity;

(III) project reductions and transfers of project reductions outside the United States;

(IV) other indirect emissions that are not required to be reported under paragraph (1); and

(V) product use phase emissions;

(ii) with respect to greenhouse gas emission reductions activities of the entity that have been carried out during or after 1990, verified in accordance with regulations promulgated under section 1104(c)(1), and submitted to 1 or more designated agencies before the date that is 4 years after the date of enactment of this Act, any greenhouse gas emission reductions that have been reported or submitted by an entity under—

(I) section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

(II) any other Federal or State voluntary greenhouse gas reduction program; and

(iii) any project or activity for the reduction of greenhouse gas emissions or sequestration of a greenhouse gas that is carried out by the entity, including a project or activity relating to—

(I) fuel switching;

(II) energy efficiency improvements;

(III) use of renewable energy;

(IV) use of combined heat and power systems;

(V) management of cropland, grassland, or grazing land;

(VI) a forestry activity that increases forest carbon stocks or reduces forest carbon emissions;

(VII) carbon capture and storage;

(VIII) methane recovery;

(IX) greenhouse gas offset investment; and

(X) any other practice for achieving greenhouse gas reductions as recognized by 1 or more designated agencies.

(3) EXEMPTIONS FROM REPORTING.—

(A) IN GENERAL.—If the Director of the Office of National Climate Change Policy determines under section 1108(b) that the reporting requirements under paragraph (1) shall apply to all entities (other than entities exempted by this paragraph), regardless of participation or nonparticipation in the registry, an entity shall be required to submit reports under paragraph (1) only if, in any calendar year after the date of enactment of this Act—

(i) the total greenhouse gas emissions of at least 1 facility owned by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); or

(ii)(I) the total quantity of greenhouse gases produced, distributed, or imported by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); and

(II) the entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(B) ENTITIES ALREADY REPORTING.—

(i) IN GENERAL.—An entity that, as of the date of enactment of this Act, is required to report carbon dioxide emissions data to a Federal agency shall not be required to re-report that data for the purposes of this title.

(ii) REVIEW OF PARTICIPATION.—For the purpose of section 1108, emissions reported under clause (i) shall be considered to be reported by the entity to the registry.

(4) PROVISION OF VERIFICATION INFORMATION BY REPORTING ENTITIES.—Each entity that submits a report under this subsection shall provide information sufficient for each designated agency to which the report is submitted to verify, in accordance with measurement and verification methods and standards developed under section 1106, that the greenhouse gas report of the reporting entity—

(A) has been accurately reported; and

(B) in the case of each voluntary report under paragraph (2), represents—

(i) actual reductions in direct greenhouse gas emissions—

(I) relative to historic emission levels of the entity; and

(II) net of any increases in—

(aa) direct emissions; and

(bb) indirect emissions described in paragraph (1)(C)(ii); or

(ii) actual increases in net sequestration.

(5) FAILURE TO SUBMIT REPORT.—An entity that participates or has participated in the registry and that fails to submit a report required under this subsection shall be prohibited from including emission reductions reported to the registry in the calculation of the baseline of the entity in future years.

(6) INDEPENDENT THIRD-PARTY VERIFICATION.—To meet the requirements of this section and section 1106, a entity that is required to submit a report under this section may—

(A) obtain independent third-party verification; and

(B) present the results of the third-party verification to each appropriate designated agency.

(7) AVAILABILITY OF DATA.—

(A) IN GENERAL.—The designated agencies shall ensure, to the maximum extent practicable, that information in the database is—

(i) published;

(ii) accessible to the public; and

(iii) made available in electronic format on the Internet.

(B) EXCEPTION.—Subparagraph (A) shall not apply in any case in which the designated agencies determine that publishing or otherwise making available information described in that subparagraph poses a risk to national security.

(8) DATA INFRASTRUCTURE.—The designated agencies shall ensure, to the maximum extent practicable, that the database uses, and is integrated with, Federal, State, and regional greenhouse gas data collection and reporting systems in effect as of the date of enactment of this Act.

(9) ADDITIONAL ISSUES TO BE CONSIDERED.—In promulgating the regulations under section 1104(c)(1) and implementing the database, the designated agencies shall take into consideration a broad range of issues involved in establishing an effective database, including—

(A) the appropriate units for reporting each greenhouse gas;

(B) the data and information systems and measures necessary to identify, track, and verify greenhouse gas emission reductions in a manner that will encourage the development of private sector trading and exchanges;

(C) the greenhouse gas reduction and sequestration methods and standards applied in other countries, as applicable or relevant;

(D) the extent to which available fossil fuels, greenhouse gas emissions, and greenhouse gas production and importation data are adequate to implement the database;

(E) the differences in, and potential uniqueness of, the facilities, operations, and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry; and

(F) the need of the registry to maintain valid and reliable information on baselines of entities so that, in the event of any future action by Congress to require entities, individually or collectively, to reduce greenhouse gas emissions, Congress will be able—

(i) to take into account that information; and

(ii) to avoid enacting legislation that penalizes entities for achieving and reporting reductions.

(d) ANNUAL REPORT.—The designated agencies shall jointly publish an annual report that—

(1) describes the total greenhouse gas emissions and emission reductions reported to the database during the year covered by the report;

(2) provides entity-by-entity and sector-by-sector analyses of the emissions and emission reductions reported;

(3) describes the atmospheric concentrations of greenhouse gases; and

(4) provides a comparison of current and past atmospheric concentrations of greenhouse gases.

(e) CONFIDENTIALITY OF REPORTS.—

(1) IN GENERAL.—Subject to section 552 of title 5, United States Code, information collected and maintained in the database by a designated agency shall be made available to the public.

(2) EXCEPTION.—Notwithstanding paragraph (1), a designated agency shall not disclose information obtained under this section directly or indirectly from an entity, if such information would, upon being made public, disclose—

(A) a trade secret; or

(B) other proprietary information of the entity.

(3) DISCLOSURE FOR VALIDITY.—Notwithstanding paragraph (2), proprietary information shall be made available to the public if 1 or more of the designated agencies determine that disclosure of the information is necessary to determine the validity of emission reductions that have been—

(A) recorded in the registry; and

(B) transferred or traded based on value created through recording in the registry.

SEC. 1106. MEASUREMENT AND VERIFICATION.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the designated agencies shall jointly develop comprehensive measurement and verification methods and standards to ensure a consistent and technically accurate record of greenhouse gas emissions, emission reductions, sequestration, and atmospheric concentrations for use in the registry.

(2) REQUIREMENTS.—The methods and standards developed under paragraph (1) shall address the need for—

(A) standardized measurement and verification practices for reports made by all entities participating in the registry, taking into account—

(i) protocols and standards in use by entities desiring to participate in the registry as of the date of development of the methods and standards under paragraph (1);

(ii) boundary issues, such as leakage and shifted use;

(iii) avoidance of double counting of greenhouse gas emissions and emission reductions; and

(iv) such other factors as the designated agencies determine to be appropriate;

(B) measurement and verification of actions taken to reduce, avoid, or sequester greenhouse gas emissions;

(C) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(i) organic soil carbon sequestration practices; and

(ii) forest preservation and reforestation activities that adequately address the issues of permanence, leakage, and verification;

(D) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, the Administrator, and the Secretary of Energy determine to be appropriate; and

(E) other factors that, as determined by the designated agencies, will allow entities to adequately establish a fair and reliable measurement and reporting system.

(b) REVIEW AND REVISION.—The designated agencies shall periodically review, and revise as necessary, the methods and standards developed under subsection (a).

(c) PUBLIC PARTICIPATION.—The Secretary of Commerce shall—

(1) make available to the public for comment, in draft form and for a period of at least 90 days, the methods and standards developed under subsection (a); and

(2) after the 90-day period referred to in paragraph (1), in coordination with the Secretary of Energy, the Secretary of Agriculture, and the Administrator, adopt the methods and standards developed under subsection (a) for use in implementing the database.

(d) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—The designated agencies may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emission trading.

(2) AVAILABLE ARRANGEMENTS.—In obtaining any service described in paragraph (1), the designated agencies may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

SEC. 1107. INDEPENDENT REVIEWS.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report that—

(1) describes the efficacy of the implementation and operation of the database; and

(2) includes any recommendations for improvements to this title and programs carried out under this title—

(A) to achieve a consistent and technically accurate record of greenhouse gas emissions, emission reductions, and atmospheric concentrations; and

(B) to achieve the purposes of this title.

(b) REVIEW OF SCIENTIFIC METHODS.—The designated agencies shall enter into an agreement with the National Academy of Sciences under which the National Academy of Sciences shall—

(1) review the scientific methods, assumptions, and standards used by the designated agencies in implementing this title;

(2) not later than 4 years after the date of enactment of this Act, submit to Congress a report that describes any recommendations for improving—

(A) those methods and standards; and

(B) related elements of the programs, and structure of the database, established by this title; and

(3) regularly review and update as appropriate the list of anthropogenic climate-forcing emissions with significant global warming potential described in section 1102(8)(G).

SEC. 1108. REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry under section 1105(c)(1) represent less than 60 percent of the national aggregate anthropogenic greenhouse gas emissions.

(b) INCREASED APPLICABILITY OF REQUIREMENTS.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of the aggregate national anthropogenic greenhouse gas emissions are being reported to the registry—

(1) the reporting requirements under section 1105(c)(1) shall apply to all entities (except entities exempted under section 1105(c)(3)), regardless of any participation or nonparticipation by the entities in the registry; and

(2) each entity shall submit a report described in section 1105(c)(1)—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) RESOLUTION OF DISAPPROVAL.—For the purposes of this section, the determination of the Director of the Office of National Climate Change Policy under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

SEC. 1109. ENFORCEMENT.

If an entity that is required to report greenhouse gas emissions under section 1105(c)(1) or 1108 fails to comply with that requirement, the Attorney General may, at the request of the designated agencies, bring a civil action in United States district court against the entity to impose on the entity a civil penalty of not more than $25,000 for each day for which the entity fails to comply with that requirement.

SEC. 1110. REPORT ON STATUTORY CHANGES AND HARMONIZATION.

Not later than 3 years after the date of enactment of this Act, the President shall submit to Congress a report that describes any modifications to this title or any other provision of law that are necessary to improve the accuracy or operation of the database and related programs under this title.

SEC. 1111. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SA 3325. Mr. SHELBY (for himself, Mr. AKAKA, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 205, between lines 8 and 9, insert the following:

(f) ESTABLISHMENT OF A PROGRAM FOR THE PRODUCTION OF FUEL ETHANOL FROM MUNICIPAL SOLID WASTE.—

(1) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(2) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program that promotes expedited construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol to supplement fossil fuel.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out programs that promote expedited construction * * *.

(4) REQUIREMENTS.—The Secretary may provide a loan guarantee under paragraph (2) to an applicant if—

(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in paragraph (2);

(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(5) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(A) meet all applicable Federal and State permitting requirements;

(B) are most likely to be successful; and

(C) are located in local markets that have the greatest need for the facility because of—

(i) the limited availability of land for waste disposal; or

(ii) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(6) MATURITY.—A loan guaranteed under paragraph (2) shall have a maturity of not more than 20 years.

(7) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under paragraph (2) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(8) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under paragraph (2) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(9) GUARANTEE FEE.—The recipient of a loan guarantee under paragraph (2) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(10) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(11) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to the Congress a report on the activities of the Secretary under this section.

(12) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under paragraph (2) terminates on the date that is 10 years after the date of enactment of this Act.

SA 3326. Mrs. MURRAY (for herself and Ms. CANTWELL) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 103, line 19, strike all through page 104, line 7, and insert the following:

''(i) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

''(ii) has an electricity-only generation efficiency greater than 30 percent.

''(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, or

''(ii) $500 for each 0.5 kilowatt of capacity of such property.

SA 3327. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes; as follows:

On page ____, insert between lines ____ and ____ the following:

(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

(i) the operations of Federal agencies;

(ii) funds appropriated on an annual basis;

(iii) employee relations and other human capital matters;

(iv) settlements; and

(v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

SA 3328. Mr. REID (for Mr. THOMPSON) proposed an amendment to the bill H.R. 169, to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes; as follows:

On page ____, insert between lines ____ and ____ the following:

(c) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95–563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Attorney General.

SA 3329. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 68, line 22, strike all through page 72, line 19, and insert:

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2009.''.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year beginning before January 1, 2003.''.

(B) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(C) Section 6501(m), as amended by this Act, is amended by inserting ''40B(e),'' after ''40(f),''.

(D) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2002.

(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL MIXTURES.—

(1) IN GENERAL.—Section 4081 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

''(f) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

''(2) TAX PRIOR TO MIXING.—

''(A) IN GENERAL.—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

''(B) DETERMINATION OF RATE.—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a percentage equal to 100 percent minus the percentage of biodiesel which will be in the mixture.

''(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 is amended by adding at the end the following new subsection:

''(n) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40B(b)(2)), the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)).''.

(B) Section 6427 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) BIODIESEL MIXTURES.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40B(b)(2)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)) with respect to such fuel.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2010.

SA 3330. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 68, line 22, strike all through page 72, line 19, and insert:

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2007.''.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', plus'', and by adding at the end the following new paragraph:

''(17) the biodiesel fuels credit determined under section 40B(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year beginning before January 1, 2003.''.

(B) Section 196(c) is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40B(a).''.

(C) Section 6501(m), as amended by this Act, is amended by inserting ''40B(e),'' after ''40(f),''.

(D) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

''Sec. 40B. Biodiesel used as fuel.''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2002.

(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL MIXTURES.—

(1) IN GENERAL.—Section 4081 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

''(f) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

''(2) TAX PRIOR TO MIXING.—

''(A) IN GENERAL.—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

''(B) DETERMINATION OF RATE.—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a percentage equal to 100 percent minus the percentage of biodiesel which will be in the mixture.

''(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 is amended by adding at the end the following new subsection:

''(n) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40B(b)(2)), the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)).''.

(B) Section 6427 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) BIODIESEL MIXTURES.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40B(b)(2)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)) with respect to such fuel.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2008.

SA 3331. Mr. HARKIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself, and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 50, strike lines 23 and 24, and insert the following:

''(1) TERMINATION.—This section shall not apply to any property placed in service—

''(1) in the case of property relating to hydrogen, after December 31, 2011, and

''(2) in the case of any other property, after December 31, 2006.''.

(b) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, April 24, 2002, at 10 a.m., in room 485 of the Russell Senate Office Building to conduct a hearing on S. 2017, a bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Tuesday, April 30, 2002, at 9:30 a.m., in room 428A of the Russell Senate Office Building to conduct a joint hearing with the Senate Small Business Committee on ''Small Business Development in Native American Communities: Is the Federal Government Meeting Its Obligations?''

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, April 23, 2002, at 10 a.m., to conduct an oversight hearing on ''The Federal Deposit Insurance System and Recommendations for Reform.''

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, April 23, 2002, at 9:30 a.m. on ''Generic Pharmaceuticals: Marketplace Access and Consumer Issues''.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, April 23, 2002, at 10:15 a.m., to hold a hearing titled, ''Increasing out Nonproliferation Efforts in the Former Soviet Union.''

Agenda

Witnesses

Panel 1: The Honorable William S. Cohen, Former Secretary of Defense, Chairman and Chief Executive Officer, The Cohen Group, Washington, DC.

Panel 2: Dr. Siegfried S. Hecker, Senior Fellow, Los Alamos National Laboratory, Los Alamos, NM, and Dr. Constantine C. Menges, Senior Fellow, the Hudson Institute, Washington, DC.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, April 23, 2002, immediately following the first rollcall vote of the day for a business meeting to consider the nomination of Paul A. Quander, Jr., to be Director of the District of Columbia Court Services and Offender Supervision Agency.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on ''Implementation of ESEA: Status and Key issues'' during the session of the Senate on Tuesday, April 23, 2002, at 2:30 p.m.

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

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS AND COMPETITION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Antitrust, Business Rights and Competition, be authorized to meet to conduct a hearing on ''Dominance on the Ground: Cable Competition and the ATT-Comcast Merger,'' on Tuesday, April, 23, 2002, at 2 p.m., in SD–226.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENTAL MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA

Mr. REID. Mr. President I ask unanimous consent that the Committee on governmental Affairs, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia, be authorized to meet on Tuesday, April 23, 2002, at 10 p.m., for a hearing to examine ''The Economic Implications of the Human Capital Crisis.''

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

SUBCOMMITTEE ON PUBLIC HEALTH

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Public Health,