with distinction on the Federal District Court for the Central District of California. After reviewing Mr. Walter's distinguished legal career, I have no doubt that he will be an asset to the Federal bench.

Mr. Walter's solid experience in private practice and government service deserves attention here. Upon graduation from Loyola University of Los Angeles School of Law in 1969, Mr. Walter joined the Los Angeles, CA, firm of Kindel & Anderson as a civil litigation associate. Mr. Walter later served as an assistant U.S. Attorney in the Criminal Division's Fraud and Special prosecutions Unit, where he prosecuted numerous Federal criminal cases, including the then-largest bank burglary in the United States. He returned to Kindel & Anderson in 1972 and remained there as a civil litigator until 1976. Since that time, Mr. Walter has been a partner at the Los Angeles firm of Walter, Finestone & Richter.

Mr. Walter exemplifies an attorney who gives back to the community. As a member of the Federal Indigent Defense Panel, Mr. Walter has represented more than 75 indigent defendants charged with federal crimes in Federal court and devoted thousands of pro bono hours to these cases. He has served as a judge pro tempore in the Santa Monica Municipal Court and as an arbitrator for the L.A. Superior Court Judicial Arbitration Program. He provides approximately 75 to 100 hours a year in the latter position.

I am very proud of this nominee, and I know he will make a great judge.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Resumed

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A 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.

Pending:

Daschle/Bingaman further modified amendment No. 2917 in the nature of a substitute.

Murkowski/Breaux/Stevens amendment No. 3132 (to amendment No. 2917) to create jobs for Americans, to reduce dependence on foreign sources of crude oil and energy, to strengthen the economic self-determination of the Inupiat Eskimos, and to promote national security.

Feinstein amendment No. 3225 (to amendment No. 2917) to modify the provision relating to the renewable content of motor vehicle fuel to eliminate the required volume of renewable fuel for calendar year 2004.

Feinstein amendment No. 3170 (to amendment No. 2917) to reduce the period of time in which the Administrator may act on a petition by one or more States to waive the renewable fuel content requirement.

Durbin amendment No. 3342 (to amendment No. 2917) to strike the nonbusiness use limitation with respect to the credit for the installation of certain small wind energy systems.

Harkin amendment No. 3195 (to amendment No. 2917) to direct the Secretary of Energy to revise the seasonal energy efficiency ratio standard for central air-conditioners and central air-conditioning heat pumps within 60 days.

Carper amendment No. 3198 (to amendment No. 2917) to decrease the U.S. dependence on imported oil by the year 2015.

Reid (for Bingaman) amendment No. 3359 (to amendment No. 2917) to modify the credit for new energy-efficient homes by treating a manufactured home which meets the energy star standard as a 30-percent home.

Reid (for Boxer) amendment No. 3139 (to amendment No. 2917) to provide for equal liability treatment of vehicle fuels and fuel additives.

Reid (for Boxer) amendment No. 3311 (to amendment No. 3139) to provide for equal liability treatment of vehicle fuels and fuel additives.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 3311

Mrs. BOXER. Mr. President, I understand that under the unanimous consent agreement, I am to call up my amendment No. 3311 at this time.

The PRESIDING OFFICER. That amendment is already pending.

Mrs. BOXER. Mr. President, I would like the clerk to read the amendment, and after that I am going to yield briefly, without the time coming off my time, to several colleagues who want to lay down some amendments; also, that I would not lose my right to the floor, as they will make clear when they speak.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The senior assistant bill clerk read 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.''

Mrs. BOXER. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mrs. BOXER. Mr. President, now I will be happy to yield, with the understanding I will not lose my right to the floor, to several of my colleagues.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, will the Senator from California yield for a unanimous consent request?

Mrs. BOXER. I will be happy to yield.

AMENDMENT NO. 3326 TO AMENDMENT NO. 2917

Mrs. MURRAY. Mr. President, I ask unanimous consent that the pending amendment be set aside and amendment No. 3326 be called up, and that immediately after it is reported, it be laid aside and the Senate resume consideration of Senator BOXER's amendment No. 3311.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for herself and Ms. CANTWELL, proposes an amendment numbered 3326 to amendment No. 2917.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the specifications for a fuel cell power plant eligible for the extension of the energy tax credit)

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.''

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the pending amendment be set aside and amendments Nos. 3370 and 3372 be brought up, and that immediately after they are reported, they be laid aside and the Senate resume consideration of Senator BOXER's amendment No. 3311.

The PRESIDING OFFICER. Is there objection?

The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, we have a problem. We are not going to be able to finish this bill. We have a number of Senators in the queue waiting to call up their amendments. I am concerned, and I would like to discuss this matter a little further. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have the floor. Does the Senator object?

Mr. MURKOWSKI. The Senator does object.

The PRESIDING OFFICER. Objection is heard.

The Senator from California.

Mrs. BOXER. Mr. President, I tell my friend, under the UC agreement, I have agreed to yield—and, of course, Senators have the right to object, but I agreed to yield next to Senator CORZINE and then Senator DORGAN, and then I go back to my amendment and we get this done. I wanted to be congenial to my colleagues because they have done that for me in the past.

Mr. KYL. Will the Senator from California yield?

Mr. MURKOWSKI. Reserving the right to object. I have already objected. I had understood Senator BOXER was going to be next, although previous conversation indicated Senator MURRAY was going to be next. We have been going back and forth, and we want to continue going back and forth. Senator KYL is prepared to go.

My concern is we are going to run out of time, and we want to accommodate Senators, but as we put new Senators into the queue, we are going to run into a situation with the finance aspect of this legislation, on which I am sure Senator BAUCUS wants a reasonable amount of time. We are going to have to come up with some solution.

I want to accommodate my friend from Florida. I wonder if he will give us a few moments to try to work this out. If I may propose a unanimous consent request that the Senator from California may speak on her amendment now while we try to work this out.

Mrs. BOXER. Mr. President, we already have a unanimous consent agreement. I think it would be wise of my colleagues just simply not to interrupt and to have a conversation with the Senator from Alaska while I begin.

Mr. MURKOWSKI. I am concerned about the time element involved with each Senator. I understand the Senator from California wants to speak for about an hour.

Mrs. BOXER. No, I do not want to speak for about an hour. I want to argue this, and I have 50 minutes remaining on my time. Other Senators want to speak, if they come. I am not interested in stalling.

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Florida?

Mrs. BOXER. I am delighted to yield to my friend, assuming we go right back to this amendment as we originally intended in our UC agreement; is that correct, that is what will happen under the UC agreement?

The PRESIDING OFFICER. Under the unanimous consent agreement, the Senator from California was to yield to several Senators without losing her right to the floor.

Mrs. BOXER. Mr. President, I yield to my friend from Florida or my friend from Nevada, whomever.

Mr. REID. Will the Senator yield to me without losing her right to the floor?

Mrs. BOXER. I will be happy to yield without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. It seems what we should do is what the Senator from Alaska suggested. The Senator from California should speak on her amendment, and in the meantime, while she is doing that, we will try to work out some process for these amendments to go forward. We are using a lot of time on the bill that this afternoon will be vitally needed. There are important tax measures, as the Senator from Alaska indicated, that should take a bit of discussion. There are other matters that may not take much time. But the tax matters, in my brief review of them, are fairly complicated.

That is my suggestion: The Senator from California should go ahead and complete her statement and, in the meantime, we will try to work out the way the other amendments can come forward.

Mr. SCHUMER. Will the Senator from California yield?

Mrs. BOXER. I will be happy to yield for a question.

Mr. SCHUMER. I wish to speak on the amendment of the Senator from California. I do not want anything to get in the way of others who wish to speak to that amendment right after her.

Mr. REID. I respond through the Chair to the Senator from New York, that is my suggestion: We get debate done on the Boxer amendment. In the meantime, we have a number of people—Senator CORZINE and Senator KYL are here—there are a number of people, including Senators DORGAN and GRAHAM, who have amendments to offer, and we will try to work our way through those. That is my suggestion.

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. MURKOWSKI. I wonder if the Senator will yield for a point.

Mrs. BOXER. Yes.

Mr. MURKOWSKI. What we are really trying to do is proceed without basically having the exposure of Senators yielding to other Senators to offer amendments as opposed to other Senators wanting to speak on behalf of an amendment offered. I think Senator BINGAMAN will agree that is all we are trying to do.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, this has been an interesting beginning to my amendment. I am looking forward to getting to it, which I am going to do right now. I want to clarify that the time that was used did not come off my 51 minutes, which is what I said in my UC request when I began: That none of the time would come off the time I have.

The PRESIDING OFFICER. That was not the Chair's understanding. But without objection, it is so ordered.

Mrs. BOXER. I thank the Chair. I did say it, but it may have been lost in the shuffle.

AMENDMENT NO. 3311

Mrs. BOXER. Mr. President, there is an extraordinary thing about the bill we are debating. For the first time in history, makers of a product are being given a waiver of all liability essentially, if something in that product goes wrong in the future. For anyone who cares about consumers and communities, this is a terrible situation because we do not know what is going to happen with ethanol.

Now, I am not in the least bit hostile to ethanol. I think it is an exciting possibility that we can help our farmers and we can have a good additive that cleans the air. I know it opens up an opportunity, for example, for my rice growers that they can make ethanol from rice. So I am not at all hostile. In fact, most of my friends know, in the pro-ethanol caucus, as I call them, that I am the one who led the fight to ban MTBE because it is so damaging to the water supply.

What concerns me is giving the makers of this product carte blanche to walk away if in the future we find out there is a problem.

When I brought this issue up to the ethanol folks in the Senate, they said: Well, Senator, we are mandating ethanol in this bill and, therefore, if the Government is mandating ethanol, then we should give them a waiver from being held accountable if something goes wrong.

That reasoning is faulty and it is not borne out by the way we do business in this country. For example, we mandate that there be seatbelts in all cars, but we do not exempt car companies from being held accountable if they make a defective seatbelt. They are held accountable. We mandated seatbelts, but they are held accountable for the safety of the product.

We mandated that there be airbags in all cars, but we do not exempt car companies from being held accountable if there is a defective airbag.

We mandated that all mammographer machines meet certain safety standards. Even though we had a mandate that they meet certain standards in terms of the radiation that can leak from them, we did not say they cannot be held accountable.

In the 1990 Clean Air Act, we mandated that either MTBE or ethanol be used in gasoline, but neither was let off the hook for any damage they caused.

So the first argument that the Government is mandating this so there should be no liability for the people who make ethanol does not hold up.

The second time I came back and made the argument, I was told: In the bill, the Government will pick up all costs if there is a problem.

So I said, that is interesting. So my wonderful staff went back and read every page of the bill. They could not find anyplace in the bill where the Government picks up the tab. So they spoke to everyone they could and said, well, did we miss something? There is nothing in the bill that says the liability will be shifted from the people who make the product to the Federal Government.

I have scratched my head and said, is there any precedent at all? I thought, maybe the Price-Anderson Act, which by the way I have never supported—the bottom line is it says if there is an accident in a nuclear powerplant, the taxpayers will pick up the tab. But even there the nuclear powerplants have to pay an insurance premium over to the Federal Government so at least they are paying part of the tab if, God forbid, there should be an accident at a nuclear powerplant.

There is no premium being paid by the people who make ethanol. So that is the second place where this myth is exploded. There is nothing in the bill that says the Government will pick up the tab.

There is a third myth. They say we are only providing a safe harbor from one type of lawsuit: defective products. So I went to my lawyerly staff, and I said: They are saying no problem, they are only exempting these companies from a very narrow provision of law.

Well, the defective product argument is the only one that will hold up in court. It is the one that people are using as they seek to get damages for MTBE. So very cleverly, the way this bill is crafted, I assure everyone, by the attorneys for the oil companies—I can assure everyone that—it is crafted in a way so the liability is waived in a way so people can never be held accountable.

Why is this so important? Because if one looks back at what happened with MTBE, they see the argument that did carry weight was the defective product argument.

Why is it important to everyone? Because in the beginning everyone thought MTBE was safe, and now even though the people who want to support this mandate are saying the product is safe, there are studies in the bill to find out if it is really safe. We do not know.

Senator FEINSTEIN, who I see in the Chamber, has gone into this matter in great detail. We do not know what can happen. What we do know is it cleans the air but it makes smog worse. We know that but we really do not know what is going to occur when the components break down.

The city of Santa Monica had to sue because they paid over $200 million to try to clean up the damage from MTBE. We hope they will be able to recover because they sued under this defective product provision.

Myth four: Ethanol is safe; no need to worry about liability. I was not born yesterday, as everyone can tell, and if there is no need to worry about liability then why have the waiver for liability? It does not make sense. Obviously, somebody is worried about it. The oil companies are worried about it, I can say that. One does not give a special exemption from liability—and one does not work to get it in the bill and, by the way, fight for it, because I have tried to get some agreement on it and the oil companies do not want to give an inch on it—if you are 100-percent convinced that it is safe.

As the Washington Post points out in its April 16 editorial, the safe harbor liability protection is ''hardly a sign of confidence in ethanol's environmental merits.'' We cannot have it both ways. One cannot stand up and say this is safe and then fight to protect their product. Consumers should be outraged, and that is why we have every consumer group that I know of supporting this amendment. That is why we have every environmental group that I know of supporting this amendment.

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

Mrs. BOXER. If it comes off the time of the Senator. I have very little time.

Mr. DURBIN. I did not know I had time.

Mrs. BOXER. Yes, the Senator has an hour under cloture. Every Senator does. If the Senator takes it on his time, that is fine.

Mr. DURBIN. I ask unanimous consent that time for the colloquy in which I am about to engage be taken from the appropriate time.

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

Mr. DURBIN. May I say to the Senator from California—and she knows this very well—I come from the heart of ethanol country. I have been supportive of the ethanol program throughout my congressional career. At times I have been chairman of the alcohol fuels caucus in both the House and the Senate. I believe ethanol has been proven over and over again to be a safe fuel. It is simply alcohol. It does not have the carcinogenic and dangerous qualities of MTBE and other chemicals. We have used it successfully in the State of Illinois for years. About a third of our gasoline supply is blended with ethanol and is used safely.

So I say to the Senator from California, speaking only for myself, I accept her challenge. I believe we can establish across the Nation that ethanol is a safe fuel, not only safe for those who would handle it and those who would use it in their cars but safe for our environment.

I see no reason for us to put language in this bill creating any kind of exemption from liability for ethanol or renewables fuels.

The Senator from California has suggested our fuels be held to the same standards as every other fuel in America in terms of public health and safety. I completely endorse that approach. I would like to be shown as a cosponsor to the Senator's amendment.

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

Mr. DURBIN. I yield the floor.

Mrs. BOXER. I thank my friend. Senator DAYTON was here yesterday, from ethanol country, supporting this amendment. I think it takes guts to do it, but the Senator is right.

The people we have been meeting with from the Corn Belt—the producers, the farmers—do not like this. Frankly, they do not like the liability waiver. I believe it is the oil companies that came to the table that were fighting for this.

I am pleased the Senator is a cosponsor. I ask unanimous consent that JOHN KERRY be added as a cosponsor.

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

Mrs. BOXER. We have been hit with several myths. Another myth is ETBE is not included in the safe harbor. We are glad it isn't. ETBE is only one form of ethanol and not the most prominent form. Most ethanol will be exempted and will have this safe harbor.

I state for the record who supports this Boxer-Feinstein-Durbin-Kerry-Schumer amendment: the National Resources Defense Council, the Sierra Club, the U.S. Public Interest Research Group, the League of Conservation Voters, Consumer Federation of America, Consumers Union, the American Lung Association, Earthjustice, Friends of the Earth, Physicians for Social Responsibility, the American Water Works Association, the Association of Metropolitan Water Agencies, the Association of California Water Agencies, and the South Tahoe Public Utility District.

It is true that even the groups that support the ethanol mandate agree with our amendment on liability—for example, the American Lung Association and the Blue Water Network. Even among the supporters of ethanol—such as Senator DURBIN and Senator DAYTON—supporters have no qualms about going forward with this amendment. They realize the double standard is wrong.

When Senator FEINSTEIN began the debate on why California is leery of this mandate, she made several points. One dealt with the issue of price. Again, we were told over and over again, the Department of Energy says, yes, there will be a 9-cent increase per gallon in certain places and 7 elsewhere. That was wrong; it would only be a penny.

Senator FEINSTEIN made the point we have had some bad experiences with collusion in the area of our electricity. If there are only four or five people who make the product, we could have problems.

Yesterday there was a San Francisco Chronicle article: ''Memos show possible ethanol price-fixing.'' I ask unanimous consent this article be printed in the RECORD.

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

[From the San Francisco Chronicle, Apr. 24, 2002]

MEMOS SHOW POSSIBLE ETHANOL PRICE-FIXING

(By Zachary Coile, Chronicle Washington Bureau)

WASHINGTON, Apr. 24.—The Senate backed a plan yesterday to triple the amount of ethanol in gasoline, which opponents argued will lead to more expensive prices at the pumps for Californians.

As lawmakers on both sides of the Capitol debated the ethanol requirement, a Sacramento congressman who opposes the plan revealed possible price manipulation among ethanol producers.

Rep. Doug Ose, the Republican chairman of the energy subcommittee of the House Government Reform Committee, released internal memorandums from ethanol suppliers at a hearing about a proposal to ban MTBE as a gasoline additive and require three times as much ethanol, a corn-based additive. The proposal is part of the energy bill scheduled for a Senate vote tomorrow.

''These memos show a disturbing trend of potential market manipulation by ethanol producers,'' Ose said.

William Kovacic, the general counsel for the Federal Trade Commission and a witness at Ose's hearing, said the full commission could initiate an investigation of the ethanol suppliers.

Kovacic said that he could not tell whether the documents were evidence of possible industry collusion but that the memos were ''not simply provocative, but perhaps alarming as well.''

''Direct communications between rivals that suggest such behavior are a matter of keen concern to the enforcement community,'' Kovacic said, adding that he would alert antitrust investigators at the Justice Department.

A spokesman for the Renewable Fuels Association, the ethanol industry's trade association, said his group had not seen any of the document and could not comment on Ose's allegations.

''I am very suspect of the timing and motivation of this charge,'' Bob Dinneen, the group's president, said in a statement. ''Congressman Ose called today's hearing at the request of the MTBE industry, and no one from the ethanol industry was called to testify. It strikes me as more than a coincidence that Mr. Ose raised this issue at the eleventh-hour on the day the Senate is debating the renewable fuels standard.''

The release of the documents came on a day of often bitter debate that split the Senate along regional lines, pitting Midwestern lawmakers who support the ethanol requirement against senators from California and New York, who strongly oppose it.

The Senate last night defeated, by a 68-to-31 vote, an amendment by Sen. Charles Schumer, D-N.Y., that would have stripped the ethanol requirement from the energy bill.

Earlier in the day, California Sen. Dianne Feinstein temporarily delayed the bill until senators could debate proposals to alter the ethanol requirement.

Feinstein, a Democrat, said the requirement could sharply raise gas prices for California consumers because much of the ethanol will have to be transported by rail from the Midwest, where 98 percent of ethanol plants are located.

In releasing the memos, Ose said the documents appear to show a pattern by ethanol suppliers to discuss what prices they intended to bid for supplies before ethanol auctions took place—with the goal of assuring that suppliers got the prices they wanted.

In one of the memos, an executive at an Orange County ethanol supplier, Western Ethanol Co., wrote to a competitor in Costa Rica on Sept. 29, 2000: ''I expect that the winning bid for the 25 percent volume will be somewhere in the upper $1.30's to low $1.40's. We are prepared to stop bidding should the price drop below $1.38 per gallon.''

In another memo, an executive at another Orange County company, Regent International, wrote to an official at Archer Daniels Midland, the nation's largest ethanol producer, on Nov. 20, 1995, to discuss a proposed deal with a London-based ethanol producer, ED & F Man Alcohols, to jointly bid on fuel from France.

''Therefore (ED & F) Man will be bidding on the 75,000 hl out of France at a price of 5.02,'' the memo read. ''I would suggest that ADM underbid at a price of 4.85. This will serve as a safety net in the event Man's bid is rejected for any reason.''

ADM officials could not be reached for comment. Messages left at the offices of the Orange County companies yesterday afternoon were not returned.

The release of the memos was part of a last-ditch attempt by ethanol opponents to derail the plan to phase out MTBE as a gasoline additive and triple the use of ethanol by 2012.

California and a dozen other states have moved to ban MTBE, which has been implicated in groundwater contamination. Gov. Gray Davis last month delayed the state's MTBE ban by a year, to Jan. 1, 2004; after a report by the California Energy Commission said replacing MTBE with ethanol could cut the state's gas supply by 5 to 10 percent and drive up prices to $2 to $3 a gallon.

Mrs. BOXER. Essentially, it shows Congressman OSE from California got ahold of memos that show, if you are doubtful, they are already talking about how they will get the highest price possible for this product.

I add that because it is important that when we voted on some of the other ethanol issues, everyone said: Don't listen to the people from California.

Now it is time to listen to us. We have been through some troubles in our State because there wasn't transparency; there was manipulation of supply and electricity. We don't want to see that happen to any other State. We don't want to see it happen to gasoline.

When the people who objected to points made by Senator FEINSTEIN and Senator SCHUMER, saying they were wrong, there would be no problem, this article shows possible ethanol price fixing.

This is just the beginning. I don't want to see, in 2 years, communities in trouble because it turned out ethanol was not as safe as they said and we had problems in our communities and there is no way to recuperate from the manufacturers of ethanol.

I diverted into the issue of possible price fixing; I hope people listen. I am not here because I am hostile to ethanol. I would like to see it move a little slower. I want to see the health studies. I am not hostile to using ethanol. We are going to use it in a lot of our gasoline. It may turn out to be the panacea. We don't know. I am saying: Be cautious and do not give anyone a blanket waiver of liability from the one area of the law—defective product—that people may have at their disposal.

I ask my colleague, does she want me to yield for questions?

Mrs. FEINSTEIN. I very much appreciate the Senator from California making that offer. I would like to add to what the Senator has said. I am firmly in support of the Senator's amendment. I ask this question. She made the case about the health and environmental unknowns of ethanol. That was somewhat contested. She is absolutely right.

I ask the Senator if she knew about the EPA blue-ribbon panel on oxygenates which found ''ethanol may retard biodegradation and increase movement of benzene and other hydrocarbons around leaking tanks''?

Mrs. BOXER. I say to my colleague and friend and partner in this effort, we are aware of it. I am glad the issue has been raised. This has been an education for everyone as we looked into the study. The underlying bill does a study on the safety of ethanol, which is an admission that they don't know. Therefore, to have a study in the bill, and yet at the same time, before we have the facts from the study, waive this liability is terrible for consumers and States.

I am happy the Senator asked the question and I continue to yield.

Mrs. FEINSTEIN. I wonder if the Senator from California heard that a report by the State of California entitled ''Health and Environmental Assessment of the Use of Ethanol as a Fuel Oxygenate'' points out there are valid questions about the impact of ethanol on ground and surface water. The report points that there will be a 20-percent increase in public drinking water wells contaminated with benzene if a significant amount of ethanol is used. Of course, benzene is a known carcinogen.

What is interesting in the study, it points out that ethanol causes the components of gasoline to break apart and therefore more easily seep into ground water from leaking tanks. We all know gasoline leaks. It is saying it aids in the release of benzene, a component of gasoline.

I wonder if the junior Senator from California heard of that California report.

Mrs. BOXER. I say to my senior Senator, I have. In addition to the benzene, I make the point there are other dangerous areas—not only benzene but ethyl benzene, toluene, xylene. We believe ethanol may inhibit the breakdown of these toxic materials.

Yes, we have a blue-ribbon panel, the State. That is why I think we are disturbed at the liability waiver.

I say to my friend, it is incredible because everyone said MTBE was wonderful, too.

Now we have more warning about ethanol than we had about MTBE, and they put in a liability waiver.

I am encouraged that Senator DURBIN, for example, and Senator DAYTON—from ethanol country—are with us on this issue. It means a great deal.

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

Mrs. BOXER. I am happy to yield for a question.

Mr. SCHUMER. I am sorry I could not be here at the beginning of the debate, but I have a couple of questions. Just let me get this straight.

We are banning MTBEs because we know they are harmful—in this bill.

Some of our States have done it already. And we are forcing States that may not use ethanol to buy ethanol, which will raise gas prices and cut the amount that goes into the trust fund. At the same time, we are saying: But, if your soil is polluted—and we have a big problem in New York because on Long Island we have one aquifer, one place where all the drinking water occurs and the MTBEs are sinking in—if your soil is polluted and even if it was done knowingly, that you cannot sue the polluter? Is that what we are saying here?

Mrs. BOXER. Yes, this is exactly what the liability safeguard provision does. I repeat, the corn people to whom we have spoken really do not like this particularly. They are unhappy with it. But the oil companies are pushing for it.

It seems to me, when you hear that Senator DURBIN and Senator DAYTON, from corn-growing places, support us, that is hopeful. But my friend is right. We are banning MTBE because it is harmful. We do not really know the end result of ethanol. And before we even know the end result, we are waiving liability. He is correct.

Mr. SCHUMER. I know the Senator has been a leader and expert in these issues of suits and liability, far more than I have. How often have we done this? How often have we taken some substances that we know are dangerous already, some substances that might be dangerous, and put in a whole safe harbor so you cannot sue no matter what happens? Have we done this for other substances?

Mrs. BOXER. I say to my friend, this is a precedent-setting waiver. Even in the case of the Price-Anderson Act where we waived liability for the nuclear power industry, they must pay a premium into a fund, so they are on the hook for billions of dollars. This has never been done. I say further to my friend, when we talk to some of my ethanol-supporting friends, they say: But the Government is mandating this, so therefore they should waive liability. We mandate seatbelts, but if there is a defective seatbelt, a person can sue; airbags, mammograms—you could go through the list. This is precedent setting, and it is terrible law.

Mr. SCHUMER. If I might ask a question or two more?

So we are saying the Government is mandating it, but we are not putting in any Government backstop?

Mrs. BOXER. We are not.

Mr. SCHUMER. If you are a small community and you have a couple of schools in your community and your ground water is polluted, costing you millions of dollars—and that means the property taxes have to go way up—and you know some oil company or refiner, or whatever, polluted that soil knowingly, and the MTBEs leaked in, you have no recourse against the company and there is no Government backstop as in Price-Anderson, so the local taxpayers would be stuck; is that correct?

Mrs. BOXER. That is correct. As a matter of fact, the first time I raised it, some of my friends from the ethanol areas said there was a Government backstop in the bill. So I went back. We searched the bill, page after page, and could not find it.

We called the people who put together the compromise. As you know, the Senators from California and New York were not in that group when there was a compromise. No one has come up with anything that shows us there is anything in the bill.

The bottom line is that a city such as Santa Monica—and you could pick out your cities—that had a horrible problem with MTBE is currently suing to recover $200 million from the oil companies. If that was not allowed, the consumers, our taxpayers, have to pick up the tab. This is the classic case of, in my view, turning away from ''polluter pays'' and going to ''taxpayer pays.''

If ethanol is so safe, then I would say: Why do they have a study on safety in the bill? Why are they seeking this waiver? And why are they ignoring the two studies my friend from California, Senator FEINSTEIN, is going to have printed in the RECORD, the blue-ribbon committee from EPA, and the State study, that show there is really a problem?

Mr. SCHUMER. Just another question: So when the Senator is saying ''taxpayers pay,'' in this case it is not even the Federal taxpayer—which we do in other areas—it would be the local property taxpayer who would be left holding the bag?

Mrs. BOXER. It will be the biggest unfunded mandate. Not only are they mandating ethanol, and at a very fast pace—and it is very hard for us to be able to accept that much—but they are also saying: Local communities, you are on your own.

Mr. SCHUMER. It seems to me—and I wonder about the Senator's comments as to this—this is like piling on. First you mandate ethanol and raise the gasoline prices in New York, California, and so many other parts of the country. We can dispute how much. We think a modest estimate is 4 cents to 10 cents, depending on the State. Then we cut money from the trust fund, so you are getting a gas tax but not the money to build the roads. And now we are saying pollution—where it is caused by ethanol, we don't know it; but things we know are poisonous and polluting are exempt from any lawsuit at all. It seems to me that is just piling on. I have never seen anything like it.

I ask my friend from California, has she? She has more experience in these areas than do I. Have you seen anything that has such an amalgam? It is almost like an evil brew. They put in all these bad ingredients and sneak them in the bill.

I appreciate very much the leadership of the Senator from California, standing up to this provision. We tried to knock out the whole thing. I was surprised we got as many as 31 votes, given the power of the ethanol lobby. But now we are looking at one piece of it, perhaps one of the most egregious pieces of it, and asking people just to knock out that part.

Mrs. BOXER. I agree.

Mr. SCHUMER. Have you seen anything of such an amalgam this way, that hits you right, hits you left, hits you center?

Mrs. BOXER. It is an amazing situation for those of us on the east coast or the west coast. We know we are outnumbered here. But as my colleague from California has told me many times, we must make the case and the record on this, because I can tell you right now, after living through the crisis we lived through in electricity, where we saw what happens when a supply is manipulated—the story in today's San Francisco Chronicle says:

> These memos show a disturbing trend of potential market manipulation by ethanol producers. . . .

And the ink hasn't dried on this bill as it becomes law.

Did you say a witch's brew? Is that what you said?

Mr. SCHUMER. I can't remember. I think I said an evil brew.

Mrs. BOXER. If you look at the components of ethanol—and we all hope and pray the health studies in the bill come out that it is terrific and there is no problem—just look at what ethanol does to another witch's brew. It may spread blooms of benzene, toluene, ethyl benzene, and xylene because ethanol may inhibit the breakdown of these toxic materials.

Mr. SCHUMER. Just to clarify, what is in the bill doesn't just apply to ethanol and its potential dangers but to some things that we know are dangerous such as MTBEs, such as benzene, and other things. Is that fair to say?

Mrs. BOXER. The safe harbor does not apply to MTBE.

Mr. SCHUMER. It does not? Just to the ethanol?

Mrs. BOXER. It is just ethanol minus ETBE, which as I understand it is about 2 percent—a very small percentage of the ethanol. Those are the only two.

There is another point I want to make to my friend.

I ask unanimous consent to have printed in the RECORD this letter from the Association of California Water Agencies, American Water Works Association, and the Association of Metropolitan Water Agencies.

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

ASSOCIATION OF CALIFORNIA WATER AGENCIES, AMERICAN WATER WORKS ASSOCIATION, ASSOCIATION OF METROPOLITAN WATER AGENCIES,

April 16, 2002.

Re: Energy Policy Act of 2002: MTBE and Ethanol provisions

Hon. TOM DASCHLE,

U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR DASCHLE: The Association of California Water Agencies (ACWA), American Water Works Association (AWWA) and the Association of Metropolitan Water Agencies (AMWA) strongly support language in the current Energy Policy Act of 2002 to end the use of methyl tertiary butyl ether (MTBE) and expedite states' requests for waivers from the Clean Air Act's oxygenate requirement. The phase-out will protect increasingly scarce water supplies from additional contamination by MTBE, which was blended into gas without regulators' consideration of its impact on groundwater.

Unfortunately, however, the energy bill would also require that states use a new fuel additive, ethanol, in even greater quantities than were required for MTBE. Replacing MTBE with ethanol runs the serious risk of repeating costly environmental mistakes, once again without evidence of the benefits for clean air or the risks to human health. A 1999 study by the University of California concluded that the state could meet its clean air, goals without oxygenated fuel, a point corroborated by the U.S. EPA's Blue Ribbon Panel in July 1999. Putting ethanol in gasoline, at any levels would almost certainly result in higher prices at the pump and new instances of possible water contamination.

The problems don't end there. The ethanol provision features language creating a ''renewable fuels safe harbor'' that gives product liability protection to ethanol marketers. This is especially troubling in view of the real possibility that it will have its own environmental problems.

Members of the above organizations supply safe drinking water to more than 200 million people in North America. We recognize the need for the U.S. to invest in renewable fuel sources, and are cognizant of the benefits they offer. But ethanol doesn't need a federal mandate to help meet U.S. energy needs. Your fellow Senators have spoken at length on this provision creating market volatility and price spikes for the benefit of a few ethanol producing states, and our organizations support efforts by Senators Feinstein and Boxer to amend the bill.

Senator Daschle, water agencies sincerely appreciate the language phasing-out MTBE in S. 517. But the bill's call for renewable fuels must not be pitted against the safety of drinking water. We oppose the ethanol mandate and safe harbor language in the bill, and we urge instead your support for waivers from the Clean Air's outdated oxygenate requirement.

Thank you for your consideration, and please contact our offices if we may provide further information.

Mrs. BOXER. Here is what it says. It is a letter addressed to Senator DASCHLE.

Senator Daschle, water agencies sincerely appreciate the language phasing-out MTBE that is in the bill. But the bill's call for renewable fuels must not be pitted against the safety of drinking water. We oppose the ethanol mandate and safe harbor language in the bill, and we urge instead your support for waivers from the Clean Air Act's outdated oxygenate requirement.

That is of course the larger picture.

But the point is these water agencies have had to deal with the real problems of MTBE. Mr. President, 120 million people are served by these water agencies.

Mrs. FEINSTEIN. Will my colleague yield?

Mrs. BOXER. I am happy to yield.

Mrs. FEINSTEIN. I thank Senator BOXER for her support and leadership on this issue, as Senator SCHUMER said. One of the things that has struck me is the belief that there is no harm from ethanol when in fact studies on this issue have not been done to a great extent.

I would ask the Senator if she has comments about yesterday's hearing on the House side. Yesterday, Professor Gordon Rauser of the University of California commented on the potential harm of ethanol on ground water. This was before a House committee.

He said that research now strongly suggests that the presence of ethanol in gasoline not only delays its degradation of benzene but also lengthens the benzene plumes which run out by between 25 and 100 percent.

I think it is very important that the RECORD shows there is scientific evidence that benzene plumes can go up as much as 100 percent and travel 100 percent more in distance because of ethanol.

That suggests ethanol may not be as safe as its proponents would have you believe.

Mrs. BOXER. Yes. That is exactly the point of the blue-ribbon panel of the EPA. That is exactly what MTBE does as well.

We are dealing with the potential that we could really have problems. No one hopes more than I do that in the end it is all going to be safe; that would be a winner. But we cannot stand here and say that.

If we don't learn from history, we are doomed to repeat it. We went through the electricity crisis. We know what happens when supply is manipulated.

Unfortunately, what my friend said on the floor may become true. Manipulation is already being discussed on what to charge for ethanol.

We lived through the MTBE tragedy. I was one of the leaders; I had the first bill to ban MTBE. In fact, a long time ago we got over 56 votes to ban MTBE.

No one can say I have been reluctant to do that. As I said, I am not hostile to ethanol; I am very open to it, but at the same time we need to know what we are doing here. We need to be careful about the amount we are mandating so it isn't overwhelming but also difficult for people to charge exorbitant rates. We have to be careful that there are not a few suppliers and there is price manipulation. We have to be careful with that. We have to be careful that we have the infrastructure we need to bring in the ethanol. We must be careful so we are not giving a waiver of liability to the oil companies and give them safe harbor so they will not be held responsible, if, in fact, it turns out that this blue-ribbon panel and the scientist who Senator FEINSTEIN quoted proves to be correct.

We already know that ethanol makes the air cleaner, but it makes smog worse. We know these things. What we don't know is the long-range impact of what happens when we use it in the types of quantities in which we want to use it.

Mr. President, how much time do we have on our side?

The PRESIDING OFFICER (Mr. CARPER). Seventeen minutes.

Mr. MURKOWSKI. Mr. President, will the Senator yield for a very short question?

Mrs. BOXER. On your time. I want to reserve my time.

Mr. MURKOWSKI. My question has to do with the terminology ''Big Oil'' and the responsibility for ethanol. The Senator from Alaska understands that Big Oil does not make ethanol.

Mrs. BOXER. We understand that the oil companies are at the table with the ethanol people. They manufacture products. So everyone is at the table with the oil companies.

Mr. MURKOWSKI. I will leave the question out there. It is not my understanding that Big Oil makes ethanol.

Mrs. BOXER. They blend it into the oil. We understand that.

Mr. MURKOWSKI. They blend it because it is mandated.

Mrs. BOXER. Right now it is not mandated. We will wait and see what happens.

But my argument is, if this bill becomes law, I don't want to see the oil companies—the makers of ethanol—get off the hook if there is a problem. It would be unprecedented. It would be the first time in American history that it would happen. And it would be coming at a time when we know that all the environmental and health questions have not been answered.

Before some of my colleagues arrived, I went through all of the myths that I have been told relating to my case. To try to say we are just mandating it, and we must, therefore, waive liability—we don't do that to automobile manufacturers with seatbelts, airbags, or anything else.

That is why I am very proud to have Senator DURBIN's support and Senator DAYTON's support because these Senators come from ethanol States. They understand that if they have this waiver in this bill, it clouds this whole issue. If anyone says to you they have the safest product in the world and they want a liability waiver, what does that mean? It means in their hearts that they are not so sure. Again, anyone who wasn't born yesterday knows that is not a good thing to do.

I reserve the remainder of my time—probably 15 minutes.

The PRESIDING OFFICER. The assistant majority leader.

Mr. REID. Thank you, Mr. President. We would like to schedule a vote in the next hour or so on the amendments of the Senators from California. It is my

understanding that on the Boxer amendment, Senator GRASSLEY wishes to speak for 5 minutes and Senator HAGEL for 10 minutes. I will use a couple of minutes.

We have to move this along. How much longer does the Senator from California wish to speak?

Mrs. BOXER. If I could just close in 5 minutes.

Mr. REID. Mr. President, on this amendment, the Boxer amendment, I ask unanimous consent that I be recognized for 5 minutes to speak in opposition to the amendment, that Senator BOXER close with 5 minutes, that Senator GRASSLEY be recognized for 5 minutes in opposition to the amendment, and that Senator HAGEL be recognized to speak for 10 minutes in opposition to this.

I also ask unanimous consent that, upon completion of debate on the Boxer amendment, sometime prior to 12:30 today, I be recognized to offer a motion to table on behalf of the majority leader.

Mrs. BOXER. Mr. President, reserving the right to object for one moment, I didn't realize the Senator from Nevada was speaking against my amendment. Therefore, because of his eloquence, I ask that I be able to speak for 8 minutes instead of 5 minutes.

The PRESIDING OFFICER. Does the Senator modify his request?

Mr. REID. That would be fine.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Mr. President, how much time does the Senator from California need on her very important amendment?

Mrs. FEINSTEIN. One-half hour.

Mr. REID. We will arrange a vote, and I assume a few Members will wish to speak in opposition to the amendment. I don't have the amount of time figured out.

If the Senator from California would agree to 25 minutes, and 15 minutes in opposition——

Mrs. FEINSTEIN. I agree to that.

Mr. REID. Mr. President, I ask unanimous consent that on the Feinstein amendment No. 3225——

Mrs. FEINSTEIN. The 1 year.

Mr. REID. Yes. We would have a vote first on the Boxer amendment and second on the Feinstein amendment at 12:30, with the times I have mentioned. I ask unanimous consent that be the order, and that both votes be on or in relation to the amendments.

The PRESIDING OFFICER. Will the Senator please restate the request with respect to the Feinstein amendment.

Mr. REID. I am sorry, I cannot hear the Chair.

The PRESIDING OFFICER. Will the Senator please restate the debate time with respect to the Feinstein amendment.

Mr. REID. Yes. Senator FEINSTEIN would have 25 minutes to speak on her amendment, and the opposition would have 15 minutes.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

Mr. REID. And the vote would occur at 12:30, with no second-degree amendments prior to that time being in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The deputy majority leader.

Mr. REID. Mr. President, the majority leader is in the most important agricultural conference, which supposedly—I have heard this before—is in its waning minutes, and he can't be in the Chamber. He is one of four Democratic conferees. So he has asked me to speak on his behalf relating to the Boxer amendment.

First, Mr. President, the chart I have shows the amount of cases that the Senator from California is talking about. Of all the cases we have in our court system, the defective product liability cases amount to .002 percent. On behalf of the majority leader, I indicate that this is a very small number of cases, and it relates to this bill. It is my understanding that the language in this bill certainly gives the proper opportunity for people to go forward in litigation.

What the amendment of the Senator from California could be construed to be is, in effect, giving strict liability, meaning that you do not have to prove any negligence. The majority leader has indicated that this simply is not fair, that there is no reason to have strict liability in this instance when there are so few cases in our judicial system where strict liability is allowed. So the majority leader has asked me to indicate that this amendment should be opposed by all Senators.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I had the good fortune of listening to the exchange between the junior Senator from California and the senior Senator from New York. The senior Senator from New York is not in the Chamber now. But I would like to point out that there is a lack of understanding of this legislation, particularly as it relates to that exchange they had over whether or not you can sue with regard to MTBE.

For all the pollution we have had from that product, there is nothing in this legislation that is going to restrict any lawsuits in regard to MTBE. So when there was an implication that if we did not adopt the amendment before us, that people who have been harmed would not be able to seek legal redress, that is totally false. It is misleading if anybody says that for MTBE, and damage done from it, there cannot be legal redress.

It is very important we make that clear because the water of California, the water of New York, and other States—there is even a little bit in my State—has been damaged because of this product, MTBE. If you drink MTBE, it will kill you. If you drink ethanol, it will not.

For the future—and this legislation is prospective—if there is any violation of the Clean Water Act, the Clean Air Act, if there is any violation by any product, the Environmental Protection Agency has the power to make that determination. If that determination is made, then there is not a safe harbor under this legislation. So I think, as the distinguished Democratic whip has stated, there is ample opportunity for redress in this legislation.

I also point out another misstatement from the other side: that somehow you are not going to be able to hold big oil companies responsible involving anything to do with ethanol. You do not have to worry about holding them responsible anyway. The big oil companies are not producing ethanol.

Then, I remind the junior Senator from California, as I have said, I think on two other occasions during this debate over the last week, that we were proud of her and willing to work with her on a resolution in 1999 that she authored, to declare MTBE as something that should be outlawed, and that the reason it should be outlawed is the Clean Air Act requirements could be met because the oxygenate requirements of that act could be fulfilled because of the availability of ethanol.

Well, it is the same ethanol in the year 2002 as we were mixing with gasoline in 1999, or for the last 20 years, as far as that is concerned. The Senator from California, at that particular time, was giving accolades to ethanol as a substitute for MTBE.

Then, lastly, since I am a Republican, I might be suspect from the other side of the aisle, but about 6, 7 years ago, Senator HARKIN, my colleague from Iowa, had a hearing on ethanol versus MTBE in relation to its safety, its use, et cetera, and Senator HARKIN gave a demonstration for all of the Senate that was involved in that committee.

He had a small glass of ethanol, and he drank it. You can talk all you want about the dangers of ethanol, but Senator HARKIN is very much alive and well, years after he took that small amount of ethanol. He also had some MTBE there with the skull and crossbones on the can that said how poisonous it was. So I think we need to get the facts straight before this Senate.

Again, the exchange that went on a few minutes ago from the senior Senator from New York to the junior Senator from California was misleading in relation to people not having legal redress in this law against damage from MTBE.

I yield the floor.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

The Senator from Nebraska.

Mr. HAGEL. Mr. President, I rise today to speak in opposition to the

amendment offered by my colleague from California. As the Senators from Iowa and Nevada, who have just preceded me, have stated very clearly, this latest attempt to undermine the energy bill's renewable fuel standard—one of the few provisions of the bill that is truly bipartisan—is not in the best interest of this country's energy needs. And it deserves, as the senior Senator from Iowa has just said, some explanation as to what it does and does not do—this renewable fuel standard amendment, reached by a bipartisan group of Senators, that is in the present energy bill.

It is claimed that it will provide a sweeping liability exemption for damage to public health or the environment resulting from the use of renewable fuels. This is a clear misrepresentation of this section of the energy bill.

A few months ago, Majority Leader DASCHLE reached out to a number of Senators from both sides of the aisle to help craft the renewable fuel provision in the current energy bill that we debate today. The result is a historic agreement which has been endorsed by a majority of Governors, the Bush administration, agricultural organizations, the oil industry, and, yes—and yes—environmental and public health groups.

The talks that produced this bipartisan compromise included representatives from the EPA, the American Lung Association, and the Northeast States for Coordinated Air Use Management, among many others.

I know—and I am sure my colleagues from California and other Senators in this body know—that the majority leader of the Senate has a strong commitment to the environment and to the health of all Americans. I suspect he would not agree to a provision he thought might ultimately harm the public's health or environment. None of us would.

The safe harbor provision in this bill is there for one reason: to protect the public and the environment while at the same time not exposing manufacturers and distributors to frivolous lawsuits for simply complying with a Federal requirement, a Federal requirement that we imposed aimed at improving our air and water quality.

This language in this bill is fair. It is reasonable. It is right.

Yesterday, the Renewable Energy Action Project, REAP, a California-based coalition of environmental groups, public agencies, and renewable energy producers, placed a full-page ad in the Washington Post. The headline in the ad read: ''Renewable fuels mean cleaner air, cleaner water, and less dependence on foreign oil.'' And the ad went on to talk about the health benefits.

The ad strongly supports the renewable fuels standard provision and calls the provision an important environmental victory that will protect America's drinking water and improve our air quality. This coalition also warned readers to remember the facts and not be surprised when they hear inflammatory and misleading information attacking the renewable fuel standard.

We have heard the misleading information. We have heard it clearly. Let's review the facts.

The facts are, this bill has solid safeguards. It requires, the Environmental Protection Agency to conduct studies of the long-term health and environmental effects of renewable fuels. Under this bill, the EPA Administrator has the authority, the jurisdiction, the control to either prohibit or allow the sale of renewable fuels that could adversely affect air or water quality or the public health. There is no safe harbor if the Administrator rules that the law has been broken or laws are violated.

The safe harbor provision is very limited. It applies only to claims that a renewable fuel is ''defective in design or manufacture''—I know some in the legal business find that difficult to accept—and that meets the requirements of the Clean Air Act. This is very important. The Clean Air Act is still the law of the land. All must comply with the law of the land. These requirements include compliance with requests for information about a fuel's public health and environmental effects as well as compliance with any regulations adopted by the EPA. If these requirements are not met, the safe harbor protection does not apply.

This provision does not affect claims based on the wrongful release of a renewable fuel into the environment. Anyone harmed by a release of that kind would retain all the rights to sue, all the rights they now have under current law. If we change or strike the safe harbor provision in this bill, we will unravel the entire bipartisan agreement. We will, in fact, be taking several steps backward because the result will be the continued use of MTBE, which we know has health and environmental consequences. I do not think that is what my colleagues from California or any other colleague wants or intends.

Just let me recap for a moment what the senior Senator from Iowa said about compliance and who is protected, which is very important. There is no safe harbor protection under this amendment, if the EPA Administrator rules that a manufacturer or any entity is not in compliance with the Clean Air Act. The language is very clear. I shall read briefly from that language in the bill:

> If it does not violate a control or prohibition imposed by the administrator under section 211 of the Clean Air Act, as amended by this act, and the manufacturer is in compliance with all requests for information under section 211(b) of the Clean Air Act, as amended by this act, in the event that the safe harbor under this section does not apply, the existence of a design defect or manufacturing defect shall be determined under otherwise applicable law.

This is very clear.

As I summarize, let me point out an article that appeared today in the Washington Post. This article is headlined ''Link Seen Between Cooking, Cancer . . . Frying, Baking Starches Creates A Carcinogen.'' It goes on to say:

> The process of frying and baking starchy foods such as potatoes and bread causes the formation of potentially harmful amounts of a chemical listed as a probable carcinogen. . . .

It goes on.

What much of this is also about is downstream, future technologies. No one can predict what is ahead. We now have a story questioning starchy foods and how we prepare them. I think there is some historical evidence that people have actually been baking bread for centuries and eating potatoes cooked many ways and have done quite well actually.

Let's bring some common sense back to this debate. Let's bring some common sense to what we are trying to do here and apply the law based on common sense.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, how much time remains on the side of the opponents?

The PRESIDING OFFICER. Fifteen minutes in opposition on the Feinstein amendment.

Mrs. BOXER. Mr. President, I have 8 minutes to respond.

The PRESIDING OFFICER. The question was on the time in opposition.

The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, it is fair to reflect on this safe harbor Boxer amendment which will be stricken if the amendment prevails.

The bill, we all know, contains this safe harbor provision regarding the liability of manufacturers and distributors in renewable fuels that are subject to the bill's mandate. The principle is relatively simple: No one should be subjected to tort liability simply for manufacturing or selling a product that was mandated by this Congress. That is what we are talking about, a product mandated by Congress. Maybe Congress should bear the liability.

In any event, it is fair to say the provision is very limited. It applies only to claims that a renewable fuel mandated by the act is defective in design or manufacture, and it applies only so long as the applicable requirements of section 211 of the Clean Air Act have been met. These requirements include both compliance with requests for information about a fuel's public health and environmental effects and compliance with any regulations adopted by the Administrator.

If these requirements are not met, then the safe harbor protection will not be available, and liability will be determined under otherwise applicable law.

This provision does not affect claims based on wrongful release of a renewable fuel in the environment. Anyone harmed by a release of that kind would

retain all rights he or she has under current law.

It also applies only prospectively. So it does not affect any claims that have already been filed as of the effective date.

There is some uncertainty regarding the long-term health and environmental risks associated with renewable fuels. Questions have been asked about ETBE, an ether derivative from ethanol, even ethanol itself. The major strength of the bill is its provisions requiring EPA to conduct studies of those effects.

Those studies show that if additional regulations are necessary, then the Administrator simply has authority under the rulemaking provision. Liability protection under the bill would depend on full compliance with any rules the Administrator may adopt. The balanced approach, which I think it is, will protect the public from any adverse health and environmental impacts from renewable fuels while not exposing manufacturers and distributors to tort lawsuits for complying with the renewable fuels mandated in the bill.

Some have contended that this provision could give polluters sweeping liability for damage to public health or the environment resulting from renewable fuels or their use, in the sense of conventional gasoline. Nothing could be further from the truth.

In the first place, the safe harbor provision doesn't affect claims based on the wrongful release of the renewable fuel into the environment. Those responsible for releases to the environment receive no protection whatsoever, nor should they. Moreover, the safe harbor only applies if the maker or seller of a renewable fuel complies with EPA regulations to protect the public health and environment.

Under this bill, the Administrator has the authority to control, or even prohibit, the sale of renewable fuels that may adversely affect air or water quality or the public health. There is no safe harbor if the Administrator's rules are violated.

In my opinion, the amendment would simply promote litigation and increase our dependence on imported oil, which we have already talked about a great deal in this debate on the energy bill.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks time?

Mrs. BOXER. Mr. President, understanding is that all time in opposition to my amendment has been used; is that correct?

The PRESIDING OFFICER. Yes. The time in opposition to the Senator's amendment has expired.

The Senator from California has 8 minutes.

Mrs. BOXER. I would like to be told when I have used up 7 minutes of my 8.

Mr. President, it is such a simple point. People try to complicate simple matters around here. If ethanol is so safe, why have the companies involved in its production pressed for the liability exemption in the bill? I have to say, with respect to my friends from ethanol country, if this chart that my friend from Nevada talked about were submitted as an answer to a question in a bar exam, the person would fail the bar exam because they have mixed up the causes from the remedies. You cannot show all of this and say each one of these is a cause. Compensatory damages is a remedy. Punitive damages is a remedy.

The cause of action they are going after here happens to be a very small one, it is true. It is only used in a small number of all civil cases, it is true. But defective product liability is the only cause of action that will hold up in a court of law when you seek to get damages from an additive to gasoline.

How do I know this? Because we have done this with MTBE, and every other cause of action that was recommended was thrown out by the court. The only one left standing was defective product.

So then my friends say: But we are only eliminating defective product, and it is just a little narrow sliver. Again, they don't pay these oil company attorneys $500 an hour to come up with some overarching thing that people will notice. They pay them to come up with a very narrow exemption that they hope will slip through. Thank goodness, people who have read this bill understand the ramifications of this liability waiver, because this could have slipped through.

The fact of the matter is that they have exempted themselves in this so-called ethanol compromise—the compromise where Senator FEINSTEIN wasn't at the table, nor was I, nor were the New York Senators. They compromised it themselves. The oil companies and the ethanol producers came up with this liability waiver.

So it is a simple point. If it is meaningless, why won't they take it out? If it only applies to .002 percent of civil cases, then it is meaningless, so why won't they take it out?

The other question is, I believe, this is precedent setting. We mandate many things. The Senator from Alaska says we are mandating this. We cannot expect these companies to pick up the tab if it is defective. We mandate seatbelts. If there is a defective seatbelt, auto companies are held responsible. We mandate regulations on a lot of products, such as airbags. We mandate that products be safe and that certain rules and regulations be followed in mammography and many other products. Yet if there is a defective product, there is no waiver of liability.

One of my friends who is with the ethanol caucus said: Well, we did it in Y2K, Mr. President; we waived the liability for the computer industry in Y2K. That is a laughable comparison. We gave a waiver of liability for 1 year on the Y2K problem because we knew it would be complicated. That set a precedent for every thousand years—every thousand years. We won't be around for the next one.

But that is not what this is about. You have heard the expression ''solidarity forever.'' This is liability forever—liability from a product on which there are some problems already proven and there are perhaps more problems yet to be known. That is why there is a study in the bill.

I think anyone in this body who cares about consumers, and about health, and about the children, and who cares about the environment, cares about our States and localities that will have to pick up the tab if there is a problem, will vote with us.

I will be happy to yield to my friend for a question.

Mrs. FEINSTEIN. Mr. President, I think what the Senator has said is very important. I hope Members of the Senate will listen because what she pointed out was the central flaw in this safe harbor provision.

As I understand it, what the Senator is pointing out is that the safe harbor provision eliminates the one cause of action anyone has that is able to be successful, and that relates to a defective product. So this bill eliminates any cause of action which is brought around the product being defective.

Let me give an example, if I understand this. If it is shown—as I believe it can be shown—that ethanol breaks down gasoline to allow its component parts to plume into the air, spread into the ground, and then it enables benzene to move faster and longer and harder, no one can sue under a defective product liability cause of action; is that right?

Mrs. BOXER. My colleague is absolutely correct. If I might tell her that, in the Lake Tahoe case against MTBE, the only cause of action the court allowed was the very one they are trying to do away with, as she pointed out, the defective product liability. It was $45 million to clean up the mess at Lake Tahoe, an area of our Nation that my colleague and I, Senators REID, and others have worked so hard to protect. The fact is, they had a horrible problem because of the boats using the gasoline with MTBE, which is now banned on Lake Tahoe. They went to court to try to get the $45 million. We still don't know. The jury did come back, and they found for the good guys, the plaintiffs.

The PRESIDING OFFICER. The Senator has 1 minute.

Mrs. BOXER. The jury ruled in favor of the plaintiffs. It was made under the defective product cause of action. Had they not had that available to them—which is exactly what this bill would do, eliminate that—they would not have had a case; the people of Lake Tahoe would be stuck paying $45 million. This is a small area.

So, in closing, let me say this: I say to my friends here, please, rise above all of this special interest politics and think about what is good for your people. We know what is good for your

people is to make sure they are protected—protected from a product that may cause them and their community harm. If we don't vote for this amendment, I worry and fear for the future.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time? If no one yields time, time will be charged equally.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, would you repeat that statement? What is the status with regard to time?

The PRESIDING OFFICER. If no one uses time, time will be charged equally to both sides. Senator FEINSTEIN has 25 minutes remaining in support of her amendment, and there are 10 minutes in opposition to the Feinstein amendment.

Mr. BINGAMAN. Under the unanimous consent agreement, Senator FEINSTEIN's 25 minutes begins to run at this point?

The PRESIDING OFFICER. That is correct.

Mr. BINGAMAN. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI. Mr. President, how much time do we have?

The PRESIDING OFFICER. Ten minutes in opposition. Senator FEINSTEIN has 25 minutes, and the time is equally divided in both the support and opposition.

AMENDMENT NO. 3132 WITHDRAWN

Mr. MURKOWSKI. Mr. President, I ask unanimous consent to withdraw amendment No. 3132.

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

AMENDMENT NO. 3225

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 3225, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. FEINSTEIN. Mr. President, the amendment I call up is a very modest amendment to the renewable fuels provision in the Senate energy bill. It will simply delay the implementation of the ethanol mandate for 1 year. That would move it from 2004 to 2005.

The purpose of the amendment is to give States more time to make essential infrastructure refinery and storage improvements. This amendment will provide the Senate with the opportunity to make an essential modification to the current bill since virtually every State outside of the Midwest will have to grapple with how to bring in more ethanol over the next several years.

Although the ethanol industry says they can meet future demand, virtually every expert has told me that delivery interruptions and shortfalls are likely, if not inevitable, and yet we are tied to bring in a specific amount. In 2004, the Nation will be forced to use 2.3 billion gallons of ethanol. There is insufficient transportation infrastructure to ship large amounts of ethanol to the east and west coasts, and a temporary reprieve is essential to develop the infrastructure, especially when the infrastructure demands for ethanol are far more complex for ethanol than for MTBE.

Here is why infrastructure is so important. Moisture causes ethanol to separate from gasoline. So the fuel additive cannot be shipped through traditional gasoline pipelines. Ethanol needs to be transported separately by truck, boat, barge, rail, and then blended into the gasoline at the refinery site after it has arrived.

Yet it will not be so easy to transport ethanol by truck, boat, or rail from the Midwest and blend it once it is transported, unless adequate facilities can be built.

According to the California Energy Commission, the adequacy of logistics to deliver large volumes of ethanol is not consistent. A recent report sponsored by the California Energy Commission predicts there will be future logistical problems since the gasoline supply system is currently constrained with demand exceeding the existing infrastructure capacity.

In fact, inadequate infrastructure recently led the Governor of California to push back the start date of the State's ban on MTBE to 2004 from 2003. California does not have the ethanol infrastructure in place to meet the oxygenate requirement under current law once MTBE is banned. The Governor had little choice because California's predicted gas prices at the pump would double if the MTBE ban went into effect as planned in 2003.

This is due in part to the lack of infrastructure. It is also because once MTBE is removed, California needs 5 to 10 percent more gasoline with ethanol. Here is why.

MTBE helps reduce the amount of gasoline needed to make a gallon. Ethanol, however, does not go as far as MTBE, so it increases the amount of gasoline needed to make a gallon. Once we have phased out MTBE, the difference is estimated by experts to require 5 to 10 percent more gasoline in every gallon of gasoline that is produced with ethanol—5 to 10 percent more.

California's refining capacity is at capacity. It is 98 percent, which is capacity. Therefore, we cannot refine 5 to 10 percent more gasoline under the present refining conditions. Therefore, not only are there going to have to be massive improvements in the ability to bring ethanol into the State, but there have to be massive changes made in the refineries themselves, and this is going to take time. Somehow we are going to have to bring online additional refining capacity to handle the tripling of ethanol that is required over the next 10 years by this bill.

This is one of the reasons, from a California perspective, the ethanol mandate is worse for California than for any other State, and for California it is going to spike the cost of gasoline.

Let there be no doubt, we have troubles even the way things are with gasoline supply. As a matter of fact, gas in California is going up. One of the reasons is refinery outages, the shortage of gasoline. That is a very real problem.

This additional year, from 2004 to 2005, will give all States, and especially the east coast and west coast States, an additional year to solve some of these problems.

Before forcing three times the amount of ethanol we currently produce in our fuel supply, I sincerely urge the Senate to adopt this amendment to allow those States that have problems, of which ours is prime, to be able to develop the terminals, the trucks, and the barges to bring in ethanol and the refinery changes that are going to be necessary to produce more gasoline, as well as to absorb ethanol into the situation.

Let me summarize. In the past days, we have made the following points: That the Senate bill requires 5 billion gallons of ethanol by 2012. The mandate will force California to use 2.68 billion gallons more of ethanol than we need to meet clean air standards.

We have proven, I think, that this is a hidden gas tax of anywhere from 4 to 10 percent, and the infrastructure shortfalls in California will most likely put the gas tax hike above that. We have shown there are transportation and infrastructure problems. We have shown there is a dangerously high market concentration.

We point out Archer Daniels Midland has a 41 percent market share. The Wall Street Journal this morning contains a very interesting article on this very subject entitled ''ADM Used European Wine For Ethanol.'' It shows how recent evidence has been uncovered to suggest that ADM engaged in bid rigging, which is a form of price fixing, with respect to European ethanol brought into the United States.

So giving any company a large concentration of market share can also produce exactly what we went through with Enron. We have shown that ethanol has mixed environmental and health benefits. It does decrease carbon monoxide. However, it increases nitrogen oxide emissions, or NO_x, which will increase smog in my State and in other States.

We have demonstrated there will be less revenue to the highway trust fund because gasoline is taxed at 18.4 cents to provide funds for our roads and bridges, but fuel blended with ethanol is only taxed at 13.1 cents. Therefore, this mandate will create an unbelievable $7 billion shortfall in the highway trust fund, and it will provide every State in the Union less dollars to build roads, bridges, and transportation infrastructure.

We have shown, and Senator BOXER did this eloquently, that the safe harbor provision of the bill prevents legal redress if ethanol and other fuel additives harm the environment, because it

removes the unsafe product liability cause of action. That is the one cause of action that sustained the cases in California brought on MTBE, and this bill removes it for ethanol.

Why is this in there? Because the oil companies wanted liability protection or they would not go along with the deal that was cut. So they were given liability protection and no one can bring an unsafe product cause of action against ethanol.

We have shown that ethanol is not a renewable fuel because some scientists believe it takes 70 percent more energy to make ethanol than it saves using it, and we have shown that the ethanol mandate will largely benefit producers, not farmers.

Producers will get 70 percent of the benefit; farmers, 30 percent according to one report. We have shown what this amounts to is a massive transfer of wealth.

The bottom line is the ethanol provisions of this bill are a very bad deal and that mandating 5 billion gallons of it, a tripling of it, by 2012, which never had a hearing in the Energy Committee, never saw the light of day before the deal was put together in secret and apparently a majority of the Senate is going to support it, we ask one thing, and that is that California and other States that need it, on the east coast and on the west coast especially, be given one more year to increase the refining capacity, to improve the infrastructure, to see that the terminals are in place and that we can, in fact, triple ethanol and have enough gasoline to supply our need.

It is my understanding the junior Senator from California would like to ask a question.

Mrs. BOXER. I do want to ask a question, but first I want to thank my colleague for this very modest amendment. I am stunned that our friends in the ethanol caucus have so far not acceded to it. This is my feeling, and I ask my friend if she agrees with me. As she has so eloquently pointed out, we need to build an infrastructure to receive this ethanol. We have to make sure we know what we are doing and we do not rush this. If we rush this and the Senator's amendment is not adopted, I think it is possible there could be huge hostility toward the use of ethanol, and when the people of our country get upset about taxation without representation—and that is how they are going to feel because, as my friend has pointed out, this is like a tax on gasoline for us—there is no telling what is going to happen in this country in places where they are hit.

If we put that together with this terrible article that ran yesterday, ''Memos Show Possible Ethanol Price-fixing,'' with the legitimate issues of building an infrastructure, together with the fact we do not know the health impacts, if they rush this there could be an explosion of resentment in the country.

There is a 2-year study on the health effects in the bill. Until that is done, until that is analyzed, this could take us into 2005. If we find out, for example, there is a way to mitigate some of the problems, we would have time to fix the infrastructure in a way to contain the problem.

My question to my friend, in addition to thanking her for her leadership on this, is, does she not believe if we are all really on the level and we are being sincere, that this is a friendly amendment to both sides because it would, in fact, give us more time to accommodate for the use of the ethanol, would give us more information on the impacts of the ethanol, and it would allow us to do this in an orderly way without great disruption to the marketplace and at the pumps.

Mrs. FEINSTEIN. I respond to the junior Senator by saying she is absolutely right. She has phrased it in a very kind and gentle way. I am afraid I feel more adamantly about it, because I am 100 percent certain this is a big gas tax increase for our people.

We have the longest commutes in the Nation now with people commuting as much as 2½ hours to get to work from Stockton to the Bay Area. This is going to be a real hardship. Our State is complicated because we do not have the refining capacity to refine the additional gasoline that ethanol is going to require. We talked about this yesterday. I went back and checked the figures, and our state will require 5 to 10 percent additional gasoline once we ban MTBE, but to force ethanol down our throats at the same time is a recipe for disaster.

Therefore, we will not have the refining ability to refine that because our refineries are at capacity.

So the infrastructure need of our State is much greater because it is going to mean additional refining capacity. That is not cheap or easy to produce, because you have to go through zoning, you have to go through local governments, you have to conduct environmental reports, to increase the refining capacity of our refineries.

Additionally, our refineries are old and they break down. We have had two breakdowns of major refineries, as the junior Senator knows, and that spikes the price of gasoline. The Senator is right. All this amendment says is, give us another year. Instead of 2004, make it 2005. Give us and other states a chance to produce our additional refining capacity and to meet the additional infrastructure needs.

The Senator from New York is in the chair. She knows the hardship that New York is going to occasion because of this. It gives New York an additional year to be able to make substantial infrastructure changes.

Neither California nor New York have much by the way of ethanol plants. Everything has to come in from the Midwest. Weather is going to impact it. It has to come in by truck or rail or boat. Then it has to be transported to a refinery and injected into the gasoline.

We are saying: Please, you have the votes out there. You know it will present considerable hardship to some. At least be generous enough to give an extra year to be able to get ready for it.

I thank the Senator for her question, and I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Iowa.

Mr. GRASSLEY. Madam President, obviously, I am against this amendment. The rest of the country is trying to help California get through their oxygenate standards and to get over the business of polluting water with MTBE which their oil companies wanted to use and got a mandate for in the last Clean Air Act.

Somehow, notwithstanding all this help, the Senators from California do not realize how good the agricultural States and even other States are trying to be to California to get through this problem. For example, a lot of farmer cooperatives have helped invest $1.4 billion in small ethanol plants and ethanol expansion in order to provide the product needed to help California to meet the requirements of the Clean Air Act.

We already have the Governor of California sticking it to the farmers—particularly the farmers who have created the small co-ops to produce ethanol—by delaying one year, the MTBE ban that he said 3 years ago would take effect at the end of this year. So now farmers have to wait through 2003 before they get the market created by the MTBE ban. It is putting the investment of these small co-ops in danger.

The Senators from California can talk all they want about helping ADM. ADM will survive. The financial investments of the small co-ops will be harmed.

So now, in addition to the damage the Governor of California has been done by delaying the MTBE ban by 1 year, now the Senators want to delay another year.

The Senators will help ADM and hurt the farmers who have been trying to build the smaller plants so there is more competition in ethanol and also more value-added benefits of ethanol go to the individual family farmer, instead of ADM.

So I make it clear, this 1 more year delay, in addition to the year delay caused by the Governor of California, is doing damage to the people that Senators say they want to help. Senators say they do not want dependence upon ADM, but they will make themselves more dependent on ADM.

And now to clear up something about the mixture of ethanol with gasoline. The senior Senator from California said you bring ethanol to the refinery and it is injected. Let me tell how simple it is to mix ethanol and gasoline together. In the tanker, you put the 10-percent mix of ethanol in the tanker and add the other 90 percent of gasoline. This can be done at the terminal, not at the refinery. You go down the

road and it is splash blended. It is not a technologically complicated process of mixing ethanol with gasoline to create what we call gasohol.

The other thing I think the Senate should be reminded of regarding not having refinery capacity, how long has it been since you built a refinery in California? It has been decades. That is not our problem; that is your problem that you don't have this refinery capacity because of the attitude ''not in my backyard.''

Now, key points regarding this amendment: The bill before the Senate provides for a gradual phase-in of the use of renewable fuels beginning with 2.3 billion gallons in the year 2004 and growing to 5 billion gallons over an additional 8-year-period of time. So there is plenty of time to meet the needs under this legislation.

The gradual phase-in of the renewable fuels standard provides a very orderly transition allowing ethanol capacity and infrastructure modifications to expand to meet market demand.

Nevertheless, we have this delaying tactic before the Senate. It is being presented out of fear of disruptions of supply and price. The facts show there is no need to delay our fuel standard and there is no fear of disruptions. The original agreement implemented the renewable fuels provisions beginning 2003 in an effort to assure all parties that ethanol capacity expansion and infrastructure modifications needed to meet demand would be completed, and we made the renewable portfolio standards delayed by 1 year, until the year 2004.

The U.S. ethanol industry has the capacity to produce 2.3 billion gallons of ethanol per year. Right now we produce 1.8 billion gallons per year. Plants currently under construction will increase capacity to 2.7 billion gallons by the end of this year. Clearly, there is more than enough ethanol capacity to meet the needs of the first year of the program, beginning 2 years from now.

Ethanol producers have expanded capacity to meet demands. In response to State calls for the removal of MTBE from gasoline, America's farmers responded, investing in ethanol plants and adding 1 billion gallons of new capacity in just these 2 years. Delaying the renewable fuels provision will result in significant oversupply in the ethanol market, harming new entrants in the ethanol market. Predominantly, these are farmer-owns facilities, likely resulting in some plant shutdown.

A delay will wreak havoc on the fuel supply markets as ethanol plants shut down as a result of delay. The petroleum industry will lose potential sources of supply necessary to meet renewable fuel requirements the following year when the program begins, disrupting markets and actually raising the potential for price increases to consumers.

By the way, I want to respond to the so-called tax on consumers. There is not any place I have been in my State that you have to pay one penny more for gasoline with ethanol in it. Most times you get it for 2 cents cheaper, sometimes 3 cents cheaper. Most of the time it is priced exactly the same. Don't talk to me about a tax on consumers because ethanol is in gasoline.

Today, oil refineries are operating at near full capacity, leaving no room in the system for unexpected shutdowns, fires, or pipeline disruptions.

Delaying the renewable fuels provision by a year will further constrain domestic supply, leaving consumers vulnerable to price hikes.

Last, I think we also have to remember there is a certain amount of camaraderie around this body that has to be respected. That is that we do have some very basic agreements put together in regard to getting a bipartisan energy bill through this body.

The historic bipartisan compromise on fuels issues in this bill represents a carefully crafted agreement among oil industry, ethanol producers, agricultural groups, environmental and public health interest groups, including the American Lung Association, the Union of Concerned Scientists, and Northeast States for Coordinated Air Use Management, among others.

So let's keep this carefully crafted agreement together so we can get a bill passed and maintain a bipartisan approach to the energy problems of this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, how much time do I have?

The PRESIDING OFFICER. Six minutes.

Mrs. FEINSTEIN. Madam President, I would like to respond to the Senator. I found his comments really quite amazing. On the one hand, he was saying how generous he was being to California; on the other hand, he was saying: Tough, if it spikes your cost of gasoline; tough, if you don't have enough refinery capability, that is your fault. I am for the farmers in the Midwest, and all the rest of you be damned.

I don't appreciate that very much. I will tell you something: When the price of gasoline does spike and people are calling, I will refer them to your office, Senator, and be happy to do so. We are being forced to use something we do not need. It would be one thing if we needed it to meet clean air standards. We are being forced to use 2.68 billion gallons of ethanol we do not need in California to meet clean air standards. I resent that.

I resent that the policy of the United States Senate mandates that we have to use something we do not need that is going to cost us more, that is going to prevent us from getting highway money and transportation money because it is going to cut the highway trust fund by $7 billion.

I resent the fact that I am on the Energy Committee and this bill was not even run by the committee; that there has been no public hearing held on any part of it. I resent that fact.

I resent the fact that you don't care whether my State has the refining capacity or not to meet this in time. We have tried to be nice all during this debate, but I resent the fact that this is a deal cut in secret, when nobody who is affected adversely has a chance to weigh in.

I resent the fact that we have no chance to get experts before a committee, to say what we do and do not know about ethanol.

I resent the fact that everybody says it is just great, when scientists have said it may have real problems attributed to it and we cannot even have a hearing to listen to those problems. I resent that. I do not think it is good public policy. It might be good in a political campaign.

I resent the fact that I had the refiners, the ethanol people and the corn farmers, in my office for 8 months trying to negotiate something that California could live with, and then both Presidential candidates announced their support of ethanol and the corn growers reversed and said: Forget you, we are not going to negotiate with you; now we can get much more. And the ''much more'' has resulted in a tripling of an additive we do not need.

Senator BOXER and I are standing here like two lone sheep trying to make an argument when the deal has already been cut, when we have never been consulted. The Senator from New York, what is she going to do when her gasoline price spikes—because it is going to—because we did not have that opportunity?

I resent that as public policy. I have every right to. I represent 34.5 million people, the fifth-largest economic engine on Earth, and we are being told: It is good for corn farmers, so, you guys, lay down and take it. I am being told: Oh, we have a credit trading system. But the fact of the matter is, if you really read the fine print: Use it or pay for it.

I have a problem with that public policy. And I have every right to stand on this Senate floor and say I have a problem with it, and say I think this is unfair, and say I think it is done in the dark of night, and say I do not think anybody who is really affected by it has been let into that secret, dark room.

Yes, you have all cut your deal, and both coasts are going to suffer because of it.

I talk to Senators who I was surprised were in on the deal. What they told me was: We had to, or they would not let us stop using MTBE. We had to, or they would not let us stop using MTBE. That is the way public policy is made.

It is wrong. I am sorry, it is wrong. We lose today, but guess what, we will watch this thing. We will watch this with the eyes of a hawk. You can be sure we will have more to say about it

because it is bad public policy. To mandate States to use something they don't need, when they can meet clean air standards with reformulated fuel except for a small part of the year, in a certain market—it is wrong. It is bad public policy.

Mrs. BOXER. Will my colleague yield for a question?

Mrs. FEINSTEIN. I will be happy to yield because my adrenaline will then drop and my blood pressure will as well.

Mrs. BOXER. I say to my colleague, she had every right to exhibit the feelings she did, when we are told on the floor: Don't come and tell us about price increases.

Our State has gone through the proverbial nightmare with electricity prices because they were manipulated, because the supply was manipulated, because there was no transparency, because a few companies got together and did it to us. Now we are walking into this situation because of our colleagues who have a special interest in this. I understand it, but don't stand on the floor and say: Don't tell me about price increases.

Your administration, the administration in charge, the Bush administration, has put out a chart. What I want to ask my colleague is this: Didn't Spencer Abraham put out a chart that showed us that this administration believes the price of gasoline in California will go up 9 cents? This is not something we are making up. Is that not a fact?

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

Mrs. BOXER. I ask for 30 more seconds so she can respond.

Mr. REID. There is no time.

Mrs. BOXER. May she have 30 seconds to respond to my question, please?

Mr. REID. I object.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Yes. The Senator from Nevada has 2½ minutes. I yield 2 minutes of that to the Senator from Nebraska, Mr. NELSON.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, one of the questions raised continuously throughout this debate, and it continues to be a question, is: Will there be enough volume, will there be enough production capacity to handle these requirements? Let me refer to the chart we have here that shows there are 61 plants today, plants that are in operation; 14 are under construction—and they claim 82 percent of capacity is in production. We can do better. Biodiesel is estimated to provide another 100 million gallons of ethanol equivalent.

As you begin to see the capacity and production, you see that we have the additional capacity in excess of the production we have at the present time. So the whole question about whether or not we will have enough production, will there be enough ethanol, I think should be put to bed.

The other point that needs to be made is, will this raise the price of gasoline because of the cost of ethanol? Frankly, by reducing the amount of gasoline used, because of the additive, it will drive down the supply of gasoline, which I think will also, if you will—and the use of ethanol as a part of that—not increase the cost of gasoline but will in fact decrease the cost of gasoline. The evidence really exists that this is what the marketplace has been doing over the last 10 to 20 years in many States across the country.

I can understand the concern that has been raised. But I think we have to deal with the facts. If we are going to deal with concerns, the best way to deal with them is with facts. I think the facts have shown capacity, have shown prices, and haven't gone up. I think we can conclude that there will be enough capacity and that the prices will not go up as has been suggested.

I yield the floor.

Mr. REID. Madam President, I yield the final 30 seconds to the Senator from California.

The PRESIDING OFFICER. The Senator from California is yielded the final 30 seconds.

Mrs. FEINSTEIN. Madam President, once again, this is just a very modest amendment. It delays the implementation of this mandate by 1 year, until 2005. It gives both coasts of the United States the opportunity to do what they need to do to increase refining capacity, to develop the terminals, to develop the truck fleet, and to get ready for what is going to be a massive infusion of a product that can't be shipped by pipe. It has to be shipped by truck or by rail or by barge.

I hope the Senate will allow us this additional year to get ready for this unfortunate mandate.

AMENDMENTS NOS. 3332, 3333, 3370, 3372, 3239, AS MODIFIED, 3146, AS MODIFIED AND FURTHER MODIFIED, 3082, 3355, AND 3335

Mr. REID. Madam President, prior to the vote taking place, there are some housekeeping matters.

I ask unanimous consent the pending amendments be temporarily set aside in order for the following filed amendments to be offered in the order in which they are listed below. I further ask unanimous consent that following the reporting of these amendments they be set aside in the order offered:

Kyl No. 3332; Kyl No. 3333; Graham No. 3370; Graham No. 3372; Brownback No. 3239, as modified; Hagel No. 3146, as modified, with a further modification now at the desk; Baucus No. 3082; Conrad-Smith No. 3355; and Sessions No. 3335.

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

The amendments (Nos. 3332, 3333, 3370, 3372, 3239, as modified, 3146, as further modified, 3082, 3355, and 3335) are as follows:

AMENDMENT NO. 3332

(Purpose: To strike the extension of the credit for producing electricity from wind)

In Division H, on page 4, line 8, strike ''Subparagraphs (A) and'' and insert ''Subparagraph''.

AMENDMENT NO. 3333

(Purpose: To strike the provisions relating to alternative vehicles and fuels incentives)

In Division H, beginning on page 17, line 9, strike all through page 55, line 6.

AMENDMENT NO. 3370

(Purpose: To strike section 2308 of Division H (relating to energy tax incentives))

In Division H, (relating to energy tax incentives), strike section 2308.

AMENDMENT NO. 3372

(Purpose: To limit the effective dates of the provisions of Division H (relating to energy tax incentives))

In Division H, on page 216, after line 21, add the following:

SEC. . LIMITATION ON EFFECTIVE DATES.

Notwithstanding any other provision of this division, no provision of nor any amendment made by this division shall take effect until the date of the enactment of legislation which raises Federal revenues or reduces Federal spending sufficient to offset the Federal budgetary cost of such provisions and amendments for the 10-fiscal year period beginning on October 1, 2002.

AMENDMENT NO. 3239, AS MODIFIED

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.
(3) BASELINE IDENTIFICATION AND PROTECTION.—Through regulations promulgated under paragraph (1), the designated agencies shall develop and implement a system that provides—
(A) for the provision of unique serial numbers to identify the verified emission reductions made by an entity relative to the baseline of the entity;
(B) for the tracking of the reductions associated with the serial numbers; and
(C) that the reductions may be applied, as [determined to be appropriate by any Act of] Congress enacted after the date of enactment of this Act, toward a Federal requirement under such an Act that is imposed on the entity for the purpose of reducing greenhouse gas emissions.

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 greenhouse gas emissions from fossil fuel combusted by

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.

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.

AMENDMENT NO. 3146, AS FURTHER MODIFIED

(Purpose: To establish a national registry for accurate and reliable reports of greenhouse gas emissions, and to further encourage voluntary reductions in such emissions)

Strike Title XI and insert the following:

TITLE XI—NATIONAL GREENHOUSE GAS REGISTRY

SEC. 1101. SHORT TITLE.

This title may be cited as the ''National Climate Registry Initiative of 2002''.

SEC. 1102. PURPOSE.

The purpose of this title is to establish a new national greenhouse gas registry—

(1) to further encourage voluntary efforts, by persons and entities conducting business and other operations in the United States, to implement actions, projects and measures that reduce greenhouse gas emissions;

(2) to encourage such persons and entities to monitor and voluntarily report greenhouse gas emissions, direct or indirect, from their facilities, and to the extent practicable, from other types of sources;

(3) to adopt a procedure and uniform format for such persons and entities to establish and report voluntarily greenhouse gas emission baselines in connection with, and furtherance of, such reductions;

(4) to provide verification mechanisms to ensure for participants and the public a high level of confidence in accuracy and verifiability of reports made to the national registry;

(5) to encourage persons and entities, through voluntary agreement with the Secretary, to report annually greenhouse gas emissions from their facilities;

(6) to provide to persons or entities that engage in such voluntary agreements and reduce their emissions transferable credits which, inter alia, shall be available for use by such persons or entities for any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts; and

(7) to provide for the registration, transfer and tracking of the ownership or holding of such credits for purposes of facilitating voluntary trading among persons and entities.

SEC. 1103. DEFINITIONS.

In this title—

(1) ''person'' means an individual, corporation, association, joint venture, cooperative, or partnership;

(2) ''entity'' means a public person, a Federal, interstate, State, or local governmental agency, department, corporation, or other publicly owned organization;

(3) ''facility'' means those buildings, structures, installations, or plants (including units thereof) that are on contiguous or adjacent land, are under common control of the same person or entity and are a source of emissions of greenhouse gases in excess for emission purposes of a threshold as recognized by the guidelines issued under this title;

(4) ''reductions'' means actions, projects or measures taken, whether in the United States or internationally, by a person or entity to reduce, avoid or sequester, directly or indirectly, emissions of one or more greenhouse gases;

(5) ''greenhouse gas'' means—

(A) an anthropogenic gaseous constituent of the atmosphere (including carbon dioxide, methane, nitrous oxide, chlorofluorocarbons, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and tropospheric ozone) that absorbs and re-emits infrared radiation and influences climate; and

(B) an anthropogenic aerosol (such a black soot) that absorbs solar radiation and influences climate;

(6) ''Secretary'' means the Secretary of Energy;

(7) ''Administrator'' means the Administrator of the Energy Information Administration; and

(8) ''Interagency Task Force'' means the Interagency Task Force established under title X of this Act.

SEC. 1104. ESTABLISHMENT.

(a) IN GENERAL.—Not later than 1 year after the enactment of this title, the President shall, in consultation with the Interagency Task Force, establish a National Greenhouse Gas Registry to be administered by the Secretary through the Administrator in accordance with the applicable provisions of this title, section 205 of the Department of Energy Act (42 U.S.C. 7135) and other applicable provisions of that Act (42 U.S.C. 7101, et seq.).

(b) DESIGNATION.—Upon establishment of the registry and issuance of the guidelines

pursuant to this title, such registry shall thereafter be the depository for the United States of data on greenhouse gas emissions and emissions reductions collected from and reported by persons or entities with facilities or operations in the United States, pursuant to the guidelines issued under this title.

(c) PARTICIPATION.—Any person or entity conducting business or activities in the United States may, in accordance with the guidelines established pursuant to this title, voluntarily report its total emissions levels and register its certified emissions reductions with such registry, provided that such reports—

(1) represent a complete and accurate inventory of emissions from facilities and operations within the United States and any domestic or international reduction activities; and

(2) have been verified as accurate by an independent person certified pursuant to guidelines developed pursuant to this title, or other means.

SEC. 1105. IMPLEMENTATION.

(a) GUIDELINES.—Not later than 1 year after the date of establishment of the registry pursuant to this title, the Secretary shall, in consultation with the Interagency Task Force, issue guidelines establishing procedures for the administration of the national registry. Such guidelines shall include—

(1) means and methods for persons or entities to determine, quantify, and report by appropriate and credible means their baseline emissions levels on an annual basis, taking into consideration any reports made by such participants under past Federal programs;

(2) procedures for the use of an independent third-party or other effective verification process for reports on emissions levels and emissions reductions, using the authorities available to the Secretary under this and other provisions of law and taking into account, to the extent possible, costs, risks, the voluntary nature of the registry, and other relevant factors;

(3) a range of reference cases for reporting of project-based reductions in various sectors, and the inclusion of benchmark and default methodologies and practices for use as reference cases for eligible projects;

(4) safeguards to prevent and address reporting, inadvertently or otherwise, of some or all of the same greenhouse gas emissions or reductions by more than one reporting person or entity and to make corrections and adjustments in data where necessary;

(5) procedures and criteria for the review and registration of ownership or holding of all or part of any reported and independently verified emission reduction projects, actions and measures relative to such reported baseline emissions level;

(6) measures or a process for providing to such persons or entities transferable credits with unique serial numbers for such verified emission reductions; and

(7) accounting provisions needed to allow for changes in registration and transfer of ownership of such credits resulting from a voluntary private transaction between persons or entities, provided that the Secretary is notified of any such transfer within 30 days of the transfer having been effected either by private contract or market mechanism.

(b) CONSIDERATION.—In developing such guidelines, the Secretary shall take into consideration—

(1) the existing guidelines for voluntary emissions reporting issued under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)), experience in applying such guidelines, and any revisions thereof initiated by the Secretary pursuant to direction of the President issued prior to the enactment of this title;

(2) protocols and guidelines developed under any Federal, State, local, or private voluntary greenhouse gas emissions reporting or reduction programs;

(3) the various differences 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;

(4) issues, such as comparability, that are associated with the reporting of both emissions baselines and reductions from activities and projects; and

(5) the appropriate level or threshold emissions applicable to a facility or activity of a person or entity that may be reasonably and cost effectively identified, measured and reported voluntarily, taking into consideration different types of facilities and activities and the de minimis nature of some emissions and their sources; and

(6) any other consideration the Secretary may deem appropriate.

(c) EXPERTS AND CONSULTANTS.—The Secretary, and any member of the Interagency Task Force, may secure the services of experts and consultants in the private and nonprofit sectors in accordance with the provisions of section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emissions trading. In securing such services, any grant, contract, cooperative agreement, or other arrangement authorized by law and already available to the Secretary or the member of the Interagency Task Force securing such services may be used.

(d) TRANSFERABILITY OF PRIOR REPORTS.—Emission reports and reductions that have been made by a person or entity pursuant to section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)) or under other Federal or State voluntary greenhouse gas reduction programs may be independently verified and registered with the registry using the same guidelines developed by the Secretary pursuant to this section.

(e) PUBLIC COMMENT.—The Secretary shall make such guidelines available in draft form for public notice and opportunity for comments for a period of at least 90 days, and thereafter shall adopt them for use in implementation of the registry established pursuant to this title.

(f) REVIEW AND REVISION.—The Secretary, through the Interagency Task Force, shall periodically thereafter review the guidelines and, as needed, revise them in the same manner as provided for in this section.

SEC. 1106. VOLUNTARY AGREEMENTS.

(a) IN GENERAL.—In furtherance of the purposes of this title, any person or entity, and the Secretary, may voluntarily enter into an agreement to provide that—

(1) such person or entity (and successors thereto) shall report annually to the registry on emissions and sources of greenhouse gases from applicable facilities and operations which generate net emissions above any de minimis thresholds specified in the guidelines issued by the Secretary pursuant to this title;

(2) such person or entity (and successors thereto) shall commit to report and participate in the registry for a period of at least 5 calendar years, provided that such agreements may be renewed by mutual consent;

(3) for purposes of measuring performance under the agreement, such person or entity (and successors thereto) shall determine, by mutual agreement with the Secretary—

(A) pursuant to the guidelines issued under this title, a baseline emissions level for a representative period preceding the effective date of the agreement; and

(B) emissions reduction goals, taking into consideration the baseline emissions level determined under subparagraph (A) and any relevant economic and operational factors that may affect such baseline emissions level over the duration of the agreement; and

(4) for certified emissions reductions made relative to the baseline emissions level, the Secretary shall provide, at the request of the person or entity, transferable credits (with unique assigned serial numbers) to the person or entity (and successors thereto) which, inter alia,—

(A) can be used by such person or entity towards meeting emissions reductions goals set forth under the agreement;

(B) can be transferred to other persons or entities through a voluntary private transaction between persons or entities; or

(C) may be applicable towards any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts.

(b) PUBLIC NOTICE AND COMMENT.—At least 30 days before any agreement is final, the Secretary shall give notice thereof in the Federal Register and provide an opportunity for public written comment. After reviewing such comments, the Secretary may withdraw the agreement or the parties thereto may mutually agree to revise it or finalize it without substantive change. Such agreement shall be retained in the national registry and be available to the public.

(c) EMISSIONS IN EXCESS.—In the event that a person or entity fails to certify that emissions from applicable facilities and operations are less than the emissions reduction goals contained in the agreement, such person or entity shall take actions as necessary to reduce such excess emissions, including—

(1) redemption of transferable credits acquired in previous years if owned by the person or entity;

(2) acquisition of transferable credits from other persons or entities participating in the registry through their own agreements; or

(3) the undertaking of additional emissions reductions activities in subsequent years as may be determined by agreement with the Secretary.

(d) NO NEW AUTHORITY.—This section shall not be construed as providing any regulatory or mandate authority regarding reporting of such emissions or reductions.

SEC. 1107. MEASUREMENT AND VERIFICATION.

(a) IN GENERAL.—The Secretary of Commerce, through the National Institute of Standards and Technology and in consultation with the Secretary of Energy, shall develop and propose standards and practices for accurate measurement and verification of greenhouse gas emissions reductions. Such standards and best practices shall address the need for—

(1) standardized measurement and verification practices for reports made by all persons or entities participating in the registry, taking into account—

(A) existing protocols and standards already in use by persons or entities desiring to participate in the registry;

(B) boundary issues such as leakage and shifted utilization;

(C) avoidance of double-counting of greenhouse gas emissions and emissions reductions; and

(D) such other factors as the panel determines to be appropriate;

(2) measurement and verification of actions taken to reduce, avoid or sequester greenhouse gas emissions;

(3) in coordination with the Secretary of Agriculture, measurement of the results of

the use of carbon sequestration and carbon recapture technologies, including—

(A) organic soil carbon sequestration practices;

(B) forest preservation and re-forestation activities which adequately address the issues of permanence, leadage, and verification; and

(4) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture and the Secretary of Energy shall determine to be appropriate.

(b) PUBLIC COMMENT.—The Secretary of Commerce shall make such standards and practices available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them, in coordination with the Secretary of Energy, for use in the guidelines for implementation of the registry as issued pursuant to this title.

SEC. 1108. CERTIFIED INDEPENDENT THIRD PARTIES.

(a) CERTIFICATION.—The Secretary of Commerce shall, through the Director of the National Institute of Standards and Technology and the Administer, develop standards for certification of independent persons to act as certified parties to be employed in verifying the accuracy and reliability of reports made under this title, including standards that—

(1) prohibit a certified party from themselves participating in the registry through the ownership or transition of transferable credits recorded in the registry;

(2) prohibit the receipt by a certified party of compensation in the form of a commission where such party receives payment based on the amount of emissions reductions; verified; and

(3) authorize such certified parties to enter into agreements with persons engaged in trading of transferable credits recorded in the registry.

(b) LIST OF CERTIFIED PARTIES.—The Secretary shall maintain and make available to persons or entities making reports under this title and to the public upon request a list of such certified parties and their clients making reports under this title.

SEC. 1109. REPORT TO CONGRESS.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, and biennially thereafter, the President, through the Interagency Task Force, shall report to the Congress on the status of the registry established by this title. The report shall include—

(a) an assessment of the level of participation in the registry (both by sector and in terms of total national emissions represented);

(b) effectiveness of voluntary reporting agreements in enhancing participation the registry;

(c) use of the registry for emissions trading and other purposes;

(d) assessment of progress towards individual and national emissions reduction goals; and

(e) an inventory of administrative actions taken or planned to improve the national registry or the guidelines, or both, and such recommendations for legislative changes to this title or section 1604 of the Energy Policy Act of 1992 (42 U.S.C. 13385) as the President believes necessary to better carry out the purposes of this title.

SEC. 1110. REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this title, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry represents less than 60 percent of the national aggregate greenhouse gas emissions as inventoried in the official U.S. Inventory of Greenhouse Gas Emissions and Sinks published by the Environmental Protection Agency for the previous calendar year.

(b) MANDATORY REPORTING.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of such aggregate greenhouse gas emissions are being reported to the registry—

(1) all persons or entities, regardless of their participation in the registry, shall submit to the Secretary a report that describes, for the preceding calendar year, a complete inventory of greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted by such person or entity, 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 such person or entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the Secretary determines by regulation to be practicable and useful for the purposes of this title, such as—

(i) direct emissions from statutory sources;

(ii) indirect emissions from imported electricity, heat, and stream;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases; and

(2) each person or entity shall submit a report described in this section—

(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 determination under subsection (a); and

(B) annually thereafter.

(c) EXEMPTIONS FROM REPORTING.—

(1) IN GENERAL.—A person or entity shall be required to submit reports under subsection (b) only if, in calendar year after the date of enactment of this title—

(A) the total greenhouse gas emissions of at least 1 facility owned by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation);

(B) the total quantity of greenhouse gas produced, distributed, or imported by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation); or

(C) the person or entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(2) ENTITIES ALREADY REPORTING.—A person or entity that, as of the date of enactment of this title, is required to report carbon dioxide emissions data to a Federal agency shall not be required to report that data again for the purposes of this title. Such emissions data shall be considered to be reported by the entity to the registry for the purpose of this title and included in the determination of the Director of the Office of National Climate Change Policy made under subsection (a).

(d) ENFORCEMENT.—If a person or entity that is required to report greenhouse gas emissions under this section fails to comply with that requirement, the Attorney General may, at the request of the Secretary, bring a civil action in the United States district court against the person or entity to impose on the person or entity a civil penalty of not more than $25,000 for each day for which the entity fails to comply with that requirement.

(e) RESOLUTION OF DISAPPROVAL.—If made, the determination of the Director of the Office of National Climate Change Policy made 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. 1111. NATIONAL ACADEMY REVIEW.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, the Secretary, in consultation with the Interagency Task Force, shall enter into an agreement with the National Academy of Sciences to review the scientific and technological methods, assumptions, and standards used by the Secretary and the Secretary of Commerce for such guidelines and report to the President and the Congress on the results of that review, together with such recommendations as may be appropriate within 6 months after the effective date of that agreement.

AMENDMENT NO. 3082

(Purpose: To provide that certain gasoline and diesel fuel be treated as entered into the customs territory of the United States)

At the appropriate place, insert the following:

SEC. ___. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES.

(a) PROHIBITION.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended—

(1) by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) Any gasoline or diesel fuel sold at a duty-free sales enterprise shall be considered to be entered for consumption into the customs territory of the United States.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

AMENDMENT NO. 3355

(Purpose: To amend the Internal Revenue Code of 1986 to extend the energy credit to stationary microturbine power plants)

In Division H, beginning on page 103, line 1, strike all through page 105, line 12, and insert the following:

SEC. 2104. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property or qualified microturbine property,''.

(b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

''(A) QUALIFIED FUEL CELL PROPERTY.—

''(i) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant that—

''(I) generates at least 1 kilowatt of electricity using an electrochemical process, and

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

''(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit 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) $1,000 for each kilowatt of capacity of such property.

''(iii) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

''(iv) TERMINATION.—Such term shall not include any property placed in service after December 31, 2007.

''(B) QUALIFIED MICROTURBINE PROPERTY.—

''(i) IN GENERAL.—The term ''qualified microturbine property' means a stationary microturbine power plant which has an electricity-only generation efficiency not less than 26 percent at International Standard Organization conditions.

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

''(I) 10 percent of the basis of such property, or

''(II) $200 for each kilowatt of capacity of such property.

''(iii) STATIONARY MICROTURBINE POWER PLANT.—The term 'stationary microturbine power plant means a system comprising of a rotary engine which is actuated by the aerodynamic reaction or impulse or both on radial or axial curved full-circumferential-admission airfoils on a central axial rotating spindle. Such system—

''(I) commonly includes an air compressor, combustor, gas pathways which lead compressed air to the combustor and which lead hot combusted gases from the combustor to 1 or more rotating turbine spools, which in turn drive the compressor and power output shaft,

''(II) includes a fuel compressor, recuperator/regenerator, generator or alternator, integrated combined cycle equipment, cooling-heating-and-power equipment, sound attenuation apparatus, and power conditioning equipment, and

''(III) includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

''(iv) TERMINATION.—Such term shall not include any property placed in service after December 31, 2006.''.

(c) LIMITATION.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENTS.—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(B) Section 48(a)(1) is amended by inserting ''except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),'' before ''the energy''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2002, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

AMENDMENT NO. 3335

(Purpose: To amend the Internal Revenue Code of 1986 to extend the credit for the production of fuel from non-conventional sources with respect to certain existing facilities)

In Division H, 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''.

AMENDMENTS NOS. 3258 AND 3170

Mr. BINGAMAN. Madam President, I ask unanimous consent that, notwithstanding rule XXII, it now be in order for the Senate to consider, en bloc, amendment No. 3258 and amendment No. 3170; that the latter be modified with the changes that are at the desk; that the foregoing amendments be agreed to en bloc, and that the motions to reconsider be laid upon the table.

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

The amendments (Nos. 3258 and 3170, as modified), en bloc, were agreed to, as follows:

AMENDMENT NO. 3258

(Purpose: To strike the provision authorizing loan guarantees for an Alaska natural gas transportation project)

Strike section 708.

AMENDMENT NO. 317

Beginning on page 195, strike line 19 and all that follows through page 196, line 4, and insert the following:

''(B) PETITIONS FOR WAIVERS.—The Administrator in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirement of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

AMENDMENTS NOS. 3082, 3130, 3331, 3336, 3338, 3349, 3350, 3351, 3352, 3353, 3356, AND 3359

Mr. BINGAMAN. Madam President, I ask unanimous consent that, notwithstanding rule XXII, it now be in order for the Senate to consider, en bloc, amendments No. 3082, No. 3130, No. 3331, No. 3336, No. 3338, No. 3349, No. 3350, No. 3351, No. 3352, No. 3353, No. 3356, and No. 3359; that the foregoing amendments be agreed to en bloc, and that the motions to reconsider be laid on the table.

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

The amendments (Nos. 3082, 3130, 3331, 3336, 3338, 3349, 3350, 3351, 3352, 3353, 3356 and 3359) were agreed to, as follows:

AMENDMENT NO. 3082

(Purpose: To provide that certain gasoline and diesel fuel be treated as entered into the customs territory of the United States)

At the appropriate place, insert the following:

SEC. ___. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-FREE SALES ENTERPRISES.

(a) PROHIBITION.—Section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) is amended—

(1) by redesignating paragraphs (6) through (8) as paragraphs (7) through (9), respectively; and

(2) by inserting after paragraph (5) the following:

''(6) Any gasoline or diesel fuel sold at a duty-free sales enterprise shall be considered to be entered for consumption into the customs territory of the United States.''.

(b) CONSTRUCTION.—The amendments made by this section shall not be construed to create any inference with respect to the interpretation of any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

AMENDMENT NO. 3130

(Purpose: To amend the Internal Revenue Code of 1986 to allow a credit against income tax for taxpayers owning certain commercial power takeoff vehicles)

On page 73, between lines 2 and 3, insert the following:

SEC. ___. CREDIT FOR TAXPAYERS OWNING COMMERCIAL POWER TAKEOFF VEHICLES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 45K. COMMERCIAL POWER TAKEOFF VEHICLES CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, the amount of the commercial power takeoff vehicles credit determined under this section for the taxable year is $250 for each qualified commercial power takeoff vehicle owned by the taxpayer as of the close of the calendar year in which or with which the taxable year of the taxpayer ends.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED COMMERCIAL POWER TAKEOFF VEHICLE.—The term 'qualified commercial power takeoff vehicle' means any highway vehicle described in paragraph (2) which is propelled by any fuel subject to tax under section 4041 or 4081 if such vehicle is used in a trade or business or for the production of income (and is licensed and insured for such use).

''(2) HIGHWAY VEHICLE DESCRIBED.—A highway vehicle is described in this paragraph if such vehicle is—

''(A) designed to engage in the daily collection of refuse or recyclables from homes or businesses and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a load compactor, or

''(B) designed to deliver ready mixed concrete on a daily basis and is equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.

''(c) EXCEPTION FOR VEHICLES USED BY GOVERNMENTS, ETC.—No credit shall be allowed under this section for any vehicle owned by any person at the close of a calendar year if such vehicle is used at any time during such year by—

''(1) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions, or

''(2) an organization exempt from tax under section 501(a).

''(d) DENIAL OF DOUBLE BENEFIT.—The amount of any deduction under this subtitle for any tax imposed by subchapter B of chapter 31 or part III of subchapter A of chapter 32 for any taxable year shall be reduced (but not below zero) by the amount of the credit determined under this subsection for such taxable year.

''(e) TERMINATION.—This section shall not apply with respect to any calendar year after 2004.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking ''plus'' at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting '', plus'', and by adding at the end the following new paragraph:

''(24) the commercial power takeoff vehicles credit under section 45K(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 45K. Commercial power takeoff vehicles credit.''.

(d) REGULATIONS.—Not later than January 1, 2005, the Secretary of the Treasury, in consultation with the Secretary of Energy, shall by regulation provide for the method of determining the exemption from any excise tax imposed under section 4041 or 4081 of the Internal Revenue Code of 1986 on fuel used through a mechanism to power equipment attached to a highway vehicle as described in section 45K(b)(2) of such Code, as added by subsection (a).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

AMENDMENT NO. 3331

(Purpose: To further encourage development of hydrogen refueling infrastructure)

In Division H, on page 50, strike lines 23 and 24, and insert the following:

''(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, 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.''.

AMENDMENT NO. 3336

(Purpose: To amend the Internal Revenue Code of 1986 to provide for nonrecognition of grain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes)

In Division H, on page 216, after line 21, add the following:

SEC. ___. TREATMENT OF DAIRY PROPERTY.

(a) QUALIFIED DISPOSITION OF DAIRY PROPERTY TREATED AS INVOLUNTARY CONVERSION.—

(1) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by designating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

''(k) QUALIFIED DISPOSITION TO IMPLEMENT BOVINE TUBERCULOSIS ERADICATION PROGRAM.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified disposition:

''(A) TREATMENT AS INVOLUNTARY CONVERSION.—Such disposition shall be treated as an involuntary conversion to which this section applies.

''(B) MODIFICATION OF SIMILAR PROPERTY REQUIREMENT.—Property to be held by the taxpayer either for productive use in a trade or business or for investment shall be treated as property similar or related in service or use to the property disposed of.

''(C) EXTENSION OF PERIOD FOR REPLACING PROPERTY.—Subsection (a)(2)(B)(i) shall be applied by substituting '4 years' for '2 years'.

''(D) WAIVER OF UNRELATED PERSON REQUIREMENT.—Subsection (i) (relating to replacement property must be acquired from unrelated person in certain cases) shall not apply.

''(E) EXPANDED CAPITAL GAIN FOR CATTLE AND HORSES.—Section 1231(b)(3)(A) shall be applied by substituting '1 month' for '24 months'.

''(2) QUALIFIED DISPOSITION.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified disposition' means the disposition of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, as implemented pursuant to the Declaration of Emergency Because of Bovine Tuberculosis (65 Federal Register 63,227 (2000)).

''(B) PAYMENTS RECEIVED IN CONNECTION WITH THE BOVINE TUBERCULOSIS ERADICATION PROGRAM.—For purposes of this subsection, any amount received by a taxpayer in connection with an agreement under such bovine tuberculosis eradication program shall be treated as received in a qualified disposition.

''(C) TRANSMITTAL OF CERTIFICATIONS.—The Secretary of Agriculture shall transmit copies of certifications under this paragraph to the Secretary.

''(3) ALLOWANCE OF THE ADJUSTED BASIS OF CERTIFIED DAIRY PROPERTY AS A DEPRECIATION DEDUCTION.—The adjusted basis of any property certified under paragraph (2)(A) shall be allowed as a depreciation deduction under section 167 for the taxable year which includes the date of the certification described in paragraph (2)(A).

''(4) DAIRY PROPERTY.—For purposes of this subsection, the term 'dairy property' means all tangible or intangible property used in connection with a dairy business or a dairy processing plant.

''(5) SPECIAL RULES FOR CERTAIN BUSINESS ORGANIZATIONS.—

''(A) S CORPORATIONS.—In the case of an S corporation, gain on a qualified disposition shall not be treated as recognized for the purposes of section 1374 (relating to tax imposed on certain built-in gains).

''(B) PARTNERSHIPS.—In the case of a partnership which dissolves in anticipation of a qualified disposition (including in anticipation of receiving the amount described in paragraph (2)(B)), the dairy property owned by the partners of such partnership at the time of such disposition shall be treated, for the purposes of this section and notwithstanding any regulation or rule of law, as owned by such partners at the time of such disposition.

''(6) TERMINATION.—This subsection shall not apply to dispositions made after December 31, 2006.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to dispositions made and amounts received in taxable years ending after May 22, 2001.

(b) DEDUCTION OF QUALIFIED RECLAMATION EXPENDITURES.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by adding at the end the following new section:

''SEC. 199B. EXPENSING OF DAIRY PROPERTY RECLAMATION COSTS.

''(a) IN GENERAL.—Notwithstanding section 280B (relating to demolition of structures), a taxpayer may elect to treat any qualified reclamation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

''(b) QUALIFIED RECLAMATION EXPENDITURE.—

''(1) IN GENERAL.—For purposes of this subparagraph, the term 'qualified reclamation expenditure' means amounts otherwise chargeable to capital account and paid or incurred to convert any real property certified under section 1033(k)(2) (relating to qualified disposition) into unimproved land.

''(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—A rule similar to the rule of section 198(b)(2) (relating to special rule for expenditures for depreciable property) shall apply for purposes of paragraph (1).

''(c) DEDUCTION RECAPTURED AS ORDINARY INCOME.—Rules similar to the rules of section 198(e) (relating to deduction recaptured as ordinary income on sale, etc.) shall apply with respect to any qualified reclamation expenditure.

''(d) TERMINATION.—This section shall not apply to expenditures paid or incurred after December 31, 2006.''.

(2) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 199B. Expensing of dairy property reclamation costs.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred in taxable years ending after May 22, 2001.

AMENDMENT NO. 3338

(Purpose: To amend the Internal Revenue Code of 1986 to modify energy credit for combined heat and power system property)

In Division H, 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 the 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.

AMENDMENT NO. 3349

(Purpose: To modify the credit for the production of fuel from nonconventional sources regarding refined coal)

In Division H, on page 199, lines 5 through 7, strike ''at least 20 percent of the emissions of sulfur dioxide and nitrogen oxide'' and insert ''at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury.''

AMENDMENT NO. 3350

(Purpose: To modify the credit for the production of electricity to include small irrigation power)

In Division H, on page 17, between lines 8 and 9, insert the following:

SEC. 1905. CREDIT FOR ELECTRICITY PRODUCED FROM SMALL IRRIGATION POWER.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking ''and'' at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting '', and'', and by adding at the end the following new subparagraph:

''(H) small irrigation power.''.

(b) QUALIFIED FACILITY.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(G) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after date of the enactment of this subparagraph and before January 1, 2007.''.

(c) DEFINITION.—Section 45(c), as amended by this Act, is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

''(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

''(B) the installed capacity of which is less than 5 megawatts.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

AMENDMENT NO. 3351

(Purpose: To modify the credit for residential energy efficient property by substituting natural gas furnances for naturla gas heat pumps)

In Division H, beginning on page 91, line 15, strike all through page 95, line 17, and insert the following:

''(iii) $250 for each advanced natural gas furnace,

''(iv) $250 for each central air conditioner,

''(v) $75 for each natural gas water heater, and

''(vi) $250 for each geothermal heat pump.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

''(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

''(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

''(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

''(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

''(ii) in the case of the energy efficiency ratio (EER)—

''(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

''(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

''(iii) are in effect at the time of the acquisition of the property.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

''(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property that uses solar energy to generate electricity for use in such a dwelling unit.

''(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

''(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with such a dwelling unit.

''(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term 'qualified wind energy property expenditure' means an expenditure for property which uses wind energy to generate electricity for use in such a dwelling unit.

''(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified Tier 2 energy efficient building property expenditure' means an expenditure for any Tier 2 energy efficient building property.

''(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term 'Tier 2 energy efficient building property' means—

''(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

''(ii) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 12.5,

''(iii) an advanced natural gas furnace which achieves at least 95 percent annual fuel utilization efficiency (AFUE),''.

AMENDMENT NO. 3352

(Purpose: To modify the incentives for biodiesel)

In Division H, beginning on page 64, line 1, strike all through page 73, line 2, and insert the following:

SEC. 2008. INCENTIVES FOR BIODIESEL.

(a) CREDIT FOR BIODIESEL USED AS A FUEL.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

''SEC. 40B. BIODIESEL USED AS FUEL.

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the biodiesel mixture credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is the sum of the products of the biodiesel mixture rate for each qualified biodiesel mixture and the number of gallons of such mixture of the taxpayer for the taxable year.

''(B) BIODIESEL MIXTURE RATE.—For purposes of subparagraph (A), the biodiesel mixture rate for each qualified biodiesel mixture shall be—

''(i) in the case of a mixture with only biodiesel V, 1 cent for each whole percentage point (not exceeding 20 percentage points) of biodiesel V in such mixture, and

''(ii) in the case of a mixture with biodiesel NV, or a combination of biodiesel V and biodiesel NV, 0.5 cent for each whole percentage point (not exceeding 20 percentage points) of such biodiesel in such mixture.

''(2) QUALIFIED BIODIESEL MIXTURE.—

''(A) IN GENERAL.—The term 'qualified biodiesel mixture' means a mixture of diesel and biodiesel V or biodiesel NV which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(B) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—

''(i) IN GENERAL.—Biodiesel V or biodiesel NV used in the production of a qualified biodiesel mixture shall be taken into account—

''(I) only if the sale or use described in subparagraph (A) is in a trade or business of the taxpayer, and

''(II) for the taxable year in which such sale or use occurs.

''(ii) CERTIFICATION FOR BIODIESEL V.—Biodiesel V used in the production of a qualified biodiesel mixture shall be taken into account only if the taxpayer described in subparagraph (A) obtains a certification from the producer of the biodiesel V which identifies the product produced.

''(C) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel V shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such biodiesel V solely by reason of the application of section 4041(n) or section 4081(f).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL V DEFINED.—The term 'biodiesel V' means the monoalkyl esters of long chain fatty acids derived solely from virgin vegetable oils for use in compressional-ignition (diesel) engines. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds.

''(2) BIODIESEL NV DEFINED.—The term 'biodiesel nv' means the monoalkyl esters of long chain fatty acids derived from nonvirgin vegetable oils or animal fats for use in compressional-ignition (diesel) engines.

''(3) REGISTRATION REQUIREMENTS.—The terms 'biodiesel V' and 'biodiesel NV' shall only include a biodiesel which meets—

''(i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(ii) the requirements of the American Society of Testing and Materials D6751.

''(2) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel V or biodiesel NV used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the biodiesel mixture rate applicable under subsection (b)(1)(B) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(3) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT NOT APPLY.—

''(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

''(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

''(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.''.

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(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 V 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 V MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture with biodiesel V, 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 with biodiesel V, 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 V 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 V 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)) with biodiesel V, 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 V 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)) with biodiesel V 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, 2006.

(c) HIGHWAY TRUST FUND HELD HARMLESS.—There are hereby transferred (from time to time) from the funds of the Commodity Credit Corporation amounts determined by the Secretary of the Treasury to be equivalent to the reductions that would occur (but for this subsection) in the receipts of the Highway Trust Fund by reason of the amendments made by this section.

AMENDMENT NO. 3353

(Purpose: To amend the Internal Revenue Code of 1986 to provide for the treatment of sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy)

In Division H, on page 215, between lines 10 and 11, insert the following:

SEC. 2404. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

''(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

''(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

''(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year,

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

''(2) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

''(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

''(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

''(3) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

''(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

''(B) a person—

''(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

''(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than the close of the period applicable under paragraph (1), or

''(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

''(4) ELECTION.—An election under paragraph (1), once made, shall be irrevocable.

''(5) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions occurring after the date of the enactment of this Act.

AMENDMENT NO. 3356

(Purpose: To apply temporary regulations to certain output contracts)

In Division H, on page 215, between lines 10 and 11, insert the following:

SEC. 2405. APPLICATION OF TEMPORARY REGULATIONS TO CERTAIN OUTPUT CONTRACTS.

In the application of section 1–141–7(c)(4) of the Treasury Temporary Regulations to output contracts entered into after February 22, 1998, with respect to an issuer participating in open access with respect to the issuer's transmission facilities, an output contract in existence on or before such date that is amended after such date shall be treated as a contract entered into after such date only if the amendment increases the amount of output sold under such contract by extending the term of the contract or increasing the amount of output sold, but such treatment as a contract entered into after such date shall begin on the effective date of the amendment and shall apply only with respect to the increased output to be provided under such contract.

AMENDMENT NO. 3359

(Purpose: To modify the credit for new energy efficient homes by treating a manufactured home which meets the energy star standard as a 30 percent home)

In Division H, on page 74, line 16, strike ''Code'' and insert ''Code, or a qualifying new home which is a manufactured home which meets the applicable standards of the Energy Star program managed jointly by the Environmental Protection Agency and the Department of Energy''.

Mr. REID. Madam President, pursuant to the previous order, I now move to table the Boxer amendment No. 3139, and I ask for the yeas and nays on behalf of the majority leader.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 40, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—57

Allard	Crapo	Kohl
Allen	Daschle	Landrieu
Baucus	DeWine	Lincoln
Bayh	Domenici	Lott
Bennett	Dorgan	Lugar
Bond	Edwards	McConnell
Breaux	Enzi	Miller
Brownback	Frist	Murkowski
Bunning	Grassley	Nelson (NE)
Burns	Gregg	Nickles
Byrd	Hagel	Roberts
Campbell	Harkin	Santorum
Carnahan	Hatch	Sessions
Chafee	Hutchinson	Shelby
Cleland	Hutchison	Smith (NH)
Cochran	Inhofe	
Conrad	Jeffords	
Craig	Johnson	
Stabenow	Thomas	Thurmond
Stevens	Thompson	Voinovich

NAYS—42

Akaka	Feinstein	Murray
Biden	Fitzgerald	Nelson (FL)
Bingaman	Graham	Reed
Boxer	Gramm	Reid
Cantwell	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Clinton	Kennedy	Schumer
Collins	Kerry	Smith (OR)
Corzine	Kyl	Snowe
Dayton	Leahy	Specter
Dodd	Levin	Torricelli
Durbin	Lieberman	Warner
Ensign	McCain	Wellstone
Feingold	Mikulski	Wyden

NOT VOTING—1

Helms

The motion was agreed to.

Mr. BINGAMAN. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 3225

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the Feinstein amendment No. 3225.

The Senator from Nevada.

Mr. REID. Madam President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table amendment No. 3225. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Mr. EDWARDS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—60

Baucus	Dorgan	Levin
Bayh	Durbin	Lincoln
Bond	Edwards	Lott
Breaux	Feingold	Lugar
Brownback	Fitzgerald	McConnell
Bunning	Frist	Mikulski
Burns	Graham	Miller
Campbell	Grassley	Murkowski
Carnahan	Gregg	Nelson (FL)
Carper	Hagel	Nelson (NE)
Chafee	Harkin	Roberts
Cochran	Hollings	Sarbanes
Conrad	Hutchinson	Sessions
Craig	Inhofe	Smith (NH)
Crapo	Inouye	Stabenow
Daschle	Jeffords	Stevens
Dayton	Johnson	Thurmond
DeWine	Kerry	Torricelli
Dodd	Kohl	Voinovich
Domenici	Landrieu	Wellstone

NAYS—39

Akaka	Corzine	Murray
Allard	Ensign	Nickles
Allen	Enzi	Reed
Bennett	Feinstein	Reid
Biden	Gramm	Rockefeller
Bingaman	Hatch	Santorum
Boxer	Hutchison	Schumer
Byrd	Kennedy	Shelby
Cantwell	Kyl	Smith (OR)
Cleland	Leahy	
Clinton	Lieberman	
Collins	McCain	
Snowe	Thomas	Warner
Specter	Thompson	Wyden

NOT VOTING—1

Helms

The motion to table was agreed to.

The PRESIDING OFFICER. The Senator from Kentucky.

CHANGE OF VOTE

Mr. McCONNELL. Mr. President, on rollcall vote No. 88, I voted no. It was my intention to vote aye. Therefore, I ask unanimous consent that I be permitted to change my vote since it would not affect the outcome.

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, we have approximately 2 hours until all time runs out on this legislation as a result of the postcloture rules. The following amendments are about all we are going to have time to work on before 3:30. I ask unanimous consent that Senator DURBIN be allowed to offer amendment No. 3342, with 10 minutes equally divided; Senator HARKIN, amendment No. 3195, 20 minutes equally divided, and that Senator DORGAN be granted 10 minutes of that 20 in opposition; Carper amendment No. 3198, with 40 minutes equally divided; amendment No. 3326, the Murray amendment, 10 minutes equally divided; Kyl amendments Nos. 3332 and 3333, 20 minutes total for the two amendments equally divided.

I ask unanimous consent that following the completion of the debate on these amendments there be a series of votes in stacked sequence with no intervening second-degree amendments.

The votes would be on or in relation to the amendments.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. This does not waive points of order on the amendments?

Mr. REID. It waives no points of order.

Mr. LEVIN. One other issue. There are other amendments at the desk, including one in which I am interested.

Mr. REID. Yes. I will work on that.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Reserving the right to object, and I will probably not object, but we have an amendment on climate change issues that I did not hear made mention of. I inquire of the assistant majority leader with regard to that amendment.

Mr. REID. I say to my friend from Kansas, we have taken these amendments in the sequence they are now listed. Sadly, is the best way I can say it, there are eight amendments to which we are simply not going to have time to get. The reason I have asked these people to take less time than they are entitled is so we can get to as many of them as possible.

I say to my friend, if we are able to complete this unanimous consent agreement, what we are going to do is ask unanimous consent as to all amendments that are in order, that are on this list, Senators would have 2 minutes for and 2 minutes against each amendment. Other than that, that is the best we can do because that is 4 minutes more than the amendments are entitled to under the rule.

Mr. BROWNBACK. If I could inquire, does that include, then, the amendment we have put forward?

Mr. REID. It will include that.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. It is my understanding we do not need a vote on the Durbin amendment, that a voice vote would be adequate, if that is all right with the author of the amendment.

Mr. REID. We hope that is the case. That is my understanding.

Mr. CRAIG. Fine. That is what we believe can be done over on this side.

Mr. REID. I say to my friend from Idaho, if we get lucky, there may be one or two others that may not require a vote. If that is the case, I say to my friend from Kansas, we will try to move down the list a little more. But 3:30 is the drop dead time under the rule.

Mr. CRAIG. That is correct. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Nevada.

AMENDMENT NO. 3336 TO AMENDMENT NO. 2917

Mr. REID. Mr. President, I ask unanimous consent that the pending amendments be set aside temporarily in order to call up amendment No. 3336 for Senator LEVIN. This has been cleared on the other side.

Mr. LEVIN. Mr. President, I do not know that it has been cleared on the other side.

Mr. REID. Yes, it has been. It has not been cleared for acceptance. This unanimous consent agreement has been cleared.

Mr. CRAIG. The unanimous consent agreement?

Mr. REID. To allow the amendment to be listed.

Mr. CRAIG. To have it listed, is that the unanimous consent request?

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I withdraw.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LEVIN, proposes an amendment numbered 3366 to amendment No. 2917.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the incentives for alternative fuel motor vehicles and refueling properties)

In Division H, on page 73, between lines 2 and 3, insert the following:

SEC. ___. MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATION TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—The table in section 30B(c)(2)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking ''5 percent'' and inserting ''4 percent''.

(b) 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.

(c) 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.''.

(d) EFFECTIVE DATE.—Except as provided in subsection (b)(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.

Mr. REID. I call for regular order.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3342

Mr. DURBIN. Mr. President, yesterday I had reported by the clerk amendment No. 3342 and it was laid aside. I do not know if it is necessary for the clerk to report it again. I will speak briefly to the amendment. Is it necessary for the clerk to report?

The PRESIDING OFFICER. The amendment is pending.

Mr. DURBIN. Mr. President, I will be brief because I believe this amendment is going to be agreed to by a voice vote. I thank all those who are involved in that: Senator BINGAMAN, Senator MURKOWSKI, as well as Senator NICKLES, Senator GRASSLEY, Senator BAUCUS, and others who have followed this matter.

We clearly need to reduce our dependence on fossil fuels, particularly on imported oil. We should focus on sources of energy that are clean, free, and literally limitless. One of those sources is wind. Wind power is now creating opportunity for the generation of electricity across the United States. I introduced legislation last year to create a tax credit to help defray the cost of installing a small wind energy system to generate electricity for homes, farms, and businesses. I hope this legislation will ultimately become the law of the land.

Today, with this amendment, we take an important step forward in providing for equal treatment of wind energy used in business and nonbusiness applications. It certainly would apply to our quest to reduce our dependence on foreign oil. This is extremely important.

A recent USA Today poll showed 91 percent of the public favors incentives for wind, solar, and fuel cells. We think this amendment is one that will give us an opportunity to use wind power across America, to generate electricity, particularly in applications for farms and ranches and businesses.

This map I have illustrates the areas of the United States where there are wind resources that could generate electricity. I am surprised, in looking at the map, that there is no indication that Washington, DC, is a source of wind, but those who visit Capitol Hill might argue otherwise.

I think if we take a look at this map, though, we can see we have ample opportunities across the United States for a clean, literally limitless, source of electricity.

I urge adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 3342) was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3195

Mr. REID. Mr. President, I ask unanimous consent that the time on the Harkin amendment, the next in order as I understand it, start running against that amendment.

Mr. COCHRAN. Reserving the right to object, I didn't understand the request.

Mr. REID. The Harkin amendment has 20 minutes evenly divided, and I think the time should start running against that.

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

Mr. COCHRAN. Mr. President, I am a cosponsor of the Harkin amendment, along with Senator GRASSLEY and Senator LINCOLN. This amendment was offered last night. We had a discussion of the amendment at that time. The issue presented by this amendment is whether the bill, as taken up on the floor of the Senate as it relates to energy-efficient ratios of air-conditioning units, should be adopted by the Senate or another ratio that would provide virtually the same amount of efficiency but at a lower ratio and leave in place production plants that are producing coils for air-conditioning units on the market today and the entire air-conditioning units to continue to function.

Let me give a parochial example of the implications of this issue for my State of Mississippi. There are over 7,000 workers employed in facilities that produce either components for or total air-conditioning units. One plant employs 2,500 people in Grenada, MS. Our amendment allows the use, sale, manufacture, and use by citizens of air-conditioning units with an energy efficiency ratio of 12. These are numeric. The bill before the Senate requires a ratio of 13. If the committee bill is adopted, or the bill before the Senate—the committee didn't have a whole lot to do with writing this bill, incidentally—if the bill before the Senate is adopted without amendment to this section, that plant at Grenada, MS, will shut down and those 2,500 workers will be out of work. This will be replicated not only throughout my State and other manufacturing facilities but throughout the country.

So you need to check to see what the results will be in your State before you vote on this amendment.

The other side of the story is, the cost of air-conditioning units is going to skyrocket. I mean that seriously. An additional $700 per air-conditioning unit is going to be added to the cost to those who want to buy an air-conditioning unit. Think about that. If you have a State where people work for the minimum wage or low salaries, they can forget about buying an air-conditioning unit. They are not going to be able to afford air-conditioning.

One of the main purposes of this legislation is to improve energy efficiency. We are for that. The current energy efficiency ratio for air-conditioning units is at the level of 10. This amendment raises that by 20 percent to 12. We are suggesting—the Senators from Iowa, the Senator from Arkansas and I—with this amendment, that the ratio of 12 is the correct level.

We are not a regulatory body. Think about this. This bill is requiring the Senate to choose a regulatory standard. A rulemaking was in process at the Department of Energy. This legislation preempts that process and arbitrarily sets a limit that is going to unreasonably raise costs of air-conditioning units and put a lot of people out of work for no really good, justifiable reason.

I urge the Senate to think carefully about the implications of this amendment and its consequences. We urge Members to vote for the level that is more appropriate, that we think the Department of Energy would move toward and establish by its rulemaking power—which it should have been allowed to do. This bill preempts that process, stops the rulemaking in its tracks, and imposes a new energy efficiency standard. It is too high. It is too high for the reasons I stated.

I urge the Senate to adopt the Harkin-Cochran-Grassley-Lincoln amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. How much time is available?

The PRESIDING OFFICER. The Senator has 10 minutes.

Mr. DORGAN. Mr. President, I was not available when Senator HARKIN introduced the amendment last evening, but I want to come to the floor to support the standard that exists in the energy bill we are now considering.

This issue is in many ways complicated, but it is also the issue that deals with energy efficiency. We are talking about increased production, conservation, efficiency, as well as the promotion of limitless, renewable sources of energy. This issue is called the Seasonal Energy Efficiency Ratio. Almost no one knows what it is. It is called the SEER standard. The standard in the bill is established at 13 SEER, which is a standard that was published in the Federal Register almost a year and a half ago, January 2001. It would increase residential air-conditioner efficiency by 30 percent over the prior 10 SEER standard.

The Goodman Manufacturing Company, for example, said in testimony they have given at hearings: There have been claims that the 13 SEER standard would cost consumers substantially more money than the proposed rollback to a 12 SEER standard. According to the Department of Energy, the average difference in cost between a 13 SEER unit and a 12 SEER unit is approximately $122. That is what I am told the Department of Energy says is the difference.

The Department of Energy also indicates that cost will be recovered in a very short period of time, because of the added efficiency in a 13 SEER standard. According to the Goodman Company, which is the second-largest manufacture of air-conditioners in the country, and who supports the 13 SEER standard in the bill, the incremental cost to the manufacturer to produce a 13 SEER unit is about $100. They say: We believe the most efficient technology should be available to people of all income levels at an affordable price. Not all manufacturers may have this same marketing philosophy. Some may seek a protection of higher profit margins on their more efficient equipment. A 13 SEER standard would force all manufacturers to be truly competitive and provide all consumers with the most affordable energy-efficient technology for air-conditioners that is available today.

This issue deals with a mix of things we have to do in a successful energy policy. We are talking about production, conservation, efficiency, and limitless, renewable sources of energy. This is the efficiency piece that deals with air-conditioners.

Most of us understand that at peak loads at certain times of the year, the use of air-conditioners consumes a substantial amount of the energy in our country. Much has been said about it. Let me show a couple of charts that describe a couple of other alternatives.

Pat Wood, former chairman of the Texas Public Utility Commission said:

> Such a significantly strengthened standard to SEER 13 would have the triple benefits of improving electric system reliability, reducing air pollution, and cutting cooling costs for our customers.

The National Association of Regulatory Utility Commissioners—of the various States—say:

> Keeping the SEER 13 standard for residential air-conditioners is a crucial component for curbing future demand growth while retaining consumer needs for affordable cooling.

And the EPA says:

> A 13 SEER standard will do more to stimulate energy savings that benefit the consumer, reduce fossil fuel consumption and limit emissions of air pollutants.

All of those represent the benefits of the 13 SEER standard as opposed to the 12 SEER standard.

History has shown us, on virtually all of these areas of technology, that once a standard is implemented, the markets drive prices down and make the more efficient equipment even more affordable for all consumers. The incremental cost to the manufacturer to produce the 13 SEER standard, according to the Goodman Manufacturing Company, the second largest air-conditioning manufacturing company in the country—and, incidentally, a supporter of the 13 SEER standard—is about $100. The Goodman Manufacturing company, the EPA, and others say that will be recouped in lower electricity costs by a more efficient air-conditioner in a very short period of time.

I mentioned Pat Wood from Texas in a chart. The Texas electric rates were 27th in the Nation compared to other States. One of the primary uses of electricity in Texas is air-conditioning. Approximately 90 percent of the homes in Texas have air-conditioning, and Texans spend more on air-conditioning than on space heating.

If the 13 SEER standard is implemented, for example, Texas electric

companies will save $241 million by the year 2010. It is estimated in 2020 they will have saved $785 million in electric costs.

Consumer organizations and low-income advocacy organizations support the 13 SEER standard.

It seems to me, at a time when we want to ensure energy security, increasing the efficiency of our appliances makes good sense. We have testimony not only from one of the large air-conditioning manufacturers, but also from smaller air-conditioning manufacturers, that they support this. This can be done and can be done in a manner that is helpful to all Americans.

Goodman Manufacturing, the second largest manufacturer, a couple of small manufacturers—Goettl of Arizona and Aaon, Inc. of Tulsa, Oklahoma—also support the 30-percent increase in efficiency.

I know there is not the time to adequately discuss a number of these issues in the energy bill. As I indicated when I began, these are complicated issues. I know there are disagreements about them within the manufacturing sector on air-conditioning units. But with respect to legislation that deals with a range of issues in a comprehensive energy policy, on the efficiency side, the 13 SEER standard makes sense.

The 13 SEER standard will save energy. It will promote a substantial movement by the manufacturing base to produce these at an affordable cost. It will save money and also be friendly to our environment. All of this make sense as part of an energy policy.

Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator has 2 minutes 20 seconds.

Mr. DORGAN. I reserve the remainder of my time.

Mr. MURKOWSKI. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There remains 4 minutes 18 seconds.

Mr. MURKOWSKI. Mr. President, I was going to speak on behalf of the amendment, but I will defer to Senator HARKIN. He controls the time.

Mr. HARKIN. I am sorry, how much time remains?

The PRESIDING OFFICER. The Chair corrects the time. There remain 5 minutes 32 seconds.

Mr. MURKOWSKI. Will my colleague proceed now. I am going to take 2 minutes.

Mr. HARKIN. Whatever the Senator wants.

Mr. MURKOWSKI. I will yield to the Senator the remaining time.

Mr. HARKIN. I thank my colleague.

Mr. MURKOWSKI. Mr. President, this amendment strikes the mandate for a 13 SEER standard for residential air-conditioners and heat pumps. As we know, the DOE would be required to issue a new 12 SEER efficiency standard within 90 days. This would result in the same standard as recommended by the DOE staff during the previous administration, and constitute a 20-percent increase in efficiency, which is not a rollback by any means, as some would indicate.

Here we are again in the situation, just as in the CAFE debate, where certain Senators want you to believe they know better. Instead of letting the agency, in this case the DOE, act on a reasonable efficiency and cost standard, the number 13 was picked out of the air even though it meant higher costs and fewer choices for consumers.

To give some idea, the nonpartisan Energy Administration estimates the 12 SEER standard saves consumers money. The 13 SEER standard is a net cost, that is, about $600 million over 10 years. To give some idea, the 12 SEER saves $2.3 billion over the 10-year period.

During the last rulemaking in 2000, DOE staff considered a wide range of possible efficiency standards. Based on a review of all factors, DOE staff proposed a new 12 SEER standard—a 20 percent increase in energy efficiency. However, Secretary Richardson arbitrarily decided—without any further study—to issue a new 13 SEER rule in the final days of the Clinton Administration. This rule was placed under further review.

This higher level was not supported by the rulemaking—and it certainly is not economically justifiable. To justify the last minute 13 SEER standard, DOE in the prior Administration disregarded the industry data that it had used throughout the entire rulemaking. The cost of an air conditioner will increase by $712—nearly 30 percent—if a 13 SEER standard is imposed. For most consumers in the Midwest and northern regions of the country the ''payback'' time for recovery of the additional costs is well over 10 years. For these consumers—the extra cost of the more efficient unit just simply isn't worth it over the life of the equipment.

This dramatic increase in the cost of a new air conditioner under a 13 SEER standard will make air conditioning unaffordable for many seniors, working families, and low-income consumers, many of whom own single family homes and many of whom rely on air conditioning for their health and well being.

For small and manufactured homes, the expense is even greater. The size of an air conditioner under a 13 SEER standard is substantially larger than under a 10 or 12 SEER standard. This creates enormous retrofitting problems and much higher cost, particularly in manufactured housing. The larger cooling coils simply cannot fit in the space made for the smaller unit.

Because of the substantial increase in cost, many consumers will choose to fix older units that are less energy efficient instead of make a new purchase. This would defeat the purpose of higher standards—to save energy and reduce heating and cooling expenses.

A 13 SEER standard would have tremendously negative impacts on industry competition and small businesses: 84 percent of all central air conditioning models would be suddenly obsolete; as would 86 percent of all heat pump models; redesign and retooling of manufacturing facilities would cost the industry $350 million—reducing profits and jobs.

Nearly half of the original equipment manufacturers selling air conditioners in the U.S. today do not offer 13 SEER products. The Department of Justice and the Small Business Administration have both expressed concerns over the loss of competition and the closure of many small manufacturers.

But most of all—the 13 SEER standard is not economically justifiable as is required under existing law. Industry figures show that both the 12 and the 13 SEER standards will cost consumers billions after electricity savings are factored in, and the non-partisan Energy Information Administration estimates that the 12 SEER standard saves consumers money; while the 13 SEER standard is a net cost.

These are the reasons DOE staff initially recommended the 12 SEER standard as the ''economically justifiable'' level of efficiency, and this is why the DOE has proposed a 12 SEER standard as a final rule after its further review of the record. We should respect the expertise of the DOE—and let them carry out their duties under existing law.

A 13 SEER standard would have a devastating effect on the industry, eliminate competition, and cost thousands of jobs. By contrast, a 12 SEER standard will benefit consumers, preserve jobs and competition, and truly save energy. I support the amendment to strike the 13 SEER standard, and I encourage my colleagues to do the same.

I yield the remaining time to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank the distinguished Senator from Alaska for his comments. I support him in favor of a 12 SEER standard instead of a 13. I join with my friend from Mississippi. I thank him for his strong support of this amendment.

It always sounds nice. You do a 13, you are going to save a lot of energy and can quote from EPA and that stuff. But the fact remains, No. 1, the Department of Justice in the last Administration had real concerns about a 13 standard and this administration said this would be harmful to small businesses, this would not be competitive.

No. 2, the professionals in the Department of Energy in both the past administration and in this one have said a 12 standard is the best standard.

What happens if you go to a 13? The cost of these air-conditioners will be higher. The elderly, modest-income people, people who live in manufactured homes, will be less able to afford them.

What they will do is they will keep their old air-conditioners, and those are less energy efficient. They will not move to the new ones.

The cost of going from 10 to 13 will be more than $700 per air-conditioner. To go to a 12, it is about $407.

Keep in mind, under the rules the Department of Energy has to abide by, they have to look not just at the energy use, they have to look at the impact it has on certain subgroups, such as those of modest means. Under the 13 that is in this bill, it will mean a lot of low-income people in this country are going to be harmed. It will mean the elderly who need air-conditioning, when it really gets hot, their health and their well-being, will be unable to have the air-conditioning they need. Is this what we want to do around here?

When Senators come to vote on this issue, I hope this is not some kind of a knee-jerk reaction: 13 is higher than 12 and we want to have a higher energy efficiency standard, so we will vote for 13, without thinking about what the implications will mean, what it will mean to consumers, the elderly, the low-income people all over this country.

Last, what is it going to mean to jobs? We have thousands of jobs in my State of Iowa that are in jeopardy, dire jeopardy if the standard of 13 stays in this bill. These are companies that produce good quality equipment. You have all heard of Lennox. It is a great company. But I can tell you right now, if it goes to 13, Lennox will be squeezed and jobs will be lost in my state of Iowa.

Any way you cut it, the 13 standard that is in the substitute amendment now before this body is not going to achieve the goals of lower electric energy use people hope for. Instead, it is going to hurt our elderly, our low income, and especially the jobs of the people who work in these industries today.

I reserve the remainder of my time, however much it might be.

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

Ms. CANTWELL. Mr. President, I rise today in opposition to this amendment, which would leave it to the Secretary of Energy to decide what efficiency standard should be applied to residential air conditioners and heat pumps. This is an attempt to reduce by at least 10 percent the energy efficiency requirement proposed in this bill, which reflects the standard promulgated by the Department of Energy in January 2001—the result of a comprehensive rulemaking effort and multiple years of hearings and analysis.

The new standard, called SEER 13, seasonal energy efficiency ratio, was supposed to take effect last February, but it was delayed by the Bush administration's suspension of a long list of Clinton era environmental rules in what's come to be known as the ''Card Memo''—the legality of which is still subject to litigation.

My colleagues may be aware of a number of other rules that came under the Bush administration's scrutiny as a result of this freeze on environmental protections. The list is long and includes: the attempt to roll back the arsenic standard for drinking water; suspension of the roadless rule, designed to protect more than 60 million acres of untouched national forests from road building and logging; and even the Clinton administration's New Source Review policy, restricting harmful emissions from power plants.

Given this laundry list of environmental reversals, it should probably not surprise us that the Bush administration also took steps to undermine the air conditioning efficiency standard. After merely 2 months of review—compared to the 8-year rulemaking process of the Clinton administration—the Department of Energy last April proposed lowering the air conditioning efficiency standard to SEER 12, or by at least 10 percent relative to the Clinton rule. What is more, the Bush standard wouldn't even go into effect until 2006.

And so, the fix is in. If we leave this important standard to the discretion of this administration's Department of Energy, we will needlessly lower the bar for the efficiency of appliances that use as much as 28 percent of all the electricity consumed in this nation on hot summer days. Thus, this amendment would adversely impact our environment, the reliability of our transmission grid and our Nation's consumers.

I also think it's interesting to note that the Bush administration's proposed standard has been vigorously challenged—not just by consumer groups, environmental and energy efficiency organizations, but also by utilities themselves, State utility regulators, some of the same large and small appliance manufacturers that this amendment purports to help, and even the Bush administration's own Environmental Protection Agency.

Indeed, in comments on the Department of Energy's rulemaking, the Deputy Administrator of the EPA wrote that ''the EPA believes there is a strong rationale to support a 13 SEER standard,'' put in place by the Clinton rule, and further alleged that several DOE's arguments in justifying its proposed rollback contained ''overestimates,'' ''underestimates,'' and ''misinformation.''

Now, why this fight over a seemingly obscure requirement? What is the difference between a 12 SEER and 13 SEER standard?

By 2020, the Bush administration's proposal—which this amendment would render a foregone conclusion—would increase by nearly 14,500 Megawatts the peak electricity demand across this country. That is roughly the same as the output from 48 new power plants.

It would, every year, add 2.5 million metric tons of carbon emissions into our air;

It would cost American consumers $1 billion dollars on their electricity bills.

And it would degrade the reliability of our already strained transmission grid.

I believe these alone are compelling facts. But I also want to talk about a benefit of the 13 SEER standard—the standard that is now in this bill—that became obvious to us in Washington State during the height of the Western energy crisis.

Now, in my State, we don't have a lot of air-conditioning load during the summer because our major population centers are located in a temperate climate where temperatures eclipse 80 for only a few days a year. In fact, our peak energy usage occurs during the winter—for heating purposes. But this is an important issue for ratepayers in my State nonetheless, because we are upstream from—and interconnected, through Oregon, to—California. And in California, air conditioners account for as much as 30 percent of peak energy demand on hot summer days. That is, during the business hours when our economy requires the most energy to function—during the day, when temperatures are also at their height—air conditioning alone uses almost a third of all the energy consumed in that State.

Now, a very painful lesson was driven home up and down the west coast last year. That is, when supply is tightest—during periods of peak demand—the grid is also the most constrained and wholesale power prices are the most volatile. When supply is tight, utilities switch on their so-called ''peaker'' plants—plants that are usually the most obsolete, least efficient, environmentally damaging and run for only a few hours a year. And as my colleagues are aware—because of the unique nature of electricity as a commodity that cannot be stored—that very last megawatt of electricity needed to meet demand is by far the most expensive. It can have an almost exponential effect on power supply costs across a market. And it's a primary driver in price spikes and volatility.

So by increasing the efficiency of air conditioners—by 30 percent under the Clinton administration standard that this bill contains—we would essentially be helping to drive down peak demand in a way that will also lessen volatility in electricity markets, enhance the reliability of the grid and spare our environment emissions from these peaker plants.

I believe the efficiency standard contained in this bill is right for consumers and it is right for the environment. Contrary to what some of my colleagues may assert, it is also imminently achievable for industry. All manufacturers already make air conditioning models that comply with the 30 percent savings standard contained in this bill—so clearly, the technology already exists. And the Department of

Energy concluded in its 8-year rulemaking that the standard would actually increase—not reduce—manufacturing jobs in this sector.

So I think the choice is clear. The evidence supports the standard contained in this bill. This is an opportunity for this body to resist yet another Bush administration environmental rollback. So I ask my colleagues to oppose this amendment.

Mr. BINGAMAN. How much time remains for the opponents?

The PRESIDING OFFICER. There remain 2 minutes 17 seconds.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, to just put this in perspective, this is another one of these amendments that we have seen a few of during this debate over the last several weeks—the sky is falling, don't try requiring anything that is onerous.

The truth is the provision in the bill says that by the year 2006 we believe the air-conditioners sold in the country ought to meet this SEER standard. Lennox, the manufacturer which is the one the Senator from Iowa referred to today, has over 19 models of air-conditioners, and 130 of those models already meet the standard in 2002. We are saying that 4 years from now we would like for the others to meet the standards as well.

Carrier lists 1,000 models that they make available. Of those, fewer than 100 have a SEER standard of less than 13. They don't have any air-conditioners on the market with a SEER standard of less than 12.25. So we are saying, 4 years from now let's move to the higher standard.

The EPA—not just the EPA of the prior administration but the EPA of this administration—agrees with our position.

I ask unanimous consent that following my remarks, we have printed in the RECORD a letter dated October 19 from Linda Fisher, Deputy Administrator of EPA, saying that EPA believes there is a strong rationale for the 13 SEER standard we have in this bill.

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

(See Exhibit 1.)

Mr. BINGAMAN. Mr. President, it is clear to me there are a great many benefits to be achieved for our country, for consumers, and for the environment, in lower electricity bills, by going ahead and maintaining the provision we have in the bill, the 13 SEER standard. My colleague from Iowa says it is going to cost a tremendous number of jobs. The Department of Energy itself—this Department of Energy—says this will create jobs and it will not lose jobs. It requires a few more workers to produce these air-conditioners with this higher standard. Instead of losing jobs in 2006 when this new mandate will be effective, we will be creating jobs.

If this is an effort to protect jobs for manufacturers in this industry, it is a misguided effort. I believe strongly that the provision we have in the bill is the right provision.

I urge my colleagues not to support the amendment that is offered by the Senator from Iowa.

EXHIBIT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 19, 2001.

Ms. BRENDA EDWARDS-JONES,
U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps, Docket No. EE–RM/STD–98–440, Washington, DC.

DEAR MS. EDWARDS-JONES: On behalf of the U.S. Environmental Protection Agency, I am pleased to submit the attached comments to Docket No: EE–RM–98–440, the Department of Energy's Proposed Rule: Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards.

DOE has proposed a change to its previously issued standard that decreases energy efficiency requirements for residential air conditioners and heat pumps. DOE proposes to withdraw its previously issued 13 SEER standard and replace it with a 12 SEER standard. These comments affirm EPA's support for DOE's original 13 SEER standard.

EPA believes there is a strong rationale to support a 13 SEER standard. A 13 SEER standard represents a 30% increase in the minimum efficiency requirements for central air conditioners and air source heat pumps. In contrast, a 12 SEER standard represents only a 20% increase. The Administration's National Energy Policy stresses the important role that energy efficiency plays in our energy future. A 13 SEER DOE standard will do more to stimulate energy savings that benefit the consumer. DOE has quantified these savings at approximately 4.2 quads of energy over the 2006–2030 period, equivalent to the annual energy use of 26 million households and resulting in net benefits to the consumer of approximately $1 billion by 2020. In comparison, DOE projects that only 3 quads of energy would be saved over that same period with a 12 SEER standard.

A 13 SEER standard will also do more to reduce fossil fuel consumption and more to limit emissions of air pollutants. For example, by avoiding the construction of 39 400 megawatt power plants, a 13 SEER standard will reduce nitrous oxides (NO_x) emissions by up to 85 thousand metric tons versus up to 73 thousand metric tons that would be reduced with a 12 SEER standard. A 13 SEER standard will also result in cumulative greenhouse gas emission reductions of up to 33 million metric tons (Mt) of carbon. This is in contrast to a 12 SEER rule which will reduce up to 24 Mt of carbon equivalent by avoiding the construction of 27 400 megawatt power plants. At a time when many areas across the nation are struggling to improve their air quality, the additional emissions reductions achieved by a 13 SEER standard are especially important.

Thank you for the opportunity to provide these written comments. Should you have any questions, please contact Dave Godwin in EPA's Office of Air and Radiation at 202–564–3517 or via e-mail at godwin.dave@epa.gov.

Sincerely,

LINDA J. FISHER,
Deputy Administrator.

COMMENTS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY ON THE PROPOSED RULE, ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS, CENTRAL AIR CONDITIONERS AND HEAT PUMPS ENERGY CONSERVATION STANDARDS, DOCKET NO. EE–RM–98–440, OCTOBER 10, 2001

OVERVIEW OF EPA COMMENTS

The Environmental Protection Agency welcomes the opportunity to comment on the Department of Energy's Proposed Rule setting forth energy conservation standards for residential central air conditioners and central air conditioning heat pumps. EPA recognizes that the new proposed DOE rule represents a 20% increase in minimum efficiency standards for central air conditioning and heat pumps. However, we instead support the previous final rule of a 30% increase.

EPA has issue with several of the arguments DOE used to justify the withdrawal of the previous final rule as outlined within the Federal Register Notice of July 25, 2001 and the Technical Support Document. In summary, EPA believes that the information in the Federal Register Notice of July 25, 2001:

overstates the regulatory burden on manufacturers due to HCFC phase-out and concludes that the industry is under greater financial pressure from a 13 SEER standard than it is,

understates the savings benefits of the 13 SEER standard,

over and underestimates certain distributional inequalities,

mischaracterizes the number of manufacturers that already produce at the 13 SEER level or could produce at the 13 SEER level through modest changes to the products, and thereby mischaracterizes the availability of 13 SEER product.

EPA believes there is a strong rationale to support a 13 SEER standard. EPA also believes that the more stringent standard will be more representative of the long term goals of the administration's energy policy and will do more to reduce both the number of new power plants that need to be constructed, as well as the emissions resulting from these plants. EPA's more detailed comments are provided below.

OVERSTATED REGULATORY BURDEN DUE TO HCFC PHASEOUT

EPA analysis indicates that the Department of Energy's (DOE) projected cost for manufacturers to transition from HCFT–22 to a substitute for residential central air conditioners and heat pumps is likely to be a significant overestimate. Both EPA's own analyses, and estimates from at least one large manufacturer indicate that the DOE estimates in their Technical Support Document (TSD) are at least twice as high as warranted based on prior industry transitions and more recent trends.

The attached analysis from EPA's contractor, ICF Consulting, suggests a more reasonable estimate of the cost to be around $20 to $30 million per company, rather than the $50 million estimated by DOE, for the following reasons (see Exhibit 1):

The costs to retool a facility to accept new compressors is estimated at only $2 million.

The capital cost for converting from CFC–12 to HFC–134a for the entire U.S. refrigerator industry was estimated to range from $7 million to $23 million.

Projects approved under the Multilateral Fund of the Montreal Protocol for conversion of refrigerator manufacturing plants from use of CFCs to both HFC–134a refrigerant, and HCFC or hydrocarbon foam processes, show incremental cost estimates of $200,000 to $1 million.

These estimates are based on the expectation that the industry will transition to one or both of the two refrigerant HFC blends

that have emerged as likely replacements for HCFC–22 (as cited in the TSD), R–407C and R–410A, and appear to provide roughly equivalent or better energy efficiency.

Furthermore, many manufacturers can produce 13 SEER units with only minor modifications to their facilities. DOE already acknowledges in the TSD that using ''407C lowers the efficiency of unmodified R–22 systems by 5–10 percent under the SEER test conditions.'' (TSD, page 4–49). Thus, an unmodified R–22 system of 13.7 to 14.4 SEER, charged with R–407C, would achieve a 13 SEER. Of the seven manufacturers listed in the TSD, six (Carrier, Goodman, Rheem, Lennox, Trane and York) currently offer certified products with a SEER of 14.4 or greater, Nordyne makes units up to 14 SEER. Furthermore, it can only be assumed that minor design changes accounting for the use of R–407C would lower or eliminate the 5–10% efficiency loss.

With respect to R–410A, the TSD states that ''manufacturers can preserve system capacity by reducing tube diameter (and tube costs). Furthermore, 410A can provide a slight efficiency boost at the SEER testing points.'' (TSD, page 4–49). Thus, the use of R–410A, while likely requiring more redesign of equipment, may actually increase efficiencies. This increase would eliminate the need to take some of the steps outlined in the TSD necessary to comply with a 13 SEER rule while using HCFC–22 refrigerant. The TSD necessary to comply with a 13 SEER rule while using HCFC–22 refrigerant. The TSD notes that ''Carrier introduced a line of products based on 410A in 1998 and most other major manufacturers have since followed suit.'' (TSD page 4–50).

Carrier, the manufacturer with the largest (31%) share of the residential central air conditioner market (TSD, page 8–60), already offers efficient R–410A units. ARI lists over 1000 models manufactured by Carrier that use R–410A, ranging in cooling capacity from 23,200 Btuh (less than 2 tons) to 60,000 Btuh (5 tons). Of these, only a few dozen have a SEER of less than 13, and all have a SEER of at least 12.25. The maximum SEER listed is 18. While these models do not represent all of Carrier's products, it is apparent that switching to R–410A and achieving SEER ratings of 13 is very much possible. Carrier may now be in a position to increase its manufacturing capacity of these R–410A lines by the 2006 DOE deadline, thus meeting a 13 SEER standard with little or no additional regulatory burden. To the extent that Carrier cannot increase its production of R–410A by 2006 to meet demand, it can supplement production with high-efficiency HCFC–22 units until 2010.

Goodman, the manufacturer with the second largest share (19%) of the market, had already expressed support for the 13 SEER. Goodman has analyzed the costs associated with switching refrigerants and meeting a 13 SEER standard and expects the combined cost for both will be on the order of half of DOE's $50 million estimate for just the refrigerant transition. They feel that this $25 million per company is representative of the vast majority of the industry.

Many other companies offer or are well into the development of equipment using alternatives to HCFC–22. For instance, Lennox offers products with R–410A, ranging from 11.35 to 15. 15 SEER. Of 199 models listed, with capacities ranging from 23,600 to 61,000 Btuh, 130 models meet or exceed 13 SEER.

As we look forward over the next decade, there are a number of paths that companies can take to keep these costs low as they work to comply with the EPA regulations banning the shipping of new equipment charged with HCFC–22 starting January 1, 2010 and work to comply with the DOE efficiency rule (whether 12 SEER or 13 SEER) by 2006. One example would be:

Step up current production of high efficiency HCFC–22 equipment;

Meanwhile, phase out production of lower efficiency HCFC–22 units by 2006;

By 2010, switch these high-efficiency production lines to a new refrigerant while ensuring the efficiency standards are still met.

Another example would be:

Move directly to producing R–407C and/or R–410A units that meet the new DOE efficiency regulations;

Increase the production of these units to meet customer demand by 2006;

Meanwhile, phase out all HCFC–22 units by 2006.

Of course, some combination of these strategies is more likely to be taken and seems to offer the most opportunity for manufacturers to reduce regulatory burden.

The TSD states ''To the extent that manufacturers can introduce new products utilizing the new refrigerant and meeting the new efficiency standard, the cumulative burden will be reduced.'' (TSD page 8–62). EPA believes that there is ample opportunity to meet both a 13 SEER efficiency standard and a ban on HCFC–22 in new equipment with limited regulatory burden.

UNDERESTIMATES OF SAVINGS IN THE COST BENEFIT ANALYSIS

DOE's analysis of the benefits of the withdrawn 13 SEER rule are significantly underestimated. DOE's analysis is based on summer 1996 electricity prices, adjusted downward based on EIA projections of future annual electricity prices. Changes in the electricity market due to utility deregulation has resulted in increased electricity prices overall. DOE did not consider this trend in its analysis.

According to Synapse Energy Economics' wholesale electricity price data, DOE analysis underestimates the cost of electricity for residential air conditioning by an average of approximately $0.02/kWh. In addition, the California Public Utilities Commission raised some residential rates by as much as 37%, affecting more than 10% of the U.S. electricity market and thereby, raising the national average electricity prices above DOE's projections. Adjusting DOE's analysis to include more recent electricity prices will definitely and drastically alter the results indicating that a DOE minimum standard of 13 SEER represents the better decision for the nation.

OVER AND UNDER ESTIMATES OF DISTRIBUTIONAL INEQUITIES

EPA sees distributional inequalities that DOE has not adequately considered. One results from the fact that the residential price of electricity does not capture the complete cost for running systems that largely run at peak times. That is, except in select circumstances, residential customers purchase electricity based upon averages rates, not ''time-of-use'' rates. The actual costs of electricity at peak times are dramatically more and therefore, higher peak rates drive up the average costs. Less efficient equipment operating at peak times drives up the cost of electricity for all customers, including those of low income, who are less likely to have central air conditioning. According to 1997 Residential Energy Consumption Survey (RECS) microdata (the same data set used by DOE in their analysis), of the total 101 million households represented, approximately 46% have central air conditioning, but among poor households, only 25% have central air conditioning; just half the rate of presence among non-poor households (See Exhibit 2).

Also related to distributional equities and according to the RECS data, among households below the poverty level, about 60% rent their housing units. This is in contrast to 27% of above poverty level households that rent (See Exhibit 2). Therefore, low-income consumers, or those defined as ''poor'' in TSD Table 10.1, are not the ones to buy a central A/C or heat pump product, but they would be the one to pay the utility bill (or likely face increased rents if utilities were included in their rent) for the use of that product. Instituting a higher minimum efficiency standard will actually ensure that low-income consumers have lower utility bills, providing a benefit to this population.

MISINFORMATION ON PRODUCT AVAILABILITY

DOE justifies a lower SEER rule because the higher efficiency levels would put manufacturers out of business. However, according to the Air Conditioning and Refrigeration Institute (ARI) database of model combinations, many manufacturers already produce models that meet the 13 SEER requirements. This technology has been available for many years to large and small manufacturers alike. Although confidential ARI shipment information may not reflect large sales of high efficiency equipment, the publicly accessible ARI database of models shows extensive product availability. Over 7,000 air source heat pump model combinations and over 14,000 central air conditioner model combinations currently meet or exceed the 13 SEER level as listed by ARI.

The TSD (TSD page 8–2) describes a group of manufacturers that ''offer more substantial customer and dealer support and more advance products. To cover these higher operating expenses, this group attempts to ''sell-up'' to more efficient products or products with features that consumers and dealers value.'' With a higher standard, these manufacturers would not go out of business, but would rather continue to sell-up, to even higher efficiency levels or additional valued features.

Furthermore, results and upcoming plans for utility programs around the country also document the availability of 13 SEER and above products, as well as the demand for such products. Austin Energy's Residential Efficiency Program 2000–2001 gave rebates to single family existing homes for installation of split systems and heat pumps with efficiencies of 12 SEER and above. Rebates were staged: $150 for 12.0–12.9 SEER; $250 for 13.0–13.9 SEER; $400 for 14.0–14.9 SEER; and $500 for 15.0 and above. In total, 4,000 rebates averaging $312 were given to consumers. These numbers illustrate that a significant portion of the rebates given were for 13 SEER and above units.

In New Jersey, a 3-year rebate structure began in 2000 with a $370 rebate given for the installation of 13.0 SEER equipment and a $550 rebate given for 14.0 SEER equipment. A total of 14,000 rebates were given in the year 2000. As of August 2001, 8000 rebates were given out with approximately 6,000 of these units at the 14.0 SEER level. Overall results in New Jersey show that 27% of the market (1998–2000) are 13 SEER or higher with 60% of those being at the 14 SEER or higher levels.

The Long Island Power Authority (LIPA) instituted a program similar to the one in New Jersey offering rebates for installation of 13.0 and 14.0 SEER equipment. Results to date show that LIPA is on target to reach their goal of approximately 3,500 rebates for 13 SEER equipment. Approximately 80% of these rebates are for SEER 14 equipment. LIPA is expecting to ramp up to 5000 rebates in 2002. Overall, 17% of LIPA's market in 2000 is at 13 SEER or higher, with the market share for existing homes even higher at 22%.

Program plans for 2002 in Texas and California are geared toward equipment at 13 SEER and above. Reliant Energy in Southeast Texas is planning an incentive program

to target 13 SEER and above matched systems. California's two large municipal utilities (Sacramento Municipal Utility District and Los Angeles Department of Water and Power) and four investor owned utilities (San Diego Gas and Electric, Southern California Gas, Southern California Edison, and Pacific Gas and Electric), serving over 30,000,000 consumers, are planning rebate programs to assure California residents receive energy efficient equipment, measures, and practices that provide maximum benefit for the cost. These programs all revolve around 13 SEER equipment or higher. Actual incentive amounts are not yet available.

ORAL STATEMENT FOR DOUG MARTY, EXECUTIVE VICE PRESIDENT, ON BEHALF OF GOODMAN GLOBAL HOLDINGS COMPANY, U.S. DEPARTMENT OF ENERGY, OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY

PUBLIC HEARING REGARDING ENERGY EFFICIENCY STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS—SEPTEMBER 13, 2001

Assistant Secretary David Garman, and other members of the Department of Energy Staff . . . thank you for the opportunity to speak here today.

My name is Doug Marty and I am the Executive Vice President of Goodman Global Holdings out of Houston, Texas. Let me start by giving you a brief background of our company: Goodman is the second largest residential air conditioning and heating manufacturer in the United States. Founded in 1975 by the late Harold Goodman, Goodman remains entirely family-owned. We produce a complete line of residential and light commercial air conditioning and heating equipment with facilities in Houston, Texas as well as Dayton and Fayetteville, Tennessee. Name brands sold by Goodman include Amana®, Goodman®, GmC®, and Janitrol®.

As the nation's second largest manufacturer, my goal here today is to provide you with accurate information regarding the continuing debate to rollback the energy efficiency standard for air conditioners and heat pumps from a level of 13 SEER to 12 SEER. This debate has been fueled by inaccuracies and in some cases outright wrong information. Stronger energy efficiency standards do not place a major burden on manufacturers or limit consumer choice. They do not cause enormous increases in the size of the equipment. Finally, they do not impose unreasonable costs on consumers or hurt the elderly and low-income families. Let me explain.

Given recent events and for purposes of national security, we now face a time when it is imperative to explore alternatives that help to improve the efficiency of our energy use and build our domestic energy infrastructure. As we seek alternatives, it is important to consider options that strike a balance between both environmental and energy needs. One simple option is energy efficiency and conservation; specifically, energy efficiency standards for air conditioners should be strengthened to a level that provides consumers the most efficient technology available today at an affordable price and helps to strengthen our domestic resources. That level is 13 SEER.

Many opponents of the 13 SEER standard have argued that moving to the higher level would be a hardship on small manufacturers and that not all manufacturers have the capability to produce the more efficient equipment, thus limiting consumer choice. In fact, the 13 SEER technology has been available to both large and small manufacturers for approximately 15 years. The Air Conditioning and Refrigeration Institutes' own data shows that virtually all manufacturers produce 13 SEER equipment today. In reality, the only difference between a 10 SEER unit, a 12 SEER unit and a 13 SEER unit is a little more copper and aluminum used in manufacturing different sized coils. Given the fact that the units have equivalent technologies, at Goodman we run all of our equipment through the same facilities and assembly lines. Since Goodman and most other manufacturers currently produce the 13 SEER air conditioner, moving to the higher SEER will simply mean producing a higher volume. This will also mean more jobs at the industry level, thus improving the economy.

There has also been some confusion about the size of the 13 SEER equipment versus the 12 SEER equipment. It has been said that there is an enormous difference in the size of the units and with that a tremendously higher related cost for installation. It is clear that an increased efficiency standard will be established at least at a level of 12 over the current 10 SEER standard. If the decision is made to adopt the 12 SEER standard, the unit size will be slightly bigger and will require some structural modifications to install the indoor portion of the system including ductwork during installation of the unit. Once we acknowledge that there will be a standard that will likely require some structural modification, one must compare the 12 SEER unit to the 13 SEER unit. The difference between our 13 SEER and 12 SEER external equipment is only 3–5 inches in height. The internal equipment size for the 12 and 13 are similar, and there is almost no difference in the installation costs associated with a 13 SEER unit and a 12 SEER unit.

There have also been claims that the 13 SEER standard would cost consumers substantially more money than the proposed rollback to a 12 SEER standard. According to the DOE, the average difference in cost between a 13 SEER unit and a 12 SEER unit today is approximately $122. The difference in costs for Goodman units is comparable to this estimate. Since a 13 SEER unit is 8 percent more efficient that a 12 SEER unit, consumers will save more on their electric bills each and every month for the life of the unit. Thus, over an average life of a home cooling unit, the savings will easily cover the increase in cost, between a 12 SEER and a 13 SEER unit.

Moreover, history has shown us time and time again that once a standard is implemented, the market will drive prices down and make the more efficient equipment even more affordable for all consumers. How do we know this? From experience. In 1992, when the government implemented the efficiency standard at 10 SEER, the cost of the 10 SEER air conditioning unit dropped dramatically across the nation. The reason for the change in price is simple. Once the standard is set, more sales of that type of unit will occur and more volume is manufactured, thereby allowing the manufacturers to run their plant more efficiently and pass the savings on to the consumer. Since most consumers purchase units that perform at the minimum standard, it makes it that much more important to establish the standard at the correct level, 13 SEER.

Finally, in our opinion, Goodman has a marketing philosophy of selling in volume. The incremental cost to the manufacturer to produce a 13 SEER unit is only about $100 and we feel that the most efficient technology should be available to people of all income levels at an affordable price. Unfortunately, all manufacturers may not have this same marketing philosophy. Instead some manufacturers may be seeking protection of higher profit margins on their more efficient equipment. A 13 SEER standard would force all energy manufacturers to be truly competitive and provide all consumers with the most affordable energy efficient technology for air conditioners that is available today.

Just as the Administration has been supportive of energy efficiency and conservation measures, Goodman too supports the use of more energy-efficient appliances, specifically air conditioners and heat pumps. However, rather than rolling the energy efficiency standard back to 12 SEER, a 20 percent increase in efficiency, we support a 13 SEER standard, a 30 percent increase in efficiency.

A 13 SEER standard is achievable today and will certainly be achievable in 2006. A 13 SEER standard will significantly reduce energy consumption, cut utility costs for consumers and improve air quality by reducing the amount of air pollutants and greenhouse gases emitted from fossil-fueled electric power generating facilities.

In closing, Goodman strongly urges you to consider establishing a 13 SEER standard for residential air conditioners and heap pumps beginning in 2006. Again, it is the right thing to do for both the consumer and the environment.

The PRESIDING OFFICER. All time on the amendment has expired.

AMENDMENT NO. 3198

Mr. REID. Mr. President, it is my understanding we are now going to move to the debate on the Carper amendment. Is that a valid statement?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Mr. President, I ask my two colleagues—the Senator from Delaware and the Senator from Michigan—if there is any way to pare that time down. We are very close to being able to include another amendment in the order prior to the votes. We are now scheduling 40 minutes. Is there any way we can do that in 30, 35, or 25?

Mr. LEVIN. Mr. President, I would be willing to accept whatever Senator CARPER is willing to make.

Mr. CARPER. Mr. President, if the Senator will yield, I am willing to go with 20 or 15.

Mr. REID. Mr. President, I ask unanimous consent that the time for the Carper amendment be taken from 40 minutes to 30 minutes evenly divided.

Mr. SPECTER. Mr. President, reserving the right to object, this is a very brief period of time, 40 minutes.

Mr. REID. Mr. President, I withdraw my request.

The PRESIDING OFFICER. The request is withdrawn.

The Senator from Delaware.

Mr. CARPER. Mr. President, amendment No. 3198, which is at the desk, I believe is now in order under the previous order.

The PRESIDING OFFICER. The Senator is correct.

Mr. CARPER. Mr. President, I yield myself 5 minutes.

Today, the United States of America will consume some 7.8 million barrels of oil to power our cars, trucks, and vans. Between now and the year 2015, we are told by the Secretary of Energy that 7.8 million barrels of oil per day consumption for our cars, trucks, and vans will rise by some 36 percent to

over 10½ million barrels of oil per day. My own view is that it would be better for our country if we had no increase.

The amendment Senator SPECTER and I offer today is one that seeks to reduce by one-third—1 million barrels of oil per day—the amount of oil we are going to consume in 2015 to power our cars, trucks, and vans.

There are a variety of ways to achieve those savings. Earlier in this debate on the energy bill, Senator LEVIN and Senator BOND offered an amendment that sought to conserve oil with respect to our cars, trucks, and vans. I voted for it, as did Senator SPECTER. I voted for that amendment because I like a number of aspects of it. I will mention a few of those aspects.

No. 1, it has been said that we should use the Government's purchasing power to commercialize new technologies and provide tax credits to consumers to buy more fuel-efficient vehicles, and that the auto industry be given a reasonable lead time. There were a number of very positive aspects to the Levin-Bond amendment.

One thing that was missing in the Levin-Bond amendment was a measurable objective. During the time I served as Governor of Delaware for 8 years, we worked often with measurable objectives—job creation, improving credit rating, getting people off welfare, and reducing the rate of teen pregnancies. In setting the objectives, we tried not to micromanage the process. We set a measurable objective and tried to hold ourselves accountable to that measurable objective.

Today, in offering this amendment, we set a measurable objective. We don't change the Levin-Bond amendment. It is all there in place. We don't change the amendment offered earlier by the Senator from Georgia, Mr. MILLER, with respect to pickup trucks; that remains where it is.

But we say that in 2015 we want the consumption of oil for our cars, trucks, and vans consuming at that time 1 million barrels less than what it otherwise would be without this amendment.

Senator SPECTER, in joining me in this amendment, I thought offered a very constructive change. He suggested that in order to meet these savings, rather than just having the Secretary of Transportation issue a regulation to change the CAFE standard, why don't we ask the Secretary of Transportation to take into consideration a number of other factors, including the use of alternative forms of fuel.

The amendment, as amended by Senator SPECTER, does just that. The Secretary of Transportation, in issuing his regulations in the future, can require so much savings from CAFE changes, so much savings from alternative fuels, including biodiesel, soydiesel, ethanol, even diesel fuel derived from coal waste.

I think our obligation here is to set the objective. The responsibility of the Congress and the President is to say—and we now rely for almost 60 percent of our oil from abroad. We have a $400 billion trade deficit, and it is growing, and one-third of that is attributable to oil, which is troublesome, and the notion that we have global warming, and one-quarter of the carbon dioxide that goes up into the air which comes from cars, trucks, and vans—we have an obligation to set measurable objectives in terms of slowing growth and reserving oil.

This amendment does so in a flexible way. It says to the Secretary of Transportation very clearly: We expect you to rely on working with the auto industry on issuing a regulation that may involve CAFE changes. We also want to make sure we rely on alternative fuels.

For a State such as Delaware, we have a heavy reliance on the raising of soybeans. We like the idea of encouraging soydiesel.

For those who come from States where there is a lot of corn, there is the notion that the Secretary of Transportation can issue regulations to encourage the consumption of ethanol to help power our cars, trucks, and vans in the future.

For those who come from States with a fair amount of coal and coal waste, there is the notion that you can use that waste product to actually create a cleaner diesel fuel that can be used for reducing our reliance on oil, and particularly foreign oil.

I reserve the remainder of my time.

Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator has consumed 4 minutes 45 seconds.

Mr. CARPER. Thank you.

Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank my colleague from Delaware.

Mr. President, I support the Carper amendment because I think it is vitally important that the United States take affirmative steps to free ourselves from dependence upon OPEC oil. This amendment is a modest step in that direction.

While we are using 7.8 million barrels of oil a day to drive our vehicles—the estimate by the Department of Energy is that it will grow to 10.6 million barrels by the year 2015—the Carper-Specter amendment proposes to limit that growth to 9.6 million barrels. We are still going to use about 2 million barrels more. But this amendment makes the modest step of slowing the rate of increase by 1 million barrels of oil.

It is an intolerable situation, for us to be dependent upon OPEC oil. Today's New York Times carries a report about Crown Prince Abdullah of Saudi Arabia's proposed statement to the President concerning using Saudi oil as an ''oil weapon'' against the United States to demand that the United States change our policy in the Mideast. That is blackmail, pure and simple. And the United States ought not to put up with it and ought not to be in the position to have to put up with it.

Then the New York Times article goes on to point out that the Saudi position is that they are prepared to ''move to the right of bin Laden'' if necessary to make the United States capitulate on our policy.

Now, how much more arrogant and inflammatory can a comment be? Saudi Arabia produced bin Laden. Fifteen of the nineteen terrorists who attacked the United States on 9–11 were from Saudi Arabia. Now the Saudis are telling us they are not only embracing bin Laden but are prepared to move to the right of him if the United States does not yield to their demands on changing our policy in the Mideast.

In 1973, we faced lines at the gas station, and I think it would have been a blessing—perhaps a blessing in disguise—if we had not had relief from the oil embargo at that time, so that the United States, in 1973, would have been compelled to find alternative sources of energy. But we went back to our old ways, and the old ways were the easy ways and the ways of consuming vast quantities of OPEC oil.

I have opposed the CAFE standards; that is, for Congress to set a mandatory limit of so many miles per gallon, and earlier in this debate I voted against those CAFE standards.

I recall, about a decade ago, being asked to oppose CAFE standards for 1 year. Well, that year turned into another year, and yet another year. And, finally, it has been a decade or more, and we are still avoiding the imposition of CAFE standards, which is right because Congress ought not to micromanage how much gasoline is used.

But where you have a broad policy consideration, as the Carper-Specter amendment proposes, modestly, to reduce the rate of increase—and bear in mind, again, the statistics are that we use a little over 7 million barrels a day, and we will go to more than 10 million barrels a day by 2015—this amendment simply requires the Department of Energy and the Department of Transportation to find a formula to limit it to 9.6 million barrels a day.

American ingenuity can find the solution to the alternative fuel issue if we are put to the test we always have. After all, we put a man on the Moon. We invented and placed predators—robots—on the battlefield in defense of our troops. We have plans for a strategic defense initiative. The opportunities for scientific advances that will reduce our dependence on foreign oil are virtually limitless in our inventive society.

Back in 1973, when we had the long gas lines, there was blame attached to Israel and there was the undercurrent of anti-Semitism in the United States. Today, we see the outburst of anti-Semitism in Europe and in many parts of the world as a result of the Israeli policy and as a result of the United States backing Israeli policy.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator has used 5 minutes.

Mr. SPECTER. Madam President, I ask for 1 more minute.

Mr. CARPER. Madam President, I yield another minute to the Senator.

Mr. SPECTER. And this issue I raise with some reluctance. But there is no doubt that if we face an embargo and if we face the Saudis joining Iraq in using oil as a weapon, Israel will be blamed and anti-Semitism, which now bubbles just a little below the surface in many parts of the world, will rise to the surface and exceed it.

I think it is vital that the Congress establish a policy to be independent of OPEC oil. Today, in Pottsville, Pennsylvania, there is a plant which converts sludge into diesel fuel. If we set our minds to it, we can use the billions of tons of coal to find an alternative source of oil and not put up with the arrogance and the chutzpah of the Saudis telling us to change our policy in response to their blackmail. A strong statement to follow, Madam President.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. LEVIN. Madam President, I yield myself 5 minutes.

Madam President, in March, the Levin-Bond amendment regarding increased fuel standards for cars and trucks was adopted by the Senate with a strong bipartisan vote of 62 to 38. The purpose of the Levin-Bond amendment was explicit. No. 1, we said we want to increase fuel economy. It was specified that way. As a matter of fact, we directed the Department of Transportation, in its rulemaking, to increase fuel economy. It is very explicit.

The other provisions of the bill that we adopted were aimed at protecting the environment, reducing our dependence on foreign oil, but to do this in a way which would not harm the domestic manufacturing industry.

We believe, those 62 of us who voted for it, you could accomplish all of these goals: You could reduce our dependence on foreign oil, you could reduce the amount of oil we use, you could increase fuel economy, you could protect the environment, and you could do that without undermining our economy. That was the purpose of the amendment, and that is the way we explicitly stated it.

The way we accomplish those goals becomes vitally important. That is what gets to the heart of the debate this afternoon. The amendment we adopted did it in two essential ways: First, we included some positive incentives. We provided that there would be joint research and development to a greater extent among Government, industry, and academia than there had been previously or than was proposed by the administration. And we provided for Government purchases of hybrids, requiring those purchases. Just the way we had previously done for the Defense Department in the Defense authorization bill, we did for the general Government in the Levin-Bond amendment.

We also indicated an interest in trying to provide greater tax incentives. And there will be an effort later on this afternoon to do exactly that: To increase the tax incentives that would be available to lead us to the advanced technologies, the advanced hybrids, and the fuel cells.

But then we also did it in a second way. We said there also should be increased CAFE requirements but—and this was central to the Levin-Bond amendment—those requirements should be set after an analysis by the Department of Transportation of all of the factors which should go into that decision—not just what is theoretically, technologically capable regardless of cost, but what are the technological capabilities, what are the costs, what are the impacts on safety, because we had the National Academy of Sciences say there is an impact on safety, that you lose lives when you reduce the weight of the vehicle.

We had additional factors. If I could just read through some of these factors: Economic practicability, the need of the United States to conserve energy, the desirability to reduce U.S. dependence on imported oil, the effects of average fuel economy on other standards, such as relative to passenger safety and air quality. These are all interrelated criteria. And then: What are the adverse effects on the competitiveness of domestic manufacturers? What are the effects on the level of employment in the United States, the costs and lead time? What is the potential of advanced technologies, such as hybrids and fuel cells, to contribute to the achievement of significant reductions in fuel consumption? And a very important one, No. 12: The extent to which the necessity for vehicle manufacturers to incur near-term costs to comply with average fuel economy standards adversely affects the availability of resources for the development of advanced technology in the future, for leap-ahead technologies.

We listed 12 factors that we said should be considered by the Department of Transportation prior to concluding what the new standard should be. We said: You have to increase it, but we want you to look at 12 factors.

What the Carper amendment does is it wipes out, it eliminates all of those factors. It sets a mandatory amount. You must reduce by 1 million barrels per day above what is the predicted use of gasoline for those years—by another agency, by the way—and that is what it does. It cuts the heart out of the Levin-Bond amendment.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. LEVIN. I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. LEVIN. When the Senator from Delaware says it doesn't change Levin-Bond, I am afraid he is mistaken. He fundamentally changes the Levin-Bond amendment, which we adopted a month ago. The change he makes is that he says, forget the consideration of all those other factors. You have to reduce it by 1 million barrels a day regardless of the impact on safety, regardless of the effect on long-term investments by these short-term investments for near-term advances, forget economic practical ability, forget cost, forget all the other factors that we directed the National Highway Transportation Safety Administration to consider. Even though he leaves them—he does not strike them technically; he doesn't go out and cancel them; the words still remain—the heart of the matter is gone because the heart of the regulatory matter in Levin-Bond is that we say to the Department of Transportation, you have 15 months. You adopt standards increasing fuel economy. If you don't do it in 15 months, we are going to have an expedited procedure in the Senate and in the House to consider different proposals. If you do adopt standards, they, of course, would be subject to legislative review under a generic statute. Either way, we will have an expedited process to look at the recommended number of the Department of Transportation after they go through a regulatory process, not before.

This amendment prejudges the outcome of the very regulatory process which Levin-Bond put into law, if this law is ever signed.

I hope we will defeat this amendment for all those reasons.

I yield the floor.

Mr. BIDEN. Mr. President, I rise to comment on the vote in relation to amendment number 3198, which was offered by my friend and colleague from the State of Delaware, Senator CARPER. The vote by the Senate is on a motion to table the amendment. I believe that Senator CARPER should be given a straight up-or-down vote on his amendment, and for that reason, I shall vote against the motion to table.

Mr. FEINGOLD. Mr. President, I rise to oppose the amendment offered by the Senator from Delaware, Mr. CARPER. This amendment would add a new section to the conclusion of the fuel economy provisions previously adopted by the Senate, which I supported, and which were offered by my colleague from Michigan, Mr. LEVIN. The new section would require the Secretary of Transportation to issue, within 15 months, regulations to reduce the amount of oil consumed in passenger cars and light trucks in 2015 by 1,000,000 barrels per day compared to consumption without such regulations in place.

I understand and support the desire to reduce the use of oil in the transportation sector. Proponents of this amendment have argued that this amendment is flexible and would allow the Department of Transportation to take other actions, not necessarily through adjustments in the fuel economy program, to achieve oil savings. In

floor debate on this amendment, however, proponents have failed to clearly identify any other means of achieving oil savings other than fuel economy standards. I think there is broad consensus that new fuel economy standards would be the principle tool to achieve oil savings.

I have supported a new rulemaking on fuel economy with my vote in support of the Levin amendment. But the Senate has also passed an amendment on this bill, sponsored by the Senator from Georgia, Mr. MILLER, which I opposed. The Miller amendment weakens current law and exempt pickup trucks from any future increases in fuel economy standards. I feel that a new rulemaking on fuel economy should examine the possibility of fuel economy improvements in all motor vehicles, rather than exempt certain types of vehicles.

I considered the Carper amendment in light of the amendments we have already passes. Had the Carper amendment been included as part of the original Levin amendment, I might have felt differently on this matter. But now that the Senate has already passed the Levin amendment and the Miller amendment, supporting the Carper amendment is no longer a sound policy decision. To include an oil savings requirement, while excluding a whole category of vehicles from making fuel economy improvements, would be a poor policy decision and inconsistent. Certain vehicles should not have to achieve greater fuel efficiency because we chose to exempt a particular category of vehicles.

Fuel efficiency is a critically important issue for our country, and for Wisconsin. I am committed to achieving significant improvements in automobile and light truck fuel efficiency. I look forward to having many of those efficient vehicles built in Wisconsin. I will look forward to a bill in conference that strongly encourages the Department of Transportation to make those improvements.

The PRESIDING OFFICER. Who yields time on the amendment?

Mr. LEVIN. How much time remains on our side?

The PRESIDING OFFICER. Twelve and a half minutes.

Mr. LEVIN. Madam President, I yield 4 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. What we have here is an amendment that would reverse the decision on CAFE. Make no mistake about it. While I am sympathetic with the appeal, particularly from my friend from Pennsylvania, relative to how history is repeating itself as far as our increased dependence on imported oil, I can't help but look back at what we did in 1973. In 1973, we had the Yom Kippur War. We had a situation where our supply from the Mideast was interrupted. We had gas lines around the block. We were blaming each other. We set up the Strategic Petroleum Reserve to ensure that we would never, ever have a situation where we would became so vulnerable.

We thought at the time that, good heavens, if we ever increased 50 percent imports, that would be beyond the consideration of this country from the standpoint of national defense.

The problem with the Carper amendment specifically is it has no teeth in it. We are looking at a situation in the Mideast today where clearly oil is a weapon. We have seen statements suggesting they are going to stand behind bin Laden's theory. They are going to stand behind brother Saddam Hussein.

We had an opportunity a few days ago to debate this issue about reducing our dependence on foreign oil. It was called ANWR. It was substantial. It was defeated. Now we are talking about a smoke-and-mirrors issue where we have no enforcement mechanism.

As a consequence, the Carper amendment would have the same negative impacts on consumer safety, on vehicle costs, auto jobs, as the Kerry-McCain amendment. It would increase the cost of cars. Consumers choice is gone, thousands of jobs, reductions in the rate of growth and several thousand additional deaths and tens of thousands of injuries.

Make no mistake about one thing: We made a decision on CAFE. It was based on consideration of lives being saved by heavier automobiles. You can increase CAFE dramatically by smaller automobiles, but you pay the price. The decision that was made in this body on that issue was very clear. It was an overwhelming vote to reject Kerry-McCain based on consideration for the loss of human lives and injuries.

We are in the same position today. Make no mistake about it. Our vulnerability continues. It has been over a month since we voted 62 to 38 to adopt the Levin-Bond amendment on fuel economy standards. We chose at that time to leave the decisions on fuel economy to the experts.

This group is not an expert group. We choose to let the experts balance the need for increased fuel economy with safety and the needs of the American driving public. The Senate was right once not to pick a fuel economy number out of thin air. Let's not make that mistake now.

I urge my colleagues to reject the Carper amendment. Let's preserve American jobs and save lives on the Nations's highways. That was the basis for our last decision when we visited this issue.

I yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Madam President, how much time on both sides remains?

The PRESIDING OFFICER. Eight and a half to the sponsors and 9 to the opponents.

Mr. LEVIN. I yield 4 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I rise today to oppose the Carper-Specter amendment. I join with my colleagues in opposition. I note this issue is of great importance to my colleague from Delaware. We have had a lot of conversations about the best approach to increasing fuel efficiency and decreasing our dependence on foreign oil. While I appreciate his effort and the amendment he is bringing forward, I believe the Carper-Specter approach has the same major flaws as the Kerry-Hollings amendment and sets, in fact, an arbitrary CAFE number. It just does it in a different way. It is not called CAFE, but it has the same effect.

The Carper-Specter amendment sets, in fact, an arbitrary number which is exactly what we were debating before. We wanted a process; we wanted NHTSA to have the opportunity to have a number of months to take into consideration all of the factors and not set an arbitrary number.

Our opponents, the makers of the amendment, say this is, in fact, not a CAFE number and that the amendment creates a modest and measurable objective for reducing vehicle gasoline consumption. Unfortunately, it is a mandate. It is a fuel economy mandate in the form of millions of barrels saved that is no less arbitrary than the Kerry-Hollings provision that was replaced in this bill.

Currently, the only regulatory authority that is available to the Department of Transportation to pursue such regulations through passenger and light truck fleets is the CAFE program. No matter what we call it, it is still CAFE. In essence, the amendment would impose this arbitrary oil reduction number as an additional requirement to the Department of Transportation as it sets the CAFE levels, thereby undermining and distorting the rulemaking considerations and the process that we put together through the Levin-Bond proposal.

I am particularly concerned because now that we have essentially eliminated pickup trucks from the equation, it puts even more pressure on the other light trucks and SUVs that are made in the United States, which involve the employment of literally hundreds of thousands of American workers. So it is even more distorted, given the amendment that passed in the prior discussion.

Unfortunately, this amendment undermines the Levin-Bond proposal, and I urge us to maintain our position of supporting the process set up in the Levin-Bond amendment, which passed by such a wide margin, because this sets up a positive, new set of rules and guidance from Congress and requires us to address CAFE's impact on a wide variety of issues in order to increase our fuel efficiency standards.

We have to look at safety, jobs, the environment, which is very important to all of us—particularly those of us in Michigan. It makes sure we don't have a discriminatory impact on the U.S.

automakers—I know that is of concern to all of us—so that we set the standard given all of these criteria.

By requiring an overriding oil reduction number, the amendment sets a hard target, on top of the other considerations, that the rulemaking would otherwise try to balance.

So I believe this amendment puts the cart before the horse. We have an excellent approach in front of us—I believe the best approach. We are not arguing that we should continue the freeze on CAFE. In fact, we are saying let's put in process the way to get to the new technologies. We have a combination of market incentives and investments in new technologies and tax incentives. We have in place the package of incentives, a requirement by NHTSA of deadlines in terms of numbered months and the criteria to look at. We direct them in a very specific way.

I urge my colleagues to oppose this amendment and leave in place our commitment to the process for raising fuel efficiency standards that have already been established in this bill through the Levin-Bond amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CARPER. Madam President, I yield to the Senator from Connecticut 3 minutes.

Mr. LIEBERMAN. Madam President, I rise to support the Carper-Specter amendment.

We come today to offer America a clear path away from foreign oil dependency and toward a newly energized economic future, and that is a new goal for fuel efficiency of cars and trucks.

America can start engineering itself out of its oil dependency if we make it a priority. This amendment would do just that by setting a bold but realistic goal of reducing our projected dependence on oil by one million barrels a day by 2015, thereby reducing our reliance on imported oil.

There's no debate that we must change the status quo. According to the Energy Information Administration, in 2001, the U.S. consumed 18 million barrels of oil per day. Automobiles and light trucks used 68 percent of the total, or 12.25 million barrels per day. The EIA estimates total U.S. consumption of between 25 and 28 million barrels per day by 2020.

The majority of that oil comes from other nations. In 2001, the U.S. imported 9.1 million barrels of oil per day. Approximately 1.65 million barrels per day came from Saudi Arabia and 0.82 million barrels per day came from Iraq.

The question before us today is, Do we keep our blinders on and barrel along doing business as usual, knowing full well that we're headed in the wrong direction, or do we have the foresight to change course?

President Bush and my colleagues on the other side of the aisle know we have no choice but to change course. On February 25 of this year, the President said, ''It's important for Americans to remember . . . that America imports more than 50 percent of its oil—more than 10 million barrels a day. And the figure is rising . . . This dependence is a challenge to our economic security, because dependence can lead to price shocks and fuel shortages. And this dependence on foreign oil is a matter of national security. To put it bluntly, sometimes we rely upon energy sources from countries that don't particularly like us.''

We consume a quarter of the world's oil and have about three percent of its reserves—so even if we allowed drilling in the Arctic Refuge, the Rockies, and right here beneath the Capitol dome, the nations from which we import oil would still have us over a barrel. Please indulge my oil-dependent puns; in the spirit of this amendment, I am trying to get as much mileage out of them as possible.

In contrast, Mr. President, the fuel efficiency gains we're proposing today cannot be exhausted, they cannot run dry, and they will begin to shift our economy away from its usage of oil. These steps are the best way to substantially reduce our reliance on foreign oil.

To quote again from the President, ''It's also important to realize that the transportation sector consumes more than two-thirds of all the petroleum used in the United States, so that any effort to reduce consumption must include ways to safely make cars and trucks more fuel efficient.''

I couldn't agree more. Compared to proposals to open precious places to oil exploration, this measure would achieve more at a monumentally smaller price to America. In fact, the entrepreneurship, creativity and ingenuity that would be unleashed when companies strive to hit this target would create jobs. They would spur economic growth. And, of course, they would help repair the environment in the process—rather than continue to contribute to air pollution, global warming, and the degradation that often goes along with drilling for oil in natural places.

These proposals, Mr. President, are also more than feasible. Earlier this year, the National Academies of Science concluded that current technology was available to achieve efficiency gains that far exceed those required in this amendment, and that was even excluding consideration of the hybrid technology that is on the market right now. We must put our faith in the innovative genius of American industry to meet the challenge that this amendment poses.

Mr. President, this amendment also provides the lead-time and flexibility our industry needs to achieve these goals. It does not micromanage where or how these savings should occur, but rather would provide maximum flexibility to the appropriate agencies in achieving the objective of using, and therefore importing, less oil. It leaves intact all of the provisions that are now included in the underlying bill.

In short, this proposal has been carefully crafted to address the concerns raised by Senators in both parties regarding the previous CAFE amendment. I hope that the Senate finds this to be a much-improved amendment that can be broadly embraced.

Mr. President, the importance of reducing our reliance on foreign oil has been echoed throughout this chamber again and again over the last few weeks. I could quote from scores of my colleagues on both sides of the aisle who have decried the problem and put the highest priority on finding a solution.

But when it comes down to it, we have failed to prove that we're willing to lead America to a better way. This must end. We must re-energize our commitment to reach bi-partisan consensus on weaning our economy off of fossil fuels. The process will by definition be a gradual one—so we must start now.

Mr. President, there are 99 barrels of oil on the wall, 99 barrels of oil. Most of them, no matter how much we explore, come from overseas. If just one of those barrels should happen to fall, we'll still need all 99 barrels of oil on the wall, and they'll still mostly come from overseas. But if we as a nation can change our craving for that oil—get on the efficiency wagon, so to speak—so that we only need 90 or 80 or 70 and shrinking barrels of oil, we can alter that repetitive refrain.

The question is: Do we have the drive to get there? Do we have the will? If we have the will, American ingenuity can and will find the way. No one should have any doubt about that. But it takes leadership from Washington, and that is what I hope we in the Congress are willing to provide, beginning with this amendment.

Madam President, again, I think we all agree on the problem. The problem is that America is dangerously dependent on foreign oil. No matter how great our military might is, how strong our economy is, that dependence upon foreign oil makes us vulnerable.

The only way to break our dependence on foreign oil is to diminish our dependence on oil. We just don't have enough of it in reserve. One of the most tried and true American ways to deal with problems of this kind is through thrift, efficiency, conservation, and a better use of resources.

I grew up with a slogan, as I bet a lot of Members did, which is ''waste not, want not.'' We are using fuel in a wasteful way.

This amendment is, in my opinion, not in contradiction to the Levin-Bond amendment. Nothing in the Levin-Bond amendment would be undermined or distorted by the rulemaking considerations that are effected by this Carper-Specter amendment. The language is respectful of Levin-Bond and simply adds the oil-saving target of reducing America's use of oil by 1 million barrels a day by 2015. You remember the movie ''Field of Dreams,'' where it was

said, ''if you build it, they will come.'' We are saying affirmatively, if we set a standard America will meet that standard, and probably go beyond it.

If we do not, we will continue to make ourselves vulnerable by being dependent on a source of fuel that we do not control. We consume a quarter of the world's oil. We have about 3 percent of its reserves. So even if we allowed drilling in the Arctic Refuge, the Rockies, and perhaps right here beneath the Capitol dome, the nations from which we import oil would still have us—if you will allow an oil-dependent pun—over a barrel.

In contrast, the fuel efficiency gains proposed in this amendment cannot be exhausted, cannot run dry, and will begin to shift our economy away from its dependency on oil. We have the technological capacity to do it if law drives that technology.

Earlier this year, the National Academy of Sciences concluded that current technology was available to achieve the efficiency gains that far exceed those required in this amendment. That even excluded consideration of the hybrid technology on the market right now, which the automakers cannot produce fast enough for the consumers who want to buy them.

We have to put our faith in the innovative genius of American industry to meet the challenge that this amendment poses, and I am sure they will not only meet it, they will surpass it.

I yield the floor.

The PRESIDING OFFICER. Five minutes remain on each side.

Who yields time? If neither side yields time, time will be charged equally.

Mr. CARPER. Madam President, I yield 2 minutes to the Senator from Pennsylvania, Mr. SPECTER.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, I voted for the Levin-Bond amendment on that 68-to-32 vote. But the Carper-Specter amendment is not inconsistent with that at all. We simply establish a consistent standard. We are not establishing a CAFE standard. We are just asking that there be a national policy to limit U.S. dependence on foreign oil.

Today, this week, this month is not the first time that I have expressed my concern about our undue dependence on foreign oil. I ask unanimous consent that my letter to President Clinton, dated April 11, 2000, and my letter to President Bush, dated April 25, 2001, be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 11, 2000.

President WILLIAM JEFFERSON CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In light of the very serious problems caused by the recent increase in oil prices, we know you will share our view that we should explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

This conduct is nothing more than an old-fashioned conspiracy in restraint of trade which has long been condemned under U.S. law, and which should be condemned under international law.

After some considerable research, we suggest that serious consideration be given to two potential lawsuits against OPEC and the nations conspiring with it:

(1) A suit in Federal district court under U.S. antitrust law.

(2) A suit in the International Court of Justice at the Hague based, perhaps, upon an advisory opinion under ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices.

(1) A suit in Federal district court under U.S. antitrust law. A case can be made that your Administration can sue OPEC in Federal district court under U.S. antitrust law. OPEC is clearly engaging in a ''conspiracy in restraint of trade'' in violation of the Sherman Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration should consider suing OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15a), since OPEC's behavior has caused an ''injury'' to U.S. ''property.'' After all, the U.S. government is a major consumer of petroleum products and must now pay higher prices for these products. In *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979), the Supreme Court held that he consumers who were direct purchasers of certain hearing aides who alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since ''a consumer deprived of money by reason of allegedly anti-competitive conduct is injured in 'property' within the meaning of [the Clayton Act].'' Indirect purchasers would appear to be precluded from suit, even in a class action, under *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), but this would not bar the United Sates Government, as a direct purchaser, from having the requisite standing.

One potential obstacle to such a suit is whether the Foreign Sovereign Immunities Act (''FSIA'') provides OPEC, a group of sovereign foreign nations, with immunity from suit in U.S. courts. To date, there has been a ruling on this issue in only one case. In *International Association of Machinists v. OPEC*, 477 F. Supp. 553 (1979), the District Court for the Central District of California held that the nations which comprise OPEC were immune from suit in the United States under the FSIA. We believe that this opinion was wrongly decided and that other district courts, including the D.C. District, can and should revisit the issue.

This decision in *Int. Assoc. of Machinists* turned on the technical issue of whether or not the nations which comprise OPEC are engaging in ''commercial activity'' or ''governmental activity'' when they cooperate to sell their oil. If they are engaging in ''governmental activity,'' then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in ''commercial activity,'' then they are subject to suit in the U.S. The California District Court held that OPEC activity is ''governmental activity.'' We disagree. It is certainly a governmental activity for a nation to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

The 9th Circuit affirmed the District Court's ruling in *Int. Assoc. of Machinists* in 1981 (649 F.2d 1354), but on the basis of an entirely different legal principle. The 9th Circuit held that the Court could not hear this case because of the ''act of state'' doctrine, which holds that a U.S. court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state.

The 9th Circuit itself acknowledged in its *Int. Assoc. of Machinists* opinion that ''The [act of state] doctrine does not suggest a rigid rule of application,'' but rather application of the rule will depend on the circumstances for each case. The Court also noted that, ''A further consideration is the availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition.'' The Court then quotes from the Supreme Court's opinion in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

''It should be apparent that the greater of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice.''

Since the 9th Circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990's have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost twenty years ago.

You should also examine whether the anti-competitive conduct of the international oil cartel is being effectuated by private companies who are subject to the enforcement of U.S. antitrust laws (for example, former state oil companies that have now been privatized) rather than sovereign foreign states. If such private oil companies are determined to in fact be participating in the anticompetitive conduct of the oil cartel, then we would urge that these companies be named as defendants in an antitrust lawsuit in addition to the OPEC members.

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices. In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the ''ICJ'') at the Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the U.N. Security Council. The actions of OPEC in restraint of trade violate ''the general principles of law recognized by civilized nations.'' Under Article 38 of the Statute of the ICJ, the Court is required to apply these ''general principles'' when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international

level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights. For example, as of December 1, 1999 the Yugoslavia tribunal alone had handed down 91 public indictments.

Today, adherence to international principles has spread from the tribunals in the Hague to individual nations around the world. Recently, the exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on charges or torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chile. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

The emerging scope of international law was demonstrated in an advisory opinion sought by the U.N. General Assembly in 1996 to declare illegal the use or threat to use nuclear weapons. Such an issue would ordinarily be thought beyond the scope of a judicial determination given the doctrines of national sovereignty and the importance of nuclear weapons to the defense of many nations. The ICJ ultimately ruled eight to seven, however, that the use or threat to use nuclear weapons ''would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.'' The fact that this issue was subject to a decision by the ICJ, shows the rapidly expanding horizons of international law.

While these emerging norms of international behavior have tended to focus more on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1998, the Organization for Economic Cooperation and Development issued an official ''Recommendation'' that all twenty-nine members nations ''ensure that their competition laws effectively halt and deter hard core cartels.'' The recommendation defines ''hard core cartels'' as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries ''to cooperate with each other in enforcing their laws against such cartels.''

On October 9, 1998, eleven Western Hemisphere countries held the first ''Antitrust Summit of the Americas'' in Panama City, Panama. At the close of the summit, all eleven participants issued a joint communique in which they expressed their intention ''to affirm their commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocations.'' The communique further expresses the intention of these countries to ''cooperate with one another . . . to maximize the efficacy and efficiency of the enforcement of each country's competition laws.'' One of the countries participating in this communique, Venezuela, is a member of OPEC.

The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way. Consideration of such legal action could provide an inducement to OPEC and other oil-producing countries to raise production to head off such litigation.

We hope that you will seriously consider judicial action to put an end to such behavior.

ARLEN SPECTER,
HERB KOHL
CHARLES SCHUMER,
MIKE DEWINE,
STROM THURMOND,
JOE BIDEN

U.S. SENATE,
Washington, DC, April 25, 2001.

President GEORGE WALKER BUSH,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In light of the energy crisis and the high prices of OPEC oil, we know you will share our view that we must explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

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(1) A suit in Federal district court under U.S. antitrust law. A strong case can be made that your Administration can sue OPEC in Federal district court under U.S. antitrust law. OPEC is clearly engaging in a ''conspiracy in restraint of trade'' in violation of the Sherman Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration has the power to sue OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15a), since OPEC's behavior has caused an ''injury'' to U.S. ''property.'' After all, the U.S. government is a consumer of petroleum products and must now pay higher prices for these products. In *Reiter* v. *Sonotone Corp,* 442 U.S. 330 (1979), the Supreme Court held that the consumers of certain hearing aids who alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since ''a consumer deprived of money by reason of allegedly anticompetitive conduct is injured in 'property' within the meaning of [the Clayton Act].''

One issue that would be raised by such a suit is whether the foreign Sovereign Immunities Act (''FSIA'') provides OPEC, a group of sovereign foreign nations, with immunity from suit in U.S. courts. To date, only one Federal court, the District Court for the Central District of California, has reviewed this issue. In *International Association of Machinists* v. *OPEC,* 477 F. Supp. 553 (1979), the Court held that the nations which comprise OPEC were immune from suit in the United Stats under the FSIA. We believe that this opinion was wrongly decided and that other District courts, including the D.C. District, can and should revisit the issue.

This decision in *Int. Assoc. of Machinists* turned on the technical issue of whether or not the nations which comprise OPEC are engaging in ''commercial activity'' or ''governmental activity'' when they cooperate to sell their oil. If they are engaging in ''governmental activity,'' then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in ''commercial activity,'' then they are subject to suit in the U.S. The California District court held that OPEC activity is ''governmental activity.'' We disagree. It is certainly a governmental activity for a nation to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

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''It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decision regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive take of establishing a principle not inconsistent with the national interest or with international justice.''

Since the 9th circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990's have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost twenty years ago.

(2) A suit in the International Court of Justice at The Hague based upon ''the general principles of law recognized by civilized nations.'' In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the ''ICJ'') at The Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the U.N. Security Council. The actions of OPEC in restraint of trade violate ''the general principles of law recognized by civilized nations.'' Under Article 38 of the Statute of the ICJ, the Court is

required to apply these ''general principles'' when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights.

Today, adherence to international principles has spread from the tribunals in The Hague to individual nations around the world. The exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on charges of torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chili. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

While these emerging norms of international behavior have tended to focus more on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1998, the Organization for Economic Cooperation and Development issued an official ''Recommendation'' that all twenty-nine member nations ''ensure that their competition laws effectively halt and deter hard core cartels.'' The Recommendation defines ''hard core cartels'' as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries ''to cooperate with each other in enforcing their laws against such cartels.''

On October 9, 1998, eleven Western Hemisphere countries held the first ''Antitrust Summit of the Americas'' in Panama City, Panama. At the close of the summit, all eleven participants issued a joint communique in which they express their intention ''to affirm their commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocation.'' The communique further expresses the intention of these countries to ''cooperate with one another . . . to maximize the efficacy and efficiency of the enforcement of each country's competition laws.''

The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way.

We hope that you will seriously consider judicial action to put an end to such behavior.

ARLEN SPECTER,
CHARLES SCHUMER,
HERB KOHL,
STROM THURMOND,
MIKE DEWINE

Mr. SPECTER. The Federal lawsuit, Prewitt v. OPEC, establishes an antitrust violation by OPEC, and my letters to Presidents Clinton and Bush set forth legal mechanisms for dealing with OPEC where they engage in a conspiracy in restraint of trade and conspiracy to limit production and raise prices.

I ask unanimous consent that an article from the Harrisburg Patriot be printed in the RECORD. It sets out in some detail a way that the sludge can be turned into fuel to reduce our dependence on foreign oil.

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

[From the Patriot-News, Jan. 4, 2002]

COAL-TO-DIESEL IDEA PROMISING

Whatever else it has meant for America, the Sept. 11 terrorism underscored the folly of U.S. dependence on Middle Eastern oil.

And while some people believe it mandates drilling for petroleum in the Arctic National Wildlife Refuge and other environmentally sensitive areas, others see the logic in developing legitimate alternative fuels, utilizing the kind of ingenuity and entrepreneurial skills on which America was built.

Unfortunately, expanded oil drilling and alternative fuel development are tied together in the energy package that remains bottled up in the U.S. Senate, where drilling in ANWR is a key item of debate. Majority Leader Tom Daschle, D–S.D., who sets the agenda, opposes ANWR drilling, which is supported by the president and included in the energy bill approved by the House last summer.

What that means for Pennsylvania in particular is that construction of a $450 million plant in Schuylkill County to convert coal waste into diesel fuel is on hold.

John W. Rich, Jr., scion of a family that made its fortune in mining coal, wants to apply proven South African technology to produce 5,000 barrels a day of sulfur-free diesel fuel and eliminate 1 million tons a year of environmentally damaging coal waste from Pennsylvania's coal regions.

Rich's proposal has won political support and tax credits from the state and a $7.8 million startup grant from the federal government. He hopes that the energy bill, if it ever passes, will provide up to $100 million more, completing a financial package that includes investments from Chevron-Texaco and a Bechtel affiliate.

America's oil resources are so limited and difficult to tap that some foreign oil will always be required here. On the other hand, coal-waste conversion to diesel, a proven technology, would make use of a ready supply of coal and coal waste in Pennsylvania that, in oil equivalent, exceeds the known petroleum reserves of Iraq.

Not only would this technology cut into the need for foreign oil, but its cost, in comparison to the expense of drilling in ANWR and piping the crude oil south to the Lower 48, quite likely would underscore the folly of that proposal.

The Senate needs to settle on a compromise and pass an energy bill to make practical alternatives to Middle Eastern oil a reality.

Mr. SPECTER. Madam President, I think if every one of our colleagues read the story on the front page of the New York Times today, there would be no doubt about the insistence of this body to reduce our dependence on OPEC oil. To have Crown Prince Abdullah of Saudi Arabia release through a spokesman what he intends to say to the President of the United States—that Saudi Arabia will use oil as an oil weapon, as Saddam Hussein has done is outrageous. The spokesman is quoted as saying that Saudi Arabia is prepared to go to the right of bin Laden, and that Saudi Arabia is prepared to fly to Baghdad and embrace Saddam Hussein like a brother.

I ask unanimous consent that the New York Times article ''Saudi To Warn Bush of Rupture Over Israel Policy'' be printed in the RECORD.

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

[From The New York Times, Apr. 25, 2002]

SAUDI TO WARN BUSH OF RUPTURE OVER ISRAEL POLICY

(By Patrick E. Tyler)

HOUSTON, APR. 24.—Crown Prince Abdullah of Saudi Arabia is expected to tell President Bush in stark terms at their meeting on Thursday that the strategic relationship between their two countries will be threatened if Mr. Bush does not moderate his support for Israel's military policies, a person familiar with the Saudi's thinking said today.

In a bleak assessment, he said there was talk within the Saudi royal family and in Arab capitals of using the ''oil weapon'' against the United States, and demanding that the United States leave strategic military bases in the region.

Such measures, he said, would be a ''strategic debacle for the United States.''

He also warned of a general drift by Arab leaders toward the radical politics that have been building in the Arab street.

The Saudi message contained undeniable brinkmanship intended to put pressure on Mr. Bush to take a much larger political gamble by imposing a peace settlement on Israeli and Palestinians.

But the Saudi delegation also brought a strong sense of the alarm and crisis that have been heard in Arab capitals.

''It is a mistake to think that our people will not do what is necessary to survive,'' the person close to the crown prince said, ''and if that means we move to the right of bin Laden, so be it; to the left of Qaddafi, so be it; or fly to Baghdad and embrace Saddam like a brother, so be it. It's damned lonely in our part of the world, and we can no longer defend our relationship to our people.''

Whatever the possibility of bluster, it is also clear that Abdullah represents not just Saudi Arabia but also the broader voice of the Arab world, symbolized by the peace plan he submitted and that was endorsed at an Arab summit meeting in March.

Those familiar with the prince's ''talking points'' said he would deliver a blunt message that Mr. Bush is perceived to have endorsed—despite his protests to the contrary—Prime Minister Ariel Sharon's military incursion into the West Bank.

Abdullah believes Mr. Bush has lost credibility by failing to follow through on his demand two weeks ago that Mr. Sharon withdraw Israeli troops from the West Bank and end the sieges of Yasir's compound in Ramallah and of the Church of the Nativity in Bethlehem.

If those events occur and Mr. Bush makes a commitment ''to go for peace'' by convening an international conference, as his father did after the Persian Gulf war, to press for a final settlement and a Palestinian state, the Saudi view would change dramatically.

But those close to the Saudi delegation said there was no expectation that Mr. Bush is prepared to apply the pressure necessary to force such an outcome.

''The perception in the Middle East, from the far left to the far right, is that America

is totally sponsoring Sharon—not Israel's policies but Sharon's policies—and anyone who tells you less is insulting your intelligence,'' the person familiar with Abdullah's thinking said.

Western analysts see the prince as a blunt Bedouin leader whose initiative is regarded by many Arabs as a gesture worthy of the late Egyptian leader Anwar el-Sadat, who flew to Jerusalem in 1973 to sue for peace with Menachem Begin. Abdullah's offer, now the Arab world's offer, calls for recognition of Israel and ''normal relations'' in return for a Palestinian state on lands Israel occupied in 1967.

The Saudi assessment was apparently being conveyed through several private channels.

On Tuesday President Bush's father had lunch with the Saudi foreign minister, Saud al-Faisal, and the kingdom's longtime ambassador to Washington, Prince Bandar bin Sultan. Their specific message could not be learned, but in the familial setting, where Barbara Bush was also the hostess for Princess Haifa, Prince Bandar's wife, the strong strategic and personal ties of the Persian Gulf war that characterized Saudi-American relations a decade ago was a message in itself.

Abdullah, in a luncheon today with Vice President Dick Cheney, was to convey the seriousness with which he regards the Thursday meeting with President Bush as a ''last chance'' for constructive relations with the Arab world.

Secretary of Defense Donald H. Rumsfeld and Gen. Richard B. Myers, chairman of the joint chiefs of staff, also flew to Houston to join in last-minute discussions before the summit meeting. A senior official in Washington said Mr. Rumsfeld and General Myers were dispatched to brief the prince personally on the American accomplishments in Afghanistan and in the broader war on terrorism.

''The idea was, if he thought we were strong in Desert Storm, we're 10 times as strong today,'' one official said. ''This was to give him some idea what Afghanistan demonstrated about our capabilities.''

United States military commanders in the Persian Gulf region have been building up command centers and equipment depots in Qatar and Kuwait in recent months in anticipation of a possible breach with Riyadh.

Saudi officials assert that American presidents since Richard M. Nixon have been willing to speak more forcefully to Israeli leaders than the current president when American interests were at stake.

''If Bush freed Arafat and cleared Bethlehem, it would be a big victory, show a stiffening of spine,'' the person close to Abdullah said. ''But incremental steps are no longer valid in these circumstances,'' meaning that Mr. Bush would have to follow up with a major push to fulfill the longstanding expectation of the Palestinians for statehood.

The mood in the Saudi camp was that of gloom and anxiety in private even as Saudi and American officials went ahead with preparations for a warm public encounter with the Bush family.

On Friday, after his meeting with President Bush at his home in Crawford, Abdullah is to take a long train ride to College Station, the central Texas town where the former President Bush will be host at his presidential library. On Saturday, Saudi's Arabia's state oil company is gathering the luminaries of the international energy industry to dine with Abdullah and his party.

But the person close to the prince said that if the summit talks went badly, Abdullah might not complete his stay in Texas. Instead, he might return directly to Riyadh and call for a summit meeting of the Organization of the Islamic Conference, to report to its 44 leaders, who represent 1.2 billion Muslims.

''He wants to say, 'I looked the president of the U.S. in the eye and have to report that I failed,'' this person said. His message to the Arabs will be, ''Take the responsibility in your own hands, my conscience is clear, before history, God, religion, country and friends.''

The person close to Abdullah pointed out that Saudi Arabia's recent assurances that it would use its surplus oil-producing capacity to blunt the effects of Saddam Hussein's 30-day suspension of Iraqi oil exports could quickly change.

That Saudi pledge ''was based on a certain set of assumptions, but if you change the assumptions, all bets are off,'' he said. ''We would no longer say what Saddam said was an empty threat, because there come desperate times when you give the unthinkable a chance.''

Abdullah is reported to be bitter over the White House's assertion that the president is taking a balanced approach to the Israeli-Palestinian conflict, and he wants to evaluate in person whether Mr. Bush understands how his actions are being perceived in the Arab world.

''This is not a mistake or a policy gaffe,'' the person close to Abdullah said, referring to Mr. Bush's approach. ''He made a strategic, conscious decision to go with Sharon, so your national interest is no longer our national interest; now we don't have joint national interests. What it means is that you go your way and we will go ours, economically, militarily and politically—and the antiterror coalition would collapse in the process.''

Mr. SPECTER. We are heading for a cataclysm. We are headed for a cataclysmic, destructive process. When the oil industry in Iran was nationalized in the early 1950s and the Anglo-Iranian Oil Company was evicted by an act of the Iranian parliament, Great Britain decided against the use of force and submitted the dispute to the International Court, which decided it had no jurisdiction. But if we are starved from oil, we should attempt to figure out some way to denationalize what the OPEC countries have done, in taking the property of the seven sisters, the oil companies—BP and others—without compensation, or without adequate compensation.

But the demands and the blackmail and the extortion that is contained on the front page of the New York Times today concerning what OPEC has in mind for us should drive the U.S. toward independence from OPEC oil, not only as a matter of self-respect, but as a matter of national defense and continuing economic development in this country.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. How much time remains, Madam President?

The PRESIDING OFFICER. Four minutes 54 seconds.

Mr. LEVIN. I yield 4 minutes to Senator BOND.

Mr. BOND. Madam President, I rise in opposition to the amendment by my colleague from Delaware, Mr. CARPER. This amendment to the energy bill would substantially raise Corporate Average Fuel Economy, CAFE, standards with negative impacts on jobs, safety and the health of our domestic economy.

On March 13, the Senate overwhelmingly passed a bipartisan amendment I wrote with my colleague from Michigan, Senator LEVIN. The Levin-Bond amendment mandates that the National Highway Traffic Safety Administration, NHTSA, increase CAFE standards for cars and light trucks to the maximum feasible levels. The Bond-Levin amendment replaced a provision in the original energy bill which called for significant increases in CAFE based only on a political number, not science. The Senate wisely rejected that underlying provision as being bad for American jobs, bad for highway safety and bad for consumer choice.

Unfortunately, the Carper-Specter amendment on oil consumption would result in CAFE increases similar to the Kerry provision. It must be defeated. While Senator CARPER's goal may be to reduce American dependence on foreign oil, the effect of his amendment would be lost factory jobs, more highway fatalities and reduced vehicle choice. Don't be fooled by arguments that Senator CARPER's proposal is not a CAFE increase. The only way to meet the target under the amendment is for NHTSA to increase fuel economy standards beyond the maximum feasible level. And why would NHTSA only look at the CAFE program? Because it is the only regulatory authority currently available to pursue the mandated oil reductions under the Carper amendment!

The debate on the Levin-Bond amendment was only a few short weeks ago but let me refresh your memories as to the details of this proposal which passed on a 62–38 vote. Specifically, the Levin-Bond amendment directs the Department of Transportation to increase fuel economy standards for cars and light trucks based on consideration of a number of factors including the desirability of reducing U.S. dependence on foreign oil. I agree with the sponsor of the amendment that a goal of our national energy policy should be a reduction in the amount of imported oil. That is why I included language in my amendment last month requiring NHTSA to include it in the regulatory process to set new CAFE standards.

Other factors that NHTSA must consider include: technological feasibility; economic practicability; the effect of other government motor vehicle standards on fuel economy; the need to conserve energy; the effect on motor vehicle safety; the effects of increased fuel economy on air quality; the adverse effects of increased fuel economy standards on the relative competitiveness of manufacturers; the effect on U.S. employment; the cost and lead-time required for introduction of new technologies; the potential for advanced

technology vehicles—such as hybrid and fuel cell vehicles—to contribute to significant fuel usage savings; and the effect of near-term expenditures required to meet increased fuel economy standards on the resources available to develop advanced technology.

The Department of Transportation shall complete the rulemaking for light trucks within 15 months of enactment and shall give automobile manufacturers sufficient lead-time to comply with the new standards. The rulemaking for passenger cars shall be initiated within 6 months of enactment and shall be completed within 24 months. Each rulemaking shall be multiyear for a period not to exceed 15 model years. If DOT fails to act within the required time frame, it will be in order for Congress to consider, under expedited procedures, legislation mandating an increase in fuel economy standards, consistent with the considerations set forth above.

These are the details of what the Senate adopted last month on a bipartisan vote. It is a carefully balanced proposal with firm deadlines and clear criteria. Unfortunately, the Carper amendment before us today would undermine and distort the rulemaking considerations by NHTSA. The Carper amendment returns to the notion of setting an arbitrary target—in this case, to reduce the amount of oil that can be consumed in our passenger car and light trucks in 2015. Not only would this lead to CAFE increases similar to those proposed in the original bill, but it would also force the Department of Transportation to disregard the careful balancing of criteria in its rulemakings. Indeed, DOT would have to impose a overriding element (saving a specific amount of oil) on top of the considerations that the rulemaking would otherwise try to balance.

If you get nothing else out of my statement today, please simply remember that this proposed amendment will absolutely hurt consumers who choose to drive minivans and SUVs. Because the Senate adopted a measure excluding pick-up trucks from the CAFE increases, the burden on the rest of that light truck category is increased dramatically. This effect would be magnified with the adoption of the Carper-Specter amendment today.

Oh, and has anyone besides me taken the time to ask NHTSA or the Department of Transportation if this amendment is even feasible? I talked to Secretary Mineta yesterday, and 2 days ago I spoke with Dr. Runge, the NHTSA Administrator. Both indicated to me that it is not feasible to guarantee specific fuel savings through CAFE standards. There are simply too many variables and assumptions preventing any guarantee of this sort.

Many of the Senators who supported the Bond-Levin amendment agreed that the CAFE program is complex with many tradeoffs. That's why the experts at NTHSA are best qualified to determine future CAFE levels based on sound science and dependable data. Rather that CAFE increases based on nothing more than a political number which would have negative consequences for American jobs, highway safety and economic growth, NHTSA can determine the appropriate standard after extensive review and study.

Given the complexities of the issues, there are great advantages to allowing a rulemaking process to resolve these issues rather than pre-selecting an arbitrary outcome as the Carper oil consumption amendment would do.

One of the most useful reports in the entire fuel economy debate is the National Academy of Sciences study on the Effectiveness of CAFE. As I did last month, let me share with you a key finding about the safety and higher standards:

> In summary, the majority of the committee finds that the downsizing and weight reduction that occurred in the late 1980s most likely produced between 1,300 and 2,600 crash fatalities and 13,000 and 26,000 serious injuries in 1993.
>
> If an increase in fuel economy is effected by a system that encourages either downweighting or the production and sale of more small cars, some additional traffic fatalities would be expected.

I believe that NAS report offers all of us in the Senate clear guidance and expert, scientific analysis as we debate fuel economy levels. I also point out that the NAS panel was extremely careful to caution its readers that its fuel economy targets were not recommended CAFE goals, because they did not weigh other considerations such as employment, affordability, and safety.

I urge you to join me, along with numerous business and labor groups, in opposing the Carper amendment which only complicates NHTSA's effort to set appropriate CAFE standards under the mandates of the Bond-Levin amendment.

If you want appropriate CAFE standards for cars and light trucks that won't harm jobs, highway safety and vehicle choice, vote ''no'' on the Carper amendment.

Madam President, we have been here before. We have had this debate. We have done the bill. We got the T-shirt. Unfortunately, we are back on the floor with this again.

Let me be clear: This amendment totally negates the careful direction that we put in law in the Levin-Bond amendment that the National Highway Transportation Safety Administration must use the best science and technology available to increase standards to get more fuel-efficient cars, vans, and trucks on the road.

Setting an arbitrary standard which comes out of somebody's hip pocket does nothing for sound science. I have talked to NHTSA. They say there is no way we can guarantee it. There would have to be a wild estimate that would come out somewhere around where the original proposal in the underlying bill was.

Do my colleagues know what we found out when we took a look at that? We have the National Academy of Sciences saying the mandated fuel efficiency previously done has resulted when we could not meet those goals through technology in cars that weighed roughly 1,000 pounds less. What happens? Thousands and thousands of people have been killed in unsafe cars.

Despite what some of my friends on the other side of this issue say, you cannot mandate by law that technology will come out of thin air. We have asked the experts at NHTSA to use the National Academy of Sciences and find out what technology is available. If we can make diesel out of sludge in Pennsylvania, great, we will do it. That will be available to the National Academy of Sciences.

We are changing in Missouri and Arkansas. We are using poultry waste and turning it into power. Good. Let's use all those things we can, but let us not go back on the carefully agreed upon construct that was developed in the Levin-Bond amendment and overwhelmingly supported which says: Yes, we need more fuel-efficient minivans and cars, and it is going to be based on how much science can move forward, not how much an arbitrary limitation—in terms of saving gallons which cannot be controlled solely by fuel efficiency standards—would do.

There is technology. There will be increases, but it should not be arbitrary. We do not want to deprive people of the opportunity to buy the cars and minivans they need. We have talked in the past about forcing people into purple-people eaters and golf carts. Frankly, that is where you go when you have an unrealistically high CAFE standard.

We need to give people the choices of vehicles that fit their needs that incorporate the new technology which is designed to save as much fuel as possible. We need to keep the jobs in the United States. We need to keep our economy going. We need not compromise safety, as would be done by this amendment.

This amendment is not merely a refinement. This amendment is simply a bad shot at setting a standard that is not based on science but is based on an arbitrary figure that is infeasible, unworkable, destroys consumer choice, costs us jobs in the United States, and risks more lives on highways. I urge my colleagues not to support the Carper-Specter amendment.

I reserve the remainder of my time and yield the floor.

Mr. CARPER. Madam President, how much time remains on either side?

The PRESIDING OFFICER. The sponsors have 1 minute 41 seconds remaining.

Mr. CARPER. And the other side?

The PRESIDING OFFICER. The opposition has 48 seconds.

Mr. CARPER. I would like to have the opportunity to close, if I can. Will the Senator be willing to accommodate me?

Mr. LEVIN. Madam President, I will be happy to accommodate my friend from Delaware.

Madam President, let us be real clear. The Levin-Bond amendment had positive incentives. We need tax incentives, joint research and development money, Government purchasing, to a much larger extent than the administration proposed. They are in the Levin-Bond amendment.

Also in the Levin-Bond amendment, which this would totally, in effect, abrogate, is a regulatory process: 15 months for the Department of Transportation to look at 12 different criteria in upping the CAFE standard. This does not wait. This prejudges the outcome of that process and says 1 million barrels a day. That is the mandate. This is not some objective, this is a mandatory amount specifically in this amendment, and it is not the way we should be legislating.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Madam President, in listening to the comments against the Carper-Specter amendment, I am not sure they have fully read the Levin-Bond amendment. I know they have not read the amendment we offer today. Senator SPECTER and I both voted for the Levin-Bond amendment. It is a good amendment. It has a number of positive features that make common sense for our country.

In a moment or two, a budget point of order will be brought against our amendment. None was brought against the Levin-Bond amendment. The reason is because in the Carper-Specter amendment, we are looking for a real reduction in oil consumption. We do not vitiate the Levin-Bond amendment. The whole language stays in the bill.

The Levin-Bond amendment directs the Secretary of Transportation to promulgate regulations, essentially CAFE regulations, in order to meet high fuel efficiencies. We do not change that, but we do say in order to reduce the consumption of oil for our cars, trucks, and vans by 2015, not only should the Secretary of Transportation have the opportunity to consider changes in CAFE, but they should also consider how it can reduce oil consumption through alternative fuels.

Alternative fuels could be biodiesel or soy diesel. It could include ethanol, diesel created from coal waste in Pennsylvania, West Virginia, Ohio, or other States.

Four things are different than when we voted a month ago on the Levin-Bond amendment. The Middle East today is in turmoil. Venezuela is in turmoil. We voted last week not to drill in ANWR, and we voted last week to cut off oil imports entirely from Iraq. That is 1 million barrels a day. Those things are different.

We need to put into this legislation meaningful objectives, measurable objectives. This amendment would do that.

The PRESIDING OFFICER. All time has expired on this amendment. The Senator from Michigan.

Mr. LEVIN. Madam President, is it in order at this time to move to table the Carper amendment?

The PRESIDING OFFICER. The motion is in order, but the vote will occur later.

Mr. LEVIN. I move to table the Carper amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 3326

Mrs. MURRAY. Madam President, I call up amendment No. 3326.

The PRESIDING OFFICER. The amendment is pending pursuant to the order.

Mrs. MURRAY. Madam President, the amendment that is now before us is a minor tax amendment that has been cosponsored by my colleague from Washington, Senator CANTWELL. I know debate on this bill is limited, so I will be very brief.

The tax provisions in this bill provide important tax credits to encourage the use of energy-efficient fuel cells that are 1 kilowatt or greater. I note that the tax credit applies only to fuel cells of 1 kilowatt or greater because there are a number of important fuel cell applications that are less than 1 kilowatt. It is important that we support the development of fuel cells that are less than 1 kilowatt.

This amendment would expand the tax credit to include fuel cells that are greater than a half a kilowatt, but would keep the per kilowatt amount of the tax credit the same. Fuel cells that are between a half and 1 kilowatt are used as emission-free power supplies for a number of noteworthy applications, including cellular phone tower repeaters, home dialysis machines, railroad signaling and switching equipment, and recreational vehicle and camping powering equipment.

Fuel cells are an emerging technology that hold the promise of helping to dramatically reduce world pollution. This promising technology could eventually shift our dependence from fuels like gasoline and diesel fuel to hydrogen. This important tax credit is intended to provide an incentive for research, develop, design, and use fuel cell technologies.

We need to encourage the use of all types of fuel cells because as we gain more experience in the design and construction of fuel cells, it will allow the technology to advance to the point where it is competitive with other power sources.

Some may say this amendment is too costly, but the current market for fuel cells is very small. We have estimated the cost of this amendment, over the period of the tax credit, is less than $3 million. That is a small price to pay for encouraging the development of this promising new technology.

I urge my colleagues to support the development of a broader scope of fuel cell technology by supporting this amendment.

I know Senator CANTWELL from my State wanted to be present as well, but she is unavailable at this time. I understand this amendment has been accepted on both sides and would be willing to move quickly to a vote.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Madam President, I ask that the Senator from Washington yield.

Mrs. MURRAY. I yield to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. The Finance Committee has examined this amendment, and we approve it. I think it is a good idea to encourage greater research into fuel cell development. It is clearly a technology of the future. The sooner we begin, the better. This is a very modest amendment, but it is an important amendment, and I urge the Senate to adopt it.

I yield the floor.

Ms. CANTWELL. Madam President, I rise today as a cosponsor of this amendment, and ask my colleagues to vote in its favor. I also want to thank my friend, Senator MURRAY, for her work on this amendment.

I think there is broad bipartisan support for further development of the fuel cell as one of the solutions to our Nation's 21st century energy needs. The number of potential applications for the fuel cell is almost limitless. In this regard, I was pleased to join with Senator DORGAN in sponsoring an amendment to this energy bill that will require the Secretary of Energy to develop a program to ensure 100,000 hydrogen fuel-cell vehicles will be available for sale by 2010, and 2.5 million vehicles will be available by 2020. Fuel cell vehicles are three times more efficient than internal combustion engines, and they produce none of the harmful emissions associated with fossil fuels.

The fuel cell vehicle is a concept that has recently been embraced by the President, and I believe the broad bipartisan support for this technology is already reflected in the tax credit included in this bill for other, stationary fuel cell applications. Currently, this credit is available for fuel cells of one kilowatt or more. What this amendment would do is simply lower the floor to half a kilowatt, or 500 watts.

I believe this is an important change, because we should also extend this credit to fuel cells that can be used in numerous business applications. Fuel cells smaller than one kilowatt are already providing power for remote cell phone towers, backup power for certain medical technologies, and even used to light some types of railroad and traffic

signals. Expanding the tax credit already in this bill will help further demonstrate the commercial applicability of this technology.

This is an important component of any 21st century energy policy, and I ask my colleagues to support this amendment.

The PRESIDING OFFICER. All time is yielded?

Mrs. MURRAY. All time is yielded back.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3326.

The amendment (No. 3326) was agreed to.

Mr. REID. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, we have been able to save a little bit of time. I ask unanimous consent that we move down the amendment list and, prior to the votathon starting, we allow Senator GRAHAM of Florida to bring up amendment No. 3370. He has agreed there would be 15 minutes equally divided on this amendment.

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

Mr. REID. This would be under the same rules as the prior unanimous consent agreement: No seconds, and the vote would take place at the end of the votes on other amendments.

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

The Senator from Arizona.

Mr. KYL. As I understand it, it is now in order for me to bring up amendment No. 3333. Is that correct?

The PRESIDING OFFICER. The Senator may consider amendments Nos. 3333 and 3332 concurrently.

AMENDMENT NO. 3333

Mr. KYL. Madam President, I will first discuss amendment No. 3333.

As a member of the Senate Finance and Energy Committees, I have had the opportunity to witness first-hand the contradictions in Federal energy and tax policy, specifically policy for the electricity industry. One glaring example is the Energy Policy Act of 1992 and the private use rules of the Internal Revenue Code, which pre-date the Energy Policy Act and are applicable, as you know, to public power utilities.

While our Federal energy policy since 1992 has been to open electric markets to wholesale and even retail competition, our Tax Code contains restrictions dating back to the Tax Reform Act of 1986 that make it difficult, and in some cases impossible, for publicly-owned utilities to comply with that deregulation policy.

In an attempt to remove the tax-code impediments to participation in the newly restructured electric industry, the publicly-owned and investor-owned utilities labored for several years to develop a package of tax-law changes that would provide the necessary flexibility to comply with the new energy policies being implemented by the Federal and State governments while, at the same time, not fundamentally changing the competitive balance between the private and public sectors of the energy industry.

The fruit of those efforts was S. 972, introduced last year by Senators MURKOWSKI, THOMPSON, BREAUX, and JEFFORDS. I joined as a cosponsor of this bipartisan bill. In the House, H.R. 1459 was introduced by Congressman J.D. HAYWORTH and was cosponsored by 16 other members of the Ways and Means Committee. These bills were successful in accommodating widely divergent views of public-power and investor-owned utilities on a whole score of Federal tax issues. They represent years of negotiations between the private and public sectors of the industry, and as such, reflect a delicate, equitable balancing of interests.

There are four provisions in these companion bills that are designed to help modernize our Tax Code for investor-owned utilities. I want to address these provisions in light of the subsequent House-passed bill, H.R. 4, and the bill marked out of the Senate Finance Committee that we are now considering. Both of these latest incarnations represent a significant departure from the original texts of H.R. 1459 and S. 972.

The first provision addresses the transmission tax problem that has occurred as the result of FERC Order 2000. This order strongly encourages, some would say ''directs,'' all transmission-owning electric companies, subject to FERC jurisdiction, to join a regional transmission organization, RTO. However, many proposals to form RTOs would force these utilities to sell or spin off their transmission assets to form independent transmission companies, Transcos, resulting in a substantial Federal income-tax liability.

The solution to this problem, as stated in S. 972 and H.R. 1459, is to amend section 1033 of the Tax Code to permit sales of transmission assets on a tax-deferred basis if these sales occur in conformity with Order 2000, and the proceeds of the sale are reinvested in certain utility assets. Section 355(e) would also be amended to permit a non-taxable spin-off of transmission assets even if they are combined with neighboring transmission assets in conformity with Order 2000. Amending the Federal Tax Code to allow formation of Transcos will further diminish tax barriers to wholesale and retail competition by creating truly independent transmission organizations.

H.R. 4 includes this provision, but unfortunately, the bill reported out of the Senate Finance Committee does not. Before this bill is signed by the President, I hope that the transmission-relief provision will be included in the legislation.

The second provision concerns the equitable tax treatment of nuclear decommissioning funds, and it is the only provision of the four that is addressed in all of the aforementioned bills. Under current law, owners of nuclear power plants must make mandatory contributions to external trust funds to ensure that monies are available to decommission plants when they are retired. Congress added section 468A to the tax code in 1984 to permit owners of nuclear plants to deduct a portion of the contributions made to these external funds. Section 468A, when enacted, was designed to operate within the existing structure of regulated rates. The ability to deduct the contributions as permitted in section 468A is currently dependent on the local public service commission's formal approval of the decommissioning expenses that an electric utility can charge its customers. Both the House and the Finance Committee have adopted changes to section 468A to adapt to the structure of competitive markets while preserving the Section's original intent. These changes will facilitate the transfer of nuclear facilities to new owners in compliance with State and Federal directives.

A third provision, included in S. 972, H.R., 1459, and H.R. 4, but not in the Finance Committee bill, has to do with the reimbursement of utilities for construction costs. Under current law, the costs of building new transmission and distribution lines for new generating plants, homes, commercial properties, and industrial sites, indeed, any kind of property where construction costs are paid by a developer or interconnecting party to a utility, are treated as contributions in aid of construction—CIACs—and are considered as taxable income to the utility. The result is that developers or interconnecting third parties must reimburse a utility for construction costs plus a Federal tax of over 30 percent. The proposed solution is to treat the reimbursement of these costs as nontaxable, therefore facilitating new generation, transmission, and distribution facilities by making it less costly to provide these services. This would certainly help increase the supply of power and improve electric reliability, and I am hopeful that Congress will resolve this issue in conference.

The fourth provision concerns the public power utilities only. This provision effectively relaxes the private use restrictions on existing bonds if the issuing municipal or State utility elected to terminate permanently its ability to issue tax-exempt debt to build new generation facilities. Publicly-owned utilities, as entities of State and local governments, have used tax-exempt debt to finance their utility infrastructure in much the same way as cities finance schools, roads, and bridges. Without this provision, public power systems cannot issue stock to raise capital and have no alternative source of financing for these large capital projects other than municipal bonds.

In exchange for the use of tax-exempt debt, public power systems are required to adhere to a strict set of Federal tax rules and regulations designed to limit the amount of power they can sell to private entities. These rules limit a public power entity's ability to negotiate contracts with exiting customers, to resell excess power resulting from competition, ''lost load'', and to discourage the opening of transmission lines that were financed with tax-exempt debt.

The truth is, the current private use laws and regulations are no longer suitable for today's energy market. S. 972 and H.R. 1459 successfully incorporated what both the investor-owned and the publicly-owned utilities agree would constitute an effective modernization of the current Tax Code. The Finance Committee bill did not meet that test, and H.R. 4, although it attempted to do so, failed that test as well.

What happened was that H.R. 1459 sustained damage during the process of House passage. The bill, as approved by the Committee on Ways and Means—H.R. 2511, ''The Energy Policy Act of 2001''—and as subsequently passed by the House—H.R. 4, ''Securing America's Future Energy Act of 2001''—contains substantial, material modifications to the original legislation that make it impossible to vote for. In fact, certain modifications are even more restrictive than existing law and IRS regulations. As a result, H.R. 4, overall, works absolutely counter to national energy policy and the efficient operation of our country's electric infrastructure. The various conditions set forth in the bill will unfortunately discourage utilities from taking the necessary steps to advance open access. Examples of the most problematic provisions:

Provisions that eliminate public power's ability to elect to forego issuance of future tax-exempt bonds for generation from refunding outstanding tax-exempt generation bonds, even though this can result in savings to the utilities' customers and the U.S. Treasury. The bill also prohibits these electing utilities from utilizing tax-exempt financing to fund limited repairs and environmental improvements, including those which may be government-mandated.

In the context of sales of energy, there are provisions that restrict or eliminate public power's ability to use long-standing statutory and regulatory exceptions to the private use rules, and provisions that constrain new rules designed to enable public power to participate in a deregulated environment. As an example, language in the bill effectively precludes sales to rural electric cooperatives that were one of the exceptions to the private use rules. The bill seems to provide that the expansion of an existing generation facility can result in loss of eligibility of the entire facility for permitted exception treatment for long-term take or pay requirement contracts, even if the cost of the expansion was financed with taxable debt or equity. Furthermore, a public power company that owns no transmission will qualify for the bill's clarifications to the private use rules only if all transmission providers who provide transmission to that municipal utility's customers provide open access to all of their transmission facilities. These types of restrictions reduce or eliminate many of the benefits intended in the bill.

There are new restrictions on tax exempt bonds for transmission facilities that will prevent municipal utilities from using tax-exempt bonds to finance new transmission facilities to connect new power plants to their service areas. In addition, new restrictions in the bill require that, to qualify for private use relief, public power transmission facilities must be owned, directly connected to customers, and necessary to serve those customers. Thus, the bill ignores the need for investment in new transmission for maintenance of grid reliability, the multiple legal forms of ownership and use of transmission (including the different forms of RTOs and related organizations, leasehold and operational arrangements), and the fundamental physics involved in transmission network operation.

The new exception to the private use rules for sales of certain lost load is revised so as to require proof that the load loss was ''attributable to open access'' in order to take advantage of this exception, which was designed to ensure that our nation's energy capacity is fully utilized.

I had hoped that these problems could have been resolved in the Finance Committee by my colleagues and myself, but the revenue constraints imposed on us have prevented us from rectifying these problems. So the Finance Committee, rather than correcting the errors as reported in the final version of H.R. 4, chose not to provide any private use relief at all. Instead, we directed the Treasury to conduct a study to examine the problem and propose a solution.

That said, I think more immediate assistance can and should be provided by the Treasury Department.

During the Finance Committee's mark-up of the tax title of the pending energy bill, I asked the Treasury Department to look into an allocation proposal related to the private use restrictions of the Internal Revenue Code. The proposal would provide a limited safe harbor under which issuers of tax-exempt bonds could allocate private use first and foremost to the portion of an output facility that is not financed with outstanding tax-exempt bonds. For certain bonds, the proposal would permit issuers to use reasonable methods to allocate various funding sources among their assets.

The Treasury Department has examined this proposal and believes that many of the issues raised therein could be addressed under current law. Treasury officials say we could, under a different time frame than the pending energy bill, issue regulations to that effect. In the meantime, however, I would strongly support a provision in the tax title of the bill incorporating this proposal.

In addition, various members of the Finance Committee, including the chairman of the Energy and Natural Resources Committee, have asked that the Treasury Department finalize various temporary output regulations that relate to the use of tax-exempt financing by public power as quickly as possible. I expect that the Treasury Department will make finalizing these regulations a top priority and will endeavor to be responsive to the many public comments that it has received. I look forward to their findings.

I ask unanimous consent to have printed in the RECORD letters dated March 8, 2002 and March 20, 2002.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, March 8, 2002.

Hon. MARK A. WEINBERGER,
Assistant Secretary, Tax Policy, Department of the Treasury, Washington, DC.

DEAR MR. SECRETARY: I am following up with you directly on certain items that were raised during the Senate Finance Committee's consideration of the tax title to the pending Senate energy bill. Although I continue to believe that a broader, more expansive solution is necessary to more fully address the tax issues presented by the restructuring of the electric utility industry, I raised question at the mark-up with respect to two narrower items.

The first item concerns our discussion during the mark-up about an allocation proposal related to the private use restrictions of the Internal Revenue Code. You will recall that I asked if you would examine this proposal. The proposal generally would provide a limited safe harbor under which issuers of tax-exempt bonds could allocate private business use first to the portion of an output facility that is not financed with outstanding tax-exempt bonds. For certain bonds, the proposal would permit issuers to use reasonable methods to allocate various funding sources among their assets.

The second item is the temporary output regulations. As you know, the Finance Committee, as part of its report, asked that the Treasury Department finalize the temporary and proposed output regulation as quickly as possible, providing flexibility in those regulations, to foster participation of public power in a rapidly changing electric industry, without adversely affecting public power investors and customers.

I look forward to a letter from the Treasury Department on both of these issues. I am hopeful that you will find that many of the issues raised by the allocation proposal could be addressed under present law, and that, under a different timeframe than the pending energy bill, you would issue administrative guidance to that effect. It would be helpful, in the meantime, however, if you would also indicate your support for a provision in the tax title of the Senate bill incorporating this proposal.

With respect to the temporary and proposed regulations, I hope that you will be able to state in that letter that you will make the finalization of these regulations a

top priority and will endeavor to use your regulatory authority to the greatest extent possible to be responsive to the numerous public comments you have received and to further public power's participation in the restructuring of the industry.

Naturally, I do not expect you to take any action that would be inappropriate or contravene normal agency rules and regulations. Thank you for your attention to this matter.

Sincerely,

JON KYL,
U.S. Senator.

DEPARTMENT OF THE TREASURY,
Washington, DC, March 20, 2002.

Hon. JON KYL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KYL: Thank you for your letter dated March 8, 2002 concerning certain items that were raised during the Senate Finance Committee's consideration of the tax title to the pending Senate energy bill. In particular, your letter refers to two matters relating to electric facilities financed with tax-exempt bonds: (1) temporary and proposed Treasury regulations that define private use of output facilities, including generation, transmission and distribution facilities (temporary regulations; and (2) a proposal that, in general, would allow issuers to allocate private use first to the portion of an output facility that is not financed with tax-exempt bonds.

Your letter requests that the Treasury Department finalize the temporary regulations expeditiously, in a manner that fosters participation by public power systems in electric industry restructuring. We understand that providing certainty in this area is necessary for the industry to evolve. Thus, we are making the finalization of these regulations a top priority. We intend to craft regulations that take into account the current dynamic environment in the electricity industry and the policy objective of facilitating public power's participation in the restructuring of the industry. In finalizing the regulations, we will, of course, carefully consider all of the public comments we have received.

Treasury is examining your proposal regarding the proper allocation of private use of an output facility. We believe that the issues raised by your proposal can be addressed under present law. The proposal raises policy and administrative questions that require careful consideration. As we work to finalize the temporary regulations, we intend to address the issues raised by your proposal. In doing so, we must craft an administrable set of rules that are consistent with the policy objective of a competitive electricity market.

We hope this information is helpful to you. Please contact me if you have any additional questions.

Sincerely,

MARK A. WEINBERGER,
Assistant Secretary
(Tax Policy).

Mr. KYL. Madam President, this first amendment is a very simple amendment that would save a little over a billion dollars, according to the calculations of the committee, but probably would save closer to $3 billion by striking that section of the Finance Committee portion of the bill that is called the clear act provisions; more specifically, those provisions that provide tax credits for Americans who purchase four specific kinds of motor vehicles; specifically, a new qualified alternative fuel motor vehicle, a new qualified fuel cell motor vehicle, a new hybrid motor vehicle, and then it extends the present law which provides a credit for electric vehicles.

I know this provision was inserted in the Finance Committee with the best of intentions, but for the reason I will point out, I think this has not been as carefully thought out and prepared as it should be. Based on the experience of my home State of Arizona trying to do the same thing, it would be premature for us to move forward with this particular program at this time. I will illustrate specifically what is involved and then get to the Arizona experience.

Under the bill pending before us, there would be provided a maximum income tax credit of $40,000 per taxpayer for the purchase of these kinds of motor vehicles, the fuel cells, the alternative fuel, and the electric vehicles. The fact is that is for a very large vehicle; the average for the usual passenger car type of vehicle would be in the neighborhood of from $3,500 to $6,000.

The part I am particularly interested in is the alternative fuel vehicle. According to the committee staff, the average tax credit in this case would be about $5,000. It is determined by a very complicated formula based upon the weight of the vehicle and some other factors, but it is about a $5,000 subsidy per taxpayer buying this particular kind of vehicle.

I am concerned about this because Arizona decided to try to do this same thing, provide a taxpayer subsidy for the purchase of these alternative fuel vehicles as a way of trying to clean up our environment and to reduce reliance upon pure oil or gasoline. It provided a subsidy, calculated a little bit differently, for the purchase of these vehicles; in fact, for the retrofitting of the alternative fuel system for a vehicle that had already been manufactured.

I will read some headlines, or excerpts, from some of the Arizona newspapers after this program was put into effect. I might begin by saying this has been a fiasco in Arizona. The program has since been terminated. Politicians' careers have been destroyed because of it. They did not think it through carefully enough before they implemented it. It was about to bankrupt the State, so the State decided to terminate the program prematurely before it ended up costing them as much as it was going to cost.

These are a few quotations:

The rebate program was originally projected to cost the State about $3 million but has since spiraled to a dizzying $483 million.

That is from the Arizona Daily Star.

Bad legislation, bad policy and no benefit to air quality.

That is a quotation from the Arizona Republic. That is October 30, 2000.

From that same editorial:

There has been no environmental study of the alternative-fuel program by any State agency, just as no one ever completed an incisive cost analysis of the legislation.

Another quotation from the Arizona Republic:

The law allowed thousands of people to buy expensive sport-utility vehicles with the State picking up nearly half the costs of the trucks and their bifuel conversions to either propane or compressed natural gas.

One final quotation from the Arizona Daily Star says:

The Arizona Republic shows that 13 percent of the applications for cleaner-running vehicles came from rural areas without a pollution problem.

I ask unanimous consent that the remainder of these statements be printed in the RECORD at this point.

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

ARIZONA'S EXPERIENCE WITH ALTERNATIVE FUELS AND TAX CREDITS.

''The law in question . . . provided tax incentives and rebates for up to 50 percent of the cost of a car equipped to burn alternative fuels. One of the startling loopholes in this poorly written law was a failure to require any accountability from consumers. Vehicles equipped to run on an alternative fuel are also equipped with regular gas tanks. A person could buy a new vehicle, have half of it paid for by the state, and never use an ounce of the cleaner burning fuel system.'' (AZ Daily Star, Editorial, Oct. 31, 2000)

''The rebate program was originally projects to cost the state of about $3 million but has since spiraled to a dizzying $483 million. (AZ Daily Star, Editorial, Oct. 30, 2000)

''Bad legislation, bad policy and no benefit to air quality.'' (AZ Republic, Oct. 30, 2000)

''There has been no environmental study of the alternative-fuel program by an state agency, just as no one ever completed an incisive cost analysis of the legislation'' (AZ Repub, Oct. 30)

''House Speaker Jeff Groscost boasted in Washington three weeks after a new tax credit law took effect here that Arizona auto dealers had at least 1,800 orders for alternative fuel vehicles. . . . The state budget had been built on the assumption that only about 300 people would buy these cars and trucks and apply for the generous tax credits.'' (AZ Daily Star, Oct. 30, 2000)

''The law allowed thousands of people to buy expensive sport-utility vehicles with the state picking up nearly half of the costs of the trucks and their bifuel conversions to either propane or compressed natural gas.''(AZ Republic, Oct. 30

''Just 12 days after it was implemented, the state's alternative-fuels rebate program has already blown its worst cost estimate by 13 percent.''(AZ Repub, Nov. 2, 2000)

''The Arizona Republic shows that 13 percent of the applications for cleaner-running vehicles came from rural areas without a pollution problems.''(AZ Daily Star, Oct. 30, 2000)

''The Republic's analysis of the state's rebate program to convert gasoline-powered cars and trucks to alternative fuel, mainly propane and natural gas, is based on preliminary data obtained from the Commerce Department, the administrator of the program.

''The analysis included only the 5,512 applications in which a rebate amount was contained in the computer database obtained this week from the Commerce Department. The database contained more than 12,000 applications for rebates and is anticipated to grow to 22,000 when all the applications are processed. Few rebates have been paid to the buyers of new vehicles being converted to an alternative fuel.

''The alternative-fuel vehicle rebate legislation passed on April 18 didn't contain funding limits. The estimated cost of $3 million to $10 million for the program was unofficial.

Under the alternative-fuels program, the entire cost of converting a vehicle to propane or compressed natural gas would be paid by the state, along with 30 percent of the purchase price of a new vehicle. For example, if a sport-utility vehicle originally cost $25,000 plus $7,000 to convert it to also run on compressed natural gas, its owner would be reimbursed the entire conversion cost plus $9,600—30 percent of the total vehicle cost of $32,000.'' (AZ Repub, Nov 2, 2000).

''It sounded irresistible: buy a car that burns something other than gasoline and the state pays up to 50 percent of the cost; convert an existing gas-burner to alternative fuels and the state pays 100 percent of the cost of the conversion. No alternative fuel depot at home? Not to worry. The state will cover that $7,000 as well, or up to $400,000 for a commercial alternative-fuels depot. It is all courtesy of a measure proposed and adopted in Arizona at the last minute of a legislative session in April. Sound too good to be true? More than 22,000 Arizonans did not think so, and since July they have filed applications for an average of $21,966 each, which would cost the state nearly $500 million from a program that was supposed to cost less than $5 million a year. State officials now say the eventual costs could reach $800 million once applications being processed are counted.

''The premise of the program was simple. According to a state-issued summary, the law allows the users of alternative-fuel vehicles bought or converted after Jan. 1, 2000, to qualify for cash rebates or tax credits worth 30 percent of the vehicle's cost. Eligible vehicles can use an alternative fuel solely or, as with 'bifuel' vehicles, run on either gasoline or some other fuel, such as natural gas. If a $25,000 vehicle cost $7,000 to convert to propane, for example, a program participant would be reimbursed the conversion cost plus $9,600, 30 percent of the total $32,000 cost.

''Some found the legislation laughable from the beginning. 'The legislation had so many loopholes you could drive a Ford Excursion through it,' said Sandy Bahr, outreach director for the Phoenix-based Grand Canyon chapter of the Sierra Club. Ms. Bahr said that, because the bill does not require owners to actually use alternative fuels, many are using the bifuel-vehicle incentives to take advantage of the program. 'You've got people putting little four-gallon propane tanks in sports utility vehicles and getting 50 percent back on a $40,000 car.'' Ms. Bahr said. 'Four gallons of propane goes less far than four gallons of gasoline, so all they do is use their regular engines because propane is hard to find. That actually creates more emissions because they're driving a bigger car than they would ordinarily buy.'

''Moreover, there are only six refueling stations for alternative fuels in the Phoenix area, and none in the rest of the state.'' (NY Times, Nov. 2, 2000)

Mr. KYL. What we can see is, like the system that is being proposed by the Senate, there was no cost-benefit analysis. There was not a very clear idea of what the ultimate costs were going to be, and the experience with the program not only showed fraud or potential fraud but runaway expenses.

Under the program that has come out of the committee, one of the concerns is that nonprofits will be able to utilize credits by selling them, which, of course, opens up the possibility that there could be a secondary market or abuses could occur in selling these large tax credits.

There has been very little evaluation of whether or not the vehicles could be altered after their purchase, after the tax credit has been received, so that they could run in fact on gasoline or diesel. There is no data whatsoever to show that we would have a better environment as a result. In fact, there has been no cost-benefit analysis.

Pursuant to an amendment I offered in the committee, there will be a study after the fact that will tell us how successful the program has been, but there has been no study in advance of that. In fact, the committee report language does not cite a single study or report justifying the credits under the reason for change.

The report says, and I am quoting:

The committee believes further investments in alternative fuel and advanced technology vehicles are necessary to transform automotive transportation in the United States to be cleaner, more efficient and less reliant on petroleum fuels.

The committee language also prognosticates, and I am quoting again:

That it expects hybrid motor vehicles and dedicated alternative fuel vehicles are the near-term technological advancement that will replace gasoline- and diesel-burning engines with alternative powered engines.

The revenue estimates are $1.1 billion, but since many of the credits expire after 2006, I think it vastly understates the true cost. I suspect this will be extended before they expire, so that the cost is more likely going to be maybe $3 billion or so over a 10-year period. Obviously, the automobile industry is the primary beneficiary of these credits since they can simply increase the cost of the vehicles, and then the credits obviously go to the taxpayer to offset that increase in cost.

I make this point—and I don't expect members of the committee are going to agree with this proposition—I wish we could go a little slower. I advised the committee of the experience in Arizona. To the credit of the committee and the chairman of the committee, his staff was very careful to talk to people in Arizona and do their best to remove the kinds of problems we experienced in Arizona. I commend the chairman of the Finance Committee for that effort. It was a useful effort.

I am concerned we are going to find a lot of problems in this program after it begins. It will be too late then. We will find it will cost a whole lot more than we predicted and the benefits will not pan out in terms of cost-benefit analysis.

I reserve the remainder of my time on this amendment. If anyone wishes to respond, I will briefly discuss the other amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, on the face of it, everyone would agree, this is to give a stimulus, a boost, to alternative fuels, alternative fuel vehicles, and alternative fuel vehicle infrastructure. About two-thirds of the petroleum we consume today in America is consumed in the transportation sector—cars, trucks, railroads, and so forth.

Clearly, we are trying as Americans to wean ourselves a bit from our overreliance on OPEC. That is the whole point of this energy bill. We will not make ourselves completely self-reliant. No one claims that. At least on the margin, we are making a step or two difference to become more energy self-sufficient. Clearly, helping alternative fuel development and alternative fuel vehicle development, alternative fuel vehicle infrastructure development—pumps and so forth—will help.

It is also important we not act precipitously, that we act measurably, thoughtfully. Through the very able assistance of my good friend from Arizona, we have worked closely with the Arizona Department of Transportation. Unfortunately, in the State of Arizona, which attempted something similar a year or two ago, there were people who took advantage of the situation to such a degree that it became a bit of an outrage. We don't want to repeat those mistakes. I don't think anyone in this body wants to repeat those mistakes.

As the Senator said, our staff spent quite a bit of time talking with the Arizona Department over what problems and recommendations they have so the problems do not recur in the provisions enacted here. As a consequence of those discussions, we have dramatically tightened up this bill regarding credits. They cannot be used in the aftermarket by people who alter vehicles. They cannot be used for vehicles that use conventional fuels. This credit is only available to vehicles dedicated to alternative fuels. We made that clear.

I add the primary sponsors of this amendment are Senators who worked hard: Senators HATCH, ROCKEFELLER, KERRY, and SNOWE. They are the primary sponsors of this provision. It has the support of both the auto manufacturing industry and the conservation community, the Environmental Defense Fund, the Union of Concerned Scientists support this amendment, NRDC, Ford Motor Company, Lance Auto Manufacturing, and others too numerous to name.

The main point is, we are trying to wean ourselves from OPEC. This provision is a step, a start. It helps. We have tailored the amendment based upon the experience in Arizona to help assure this works. It will probably not work as well as many think, and it may work better than some Members think, but we are undertaking a good effort to make this right. I appreciate the concerns of my friend from Arizona. They are legitimate concerns and concerns we all have. We have attempted to address these concerns. I thank the good State of Arizona for helping address these matters.

I urge not adopting the amendment that strikes, but to work together to

see what works and what doesn't work and change or modify or delete as the case in Arizona. I thank my good friend for helping draw out what is going on in this debate.

Mr. HATCH. Madam President, I rise today in opposition to the amendment of the Senator from Arizona. As I understand it, this amendment would strike the portions of the energy tax provisions that would provide tax incentives for the purchase of alternative fuels and advanced technology vehicles such as hybrid electric and fuel cell automobiles.

The provisions that this amendment would strike are almost identical to the provisions in the bipartisan CLEAR ACT, which stands for Clean Efficient Automobiles Resulting from Advanced Car Technology, which I introduced last year along with Senators JEFFORDS, ROCKEFELLER, CHAFEE, KERRY, COLLINS, GORDON SMITH, CRAPO, and LIEBERMAN.

The CLEAR ACT is the product of a carefully crafted, delicately balanced, and politically unusual alliance between auto manufacturers, truck engine manufacturers, environmental groups, fuel suppliers, and other stakeholders. I might add that these provisions, which provide strong incentives for energy conservation, are an integral part of the President's energy plan. The CLEAR ACT provisions create a fair and balanced playing field for all the advanced technologies and alternative fuel vehicles that offer the promise of both clean air and less dependency on foreign fuel.

Transportation accounts for about two-thirds of the oil consumption in the United States, and we are 97 percent dependent on oil for our transportation needs. When we consider the role transportation plays in our economy and our way of life, it is hard to believe that we rely on foreign sources for more than one-half of our oil supply. If our nation is going to have a strategy for energy security, that strategy must begin with transportation fuels. The Kyl amendment would take away our best opportunity to provide a balanced approach to achieve this strategy.

Advances in alternative fuels and new vehicle technologies have been significant in recent years. However, three basic obstacles stand in the way of a broad shift toward their adoption. These are the higher cost of the vehicles, the higher cost of alternative fuels, and the lack of an infrastructure of alternative fueling stations.

The CLEAR ACT provisions that this amendment would strike would lower the barriers that stand in the way of widespread consumer acceptance of these advanced technology and alternative fuel vehicles by providing tax credits to consumers who purchase hybrid electric, fuel cell, battery electric, and dedicated alternative fuel vehicles. They would also provide incentives for the purchase of alternative fuels and the development of an alternative fuel infrastructure.

Without imposing any new mandates, the CLEAR ACT provisions in this energy bill focus on the very best emerging technologies to help our citizens to enjoy the health benefits of cleaner air sooner, to help our communities to enjoy the economic benefits of attaining clean air standards sooner, and to help us reduce our consumption of foreign oil sooner than would otherwise be possible.

With the clear benefits of these provisions to less dependency on foreign oil and to cleaner air, which I might add come at a very reasonable cost in terms of revenue loss to the Treasury, it is hard to see why anyone in this body would want to strike them. Moreover, the tax credits the CLEAR ACT offers are performance based, which is to say that they are based on the principle that every dollar of tax expenditure should produce substantive air quality and energy security benefits. The greater the benefits a particular vehicle achieves, the larger the tax incentive for purchasing it.

While I do not want to assume I know the motivations of the Senator from Arizona for offering this amendment, part of it might be based on an unfortunate experience in his home state. Not long ago, a well-intentioned program to promote alternative fuel vehicles by the Arizona legislature experienced extreme cost overruns and failed to provide the promised energy and environmental benefits. I want to assure the members of this body that we have studied the Arizona experience, we have identified the inherent weaknesses of that model, and we have been careful to avoid each one of them in this legislation.

With the CLEAR ACT provisions, until a new advanced vehicle is purchased, until new infrastructure has been installed, or until alternative fuel is placed in the tank of a dedicated alternative fuel vehicle, there will be no cost to the Treasury. And when a cost is incurred, it will be a small cost relative to the resulting environmental benefits and energy savings.

To me it is inconceivable that this Senate would pass an energy policy bill without addressing the issue of how to increase the public's adoption of alternative fuel and advanced technology vehicles. Although gasoline vehicles are 90 percent cleaner today than thirty years ago, the significant increase in the total number of vehicles on the road and the miles traveled per year by each vehicle means that little progress has been made in reducing the contribution of motor vehicle emissions to air pollution.

Similarly, despite improvements in fuel economy compared to thirty years ago, more petroleum than ever is used in motor vehicles and U.S. dependence on imported oil is at a record high and increasing. Alternative fuel vehicles and advanced technology vehicles, such as hybrids and fuel cells, significantly reduce the use of gasoline and diesel and have dramatically reduced emissions. Each dedicated natural gas vehicle displaces 100 percent of the gasoline or diesel that otherwise would be used in that vehicle.

Conventional gasoline and diesel motor vehicle technology has come about as far as it can in terms of fuel economy and emissions. The further gains that are needed to allow the U.S. to achieve energy security and clean air require nonpetroleum vehicles and hybrid and fuel cell vehicles. The nation simply cannot achieve its goals in these areas with these conventional vehicles. Striking these provisions would be a big mistake, and I urge my colleagues to vote against the Kyl amendment.

Mr. GRASSLEY. Madam President, I oppose Senator KYL's amendment to strike the wind energy tax credit extension provisions in this bill. It is unwise from an energy policy standpoint and would be harmful to American agriculture. Therefore, I oppose it vigorously.

Mr. FEINGOLD. Madam President, I supported the amendment offered by the junior Senator from Arizona, Mr. KYL. I did so even though I support the underlying policy that amendment sought to strike from the bill, namely the alternative fuels vehicle tax credit. I regret, though, that this provision, along with many other tax provisions in the bill, were included without adequate offsetting savings. The result is a measure that will make our budget deficits even larger.

We must return to the fiscally responsible budgeting that was so beneficial to the economy, and which brought our budget, however briefly, to balance, and even a slight surplus. If Congress does not pay for additional tax cuts, we will only make matters worse.

Mr. KYL. How much time remains for me?

The PRESIDING OFFICER. The Senator has 2 minutes.

AMENDMENT NO. 3332

Mr. KYL. It is my intention to use the remainder of the time on the second amendment, numbered 3332, after which I presume a Member on the other side will move to table amendment No. 3333, to get the yeas and nays, and I would be happy to accept a voice vote on 3332, which I will describe at this point.

This is an amendment that eliminates the credits for wind energy. According to the industry itself, they are now competitive and they no longer need the subsidy we provide to them. As a matter of fact, quoting from their own material from the American Wind Energy Association: The state-of-the-art wind power plants are generating electricity at costs as low as 4 cents per kilowatt hour, a price competitive with many conventional energy technologies. This is without the production tax credit that would be extended under this legislation.

The AWEA further projects by the year 2005 the costs will be in the area

of 2.5 to 3.5 cents per kilowatt hour, just about exactly the range of the cost of production by coal or nuclear or other generation, or natural gas. This is a tax credit that is simply no longer needed.

Since the Department of Energy Information Administration has analyzed that the RPS mandate in this legislation will only be fulfilled through additional wind energy capacity, we are just basically giving a huge gift to the producers of wind energy that would have essentially a monopoly on this new renewable power we are mandating.

I will not name the particular companies, but the companies that are going to benefit from this are some of the largest production companies in the country, all good companies, but certainly companies that are multibillion-dollar companies and hardly need this particular kind of a credit.

I ask unanimous consent to have printed in the RECORD brochures from the industry itself.

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

WHAT ARE THE FACTORS IN THE COST OF ELECTRICITY FROM WIND TURBINES?

The cost of electricity from utility-scale wind systems has dropped by more than 80% over the last 20 years.

In the early 1980's, when the first utility-scale wind turbines were installed, wind-generated electricity cost as much as 30 cents per kilowatt-hour. Now, state-of-the-art wind power plants are generating electricity at costs as low as 4 cents/kWh, a price that is competitive with many conventional energy technologies. Costs are continuing to decline as more and larger plants are built and advanced technology is introduced.

Aside from actual cost, wind energy offers other economic benefits which make it even more competitive in the long term:

Greater fuel diversity and less dependence on fossil fuels, which are often subject to rapid price fluctuations and supply problems. This is a significant issue around the world today, with many countries rushing to install gas-fired electric generating capacity because of its low capital cost. As world gas demand increases, the prospect of supply interruptions and fluctuations will grow, making further reliance on it unwise and increasing the value of diversity.

Greatly reduced environmental impacts per unit of energy produced, compared with conventional power plants. Environmental costs are becoming an increasingly important factor in utility resource planning decisions.

More jobs per unit of energy produced than other forms of energy.

NEW CORPORATE PLAYERS COULD POWER STRONGER GROWTH IN WIND ENERGY

As the U.S. Senate continues consideration of national energy legislation, the American wind energy industry is poised to continue building on 2001—its most successful year in history—and is the focus of growing interest by major players in the energy field, according to the American Wind Energy Association (AWEA).

The industry is receiving a boost not only from the recent two-year extension of the federal wind energy production tax credit (PTC), which was signed into law March 9, but from a series of announcements by utilities, oil companies, and other firms that they see wind energy in their future. Wind energy supporters are hopeful that with a further three-year extension of the PTC included in the Senate energy bill, the industry will at last have a stable financial environment and the serious corporate participation needed to put it on the road to steady long-term growth.

Among recent industry developments, AWEA said, are the following:

American Electric Power (AEP), one of the nation's largest utilities, spent $175 million in late December to buy the 160-megawatt (MW) Indian Mesa wind plant in West Texas. Previously, AEP had invested $160 million to build its own 150-MW wind farm at Trent Mesa, also in West Texas. Dwayne L. Hart, senior vice president of business development for AEP subsidiary AEP Energy Services, commented, ''The addition of Indian Mesa furthers our goal of enhancing the renewable portion of our overall generation portfolio.'' Ward Marshall of AEP Energy Services is President-Elect of AWEA.

BP and ChevronTexaco announced in mid-January that they will build and operate a 22.5–MW wind plant at their jointly-owned Nerefco oil refinery near Rotterdam in The Netherlands. Bob Dudley, BP's group vice president, Gas and Power and Renewables, said, ''This project is an excellent opportunity in line with BP's strategy to add value to our business, lower emissions, and demonstrate our commitment to clean energy,'' while James Houck, ChrevronTexaco President Power and Gasification, said, ''Wind power is an increasingly viable source of power generation and this project fits with our objectives to manage carbon emissions and invest in new technologies that minimize environmental impact.''

Entergy, a major utility based in New Orleans, La., purchased a majority interest in the 80–MW Top of Iowa wind farm from Houston, Tex.-based Zilkha Renewable Energy and its partner, Midwest Renewable Energy Corp. Geoff Roberts, president and CEO of Entergy's independent power development business unit, commented on the transaction, ''This project provides Entergy with an attractive entry vehicle into the wind energy business.''

FPL Energy, a subsidiary of FPL Corp., which also owns the large utility Florida Power & Light, announced January 7 that it had added 844 MW of wind power to its power generation portfolio during 2001. The company, America's largest wind plant operator, now operates 1,830 MW of wind, of which it owns 1,439 MW. Dean Gosselin, FPL Energy vice president of wind development, said, ''We know there are many more opportunities for wind energy throughout the country and great support in many regions for new wind power facilities.''

GE Power Systems said in late February that it has signed an agreement to purchase the manufacturing capability of Enron Wind Corp., the largest U.S.-based utility-scale wind turbine manufacturer. ''The acquisition of Enron Wind represents GE Power Systems'' initial investment into renewable wind power, one of the fastest growing energy sectors,'' said John Rice, president and CEO of GE Power Systems. GE Power Systems said it expects the wind industry to grow at an annual rate of about 20%, with principal markets in Europe, the U.S., and Latin America.

Pacificorp Power Marketing (PPM), affiliated with Pacificorp, a large utility based in Portland, Ore., is playing a major role in building the market for wind in the Northwest. The company is purchasing and marketing power from three wind plants in the West, including the 261-MW Stateline Project, and has said it plans to add substantial wind capacity to its portfolio over the next few years. ''This is wind power on a grand scale,'' said PPM president Terry Hudgens of Stateline, adding, ''Stateline is a watershed event for our company and for the region. With Stateline, wind is no longer just a small niche in our supply, but has taken a position as a very real and significant part of the new electric resources the region badly needs.''

Shell Subsidiary Shell WindEnergy, Inc., announced in late January that it had purchased an 80-MW wind plant near Amarillo, Tex. ''We are delighted to have moved so quickly in making a second major investment in the U.S. wind power market,'' said David Jones, Director of Shell WindEnergy, Inc. ''Wind energy is not only the fastest-growing area of power generation worldwide but it is also one of the cleanest sources of energy.'' Shell WindEnergy also owns a 50-MW wind project in Wyoming, and Shell is developing or operating more than 1,000 MW of wind in the U.S. and Europe.

TXU, a large utility based in Dallas, Tex., announced in early January that it plans to purchase a 40% equity stake in two wind farms under construction in central Spain. TXU is already one of the largest U.S. purchasers of wind-generated electricity, buying the output of several Texas wind plants.

Utilicorp United, based in Kansas City, Mo., commissioned a 110-MW wind plant near Montezuma, Kans., in December. Commented Keith Stamm, president and chief operating officer of UtiliCorp's Global Networks Group, ''This wind farm demonstrates UtiliCorp's commitment to providing its customers with renewable and reliable energy supplies . . . While this is the first major wind power project in Kansas, the state has the potential to be a U.S. leader in wind energy.''

''This string of announcements by major energy corporations is rapidly changing the face of the wind energy business,'' said Randall Swisher, AWEA executive director. ''Coming on the heels of the industry's most successful year, in the U.S. and worldwide, it signals that wind energy is moving into the big leagues. AWEA estimates that with continued government encouragement and broad utility support, wind energy will provide at least six percent of the nation's electricity by 2020.

FPL ENERGY PLACES ORDER FOR 175 VESTAS WIND TURBINES, WITH OPTION FOR 650 ADDITIONAL UNITS

FPL Energy, LLC, the independent power production subsidiary of FPL Group Inc. (NYSE: FPL), today announced an agreement with Vestas Wind Systems A/S of Denmark for delivery of approximately 175 wind turbines and an option for an additional 650 turbines.

Delivery of the 660-kilowatt turbines will begin in 2002 and will support the planned expansion of wind-driven electricity generation projects underway at FPL Energy.

''Wind projects will be a major element of our expansion activity in 2002 and 2003,'' said Ron Green, president of FPL Energy. ''We expect to add 1,000 to 2,000 megawatts of wind power to our portfolio by the end of next year.''

FPL Energy is the largest generator of electricity form wind turbines in the United States. It currently owns and operates wind farms in eight states with more than 1,400 megawatts of capacity.

''As the leading U.S. developer of wind power, it is important for FPL Energy to secure a reliable source of wind turbines for use in projects we are developing today and into the future,'' said Mr. Green.

Approximately 80 percent of FPL Energy's electric generation is fueled by renewable

sources or clean-burning natural gas. Wind power represents nearly 28 percent of the company's 5,063-megawatt portfolio.

Last month, Congress extended the production tax credit for operating wind projects. Projects that become operational by the end of 2003 will receive a 1.7-cent per kilowatthour tax credit, adjusted for inflation, for a ten-year period.

''We continued our wind project development activities during the first part of this year, and the extension of the production tax credit in March gave us the green light to quickly advance these important projects to construction.

''Wind power is an important component of our nation's move toward energy independence as we harness our natural resources for production of electricity. It is a clean, renewable source of energy that can be sited, built and in operation much more rapidly than conventional fossil fuel facilities,'' Mr. Green said.

''Typically, wind farms can be constructed in six to nine months, and they are profitable from the first day of operation,'' said Mr. Green. Last year, FPL Energy built nearly 850 megawatts of wind-powered generating facilities, approximately half of what was built in the United States.

''A large percentage of our current wind facilities are equipped with Vestas turbines,'' said Mr. Green. ''We are pleased to move forward with such a reliable supplier for our future expansion.''

FPL Energy is the nation's leader in wind energy generation, with 24 wind farms in Iowa, Kansas, Texas, Minnesota, Wisconsin, Washington, Oregon and California. The company is a leading independent producer of clean energy from natural gas, wind, solar and hydroelectric. Its portfolio includes 73 facilities in operation, under construction, or in advanced stages of development in 17 states.

FPL Group, with annual revenues of more than $8 billion, is nationally known as a high quality, efficient, and customer-driven organization focused on energy-related products and services. With a growing presence in more than 17 states, it is widely recognized as one of the country's premier power companies. Its principal subsidiary, Florida Power & Light Company, serves approximately 4 million customer accounts in Florida. FPL Energy, LLC, an FPL Group energy-generating subsidiary, is a leader in producing electricity from clean and renewable fuels. FPL FiberNet, LLC is a leading provider of fiber-optic networks in Florida. Additional information is available on the Internet at www.fplgroup.com, www.fpl.com, www.fplenergy.com and www.fplfibernet.com.

Mr. KYL. I close by advising my colleagues I would be pleased to have a vote by voice.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I think we are ready to vote on amendment No. 3332.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 3332) was rejected.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BINGAMAN. I move to table the other Kyl amendment, numbered 3333, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

AMENDMENT NO. 3370

Mr. REID. Madam President, it is my understanding the next amendment in order by virtue of the unanimous consent agreement is Graham amendment No. 3370.

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. I ask unanimous consent the 15 minutes granted on this amendment start running.

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

Mr. REID. I suggest the absence of a quorum with the time counting against the Graham amendment.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. REID. The Senator from Florida is on the floor. I ask unanimous consent the amendment now pending be temporarily laid aside for purposes of calling up this amendment.

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

AMENDMENT NO. 3346

Mr. REID. I call up amendment No. 3346.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KOHL, proposes an amendment numbered 3346.

Mr. REID. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the credit for the production of electricity to include municipal biosolids and recycled sludge)

In Division H, on page 17, between lines 8 and 9, insert the following:

SEC. ___. CREDIT FOR ELECTRICITY PRODUCED FROM MUNICIPAL BIOSOLIDS AND RECYCLED SLUDGE.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking ''and'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H), and by adding at the end the following new subparagraphs:

''(I) municipal biosolids, and

''(J) recycled sludge.''.

(b) QUALIFIED FACILITIES.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraphs:

''(H) MUNICIPAL BIOSOLIDS FACILITY.—In the case of a facility using municipal biosolids to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 2001, and before January 1, 2007.

''(I) RECYCLED SLUDGE FACILITY.—

''(i) IN GENERAL.—In the case of a facility using recycled sludge to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

''(ii) SPECIAL RULE.—In the case of a qualified facility described in clause (i), the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this subparagraph.''.

(c) DEFINITIONS.—Section 45(c), as amended by this Act, is amended by redesignating paragraph (9) as paragraph (11) and by inserting after paragraph (8) the following new paragraphs:

''(9) MUNICIPAL BIOSOLIDS.—The term 'municipal biosolids' means the residue or solids removed by a municipal wastewater treatment facility.

''(10) RECYCLED SLUDGE.—

''(A) IN GENERAL.—The term 'recycled sludge' means the recycled residue byproduct created in the treatment of commercial, industrial, municipal, or navigational wastewater.

''(B) RECYCLED.—The term 'recycled' means the processing of residue into a marketable product, but does not include incineration for the purpose of volume reduction.''.

(d) EXEMPTION FROM CREDIT REDUCTION.—The last sentence of section 45(b)(3), as added by this Act, is amended by inserting '', (c)(3)(H), or (c)(3)(I)'' after ''(c)(3)(B)(i)(II)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

AMENDMENT NO. 3370

The PRESIDING OFFICER. Who yields time?

The Senator from Florida.

Mr. GRAHAM. Madam President, what is the parliamentary situation at this time?

The PRESIDING OFFICER. Amendment No. 3370 is the business before the Senate. The Senator's amendment is before the Senate.

Mr. GRAHAM. Madam President, I would like to take up first amendment No. 3372.

Mr. REID. Madam President, if I could reserve my right to object, the Senator has two amendments. We do not care which one he brings up, but he cannot bring up both.

Mr. GRAHAM. I would like to bring up No. 3372.

Mr. REID. I ask the unanimous consent agreement that is now standing be modified.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Madam President, parliamentary inquiry: Is that amendment germane postcloture?

The PRESIDING OFFICER. No, it is not.

Mr. NICKLES. Is the amendment out of order?

The PRESIDING OFFICER. A point of order would lie at the appropriate time.

Mr. NICKLES. Madam President, for the information of my colleague, I am happy for him to discuss it, but I will make a point of order at the appropriate time.

Mr. GRAHAM. Madam President, I will object to the unanimous consent request by the Senator from Nevada, and we will proceed on the amendment that was the original subject of the unanimous consent.

The PRESIDING OFFICER. Objection has been heard.

The Senator from Florida.

Mr. GRAHAM. Madam President, in February the Finance Committee reported out legislation which has become the tax provisions for the energy bill. This set of provisions includes a number of incentives provided to traditional energy production, conservation, and the use of alternative fuels.

In reporting this set of proposals, the Finance Committee made the decision to defer the inclusion of an appropriate offset for the cost of these tax incentives until the bill was considered on the floor. We of course are now at that point.

The committee did not make the decision that such an offset was unnecessary. In fact, the budget which was adopted by the Congress last year for the 1st session of the 107th Congress, as well as the one which is currently under consideration by the Senate Budget Committee, requires that this legislation be budget neutral.

The amendment I had hoped to offer, and to which our friend and colleague from Oklahoma has just indicated his intent to offer a point of order that it was not germane, and therefore was not available, would have met that obligation. It would have said, simply, that before these tax provisions went into effect either through spending or through revenue from other sources, it would be our obligation to make this a budget-neutral program.

I am personally very disappointed that we are proceeding with these tax provisions, which as of now have a 10-year cost estimate of approximately $13 billion, without any effort to offset.

I strike the word ''any.'' We did, in fact, adopt a package of proposals earlier today which were stated to be a partial offset. But when you look at the cumulative number of those provisions, the total amount of additional revenue over 10 years would be $37 million, as against $13 billion of revenue loss in this program.

The President of the United States outlined very clearly in his State of the Union Message that there were three priorities for this Nation, all of which have strong bipartisan support. These three priorities were what he said could be considered without the fiscal discipline requiring that there be a method of paying for these. Those three were: Winning the war on terrorism, defending our homeland, and reviving our economy.

Congress has in fact followed the President's direction. In March we passed the Job Creation Worker Assistance Act, which included several tax incentives designed to stimulate the economy. That legislation was enacted without an offset. In a few weeks, Congress is likely to consider a supplemental appropriation to provide $37 billion for the war in Afghanistan, and that will be without an offset.

But wherever we go outside these three areas of the war, homeland security, or stimulating the economy, the effect of not providing an offset is to ask our children and grandchildren, by the reduction in the Social Security trust fund, upon which their security in retirement depends, that trust fund now becomes the means by which we pay for our current appetite.

Therefore, the amendment that is before us is an amendment which will strike one of the provisions in the tax measure. It is division H, relating to energy tax incentives, striking section 2308.

Frankly, that is an arbitrary selection and a strike. In a world in which we were prepared to pay for these various energy tax measures, I might well be prepared to support them. But in a world in which we are saying it is not important enough for us to pay for these measures, we are going to ask the next generations to pay by reducing the security upon which their retirement depends. I think that is an immoral act. I believe it is another step on the slippery slope down the mountain from fiscal discipline which this Congress worked so hard over the last decade to achieve.

We already have converted an almost $6 trillion projected 10-year surplus into a series of deficits. We have acted at a level of fiscal irresponsibility almost unknown in the history of this country. I wish we had been able to adopt the amendment that I wanted to offer, which would have said let's put aside all of these tax measures until we have developed—as a Finance Committee indicated it was the intention—a means of paying for them before they go into effect. That is not available.

Therefore, I am taking a second option to propose that we strike this and other of the provisions that have gone into the bill so we will not be in the position of having to find an offset because we have made the decision that we are going to be fiscally responsible.

I urge my colleagues to take this opportunity to say enough is enough. We are already committed to paying without offsets for the war, for homeland security, and for economic stimulation. But beyond those priorities, I think on a broad, bipartisan consensus we should ask is this issue important enough for us to do and important enough for our generation of Americans to pay for it.

Mr. BINGAMAN. Mr. President, let me first say that the general sentiment that the Senator from Florida has expressed is one I agree with—which is that I am disappointed that we have not come up with a proposal to offset the cost of the various tax provisions in this bill. I hoped we could do that in the Finance Committee.

I think that clearly would be the better course to follow, and perhaps, if we could get the support from the administration, we could move in that direction. But that has not been possible.

I am constrained to oppose the amendment of the Senator from Florida.

This amendment would simply pick out the tax provisions in the bill, and the particular provision that he finds objectionable, which is intended to maintain domestic production when world oil prices are lower. We have several provisions in the bill which are so-called countercyclical provisions, which basically say that when the oil price goes down below certain levels, there is a tax incentive for companies to stay in the business and not to shut down production in this country.

This is one of several provisions intended to maintain reasonable cashflows to keep the service sector in the oil economy working. The provision would stimulate the economy and producing areas in our country.

For that reason, I urge my colleagues to oppose the Graham amendment that has been presented to the Senate at this time.

I yield the floor.

Mr. NICKLES. Mr. President, I want to inform my friend from Florida that I will make a couple of comments and then move to table. But if he wishes to speak before the tabling motion, I would be happy to let him do so.

Mr. GRAHAM. Mr. President, I was going to close on the amendment before we take up the tabling motion.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, it had not been my intention to dwell on specifics of a particular tax measure because, as I indicated, if we had provided the offset for this, I would have voted for it.

The issue for our colleagues and for the American people is that this provision would further deplete the Social Security trust fund. That is where it is coming from. This is not revenue eligible.

As desirable as this may be, I do not believe it meets that test. It does not meet the President's test. It does not justify going into the Social Security trust fund.

I share his position and urge that our colleagues use this as a line in the sand for fiscal discipline.

Mr. NICKLES. Mr. President, my colleague and good friend is on the Finance Committee, as am I. We had an opportunity to offset it if we wanted to in committee. We didn't do it.

I don't know why this particular amendment is picked out. But I think it is a mistake to try to strike this language. This language says you can't expense over 2 years' payments that are made to keep a lease ongoing. Sometimes a person or a company may have a lease to drill or to explore. For whatever reason, they can't initiate exploration. It may be because of political problems. Maybe they can't get a particular permit. Maybe the price has

dropped so low that it is not feasible. But they want to keep the lease open. So they make payments.

Under the provision in the bill, we say those payments are expensed over 2 years. Frankly, they should be expensed in the year made.

I might note we passed countless amendments that said let us give a tax credit for this. We will reduce taxes substantially; in other words, have the taxpayers subsidize it. In this case, we are not looking for subsidies. If somebody writes a check, we are asking that they be able to expense that check.

Frankly, the provision in the Senate bill is over 2 years. It should be 1 year. When you write the check ''for lease payment,'' you could have an example where somebody has a lease to drill someplace, and a political obstruction has arisen—maybe State, maybe Federal, maybe whatever—and they are not able to commence exploration. But if they don't make payments, they would lose the lease. They should be able to expense those payments in the year made.

The bill before us says they should be able to expense it in 2 years. That is more than defensible.

I urge my colleagues to vote in favor of the motion to table the Graham amendment.

I move to table the Graham amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, as if in executive session, I ask unanimous consent that immediately following the disposition of H.R. 4, the Senate proceed to executive session to consider the following judicial nominations: Calendar Nos. 777 and 780; that the Senate vote immediately on the nominations, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action; that any statements thereon be printed in the RECORD; and the Senate return to legislative session, with the preceding occurring without any intervening action or debate.

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

Mr. REID. I ask unanimous consent it be in order to ask for the yeas and nays on both nominations with one show of seconds.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. REID. Mr. President, I should advise all Members that we are now at the end of the debate time on this piece of legislation. We are now going to start a series of votes. We could have as many as 12 votes. We will try to complete within the time set. Everyone should try to stay as close to the Chamber as possible for this very long and arduous task of completing the bill today.

This will be the end of 6 weeks that the two managers have worked on this bill.

I ask unanimous consent that when the vote sequence commences there be 2 minutes between each vote with the time equally divided and controlled in the usual form; that no other amendments be in order; that no points of order be considered waived by this agreement; and that all votes after the first vote on the Harkin amendment be 10 minutes each.

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

AMENDMENT NO. 3364 TO AMENDMENT NO. 2917

Mr. REID. Mr. President, I ask unanimous consent that the pending amendments be set aside and that it be in order for the Senate to consider amendment No. 3364, that it be set aside, and that it be the last amendment in order on the bill now before the Senate.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to exempt receipts of tax-exempt rural electric cooperatives for the construction of line extensions to encourage development of section 29 qualified fuel sources)

In Division H, on page 215, between lines 10 and 11, insert the following:

SEC. . TREATMENT OF CERTAIN DEVELOPMENT INCOME OR COOPERATIVES.

(a) IN GENERAL.—Subparagraph (C) of section 501(c)(12), as amended by this Act, is amended by striking ''or'' at the end of clause (iv), by striking the period at the end of clause (v) and insert '', or'', and by adding at the end the following new clause:

''(vi) from the receipt before January 1, 2007, of any money, property, capital, or any other contribution in aid of construction or connection charge intended to facilitate the provision of electric service for the purpose of developing qualified fuels from nonconventional sources (within the meaning of section 29).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

AMENDMENT NO. 3195

Mr. REID. Mr. President, I ask that the Senate now begin voting on the Harkin amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3195.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), is necessarily absent.

The PRESIDING OFFICER (Mr. DURBIN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—52

Allard	Enzi	Murkowski
Allen	Frist	Nickles
Bayh	Gramm	Roberts
Bennett	Grassley	Rockefeller
Bond	Hagel	Santorum
Breaux	Harkin	Schumer
Brownback	Hollings	Sessions
Bunning	Hutchinson	Shelby
Burns	Hutchison	Smith (OR)
Campbell	Inhofe	Specter
Cleland	Kyl	Stevens
Clinton	Landrieu	Thomas
Cochran	Lincoln	Thompson
Craig	Lott	Thurmond
Crapo	Lugar	Voinovich
DeWine	McCain	Warner
Domenici	McConnell	
Ensign	Miller	

NAYS—47

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Byrd	Fitzgerald	Nelson (NE)
Cantwell	Graham	Reed
Carnahan	Gregg	Reid
Carper	Hatch	Sarbanes
Chafee	Inouye	Smith (NH)
Collins	Jeffords	Snowe
Conrad	Johnson	Stabenow
Corzine	Kennedy	Torricelli
Daschle	Kerry	Wellstone
Dayton	Kohl	Wyden
Dodd	Leahy	

NOT VOTING—1

Helms

The amendment (No. 3195) was agreed to.

Mr. COCHRAN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3198

The PRESIDING OFFICER. There will now be 2 minutes equally divided prior to the vote on the motion to table the amendment by the Senator from Delaware. Who yields time?

Mr. CARPER. I yield 30 seconds to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, in my 30 seconds, I emphasize the point that this amendment is a significant step toward freeing the United States from dependence on OPEC oil. The front page of today's New York Times contains a statement by the Crown Prince of Saudi Arabia that, if necessary, to blackmail the United States to change our policy toward Israel, Saudi Arabia is prepared to move to the right of bin Laden. Saudi Arabia gave us bin Laden, and 15 of the 19 terrorists from 9–11. Vote for this amendment.