(Mr. LEVIN), the Senator from Michigan (Ms. STABENOW) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 202 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

AMENDMENT NO. 204

At the request of Mr. BINGAMAN, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Washington (Mrs. MURRAY), the Senator from Massachusetts (Mr. KERRY), the Senator from Vermont (Mr. JEFFORDS), the Senator from Arkansas (Mrs. LINCOLN), the Senator from New York (Mrs. CLINTON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New York (Mr. SCHUMER), the Senator from Washington (Ms. CANTWELL), the Senator from Hawaii (Mr. AKAKA), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from California (Mrs. FEINSTEIN), the Senator from Illinois (Mr. OBAMA), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Iowa (Mr. HARKIN), the Senator from Michigan (Ms. STABENOW), the Senator from Florida (Mr. NELSON), the Senator from Wisconsin (Mr. KOHL), the Senator from Rhode Island (Mr. REED), the Senator from South Dakota (Mr. JOHNSON), the Senator from Maryland (Ms. MIKULSKI), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of amendment No. 204 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

AMENDMENT NO. 214

At the request of Mr. WYDEN, the names of the Senator from Florida (Mr. NELSON), the Senator from Vermont (Mr. LEAHY), the Senator from Washington (Ms. CANTWELL), the Senator from Michigan (Ms. STABENOW) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of amendment No. 214 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

At the request of Mr. OBAMA, his name was added as a cosponsor of amendment No. 214 proposed to S. Con. Res. 18, supra.

AMENDMENT NO. 216

At the request of Mr. KERRY, his name was added as a cosponsor of amendment No. 216 proposed to S. Con. Res. 18, supra.

AMENDMENT NO. 217

At the request of Mr. CONRAD, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Ohio (Mr. DEWINE), the Senator from Vermont (Mr. LEAHY) and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of amendment No. 217 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

AMENDMENT NO. 218

At the request of Mrs. HUTCHISON, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 218 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

At the request of Mr. HATCH, his name was added as a cosponsor of amendment No. 218 proposed to S. Con. Res. 18, supra.

AMENDMENT NO. 219

At the request of Ms. LANDRIEU, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Washington (Mrs. MURRAY), the Senator from North Dakota (Mr. DORGAN), the Senator from Virginia (Mr. ALLEN) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of amendment No. 219 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

At the request of Mr. CONRAD, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of amendment No. 219 proposed to S. Con. Res. 18, supra.

At the request of Mr. OBAMA, his name was added as a cosponsor of amendment No. 219 proposed to S. Con. Res. 18, supra.

AMENDMENT NO. 220

At the request of Mr. AKAKA, his name was added as a cosponsor of amendment No. 220 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

At the request of Mr. LIEBERMAN, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from New Jersey (Mr. CORZINE) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of amendment No. 220 proposed to S. Con. Res. 18, supra.

AMENDMENT NO. 222

At the request of Mr. LEVIN, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of amendment No. 222 intended to be proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

AMENDMENT NO. 223

At the request of Ms. LANDRIEU, her name was added as a cosponsor of amendment No. 223 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

At the request of Mr. VITTER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 223 proposed to S. Con. Res. 18, supra.

AMENDMENT NO. 224

At the request of Ms. LANDRIEU, her name was added as a cosponsor of amendment No. 224 proposed to S. Con. Res. 18, an original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

At the request of Mr. VITTER, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of amendment No. 224 proposed to S. Con. Res. 18, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUNNING (for himself, Mrs. LINCOLN, Mr. LOTT, Mr. BOND, and Mr. CHAMBLISS):

S. 646. A bill to amend the Internal Revenue code of 1986 to allow distilled spirits wholesalers a credit against income tax for their cost of carrying Federal excise taxes prior to the sale of the product bearing the tax; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce legislation that will resolve a longstanding inequity in the tax treatment of U.S. distilled spirits that penalizes the wholesalers, and some suppliers, of these products.

Under current law, wholesalers of distilled spirits are not required to pay the Federal excise tax on imported spirits until after the product is removed from a bonded warehouse for sale to a retailer.

In contrast, the tax on domestically produced spirits is included as part of the purchase price and passed on from the supplier to wholesaler. After factoring in the Federal excise tax (FET)—which is $13.50 per proof gallon—domestically produced spirits can cost wholesalers 40 percent more to purchase than comparable imported spirits.

In some instances, wholesalers and even suppliers can carry this tax-paid inventory for an average of 60 days before selling it to a retailer. Interest charges—more commonly referred to as float—resulting from financing the Federal excise tax can be quite considerable.

For example, at a 5 percent interest rate on the sale of 100,000 cases of domestic spirits, a wholesaler will incur finance charges of $21,106.85 for loans related to underwriting the cost of paying the Federal excise tax. It is important to note that it is not uncommon for wholesalers to sell a million or more cases per year of domestic spirits.

The costs associated with financing Federal excise taxes amount to a tax on a tax, making the effective rate of the Federal excise tax for domestic spirits much higher than $13.50 per proof gallon.

The Domestic Spirits Tax Equity Act would give wholesalers and suppliers in bailment States a tax credit toward the cost of financing the FET for domestically produced products.

I believe this legislation is fundamentally fair and will help protect and create jobs for the wholesale tier in Kentucky and many other States. This legislation, which has broad support in both chambers and on both sides or the aisle, has passed the Senate Finance Committee and the House Ways and Means Committee several times, and has reached the President's desk under a previous Administration. It's time to finally get this legislation over the goal line.

I wish to emphasize, however, that I will reject any connection between a repeal of Section 5010 of the Internal Revenue Code or an increase in Federal taxes for distilled spirits. Tax equity for one tier should not be achieved by placing additional burden on other tiers within the same industry.

My colleagues, Senators LINCOLN, LOTT and BOND join me in introducing this legislation, I which the Joint Tax Committee estimates would reduce Federal revenues by approximately $249 million over ten years. I understand that similar legislation will be introduced in the House of Representatives. I urge my colleagues to support this legislation when it comes before the Senate.

By Mr. LUGAR (for himself, Mr. HARKIN, Mr. HAGEL, Mr. NELSON of Nebraska, Mr. GRASSLEY, Mr. CONRAD, Mr. FRIST, Mr. JOHNSON, Mr. TALENT, Mr. DORGAN, Mr. COLEMAN, Mr. DURBIN, Mr. THUNE, Mr. BAYH, Mr. DEWINE, Ms. STABENOW, Mr. BUNNING, Mr. DAYTON, Mr. OBAMA, Mr. SALAZAR, and Mr. BOND):

S. 650. A bill to amend the Clean Air Act to increase production and use of renewable fuel and to increase the energy independence of the United States, and for other purposes; to the Committee on Environment and Public Works.

LUGAR. Mr. President, I am pleased to rise today to introduce bi-partisan legislation to increase the security of our Nation, improve our environment, and add job opportunities in all 50 States in the union. This legislation has the strong support of 20 of my fellow colleagues and is the product of a great deal of bipartisan work.

This legislation seeks to curb the negative consequences that stem from our Nation's insatiable appetite for oil. Oil has served America well and indeed has fueled a dramatic portion of this Nation's rise to prosperity. However, our dependence on oil carries a multitude of risks and costs in addition to the ever higher prices paid by Americans at the fuel pump.

Oil is a magnet for conflict. The problem is simple—everyone needs energy, but the sources of the world's transportation fuel are concentrated in relatively few countries. Well over two-thirds of the world's remaining oil reserves lie in the Middle East.

Energy is vital to a country's security and material well-being. A state unable to provide its people with adequate energy supplies or desiring added leverage over other people often resorts to force. Consider Saddam Hussein's 1990 invasion of Kuwait, driven by his desire to control more of the world's oil reserves, and the international response to that threat. The underlying goal of the U.N. force, which included 500,000 American troops, was to ensure continued and unfettered access to petroleum.

This unwelcome dependence keeps U.S. military forces tied to the Persian Gulf, forces foreign policy compromises and sinks many developing nations into staggering debt as they struggle to pay for expensive dollar-denominated oil.

The growth of economies in China and India, representing a third of the world's population that grows by 200,000 people per day, will bring greater stress on the finite supply of natural resources, refining capacity and distribution capability, and the consequential skyrocketing prices would be a destabilizing economic blow.

In addition, oil causes environmental conflict. The possibility that greenhouse gases will lead to catastrophic climate change is substantially increased by the 40 million barrels of oil burned every day by vehicles. Subsequent environmental problems are often predicted as destabilizing factors in the form of drought, flooding or famine.

Such political, economic and environmental trauma is preventable if we are on a course of developing more homegrown energy and developing new technology.

That is why I have joined with my colleagues to introduce the Fuels Security Act of 2005. This act would more than double the current production of renewable fuels derived from sources available in every corner of the United States. More importantly, this increased production and use will spur investment in critical infrastructure that will allow for the economical use of renewable fuels by all Americans. Specifically, this bill would require the use of 4 billion gallons of renewable fuels per year in 2006 increasing to 8 billion gallons per year by 2012. Thereafter the requirements may be increased based on the nation's production and use of these fuels, as well as consideration of our economy and environment. While these figures may sound impressive, they still only represent a small portion of our nation's transportation fuel use of over 185 billion gallons last year.

Some critics have argued that the production of renewable fuels benefits only corn and soybean farmers in the Midwest. And while I agree that agriculture communities will benefit, farmers will be less reliant upon direct government subsidy payments while encouraging land conservation and providing energy security for our country. Additionally, many farmers view their ability to produce domestic fuels as a matter of patriotism in defense of this nation. However, the current ability of U.S. grains to free us from the shackles of oil dependence does have its limits. This is why I have long supported efforts to increase the production of fuels from all parts of a plant, which could be grown throughout the United States.

When I was chairman of the Agriculture, Nutrition and Forestry Committee, I initiated a biofuels research program to help decrease U.S. dependency on foreign oil. The Biomass Research and Development Act of 2000, which I authored and worked to pass, remains the nation's premier legislation guiding renewable fuels research. During a time of relatively low fuel prices I also co-authored ''The New Petroleum'' in Foreign Affairs with former CIA Director James Woolsey, extolling the need to accelerate the use of ethanol, especially that derived from cellulose, in order to stem future world conflict. It is clear from this research and the evolving instability in oil-rich regions of our world that it is time to act to enhance the use of renewable fuels.

This legislation is an important and rational step forward in our nation's overall security and economic well-being. I look forward to working with my colleagues in the Senate in passing this bill for the good of the American people.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 650

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fuels Security Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE II—FEDERAL REFORMULATED FUELS

TITLE I—GENERAL PROVISIONS

SEC. 101. RENEWABLE CONTENT OF MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended—

(1) by redesignating subsection (o) as subsection (q); and

(2) by inserting after subsection (n) the following:

''(o) RENEWABLE FUEL PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) ETHANOL.—

''(i) CELLULOSIC BIOMASS ETHANOL.—The term 'cellulosic biomass ethanol' means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

''(I) dedicated energy crops and trees;

''(II) wood and wood residues;

''(III) plants;

''(IV) grasses;

''(V) agricultural residues; and

''(VI) fibers.

''(ii) WASTE DERIVED ETHANOL.—The term 'waste derived ethanol' means ethanol derived from—

''(I) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

''(II) municipal solid waste.

''(B) RENEWABLE FUEL.—

''(i) IN GENERAL.—The term 'renewable fuel' means motor vehicle fuel that—

''(I)(aa) is produced from grain, starch, oilseeds, or other biomass; or

''(bb) is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found; and

''(II) is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle.

''(ii) INCLUSION.—The term 'renewable fuel' includes—

''(I) cellulosic biomass ethanol;

''(II) waste derived ethanol;

''(III) biodiesel (as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)); and

''(IV) any blending components derived from renewable fuel, except that only the renewable fuel portion of any such blending component shall be considered part of the applicable volume under the renewable fuel program established by this subsection.

''(C) SMALL REFINERY.—The term 'small refinery' means a refinery for which average aggregate daily crude oil throughput for the calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

''(2) RENEWABLE FUEL PROGRAM.—

''(A) IN GENERAL.—

''(i) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall promulgate regulations ensuring that motor vehicle fuel sold or dispensed to consumers in the contiguous United States, on an annual average basis, contains the applicable volume of renewable fuel specified in subparagraph (B).

''(ii) COMPLIANCE.—Regardless of the date of promulgation, the regulations shall contain compliance provisions for refiners, blenders, and importers, as appropriate, to ensure that the requirements of this subsection are met, but shall not restrict where renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel.

''(iii) NO REGULATIONS.—If the Administrator does not promulgate the regulations, the applicable percentage referred to in paragraph (3), on a volume percentage of gasoline basis, shall be 3.2 in 2006.

''(B) APPLICABLE VOLUME.—

''(i) CALENDAR YEARS 2006 THROUGH 2012.—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2006 through 2012 shall be determined in accordance with the following table:

"Applicable volume of renewable fuel Calendar year:	(In billions of gallons)
2006	4.0
2007	4.7
2008	5.4
2009	6.1
2010	6.8
2011	7.4
2012	8.0

''(ii) CALENDAR YEARS 2013 AND THEREAFTER.—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years 2006 through 2012, including a review of—

''(I) the impact of the use of renewable fuels on the environment, air quality, energy security, job creation, and rural economic development; and

''(II) the expected annual rate of future production of renewable fuels, including cellulosic ethanol.

''(iii) LIMITATION.—An increase in the applicable volume for a calendar year under clause (ii) shall be not less than the product obtained by multiplying—

''(I) the number of gallons of gasoline that the Administrator estimates will be sold or introduced into commerce during the calendar year; and

''(I) the quotient obtained by dividing—

''(aa) 8,000,000,000; by

''(bb) the number of gallons of gasoline sold or introduced into commerce during calendar year 2012.

''(3) APPLICABLE PERCENTAGES.—

''(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2006 through 2011, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate of the volumes of gasoline that will be sold or introduced into commerce in the United States during the following calendar year.

''(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

''(i) IN GENERAL.—Not later than November 30 of each of calendar years 2006 through 2011, based on the estimate provided under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements under paragraph (2) are met.

''(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

''(I) be applicable to refiners, blenders, and importers, as appropriate;

''(II) be expressed in terms of a volume percentage of gasoline sold or introduced into commerce; and

''(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

''(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

''(i) to prevent the imposition of redundant obligations to any person specified in subparagraph (B)(ii)(I); and

''(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (11).

''(4) EQUIVALENCY.—For the purpose of paragraph (2), 1 gallon of either cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel.

''(5) CREDIT PROGRAM.—

''(A) REGULATIONS.—The regulations promulgated to carry out this subsection shall provide for—

''(i) the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

''(ii) the generation of an appropriate amount of credits for biodiesel fuel; and

''(iii) if a small refinery notifies the Administrator that the small refinery waives the exemption provided by this subsection, the generation of credits by the small refinery beginning in the year following the notification.

''(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

''(C) LIFE OF CREDITS.—A credit generated under this paragraph shall be valid to demonstrate compliance for the calendar year in which the credit was generated.

''(D) INABILITY TO PURCHASE SUFFICIENT CREDITS.—The regulations promulgated to carry out this subsection shall include provisions permitting any person that is unable to generate or purchase sufficient credits to meet the requirement under paragraph (2) to carry forward a renewables deficit if, for the calendar year following the year in which the renewables deficit is created—

''(i) the person achieves compliance with the renewables requirement under paragraph (2); and

''(ii) generates or purchases additional renewables credits to offset the renewables deficit of the preceding year.

''(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

''(A) STUDY.—For each of calendar years 2006 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuels blending to determine whether there are excessive seasonal variations in the use of renewable fuels.

''(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator shall promulgate regulations to ensure that 35 percent or more of the quantity

of renewable fuels necessary to meet the requirements under paragraph (2) is used during each of the periods specified in subparagraph (D) of each subsequent calendar year.

''(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

''(i) less than 35 percent of the quantity of renewable fuels necessary to meet the requirements under paragraph (2) has been used during 1 of the periods specified in subparagraph (D) of the calendar year;

''(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

''(iii) promulgating regulations or other requirements to impose a 35 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

''(D) PERIODS.—The 2 periods referred to in this paragraph are—

''(i) April through September; and

''(ii) January through March and October through December.

''(E) EXCLUSIONS.—Renewable fuels blended or consumed in 2006 in a State that has received a waiver under section 209(b) shall not be included in the study under subparagraph (A).

''(7) WAIVERS.—

''(A) IN GENERAL.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements under paragraph (2), in whole or in part, on a petition by 1 or more States by reducing the national quantity of renewable fuel required under this subsection—

''(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

''(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply to meet the requirement.

''(B) PETITIONS FOR WAIVERS.—Not later than 90 days after the date on which a petition is received by the Administrator under subparagraph (A), the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove the petition.

''(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate on the date that is 1 year after the date on which the waiver was granted, but may be renewed by the Administrator, after consultation with the Secretary of Agriculture and the Secretary of Energy.

''(8) SMALL REFINERIES.—

''(A) IN GENERAL.—Paragraph (2) shall not apply to small refineries until the first calendar year beginning more than 5 years after the first year set forth in the table in paragraph (2)(B)(i).

''(B) STUDY.—Not later than December 31, 2008, the Secretary of Energy shall complete for the Administrator a study to determine whether the requirements under paragraph (2) would impose a disproportionate economic hardship on small refineries.

''(C) SMALL REFINERIES AND ECONOMIC HARDSHIP.—For any small refinery that the Secretary of Energy determines would experience a disproportionate economic hardship, the Administrator shall extend the small refinery exemption for the small refinery for not less than 2 additional years.

''(D) ECONOMIC HARDSHIP.—

''(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption from the requirements under paragraph (2) for the reason of disproportionate economic hardship.

''(ii) EVALUATION.—In evaluating a hardship petition, the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study in addition to other economic factors.

''(iii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the receipt of the petition.

''(E) CREDIT PROGRAM.—Paragraph (6)(A)(iii) shall apply to each small refinery that waives an exemption under this paragraph.

''(F) OPT-IN FOR SMALL REFINERS.—A small refinery shall be subject to paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (C).''.

(b) PENALTIES AND ENFORCEMENT.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''or (n)'' and inserting ''(n), or (o)'' each place it appears; and

(B) in the second sentence, by striking ''or (m)'' and inserting ''(m), or (o)''; and

(2) in the first sentence of paragraph (2), by striking ''and (n)'' and inserting ''(n), and (o)'' each place it appears.

SEC. 102. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

''SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.

''(a) ETHANOL-BLENDED GASOLINE.—The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is reasonably available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than non-ethanol-blended gasoline, for use in vehicles used by the agency that use gasoline.

''(b) BIODIESEL.—

''(1) DEFINITION OF BIODIESEL.—In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

''(2) REQUIREMENT.—The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel fuel described in subparagraphs (A) and (B) is available at a generally competitive price—

''(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

''(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel.

''(3) REQUIREMENT OF FEDERAL LAW.—The provisions of this subsection shall not be considered a requirement of Federal law for the purposes of section 312.

''(c) EXEMPTION.—This section does not apply to fuel used in vehicles excluded from the definition of 'fleet' by subparagraphs (A) through (H) of section 301(9).''.

SEC. 103. DATA COLLECTION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding at the end the following:

''(m)(1) In order to improve the ability to evaluate the effectiveness of the renewable fuels mandate of the United States, the Administrator shall conduct and publish the results of a survey of renewable fuels demand in the motor vehicle fuels market in the United States monthly, and in a manner designed to protect the confidentiality of individual responses.

''(2) In conducting the survey, the Administrator shall collect information both on a national and regional basis, including—

''(A) information on—

''(i) the quantity of renewable fuels produced;

''(ii) the quantity of renewable fuels blended;

''(iii) the quantity of renewable fuels imported; and

''(iv) the quantity of renewable fuels demanded; and

''(B) market price data.''.

TITLE II—FEDERAL REFORMULATED FUELS

SEC. 201. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

(a) ELIMINATION.—

(1) IN GENERAL.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended—

(A) in paragraph (2)—

(i) in the second sentence of subparagraph (A), by striking ''(including the oxygen content requirement contained in subparagraph (B))'';

(ii) by striking subparagraph (B); and

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

(B) in paragraph (3)(A), by striking clause (v); and

(C) in paragraph (7)—

(i) in subparagraph (A)—

(I) by striking clause (i); and

(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) by redesignating clause (iii) as clause (ii).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on the date that is 1 year after the date of enactment of this Act, except that the amendments shall take effect upon that date of enactment in any State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)).

(b) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

(1) by striking ''Within 1 year after the enactment of the Clean Air Act Amendments of 1990,'' and inserting the following:

''(A) IN GENERAL.—Not later than November 15, 1991,''; and

(2) by adding at the end the following:

''(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—

''(i) DEFINITION OF PADD.—In this subparagraph, the term 'PADD' means a Petroleum Administration for Defense District.

''(ii) REGULATIONS REGARDING EMISSIONS OF TOXIC AIR POLLUTANTS.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall establish, for each refinery or importer, standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refinery or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refinery or importer during calendar years

2001 and 2002, determined on the basis of data collected by the Administrator with respect to the refinery or importer.

''(iii) STANDARDS APPLICABLE TO SPECIFIC REFINERIES OR IMPORTERS.—

''(I) APPLICABILITY OF STANDARDS.—For any calendar year, the standards applicable to a refinery or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refinery or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refinery or importer during calendar years 2001 and 2002.

''(II) APPLICABILITY OF OTHER STANDARDS.—For any calendar year, the quantity of gasoline produced or distributed by a refinery or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

''(iv) CREDIT PROGRAM.—The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

''(v) REGIONAL PROTECTION OF TOXICS REDUCTION BASELINES.—

''(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, and not later than April 1 of each calendar year that begins after that date of enactment, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

''(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 2001 and 2002; and

''(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

''(II) EFFECT OF FAILURE TO MAINTAIN AGGREGATE TOXICS REDUCTIONS.—If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 2001 and 2002, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

''(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

''(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refinery or importer shall meet the standards applicable under clause (ii) not later than April 1 of the year following the report under this subclause and for subsequent years.

''(vi) REGULATIONS TO CONTROL HAZARDOUS AIR POLLUTANTS FROM MOTOR VEHICLES AND MOTOR VEHICLE FUELS.—Not later than July 1, 2006, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph).''.

(c) CONSOLIDATION IN REFORMULATED GASOLINE REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the reformulated gasoline regulations under subpart D of part 80 of title 40, Code of Federal Regulations (or any successor regulations), to consolidate the regulations applicable to VOC-Control Regions 1 and 2 under section 80.41 of that title by eliminating the less stringent requirements applicable to gasoline designated for VOC-Control Region 2 and instead applying the more stringent requirements applicable to gasoline designated for VOC-Control Region 1.

(d) AUTHORITY OF ADMINISTRATOR.—Nothing in this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator of the Environmental Protection Agency before the date of enactment of this Act regarding—

(1) emissions of toxic air pollutants from motor vehicles; or

(2) the adjustment of standards applicable to a specific refinery or importer made under the prior regulations.

(e) DETERMINATION REGARDING A STATE PETITION.—Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended by inserting after paragraph (10) the following:

''(11) DETERMINATION REGARDING A STATE PETITION.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section, not later than 30 days after the date of enactment of this paragraph, the Administrator shall determine the adequacy of any petition received from a Governor of a State to exempt gasoline sold in that State from the requirements under paragraph (2)(B).

''(B) APPROVAL.—If a determination under subparagraph (A) is not made by the date that is 30 days after the date of enactment of this paragraph, the petition shall be considered to be approved.''.

SEC. 202. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS OF FUELS AND FUEL ADDITIVES.

Section 211(b) of the Clean Air Act (42 U.S.C. 7545(b)) is amended—

(1) in paragraph (2)—

(A) by striking ''may also'' and inserting ''shall, on a regular basis,''; and

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

''(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and''; and

(2) by adding at the end the following:

''(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall—

''(i) conduct a study on the effects on public health, air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

''(I) ethyl tertiary butyl ether;

''(II) tertiary amyl methyl ether;

''(III) di-isopropyl ether;

''(IV) tertiary butyl alcohol;

''(V) other ethers and heavy alcohols, as determined by the Administrator;

''(VI) ethanol;

''(VII) iso-octane; and

''(VIII) alkylates;

''(ii) conduct a study on the effects on public health, air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the VOC performance requirements otherwise applicable under sections 211(k)(1) and 211(k)(3); and

''(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of these studies.

''(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into one or more contracts with nongovernmental entities including but not limited to National Energy Laboratories and institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).''.

SEC. 203. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by inserting after subsection (o) (as added by section 101(a)(2)) the following:

''(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

''(1) ANTI-BACKSLIDING ANALYSIS.—

''(A) DRAFT ANALYSIS.—Not later than 4 years after the date of enactment of this subsection, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Fuels Security Act of 2005.

''(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment, but not later than 5 years after the date of enactment of this paragraph, the Administrator shall publish the analysis in final form.

''(2) EMISSIONS MODEL.—For the purposes of this subsection, as soon as the necessary data are available, the Administrator shall develop and finalize an emissions model that reasonably reflects the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2005.''.

SEC. 204. ADDITIONAL OPT-IN AREAS UNDER REFORMULATED GASOLINE PROGRAM.

Section 211(k)(6) of the Clean Air Act (42 U.S.C. 7545(k)(6)) is amended—

(1) by striking ''(6) OPT-IN AREAS.—(A) Upon'' and inserting the following:

''(6) OPT-IN AREAS.—

''(A) CLASSIFIED AREAS.—

''(i) IN GENERAL.—Upon'';

(2) in subparagraph (B), by striking ''(B) If'' and inserting the following:

''(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—If'';

(3) in subparagraph (A)(ii) (as redesignated by paragraph (2))—

(A) in the first sentence, by striking ''subparagraph (A)'' and inserting ''clause (i)''; and

(B) in the second sentence, by striking ''this paragraph'' and inserting ''this subparagraph''; and

(4) by adding at the end the following:

''(B) OZONE TRANSPORT REGION.—

''(i) APPLICATION OF PROHIBITION.—

''(I) IN GENERAL.—In addition to the provisions of subparagraph (A), upon the application of the Governor of a State in the ozone transport region established by section 184(a), the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of title I) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

''(II) PUBLICATION OF APPLICATION.—As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

''(ii) PERIOD OF APPLICABILITY.—Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

''(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

''(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

''(iii) EXTENSION OF COMMENCEMENT DATE BASED ON INSUFFICIENT CAPACITY.—

''(I) IN GENERAL.—If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

''(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

''(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

''(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.''.

SEC. 205. FEDERAL ENFORCEMENT OF STATE FUELS REQUIREMENTS.

Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended—

(1) by striking ''(C) A State'' and inserting the following:

''(C) AUTHORITY OF STATE TO CONTROL FUELS AND FUEL ADDITIVES FOR REASONS OF NECESSITY.—

''(i) IN GENERAL.—A State''; and

(2) by adding at the end the following:

''(ii) ENFORCEMENT BY THE ADMINISTRATOR.—In any case in which a State prescribes and enforces a control or prohibition under clause (i), the Administrator, at the request of the State, shall enforce the control or prohibition as if the control or prohibition had been adopted under the other provisions of this section.''.

SEC. 206. FUEL SYSTEM REQUIREMENTS HARMONIZATION STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Administrator of the Environmental Protection Agency and the Secretary of Energy shall jointly conduct a study of Federal, State, and local requirements concerning motor vehicle fuels, including—

(A) requirements relating to reformulated gasoline, volatility (measured in Reid vapor pressure), oxygenated fuel, and diesel fuel; and

(B) other requirements that vary from State to State, region to region, or locality to locality.

(2) REQUIRED ELEMENTS.—The study shall assess—

(A) the effect of the variety of requirements described in paragraph (1) on the supply, quality, and price of motor vehicle fuels available to the consumer;

(B) the effect of the requirements described in paragraph (1) on achievement of—

(i) national, regional, and local air quality standards and goals; and

(ii) related environmental and public health protection standards and goals;

(C) the effect of Federal, State, and local motor vehicle fuel regulations, including multiple motor vehicle fuel requirements, on—

(i) domestic refineries;

(ii) the fuel distribution system; and

(iii) industry investment in new capacity;

(D) the effect of the requirements described in paragraph (1) on emissions from vehicles, refineries, and fuel handling facilities;

(E) the feasibility of developing national or regional motor vehicle fuel slates for the 48 contiguous States that, while protecting and improving air quality at the national, regional, and local levels, could—

(i) enhance flexibility in the fuel distribution infrastructure and improve fuel fungibility;

(ii) reduce price volatility and costs to consumers and producers;

(iii) provide increased liquidity to the gasoline market; and

(iv) enhance fuel quality, consistency, and supply; and

(F) the feasibility of providing incentives, and the need for the development of national standards necessary, to promote cleaner burning motor vehicle fuel.

(b) REPORT.—

(1) IN GENERAL.—Not later than June 1, 2006, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The report shall contain recommendations for legislative and administrative actions that may be taken—

(i) to improve air quality;

(ii) to reduce costs to consumers and producers; and

(iii) to increase supply liquidity.

(B) REQUIRED CONSIDERATIONS.—The recommendations under subparagraph (A) shall take into account the need to provide advance notice of required modifications to refinery and fuel distribution systems in order to ensure an adequate supply of motor vehicle fuel in all States.

(3) CONSULTATION.—In developing the report, the Administrator of the Environmental Protection Agency and the Secretary of Energy shall consult with—

(A) the Governors of the States;

(B) automobile manufacturers;

(C) motor vehicle fuel producers and distributors; and

(D) the public.

SEC. 207. REVIEW OF FEDERAL PROCUREMENT INITIATIVES RELATING TO USE OF RECYCLED PRODUCTS AND FLEET AND TRANSPORTATION EFFICIENCY.

Not later than 180 days after the date of enactment of this Act, the Administrator of General Services shall submit to Congress a report that details efforts by each Federal agency to implement the procurement policies specified in Executive Order No. 13101 (63 Fed. Reg. 49643; relating to governmental use of recycled products) and Executive Order No. 13149 (65 Fed. Reg. 24607; relating to Federal fleet and transportation efficiency).

SEC. 208. REPORT ON RENEWABLE MOTOR FUEL.

Not later than January 1, 2007, the Secretary of Energy and the Secretary of Agriculture shall jointly prepare and submit to Congress a report containing recommendations for achieving, by January 1, 2025, at least 25 percent renewable fuel content (calculated on an average annual basis) for all gasoline sold or introduced into commerce in the United States.

FUELS SECURITY ACT OF 2005

Mr. HARKIN. Mr. President, today, along with my colleague, Senator LUGAR, and a bipartisan coalition of 19 other Senators, am introducing important legislation to set an ambitious Renewable Fuels Standard for this country. This legislation will more than double the amount of ethanol and biodiesel in the Nation's fuel supply to at least 8 billion gallons a year by 2012. It firmly commits our Nation to clean sources of domestic energy, and is a bold step toward energy security, a strong rural economy, and a healthier environment.

We have a growing problem of energy supplies and prices in this country. Today, 97 percent of our transportation fuel comes from oil, nearly two-thirds of which is from foreign sources.

This heavy dependence on petroleum undermines our energy security. It wreaks havoc on consumers, with record high prices now for gasoline. It costs jobs—27,000 lost U.S. jobs for every $1 billion in imported oil—and threatens our environment. A full one-third of greenhouse gases now come from vehicle emissions.

We have a choice. We can stand by and fuel our addiction to foreign oil, or we can make an aggressive shift toward clean, domestic renewable fuels like ethanol and biodiesel.

In the 108th Congress, we approved an RFS of 5 billion gallons a year by 2012. At the time, this represented a strong push for renewable fuels. But since that time, renewable fuels production in this country has grown dramatically. Domestic ethanol production grew 21 percent in 2004 to 3.4 billion gallons, helping to buffer rising crude oil prices.

The Environment and Public Works Committee, recognizing this success, reported yesterday a modestly increased RFS of 6 billion gallons a year by 2012. I applaud this step forward, but we can do more. The Energy Future Coalition has said that ''increased production of domestic renewable fuels is the single most important step the United States could take to reduce its dependence on foreign oil,'' and I agree.

Our Nation already has the capacity to produce nearly 4 billion gallons of ethanol a year, almost a third of it in Iowa. The biofuels industry's output is on track to surpass even our ambitious target of 8 billion gallons a year by 2012. Several studies further indicate that renewable fuels could provide more than 25 percent of our transportation fuel by 2025. Our bill will ensure that market demand for these fuels grows accordingly.

Many of the biofuels plants that will be built will be farmer-owned, bringing tremendous added value to our rural economies. For example, according to a recent study, each typical ethanol plant built in the United States creates 700 jobs, expands the local economic base by over $140 million, and increases the local corn price by 5 to 10 cents a bushel. Iowa's ethanol plants are expected to contribute $4 billion annually to our state's economy once all are in production. This RFS is expected to create over 200,000 new jobs nationwide, add nearly $200 billion to our GDP, and do more to reduce foreign oil dependence than all of the oil in the Alaska National Wildlife Refuge could possibly do.

This legislation has built-in flexibility through a system of tradable credits for refiners who exceed their minimum requirement. It takes strong

measures to protect air and water quality, and it rewards production of second-generation biofuels such as cellulosic ethanol that promise tremendous value to farmers, consumers and the environment.

For these reasons, our bill has generated strong support from a broad range of interests. I have here a letter endorsing our bill signed by more than a dozen groups, including the Iowa Renewable Fuels Association, the National Renewable Fuels Association, the Energy Future Coalition, the National Farmers Union, the National Corn Growers Association, the American Farm Bureau Federation, the American Soybean Association, the American Coalition for Ethanol, and many others.

Farmers and biofuel producers are ready to lead our Nation toward a future based on renewable energy. I sincerely hope that Congress and the administration will get behind commonsense energy policy and support this ambitious RFS. I ask unanimous consent that the text of the bill, along with the letter, be printed in the RECORD.

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

MARCH 17, 2005.

Re the Fuels Agreement and the Renewable Fuels Standard.

The Hon. BILL FRIST,
U.S. Senate Majority Leader,
Washington, DC.
The Hon. HARRY REID,
U.S. Senate Minority Leader,
Washington, DC.

DEAR MAJORITY LEADER FRIST AND MINORITY LEADER REID: The undersigned organizations are writing to express our strong support for S. 650, legislation establishing a Renewable Fuels Standard (RFS) growing to 8 billion gallons by 2012. This landmark legislation would increase the nation's energy independence, protect air and water quality, provide increased flexibility for refiners, and stimulate rural economies through the increased production of domestic, renewable fuels.

The ethanol and biodiesel industries have undergone unprecedented growth over the past several years. In fact, the U.S. currently has the capacity to produce more than 3.7 billion gallons of ethanol and biodiesel, and plants under construction will add an additional 700 million gallons of capacity by the end of the year. Most of this growth has been in farmer-owned plants, which taken as a whole, now represent the single largest producer in the country. Clearly, the renewable fuels industry is poised to make a significant contribution to this nation's energy supply.

With rising crude oil and gasoline prices hurting consumers, and record petroleum imports exacerbating our trade imbalance and slowing economic growth, we need to be maximizing the production and use of domestic renewable fuels such as ethanol and biodiesel. Enacting an RFS that would provide a market of 8 billion gallons by 2012 demonstrates a firm commitment to reducing this nation's foreign oil dependence while providing a significant impact to the American economy. Specifically (in 2005 dollars):

The production and use of 8 billion gallons of ethanol, biodiesel and other renewable fuels by 2012 will displace over 2 billion barrels of crude oil and reduce the outflow of dollars largely to foreign oil producers by $64.1 billion between 2005 and 2012. As a result of the RFS, America's dependence on imported oil will be reduced from an estimated 68 percent to 62 percent.

The renewable fuels sector will spend an estimated $6 billion to build 4.3 billion gallons of new ethanol and biodiesel capacity between 2005 and 2012.

The renewable fuels sector will spend nearly $70 billion on goods and services required to produce 8 billion gallons of ethanol and biodiesel by 2012. Purchases of corn, grain sorghum, soybeans, corn stover and wheat straw, alone will total $43 billion between 2005 and 2012.

The combination of this direct spending and the indirect impacts of those dollars '' circulating throughout the economy will:

Add nearly $200 billion to GDP between 2005 and 2012.

Generate an additional $43 billion of household income for all Americans between 2005 and 2012, and

Create as many as 234,840 new jobs in all sectors of the economy by 2012.

We urge your support of this important bill as the Congress considers comprehensive energy policy legislation. The RFS is a vital and necessary component of any energy policy designed to reduce our nation's dependence on foreign sources of petroleum.

Sincerely,

Renewable Fuels Association, American Farm Bureau Federation, National Corn Growers Association, American Soybean Association, National Grain Sorghum Producers, American Coalition for Ethanol, National Biodiesel Board, Energy Future Coalition, Biotechnology Industry Organization, New Uses Council, National Sunflower Association, United States Canola Association, Ethanol Producers & Consumers, Environmental & Energy Study Institute, National Farmers Union.

Mr. JOHNSON. Mr. President, I rise today to join twenty of my Senate colleagues in introducing landmark legislation that will double the amount of ethanol used in motor fuel by 2012.

The Fuels Security Act of 2005 establishes a renewable fuels standard program beginning with 4 billion gallons in 2006 and culminating in 8 billion gallons in 2012—nearly a 40 percent increase from legislation that I first sponsored in 2003. The legislation creates a functioning and flexible market for ethanol produced from South Dakota's farmer-owned plants. South Dakota has more farmer-owned ethanol plants than any other State, and South Dakota producers deliver a greater percentage of corn for ethanol production than any neighboring State. Revising and strengthening the proposed RFS is important to South Dakota producers and our value-added economy.

In 2004, the domestic ethanol industry produced a record 3.4 billion gallons of ethanol and an additional 700 million gallons of capacity will be added in 2005. Because of the strong increase in ethanol production over the last few years it is necessary to revisit and revise the proposed RFS to more accurately reflect the growing market. Increasing the RFS schedule to 8 billion gallons in 2012 ensures market stability and encourages investment in ethanol plants and transportation infrastructure.

Ethanol stands out as an agriculture sector that is resisting the move toward greater consolidation and concentration. The Fuels Security Act of 2005 goes a long way toward ensuring that farmers retain market power and will continue to play a leading role in renewable energy production.

While adjusting the schedule to match growth is crucial, equally important is ensuring that the schedule and standard are not eroded by a permissive credit program or inconsistent and suspect waiver authority provisions. To that end, the Fuels Security Act of 2005 creates a one-year credit program to provide flexibility to blenders without diluting the RFS requirement. An ill-defined or open-ended credit program will cause investors to hedge against investing in new ethanol facilities as the guarantee of an increased baseline is weakened through multi-year credit trading language.

Additionally, the bill includes an effective tool to ensure that after 2012, America's renewable fuel market does not diminish and capacity and production match demand. The bill directs the Secretaries of Agriculture and Energy, as well as the Environmental Protection Agency to ensure the RFS schedule grows with the overall motor vehicle fuel pool after 2013.

I am proud to stand with over a dozen agriculture, clean energy and renewable fuels organizations that support this legislation. Accordingly, I ask unanimous consent that a letter written by over a dozen agriculture and energy groups be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1)

Mr. JOHNSON. Mr. President, I am encouraged that as a consequence of the strong bipartisan support for increasing the RFS to 8 billion gallons, my colleagues and I can add this bill to a comprehensive energy proposal working through the Senate.

Furthermore, as a member of the Senate Energy and Natural Resources Committee, I remain committed to working with my Senate colleagues, Chairman DOMENICI and Majority Leader FRIST and Minority Leader REID toward ensuring that the Fuels Security Act of 2005 becomes law.

EXHIBIT 1

MARCH 17, 2005.

Re the Fuels Agreement and the Renewable Fuels Standard.

Hon. BILL FRIST,
U.S. Senate Majority Leader,
Capitol Building, Washington, DC.
Hon. HARRY REID,
U.S. Senate Minority Leader,
Capitol Building, Washington, DC.

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The ethanol and biodiesel industries have undergone unprecedented growth over the past several years. In fact, the U.S. currently has the capacity to produce more than 3.7 billion gallons of ethanol and biodiesel, and plants under construction will add an additional 700 million gallons of capacity by the end of the year. Most of this growth has been in farmer-owned plants, which taken as a whole, now represent the single largest producer in the country. Clearly, the renewable fuels industry is poised to make a significant contribution to this nation's energy supply.

With rising crude oil and gasoline prices hurting consumers, and record petroleum imports exacerbating our trade imbalance and slowing economic growth, we need to be maximizing the production and use of domestic renewable fuels such as ethanol and biodiesel. Enacting an RFS that would provide a market of 8 billion gallons by 2012 demonstrates a firm commitment to reducing this nation's foreign oil dependence while providing a significant impact to the American economy. Specifically (in 2005 dollars):

The production and use of 8 billion gallons of ethanol, biodiesel and other renewable fuels by 2012 will displace over 2 billion barrels of crude oil and reduce the outflow of dollars largely to foreign oil producers by $64.1 billion between 2005 and 2012. As a result of the RFS, America's dependence on imported oil will be reduced from an estimated 68 percent to 62 percent.

The renewable fuels sector will spend an estimated $6 billion to build 4.3 billion gallons of new ethanol and biodiesel capacity between 2005 and 2012.

The renewable fuels sector will spend nearly $70 billion on goods and services required to produce 8 billion gallons of ethanol and biodiesel by 2012. Purchases of corn, grain sorghum, soybeans, corn stover and wheat straw, alone will total $43 billion between 2005 and 2012.

The combination of this direct spending and the indirect impacts of those dollars circulating throughout the economy will:

Add nearly $200 billion to GDP between 2005 and 2012.

Generate an additional $43 billion of household income for all Americans between 2005 and 2012, and

Create as many as 234,840 new jobs in all sectors of the economy by 2012.

We urge your support of this important bill as the Congress considers comprehensive energy policy legislation. The RFS is a vital and necessary component of any energy policy designed to reduce our nation's dependence on foreign sources of petroleum.

Sincerely,

Renewable Fuels Association; American Farm Bureau Federation; National Corn Growers Association; American Soybean Association; National Grain Sorghum Producers; American Coalition for Ethanol; National Biodiesel Board; Energy Future Coalition; Biotechnology Industry Organization; New Uses Council; National Sunflower Association; United States Canola Association; Ethanol Producers & Consumers; Environmental & Energy Study Institute.

Mr. OBAMA. Mr. President, I am pleased to join as a cosponsor of the Fuels Security Act of 2005, which sets a renewable fuels standard for the years 2006 to 2012.

To lessen our dependence on foreign oil and strengthen our economy here at home, renewable fuels like ethanol ought to be a larger part of our domestic fuel supply. This bill will contribute to that objective, and I commend Senators LUGAR and HARKIN for their leadership in crafting this legislation.

Yesterday, during the markup of a similar bill in the Senate Environment and Public Works Committee, I expressed strong support for establishing a meaningful renewable fuels standard as an important part of a comprehensive national energy policy. The bill before the Committee set targets at 3.8 billion gallons in 2006 and 6 billion gallons in 2012, improving upon last year's RFS provision in the energy bill conference report that set targets at 3.1 billion gallons and 5 billion gallons, respectively.

I voted for the chairman's mark yesterday because it gets the RFS debate rolling in the new Congress. However, I also noted that it has been widely reported in the trade press that the 30-state Governors Ethanol Coalition has recommended to the President that refiners be required to purchase a minimum volume of ethanol of at least 4 billion gallons in 2006, rising to 8 billion gallons in 2012. This recommendation adds weight to the view expressed by me and others that the committee's targets are too conservative.

Why are these specific targets so important? They are important if we are to maximize the ethanol industry's ability to boost farm income by providing a new market for corn; to promote economic growth in rural communities by increasing production in existing plants and attracting investment in new community-sized ethanol facilities; and to reduce our alarming dependence on imported oil by expanding the volume of ethanol in our transportation fuel mix.

These are important objectives. They matter. And that is why it is important to get the specific targets right.

In committee yesterday, I suggested that since ethanol production is expected to reach 4 billion gallons this year, we ought to adjust the committee bill's RFS targets on the Senate floor to reflect current market reality. I am pleased that Chairman INHOFE seemed open to that debate.

I think the Governors Ethanol Coalition recommendation of at least 4 billion gallons in 2006 and 8 billion gallons in 2012 is a good place to start this debate. I think any RFS legislation enacted by Congress should contain these levels.

That is why I am pleased to cosponsor the Fuels Security Act introduced by Senators LUGAR and HARKIN today. The ethanol volume targets in this bill—4 billion gallons in 2006 and 8 billion gallons in 2012—are in much greater alignment with expected ethanol production in future years than those in the Committee bill.

Earlier this week, I had the opportunity to tour the Aventine ethanol plant in Pekin, IL. My visit reminded me of the work of a Pekin native more than 50 years ago. That person—Senator Everett Dirksen—encouraged federal lawmakers to consider ''processing our surplus farm crops into an alcohol . . . to create a market in our own land for our own people.''

Today, farmers across Illinois, including farmers near Pekin, are growing corn for fuel, both strengthening our energy security and providing an economic boost to rural communities. By enacting a meaningful RFS, we are displacing more foreign oil with homegrown energy. We are expanding the market for Illinois corn. And we are promoting the use of renewable fuel. Remember, unlike other energy sources, when you run out of ethanol, you can simply grow more.

For too many years, America has been overly dependent on foreign oil to meet its domestic energy needs. And, despite rising crude oil prices and unsettling volatility in the Persian Gulf, that trend is increasing, not declining. Renewable fuels such as ethanol can help address this dangerous dependence on foreign oil. And a strong renewable fuels standard will maximize this contribution.

By Mr. REID:

S. 651. A bill to amend title 5, United States Code, to make creditable for civil service retirement purposes certain periods of service performed with Air America, Incorporated, Air Asia Company Limited, or the Pacific Division of Southern Air Transport, Incorporated, while those entities were owned or controlled by the Government of the United States and operate or managed by the Central Intelligence Agency; to the Committee on Homeland Security and Governmental Affairs.

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

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

S. 651

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

SECTION 1. AMENDMENTS.

(a) IN GENERAL.—Section 8332(b) of title 5, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting ''; and'';

(3) by adding after paragraph (17) the following:

''(18) any period of service performed before 1977, while a citizen of the United States, in the employ of Air America, Incorporated, Air Asia Company Limited (a subsidiary of Air America, Incorporated), or the Pacific Division of Southern Air Transport, Incorporated, at a time when that corporation (or subsidiary) was owned or controlled by the Government of the United States and operated or managed by the Central Intelligence Agency.''; and

(4) by adding at the end the following: ''For purposes of this subchapter, service of the type described in paragraph (18) of this subsection shall be considered to have been service as an employee, and the Office of Personnel Management shall accept the certification of the Director of the Central Intelligence Agency or his designee concerning any such service.''.

(b) EXEMPTION FROM DEPOSIT REQUIREMENT.—Section 8334(g) of title 5, United States Code, is amended—

(1) by striking ''or'' at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting ''; or''; and

(3) by adding after paragraph (6) the following:

''(7) any service for which credit is allowed under section 8332(b)(18) of this title.''.

SEC. 2. APPLICABILITY.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act shall apply with respect to annuities commencing on or after the effective date of this Act.

(b) PROVISIONS RELATING TO CURRENT ANNUITANTS.—Any individual who is entitled to an annuity for the month in which this Act becomes effective may, upon application submitted to the Office of Personnel Management within 2 years after the effective date of this Act, have the amount of such annuity recomputed as if the amendments made by this Act had been in effect throughout all periods of service on the basis of which such annuity is or may be based. Any such recomputation shall be effective as of the commencement date of the annuity, and any additional amounts becoming payable for periods before the first month for which the recomputation is reflected in the individual's regular monthly annuity payments shall be payable to such individual in the form of a lump-sum payment.

(c) PROVISIONS RELATING TO INDIVIDUALS ELIGIBLE FOR (BUT NOT CURRENTLY RECEIVING) AN ANNUITY.—

(1) IN GENERAL.—Any individual (not described in subsection (b)) who becomes eligible for an annuity or for an increased annuity as a result of the enactment of this Act may elect to have such individual's rights under subchapter III of chapter 83 of title 5, United States Code, determined as if the amendments made by this Act had been in effect, throughout all periods of service on the basis of which such annuity is or would be based, by submitting an appropriate application to the Office of Personnel Management within 2 years after—

(A) the effective date of this Act; or

(B) if later, the date on which such individual separates from service.

(2) COMMENCEMENT DATE, ETC.—

(A) IN GENERAL.—Any entitlement to an annuity or to an increased annuity resulting from an application under paragraph (1) shall be effective as of the commencement date of such annuity (subject to subparagraph (B), if applicable), and any amounts becoming payable for periods before the first month for which regular monthly annuity payments begin to be made in accordance with the amendments made by this Act shall be payable to such individual in the form of a lump-sum payment.

(B) RETROACTIVITY.—Any determination of the amount, or of the commencement date, of any annuity, all the requirements for entitlement to which (including separation, but disregarding any application requirement) would have been satisfied before the effective date of this Act if this Act had then been in effect (but would not then otherwise have been satisfied absent this Act) shall be made as if application for such annuity had been submitted as of the earliest date that would have been allowable, after such individual's separation from service, if such amendments had been in effect throughout the periods of service referred to in the first sentence of paragraph (1).

(d) RIGHT TO FILE ON BEHALF OF A DECEDENT.—The regulations under section 4(a) shall include provisions, consistent with the order of precedence set forth in section 8342(c) of title 5, United States Code, under which a survivor of an individual who performed service described in section 8332(b)(18) of such title (as amended by section 1) shall be allowed to submit an application on behalf of and to receive any lump-sum payment that would otherwise have been payable to the decedent under subsection (b) or (c). Such an application shall not be valid unless it is filed within 2 years after the effective date of this Act or 1 year after the date of the decedent's death, whichever is later.

SEC. 3. FUNDING.

(a) LUMP-SUM PAYMENTS.—Any lump-sum payments under section 2 shall be payable out of the Civil Service Retirement and Disability Fund.

(b) UNFUNDED LIABILITY.—Any increase in the unfunded liability of the Civil Service Retirement System attributable to the enactment of this Act shall be financed in accordance with section 8348(f) of title 5, United States Code.

SEC. 4. REGULATIONS AND SPECIAL RULE.

(a) IN GENERAL.—Except as provided in subsection (b), the Director of the Office of Personnel Management, in consultation with the Director of the Central Intelligence Agency, shall prescribe any regulations necessary to carry out this Act. Such regulations shall include provisions under which rules similar to those established pursuant to section 201 of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 514) shall be applied with respect to any service described in section 8332(b)(18) of title 5, United States Code (as amended by section 1) that was subject to title II of the Social Security Act.

(b) OTHER REGULATIONS.—The Director of the Central Intelligence Agency, in consultation with the Director of the Office of Personnel Management, shall prescribe any regulations which may become necessary, with respect to any retirement system administered by the Director of the Central Intelligence Agency, as a result of the enactment of this Act.

(c) SPECIAL RULE.—For purposes of any application for any benefit which is computed or recomputed taking into account any service described in section 8332(b)(18) of title 5, United States Code (as amended by section 1), section 8345(i)(2) of such title shall be applied by deeming the reference to the date of the ''other event which gives rise to title to the benefit'' to refer to the effective date of this Act, if later than the date of the event that would otherwise apply.

SEC. 5. DEFINITIONS.

For purposes of this Act—

(1) the terms ''unfunded liability'', ''survivor'', and ''survivor annuitant'' have the meanings given under section 8331 of title 5, United States Code; and

(2) the term ''annuity'', as used in subsections (b) and (c) of section 2, includes a survivor annuity.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 652. A bill to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; to the Committee on Energy and Natural Resources.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce a bill to authorize Federal funding for the rehabilitation of the Benjamin Franklin National Memorial. This memorial, an attraction for some 1 million visitors annually, is truly a national treasure, yet it has come under significant deterioration. The Franklin statue has not been thoroughly cleaned since 1998; there are structural impacts to the statue from changes in temperature and humidity; the lighting and sound systems are obsolete; and the marble walls and stained glass dome are discolored from days when smoking was permitted. The bill that Senator SANTORUM and I are introducing today will help ensure that Federal funding is made available to preserve and protect our Nation's memorial to Benjamin Franklin, America's distinguished scientist, statesman, inventor, and diplomat.

In the 108th Congress, Senator SANTORUM and I introduced similar legislation to authorize this much needed funding and we were pleased that Senator DOMENICI, Senator THOMAS, and their colleagues on the Senate Committee on Energy and Natural Resources favorably reported an amended version of our legislation to the Senate on September 28, 2004. Subsequently, this legislature passed the Senate on October 10, 2004; however, the limited time available prior to adjournment of the 108th Congress precluded passage of this measure by the House of Representatives.

Unlike other national memorials, the Benjamin Franklin National Memorial does not receive an annual allocation of Federal funds to provide for preventative maintenance or other important activities.

The significant burden of maintaining this national memorial has become a challenge to the Franklin Institute Science Museum of Philadelphia, Pennsylvania, custodian of the Benjamin Franklin National Memorial. In 1972, The Institute—a non-profit organization—absorbed the sole responsibility for providing the funds necessary to preserve and maintain the memorial when Public Law 92–511 designated the Memorial Hall at The Franklin Institute Science Museum as the Benjamin Franklin National Memorial. In 1973, a Memorandum of Agreement was executed by the U.S. Department of the Interior and the Franklin Institute that directed the Department to cooperate with the Institute in ''all appropriate and mutually agreeable ways in the preservation and presentation of the Benjamin Franklin National Memorial Hall as a national memorial,'' however, the Department has not provided any Federal funding to the Franklin Institute for those purposes other than $300,000 that Senator SANTORUM and I secured from the ''Save America's Treasures'' program in the Fiscal Year 2000 Interior Appropriations Act to help improve handicap accessibility to the memorial.

The Benjamin Franklin National Memorial at the Franklin Institute serves as the Nation's primary location honoring Franklin's life, legacy, and ideals. As we expect visitors to converge on Philadelphia, Pennsylvania from throughout the world for the Benjamin Franklin Tercentenary Celebration beginning in January 2006, it is important that the Franklin Institute, as custodian of the Memorial, begin a meticulous restoration and enhancement promptly. I urge my colleagues to support this legislation to preserve this national tribute to Benjamin Franklin for years to come.

By Mr. LEAHY (for himself, Mr. DURBIN, Mr. KENNEDY, and Mr. DODD):

S. 654. A bill to prohibit the expulsion, return, or extradition of persons by the United States to countries engaging in torture, and for other purposes; to the Committee on Foreign Relations.

Mr. LEAHY. Mr. President, our Nation has a proud history as the leading advocate of human rights around the world. Throughout this history, we have committed ourselves to numerous international human rights treaties, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The bill that I introduce today will reaffirm our obligations under this Convention and reassure the world that we are a nation committed to the rule of law. I want to thank my cosponsors, Senators DURBIN, KENNEDY, and DODD, for working with me on this legislation, and for their leadership on these issues.

It has been nearly a year since the first horrific images from Abu Ghraib prison appeared in the media, shocking the world and shattering the image of the United States. As the Administration circled the wagons and claimed the abuses were committed by a ''few bad apples,'' new details about the widespread abuse of detainees continued to emerge. I have spoken many times about the need for a comprehensive, independent investigation into the abuse of detainees. I have no doubt that such an investigation would be painful, but it is also a necessary step to moving forward.

Prisoner abuse by U.S. personnel is deeply troubling, but it is only one aspect of a broader and serious problem. While we must ensure that prisoners are treated humanely by our own personnel, we must also prohibit the use of so-called ''extraordinary renditions'' to send people to other countries where they will be subject to torture. Article 3 of the Convention Against Torture states that ''no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.'' The bill I introduce today, the ''Convention Against Torture Implementation Act,'' will ensure that we honor this commitment.

We have addressed this issue before. Congress implemented Article 3 of the Convention Against Torture in the Foreign Affairs Reform and Restructuring Act of 1998, but this Administration has exploited loopholes in that law to transfer detainees to countries where they are subjected to torture. Attorney General Gonzales recently said that U.S. policy is not to send detainees ''to countries where we believe or we know that they're going to be tortured,'' but he acknowledged that we ''can't fully control'' what other nations do, and added that he does not know whether countries have always complied with their promises. In fact, they have not.

My proposed legislation does not broaden the obligations that we agreed to by ratifying the Convention Against Torture; it simply closes the loopholes in the 1998 law and ensures that we honor our commitment not to outsource torture to other countries.

The case of Maher Arar provides a chilling example of extraordinary rendition, and illustrates why this bill is necessary. Mr. Arar, a Canadian and Syrian citizen, was stopped by immigration officers at John F. Kennedy International Airport in September 2002 as he attempted to change planes on his way home to Canada from Tunisia. He claims that he was interrogated by an FBI agent and a New York City police officer, and that he was denied access to a lawyer. He further claims that he repeatedly told U.S. officials that he feared he would be tortured if deported to Syria. After being detained for nearly two weeks in a Federal detention center in New York, Mr. Arar was transferred by U.S. authorities to Syria and held at the Bush administration's request. Mr. Arar claims that he was physically tortured during the first two weeks of his detention in Syria, and that he was subjected to severe psychological abuse over the following 10 months, including being held in a grave-like cell and being forced to undergo interrogation while hearing the screams of other prisoners.

According to Administration officials, the CIA received diplomatic assurances from Syria that it would not torture Mr. Arar. But those assurances amounted to little more than a wink and a nod. Unnamed intelligence officials were later quoted in the press, saying that Arar confessed under torture in Syria that he had gone to Afghanistan for terrorist training. Syria has a well-documented history of state-sponsored torture. In fact, President Bush stated on November 7, 2003, that Syria has left ''a legacy of torture, oppression, misery, and ruin'' to its people.

Rather than rely on assurances that a country will not torture an individual, we must make our own unbiased determination. We already have the necessary information to do so. Each year, as required by law, the State Department publishes country reports on human rights practices. The most recent report on Syria states that its torture methods include ''administering electrical shocks; pulling out fingernails; forcing objects into the rectum; beating, sometimes while the victim was suspended from the ceiling; hyperextending the spine; bending the detainees into the frame of a wheel and whipping exposed body parts; and using a backward-bending chair to asphyxiate the victim or fracture the victim's spine.''

Some will argue that the post-9/11 world is different; that we must use any and all means available to extract information from suspected terrorists. Their argument might be more credible if every person who turned up on a terrorist watch list were, in fact, a terrorist. I cannot say whether Mr. Arar had ties to terrorist groups or not, but we do know that he was never charged with a crime. After enduring months of torture at the hands of the Syrians, he was released and sent back to Canada.

Nor was Mr. Arar's experience an isolated incident. A recent article in The New Yorker titled ''Outsourcing Torture'' provides disturbing details about how the administration embraced the use of rendition after the 9/11 attacks. Several press reports detail the CIA's use of its own Gulfstream V and Boeing 737 jets to secretly transfer detainees to countries around the world, where it is likely that they will be tortured.

The Convention Against Torture Implementation Act addresses the extraordinary rendition problem in a straightforward manner. It requires the State Department to produce annually a list of countries where torture is known to occur. The list would be based on information contained in the State Department's country reports on human rights practices. The bill prohibits the transfer of individuals to any country on this list or to any other country if there are substantial grounds for believing that the person would be tortured. It also provides reasonable exceptions to this prohibition to allow for legal extraditions and removals.

Most importantly, the bill closes the diplomatic assurances loophole. We would no longer accept assurances from governments that we know engage in torture. Our past reliance on diplomatic assurances is blatantly hypocritical. How can our State Department denounce countries for engaging in torture while the CIA secretly transfers detainees to the very same countries for interrogation? The President says he does not condone torture, but transferring detainees to other countries where they will be tortured does not absolve our government of responsibility. By outsourcing torture to these countries, we diminish our own values as a nation and lose our credibility as an advocate of human rights around the world.

Last June, in the aftermath of the Abu Ghraib scandal, the President was asked if he had authorized abusive interrogation techniques. He replied,

''The authorization I issued was that anything we did would conform to U.S. law and would be consistent with international treaty obligations.'' The legislation I introduce today will help us fulfill the President's promise.

The Senate gave its advice and consent to the ratification of the Convention Against Torture more than a decade ago. It is time to honor our commitment and show the world that we will hold ourselves to the same standards that we demand of others.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 654

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Convention Against Torture Implementation Act of 2005''.

SEC. 2. PROHIBITION ON CERTAIN TRANSFERS OF PERSONS.

(a) PROHIBITION.—No person in the custody or control of a department, agency, or official of the United States Government, or of any contractor of any such department or agency, shall be expelled, returned, or extradited to another country, whether directly or indirectly, if—

(1) the country is included on the most recent list submitted to Congress by the Secretary of State under section 3; or

(2) there are otherwise substantial grounds for believing that the person would be in danger of being subjected to torture.

(b) EXCEPTIONS.—

(1) WAIVERS.—

(A) AUTHORITY.—The Secretary of State may waive the prohibition in subsection (a)(1) with respect to a country if the Secretary certifies to the appropriate congressional committees that—

(i) the acts of torture that were the basis for including that country on the list have ended; and

(ii) there is in place a mechanism that assures the Secretary in a verifiable manner that a person expelled, returned, or extradited to that country will not be tortured in that country, including, at a minimum, immediate, unfettered, and continuing access, from the point of return, to such person by an independent humanitarian organization.

(B) REPORTS ON WAIVERS.—

(i) REPORTS REQUIRED.—For each person expelled, returned, or extradited under a waiver provided under subparagraph (A), the head of the appropriate government agency making such transfer shall submit to the appropriate congressional committees a report that includes the name and nationality of the person transferred, the date of transfer, the reason for such transfer, and the name of the receiving country.

(ii) FORM.—Each report under this subparagraph shall be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States.

(2) EXTRADITION OR REMOVAL.—The prohibition in subsection (a)(1) may not be construed to apply to the legal extradition of a person under a bilateral or multilateral extradition treaty or to the legal removal of a person under the immigration laws of the United States if, before such extradition or removal, the person has recourse to a United States court of competent jurisdiction to challenge such extradition or removal on the basis that there are substantial grounds for believing that the person would be in danger of being subjected to torture in the receiving country.

(c) ASSURANCES INSUFFICIENT.—Written or verbal assurances made to the United States by the government of a country that persons in its custody or control will not be tortured are not sufficient for believing that a person is not in danger of being subjected to torture for purposes of subsections (a)(2) and (b)(2), or for meeting the requirement of subsection (b)(1)(A)(ii).

SEC. 3. REPORTS ON COUNTRIES USING TORTURE.

Not later than 30 days after the effective date of this Act, and annually thereafter, the Secretary of State shall submit to the appropriate congressional committees a report listing each country where torture is known to be used. The list shall be compiled on the basis of the information contained in the most recent annual report of the Secretary of State submitted to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate under section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)).

SEC. 4. REGULATIONS.

(a) INTERIM REGULATIONS.—Not later than 60 days after the effective date of this Act, the heads of the appropriate government agencies shall prescribe interim regulations for the purpose of carrying out this Act and implementing the obligations of the United States under Article 3 of the Convention Against Torture, subject to any reservations, understandings, declarations, and provisos contained in the Senate resolution advising and consenting to the ratification of the Convention Against Torture, and consistent with the provisions of this Act.

(b) FINAL REGULATIONS.—Not later than 180 days after interim regulations are prescribed under subsection (a), and following a period of notice and opportunity for public comment, the heads of the appropriate government agencies shall prescribe final regulations for the purposes described in subsection (a).

SEC. 5. SAVINGS CLAUSE.

Nothing in this Act shall be construed to eliminate, limit, or constrain in any way the obligations of the United States or the rights of any individual under the Convention Against Torture or any other applicable law.

SEC. 6. REPEAL OF SUPERSEDED AUTHORITY.

Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277; 8 U.S.C. 1231 note) is repealed. Regulations promulgated under such section that are in effect on the date this Act becomes effective shall remain in effect until the heads of the appropriate government agencies issue interim regulations under section 4(a).

SEC. 7. DEFINITIONS.

(a) DEFINED TERMS.—In this Act:

(1) APPROPRIATE GOVERNMENT AGENCIES.—The term ''appropriate government agencies'' means—

(A) the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))); and

(B) elements of the Department of State, the Department of Defense, the Department of Homeland Security, the Department of Justice, the United States Secret Service, the United States Marshals Service, and any other Federal law enforcement, national security, intelligence, or homeland security agency that takes or assumes custody or control of persons or transports persons in its custody or control outside the United States, other than those elements listed or designated as elements of the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))).

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committees on Armed Services, Homeland Security and Government Affairs, Judiciary, Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committees on Armed Services, Homeland Security, Judiciary, International Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) CONVENTION AGAINST TORTURE.—The term ''Convention Against Torture'' means the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984, entered into force on June 26, 1987, signed by the United States on April 18, 1988, and ratified by the United States on October 21, 1994 (T. Doc. 100–20).

(4) EXPELLED PERSON.—A person who is expelled is a person who is involuntarily transferred from the territory of any country, or a port of entry thereto, to the territory of another country, or a port of entry thereto.

(5) EXTRADITED PERSON.—A person who is extradited is an accused person who, in accordance with chapter 209 of title 18, United States Code, is surrendered or delivered to another country with jurisdiction to try and punish the person.

(6) RETURNED PERSON.—A person who is returned is a person who is transferred from the territory of any country, or a port of entry thereto, to the territory of another country of which the person is a national or where the person has previously resided, or a port of entry thereto.

(b) SAME TERMS AS IN THE CONVENTION AGAINST TORTURE.—Except as otherwise provided, the terms used in this Act have the meanings given those terms in the Convention Against Torture, subject to any reservations, understandings, declarations, and provisos contained in the Senate resolution advising and consenting to the ratification of the Convention Against Torture.

SEC. 8. EFFECTIVE DATE.

This Act shall take effect on the date that is 30 days after the date of the enactment of this Act.

SEC. 9. CLASSIFICATION IN UNITED STATES CODE.

This Act shall be classified to the United States Code as a new chapter of title 50, United States Code.

CONVENTION AGAINST TORTURE IMPLEMENTATION ACT OF 2005 SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The Convention Against Torture Implementation Act of 2005.

Sec. 2. Prohibition on Certain Transfers of Persons. This section implements Article 3 of the Convention Against Torture, which prohibits expelling, returning, or extraditing persons to countries where they are in danger of being subjected to torture. Subsection (a) prohibits the transfer of a person in the custody or control of the United States government to a country included on a list generated by the State Department, as required by Section 3 of this Act, or to countries where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Subsection (b) allows exceptions to the prohibition if the Secretary of State waives the prohibition or if the transfer is done under an extradition treaty or as a legal removal under United States immigration laws. Agencies that

transfer a detainee under the waiver exception must submit a report of the transfer to appropriate congressional committees. Subsection (c) states that assurances made to the United States by another government that persons in its custody will not be tortured are not sufficient for the United States to conclude that a person will not be subjected to torture.

Sec. 3. Reports on Countries Using Torture. This section requires the Secretary of State, on an annual basis, to compile a list of countries where torture is known to be used. The United States is prohibited from transferring persons to the countries on this list, except in accordance with the exceptions contained in section 2. The list shall be compiled based on information contained in the most recent State Department country reports on human rights practices, which the Department submits annually in accordance with section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)).

Sec. 4. Regulations. This section requires appropriate government agencies (as defined in section 7) to prescribe regulations in accordance with this Act. Interim regulations must be prescribed within 60 days of the effective date of the Act. Final regulations must be prescribed, through notice and comment rulemaking, not more than 180 days thereafter.

Sec. 5. Savings Clause. This section ensures that the Act does not eliminate, limit, or constrain the obligations of the United States or the rights of any individual under the Convention Against Torture or any other applicable law.

Sec. 6. Repeal of Superseded Authority. This section repeals section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277; 8 U.S.C. 1231 note). This law also implemented Article 3 of the Convention Against Torture, but lacked specific guidance for agencies and allowed the United States to rely on diplomatic assurances that a government would not torture a person transferred to its custody. This section also requires agency regulations promulgated under section 2242 to remain in effect until the appropriate government agencies issue new regulations in accordance with section 4 of this Act.

Sec. 7. Definitions. This section defines ''Appropriate Government Agencies,'' ''Appropriate Congressional Committees,'' ''Expelled Person,'' ''Extradited Person,'' ''Returned Person,'' and ''Convention Against Torture.'' It also states that terms used in the Act, unless otherwise provided, have the meanings given to those terms in the Convention Against Torture.

Sec. 8. Effective Date. Makes the Act effective 30 days after its enactment.

Sec. 9. Classification in United States Code. This section requires the Act to be classified as a new chapter of title 50 in the United States Code. The superseded authority was classified as a note in title 8 in the United States Code. Given the scope and applicability of the Act, it is more accurate to classify it in the War and National Defense title than in the Aliens and Nationality title.

Mr. KENNEDY. Mr. President, the entire world continues to wait for signs that the administration takes seriously its moral and legal responsibilities to eliminate torture and abuse. It is long past time for the administration to give the American people and the world an ironclad assurance that these shameful tactics are no longer being used in any prison or detention facility under American control and that we are not outsourcing our torture to regimes well known for using them.

I strongly support the legislation that Senator LEAHY has introduced to deal with this urgent problem and to see that our Nation is not farming out abusive interrogations to other countries. The bill makes crystal clear that we can't torture by proxy.

Abhorrence to torture is a fundamental value. Our attitude toward torture speaks volumes about our national conscience, our dedication to the rule of law, and our essential ideals. 9/11 is no excuse for abandoning our ideals.

The line separating right from wrong must clearly exclude the reprehensible practice called extraordinary rendition, the ridiculous code word for torture by proxy. Article 3 of the Treaty Against Torture, which the United States has ratified, provides: ''No State Party shall expel, return, or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture.'' The secretive U.S. practice of rendition is a violation of international law because it involves detaining prisoners without a shred of due process and delivering them for interrogation into the hands of countries known to commit torture. As one commentator noted: ''In terms of bad behavior, it stands side by side with contract killings.''

Ask Maher Arar. In the fall of 2002, Arar, a Canadian citizen, was returning to Montreal from a family visit in Tunisia and he made a stopover at Kennedy Airport in New York City. Acting in part on flawed intelligence from Canadian officials, U.S. Immigration officials seized Mr. Arar at the airport. He was not charged with a crime, or given a chance to talk with a lawyer. Instead, he was held in Brooklyn and interrogated for days by U.S. law enforcement authorities.

When the interrogation failed to produce incriminating information, Mr. Arar was flown to Jordan and handed over to Jordanian authorities. He was chained, blindfolded, and beaten in a van that transported him to the Syrian border. In Syria, he was placed in a small, dark cell—three feet by six feet, like a grave—and was held there for almost a year. He was slapped, beaten, and whipped on his palms, wrists, and back with an electric cable. He begged them to stop. He heard other prisoners screaming as they were tortured. He signed any confessions he was told to sign.

Mr. Arar was released in October 2003. Syrian officials told reporters that their investigators found no link between Mr. Arar and al-Qaida. His confession turned out to be worthless and his suffering was pointless. Mr. Arar is now home in Canada.

How can any of us stand idly by knowing that this country condoned and facilitated such brutality?

Tragically, Mr. Arar is not the only victim. On March 6, 60 Minutes aired a report on rendition. On the program, Michael Scheuer, a recently retired CIA official who created its rendition program, admitted that he would ''have to assume'' that suspects the U.S. sends to Egypt are tortured. ''It's very convenient,'' he said. ''It's finding someone else to do your dirty work.''

The Defense Department has attempted to justify this tactic. On June 25, 2003, Defense Department General Counsel William Haynes wrote to Senator LEAHY, stating that whenever the U.S. transfers an individual to another country, ''United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. We can assure you that the United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored.''

Mr. Haynes' ''assurances,'' are difficult to accept. The State Department's annual human rights report, released last month, criticized numerous countries for a range of interrogation practices it labeled as torture. The State Department identified Syria, Egypt, and Saudi Arabia, among others, as countries practicing torture. Press reports make clear that since 9/11, the U.S. has flown 100–150 suspects to countries such as these. The State Department condemns Syria for torturing its prisoners, but Mr. Haynes blindly relies on Syria's promise that the prisoners we send there will be treated humanely.

Recent press reports also suggest that the assurances of humane treatment sought by the CIA are worth very little. According to today's Washington Post, ''one government official who visited several foreign prisons where suspects were rendered by the CIA said . . . 'It's widely understood that the interrogation practices that would be illegal in the U.S. are being used.' '' The official also said, ''they say they are not abusing them . . . but we all know they do.''

According to the Post, an Arab diplomat, whose country is actively engaged in counterterrorism alongside the CIA said it was unrealistic to believe the CIA really wants to follow up on assurances. He said: ''It would be stupid to keep track of them because then you would know what's going on.'' He said, ''it's like don't ask don't tell.''

So, it seems that we are not fooling anybody but the American public.

We are a Nation of laws, not hypocrites. Our country is strong and our constitutional system has endured because it permits us to do great things and still ensure that we treat people fairly and humanely. We are not supposed to ''disappear'' people here.

Yet, that is exactly what rendition and the related tactic of ''ghost detainees'' amounts to, making people vanish into a shadowy world of secret abuse. In his report on the abuses at Abu Ghraib prison, MG. Antonio Taguba

wrote that prisoners had not been registered as required by Army regulations and they were being moved around to avoid detection by the Red Cross. General Taguba called the practice ''deceptive, contrary to Army doctrine, and in violation of international law.'' Last September, Army investigators told the Senate Armed Services Committee that as many as 100 detainees at Abu Ghraib had been hidden from the Red Cross at the CIA's direction.

Last month, the Associated Press reported that one of the ''ghost detainees'' held at Abu Ghraib, Manadel al-Jamadi, died in November 2003 under CIA interrogation. He had been suspended by his wrists, with his hands cuffed behind his back. According to an Army guard who was asked by the interrogator to adjust al-Jamadi's position, blood gushed from his mouth ''as if a faucet had been turned on'' after he was released from his shackles.

Behavior like that forces us all to ask, ''what has America become?''

The issue shows no signs of abating. Article 49 of the Fourth Geneva Convention states that transfers of detainees from occupied territory to any other country ''are prohibited, regardless of their motive.'' Violations of the Article constitute ''grave breaches'' of the Treaty and qualify as ''war crimes'' under Federal law. Nevertheless, a Justice Department memorandum in March, 2004 re-interpreted the Treaty to allow the CIA to remove prisoners from Iraq for the purpose of ''facilitating interrogation.'' According to press reports, the CIA used this ''Goldsmith Memorandum'' as justification to transport ''as many as a dozen detainees'' out of Iraq. The legal analysis in the memorandum is an embarrassment. Yet it appears to have provided the legal justification for the CIA to commit war crimes.

The New York Times recently reported that the U.S. plans to transfer as many as half the 550 detainees held at Guantanamo Bay to prisons in other countries. This week, a Federal judge blocked the government from transferring 13 citizens of Yemen until a hearing can be held on the propriety of the move. Lawyers for the detainees expressed concern that the prisoners would be delivered into the hands of torture.

Even worse, last week Attorney General Gonzales defended the practice of rendition, despite admitting that he ''can't fully control'' what other nations do and that he doesn't know whether countries have always complied with their promises.

Congress can't allow these shameful tactics to continue. Senator LEAHY's bill is designed to prevent them. It states that no person in the custody or control of the United States can be sent to another country on the State Department list of countries that commit torture. Nor, may any person be sent to a country, even if it is not on the State Department list, where there are grounds to believe the person would be in danger of being tortured. The bill states that mere diplomatic assurances that detainees will be treated humanely are not sufficient to permit a detainee's transfer. Instead, in certain circumstances, the act permits delivery of the detainee where there is an actual mechanism to verify that the person will not be tortured, such as by allowing unfettered access to the detainee by humanitarian organizations.

The Bush administration's has clearly condoned the use of torture and abuse by our own government, as well as handing prisoners over to other countries for the same purpose. Officials have approved and used interrogation techniques that include feigning suffocation, feigning drowning, ''stress positions,'' sleep deprivation, and the use of unmuzzled dogs. According to one report, ''The methods employed by the CIA are so severe that senior officials of the Federal Bureau of Investigation have directed its agents to stay out of many of the interviews of the high-level detainees . . . ''because the FBI fears that the techniques could subject their agents to criminal lawsuits.

The anti-rendition bill offered today is a way to start addressing the problem. It deserves to pass as soon as possible. Torture and other abuses of prisoners in Iraq, Afghanistan, and Guantanamo have done immense damage to America's standing in the world and has clearly made the war on terrorism harder to win. We need to repair that damage and re-claim our national commitment to fairness and decency.

As Edmund Burke said, ''The only thing necessary for the triumph of evil is for good men to do nothing.'' We in Congress have it in our power to prevent the triumph of an evil practice. Knowing what we now know, the Senate cannot simply look away and do nothing. I urge my colleagues to support us in ending these despicable abuses.

By Mr. ENSIGN (for himself and Ms. LANDRIEU):

S. 657. A bill to amend title XVIII of the Social Security Act to make a technical correction in the definition of outpatient speech-language pathology services; to the Committee on Finance.

Mr. ENSIGN. Mr. President, today I introduced a bill that would expand access to speech-language pathology care.

Speech-language pathology, or speech therapy, includes services for patients with speech, hearing and language disorders, which result in communication disabilities. Speech therapy also includes the diagnosis and treatment of swallowing disorders, regardless of the presence of communications disability. Communications disabilities most frequently affect patients who suffer from a stroke, tumor, head injury, or have been diagnosed with Parkinson's disease, amyotrophic lateral sclerosis (ALS) , or other neuromuscular diseases.

As a result of a legislative anomaly, patients cannot receive Medicare coverage for speech-language pathology care in a private practice setting. Under the Medicare program, the same patient is able to receive such care in a hospital, skilled nursing facility, or rehabilitation facility. This bill would not create a new benefit. Rather, it would provide a technical correction to a section of Medicare statute that originated more than 30 years ago. Under current law, physical therapy and occupational therapy care can be received by patients in the private practice setting.

In 1972, speech-language pathology services were added to the Medicare statute under the physical therapy definition section. 14 years later, occupational therapy was defined under a separate section. Unlike speech-language pathology services, occupational therapy services were not incorporated within the physical therapy definition. As a result, a patient can receive both physical and occupational therapy care in an independent practice setting. The legislation I am introducing today would enable patients to likewise receive speech-language therapy services in private practice settings.

Without this legislative fix, beneficiaries may confront situations in which they either do not have access to a Medicare-covered setting or do not meet the requirements to receive care from other settings. This can be especially problematic in rural communities with fewer hospitals, skilled nursing facilities, and rehabilitation facilities.

For example, consider an elderly patient who is discharged from a hospital, but requires follow-up physical therapy and speech-language pathology care. The patient would be able to obtain necessary physical therapy care in an independent practice setting, but would not be able to receive necessary speech-language pathology care in the same setting. The patient would have to see the necessary speech-language pathology care in another Medicare setting, possibly having to travel farther distances to receive such care or not receive it all.

Essentially, the legislation I am introducing today would ensure that patients have access to speech-language pathology services, particularly in rural areas. I urge my colleagues to join me in supporting this commonsense legislation.

This legislation compliments the measure I introduced last month, called the Medicare Access to Rehabilitation Services Act (S. 438). Both bills ensure access to needed therapy care within the Medicare program. I am committed to working toward their enactment and believe that they will help Medicare beneficiaries obtain the quality health care that they deserve.

By Mr. BROWNBACK (for himself, Ms. LANDRIEU, Mr. ALLARD, Mr. BUNNING, Mr. BURR, Mr. CHAMBLISS, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEMINT, Mr. DEWINE, Mrs. DOLE, Mr. DOMENICI, Mr. ENSIGN, Mr. GRAHAM, Mr. GRASSLEY, Mr. HAGEL, Mr. INHOFE, Mr. KYL, Mr. MARTINEZ, Ms. MURKOWSKI, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, and Mr. TALENT):

S. 658. A bill to amend the Public Health Service Act to prohibit human cloning; to the Committee on Health, Education, Labor, and Pensions.

Mr. BROWNBACK. Mr. President, I rise to speak on the Brownback-Landrieu Human Cloning Prohibition Act, which we introduce today.

The Brownback-Landrieu Human Cloning Prohibition Act remains the only effective ban on human cloning.

This legislation has passed the U.S. House of Representatives twice by large margins. This bill would also bring the U.S. into conformity with the recent vote at the United Nations, where the General Assembly called on all member states ''to prohibit all forms of human cloning'' by a strong 84 to 34 margin.

President Bush has also spoken eloquently on the Brownback-Landrieu Human Cloning Prohibition Act, when he ''wholeheartedly'' endorsed the legislation.

The President said: ''Human cloning is deeply troubling to me, and to most Americans. Life is a creation, not a commodity.

''Our children are gifts to be loved and protected, not products to be designed and manufactured. Allowing cloning would be taking a significant step toward a society in which human beings are grown for spare body parts, and children are engineered to custom specifications; and that's not acceptable. . . .

''I strongly support a comprehensive law against all human cloning. And I endorse the bill wholeheartedly endorse the bill—sponsored by Senator BROWNBACK and Senator MARY LANDRIEU.''

The President could hardly have been clearer.

We should take a stand against those that would turn young human beings into commodities and spare parts. We should not use human life for research purposes.

The legislation introduced by Sen. LANDRIEU and myself, along with over one quarter of the Senate, answers that human life should not be used for research purposes.

Let there be no doubt. Science affirms that the young human, at his or her earliest moments of life, is a human. It is wrong to treat another person as a piece of property that can be bought and sold, created and destroyed, all at the will of those in power.

The issue of human cloning—and specifically how we treat the young human—will determine the kind of future we will give to our children and grandchildren.

The essential question is whether or not we will allow human beings to be produced, to preordained specifications, for their eventual implantation or destruction, depending upon the intentions of the technicians who created them.

Will we create life simply to destroy it?

I firmly believe that human life should be cherished and that human dignity should be protected.

I also firmly believe that ethically-sound research should proceed in the search for cures. The legislation that we introduce today takes a very thoughtful approach and is careful not to ban or interfere with gene therapy, IVF practices, or DNA, cell or tissue cloning—other than with cloned embryos.

Now, some of our colleagues will tell you that they oppose 'reproductive cloning,' but then turn around and call for 'therapeutic cloning' or 'SCNT.' Whether intentional or not, to argue that there are different types of human cloning creates a distinction that simply does not exist.

All human cloning is 'reproductive.' The question is simply: What do you do with the young, cloned human? Do you implant it and bring it to birth—like the sheep Dolly—or do you research on and kill the young human being, as advocates of so-called 'therapeutic' cloning would have us do?

Any other so-called human cloning bans, outside of the Brownback-Landrieu Human Cloning Prohibition Act, are not enforceable. Once the young human has been cloned, you cannot distinguish it from any other human embryo produced by IVF or embodied sexual intercourse.

If so-called 'therapeutic' human cloning proceeds—and there are no laws in the U.S. against it—one of these human clones will be implanted, and there is nothing we can do to stop human cloning once we reach this point.

Even if we detected a clonal human pregnancy, nothing could be done about it. Any remedies or punishments would be highly unpopular and unenforceable.

As I have already stated, over a quarter of all U.S. Senators have agreed to be original cosponsors of this bill, and it is our intention to press for a clean vote in the Senate during the 109th Congress.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. GRASSLEY, and Mrs. LINCOLN):

S. 661. A bill to amend the Internal Revenue Code of 1986 to provide for the modernization of the United States Tax Court, and for other purposes, to the Committee on Finance.

Mr. HATCH. Mr. President, I rise today to introduce the Tax Court Modernization Act. I am joined in this legislation by the Chairman and Ranking Democrat of the Finance Committee, Senator GRASSLEY and Senator BAUCUS, and my colleague Senator LINCOLN.

The United States Tax Court plays an important role in our tax system. However, it has been years since Congress has taken a good hard look at the Tax Court. This bipartisan piece of legislation will improve this Court in a number of ways, and I would like to take a moment to summarize some of its provisions.

First, the TCMA would make minor changes in the Tax Court's jurisdiction. These are small changes that will have a big impact on the Court's efficiency. For example, the bill would allow the Tax Court to hire employees on its own, just as other courts do. Currently, the Tax Court is forced to hire through the Executive Branch's Office of Personnel Management, entangling the executive power with the judicial power. Restoring the constitutional separation of powers in the hiring process will increase the independence of the Tax Court.

Second, the TCMA would improve the way that Tax Court judges receive retirement benefits and other non-salary benefits. I believe that Tax Court judges should be treated the same way that bankruptcy, Court of Federal Claims, and Article III judges are treated when it comes to fringe benefits.

Tax Court judges are often not provided with the same benefits as similarly appointed Article I and Article III judges. For example, Congress allows Article III, bankruptcy, and Court of Federal Claims judges to participate in the Thrift Savings Plan in addition to the Civil Service Retirement System, while Tax Court judges are ineligible to participate in this program. These disparities in the treatment of our Tax Court judges affect the Court's ability to attract and retain seasoned judges, as well as talented employees.

This legislation is non-controversial and is the result of many years of work. The Finance Committee passed the bill three separate times during the 108th Congress, but it unfortunately was not included in a vehicle that made it to enactment. Hopefully, we will be able to get these provisions to the President's desk this year.

I have spent many years observing the Federal judiciary. I have spent many years trying to improve the Judicial Branch of our government and to make it the very finest court system the world has ever known. I look forward to working with my colleagues on the Senate Finance Committee on this important piece of legislation. I urge my colleagues, both on the Finance Committee and in the Senate as a whole, to support this legislation.

I ask unanimous consent to print in the RECORD a summary of the provisions of the U.S. Tax Court Modernization Act.

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

U.S. TAX COURT MODERNIZATION ACT
SUMMARY OF PROVISIONS

Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's underlying tax liability does not relate to income taxes or a type of tax over which the Tax Court normally has deficiency jurisdiction, there is no opportunity for Tax Court review and the taxpayer must file in a District Court to obtain review. This provision consolidates judicial review of collection due process activity in the Tax Court.

Authority for special trial judges to hear and decide certain employment status cases. This provision clarifies that the Tax Court may authorize its special trial judges to enter decisions in employment status cases that are subject to small case proceedings under section 7436(c).

Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to assert an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. This provision confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as District Courts and the Court of Federal Claims.

Tax Court filing fee in all cases commenced by filing petition. This provision clarifies, in keeping with current Tax Court procedure, that the Tax Court is authorized to impose a $60 filing fee for all cases commenced by petition. The proposal would eliminate the need to amend section 7451 each time the Tax Court is granted new jurisdiction.

Amendments to appoint employees. Currently, the Tax Court has to go to the executive branch, the Office of Personnel Management, to change a position. It is inappropriate to require the Tax Court to seek permission from the executive since that branch is a party (Commissioner of Internal Revenue) before the Tax Court. This change would allow the Tax Court to be independent in fact and perception from the Executive Branch while ensuring that basic employee rights, protections, and remedies are retained or required in an appropriate way (e.g., whistleblower protection, civil rights, merit system principles, etc.).

Expanded use of Tax Court practice fee for pro se taxpayers. The Tax Court is authorized to charge practitioners a fee of up to $30 per year and to use these fees to pursue disciplinary matters. The provision expands use of these fees to provide services to pro se taxpayers. Fees could be used for education programs for pro se taxpayers.

Annuities for survivors of Tax Court judges who are assassinated. The reality is that many people do not like to pay taxes. There is as much risk of a Tax Court judge being assassinated as any other Federal judge. The proposal would conform the treatment of Tax Court judges to District Court judges.

Cost-of-living adjustments for Tax Court judicial survivor annuities. All Federal employees have this provision except the Tax Court. Survivors of Tax Court judges are subject to an obsolete method of indexing.

Life insurance coverage for Tax Court judges. This simply codifies current Office of Personnel Management interpretation, as was previously done for District Court judges.

Cost of life insurance coverage for Tax Court judges age 65 or over. Congress established the Tax Court in 1969 and required that Tax Court judges receive the same compensation as District Court judges. The District Court judges were given this benefit to ensure that there was no diminution of their compensation (as required by the Constitution). This provision is in keeping with the original intent of Congress.

Modification of timing of lump-sum payment of judge's accrued annual leave. District Court judges are allowed to receive a lump-sum payment due to the life-time tenure of Article III judges. Tax Court judges, while they have a 15 year term, effectively have a life-time term because they are always subject to recall.

Participation of Tax Court judges in the Thrift Savings Plan. The proposal would allow Tax Court judges to participate in Thrift Savings Plan. Currently, only 19 federal government employees are left out of the Thrift Savings Plan (i.e., Tax Court judges).

Exemption of teaching compensation of retired judges for limitation on outside earned income. After retirement, Tax Court judges should have the same ability to teach as District Court judges.

General provisions relating to magistrate judges of the Tax Court. ''Magistrate'' is more recognizable to the American public because it is the term used by Article III courts. The provision changes the term ''Special Trial Judge'' to ''Magistrate Judge of the United States Tax Court'' and provides for alignment of term of office and removal applicable to District Court magistrate judges.

Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court. This section gives Magistrates/Special Trial Judges the same advantages as Tax Court judges, thus ensuring a greater pool of participants in the fund.

Retirement and annuity program for magistrate judges. A retirement and annuity program more aligned with District Court Magistrates and the Tax Court judges is key for attracting and retaining qualified judges.

Incumbent magistrate judges of the Tax Court. The provision provides transition rules similar to those given to the District Court magistrate judges.

Provisions for recall. Article III judges are ''self-recalling'' (i.e., they decide for themselves whether they are recalled). In contrast, Tax Court judges are subject mandatory recall by the Chief Judge. These provisions authorize the recall in a manner similar to those now applicable to the regular judges of the Court.

Mr. BAUCUS. Mr. President, I rise today to support the United States Tax Court Modernization Act. I am pleased to be an original cosponsor of this important legislation along with Senators HATCH, GRASSLEY and LINCOLN.

In 1969, Congress elevated the U.S. Tax Court as a Federal court of record under Article I of the Constitution of the United States. Congress created the Tax Court to provide a judicial forum in which affected persons could dispute tax deficiencies determined by the Commissioner of the Internal Revenue Service prior to payment of the disputed amounts. That means that the Tax Court's jurisdictional requirements are, in part, a recognition that lower and middle income taxpayers cannot necessarily pay the tax deficiency before taking their dispute to court.

Congress also closely linked the legislation governing the Tax Court with the laws governing the Article III District Courts. Unfortunately, the Congress did not include the Tax Court in the changes made for Article III courts.

This legislation is designed to restore parity between the Tax Court and Article III courts, and to modernize their personnel and pension systems.

I thank Senator HATCH for sponsoring the legislation. I also want to thank former Senator Breaux, who sponsored the legislation in the last Congress and who was a strong advocate for the Tax Court as well as this package of modernization provisions.

This modernization package is noncontroversial and long overdue. In the 108th Congress, the Finance Committee passed the Tax Court legislation three times: as a stand alone bill, as part of the National Employee Savings and Trust Equity Guarantee Act, and as part of the Tax Administration Good Government Act.

The Finance Committee intends to mark-up the United States Tax Court Modernization Act next month. I fully expect the Committee to once again unanimously pass the legislation. I also hope that, soon after Committee action, Majority Leader FRIST and Minority Leader REID will bring the United States Tax Court Modernization Act to the floor for swift passage.

The Finance Committee and the House Ways & Means Committee fought to retain jurisdiction over the Tax Court as an Article I, rather than an Article III court. The Committees recognized the benefit to the American taxpayer of having a court composed of technical tax law experts. History has proven the wisdom of this decision. The Tax Court is composed of dedicated, talented, nonpartisan tax experts. Their commitment to public service is noble. We should recognize the commitment of our Tax Court judges by acting upon the responsibility that the Members before us, our predecessors on the Finance Committee and the House Ways and Means Committee, fought to retain by ensuring that the Tax Court modernization provisions become law during the 109th Congress.

By Ms. COLLINS (for herself, Mr. CARPER, and Mr. VOINOVICH):

S. 662. A bill to reform the postal laws of the United States; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today with my friend and colleague, Senator CARPER, to introduce the Postal Accountability and Enhancement Act of 2005, a bill designed to help the 225-year-old Postal Service meet the challenges of the 21st Century. This legislation represents the culmination of a process that began in the summer of 2002 when I introduced a bill to establish a Presidential Commission charged with examining the problems the Postal Service faces, and developing specific recommendations and legislative proposals that Congress and the Postal Service could implement.

I originally introduced the Postal Accountability and Enhancement Act last

May. In June of 2004, the bill was unanimously reported out of the the Homeland Security and Governmental Affairs Committee. That bill, S. 2468, had the strong endorsements of the National Rural Letter Carriers Association, the National Association of Letter Carriers, the National Association of Postmasters of the United States, and the Coalition for a 21st Century Postal Service—which represents thousands of the major mailers, employee groups, small businesses, and other users of the mail. It also had the strong bi-partisan support of twenty-two members of the United States Senate. Unfortunately, due to a variety of factors, my efforts to have the bill considered before the full Senate were stalled.

Since last Fall, Administration representatives have become actively engaged in postal reform efforts, and have given me their commitment to working with Congress to ensure passage of a reform bill this year. I have every expectation that this will be the year comprehensive postal reform legislation is signed into law.

It has long been acknowledged that the financial and operational problems confronting the Postal Service are serious. At present, the Postal Service has more than $90 billion in unfunded liabilities and obligations, which include $1.8 billion in debt to the U.S. Treasury, $7.6 billion for Workers' Compensation claims, $3.5 billion for retirement costs, and as much as $47 billion to cover retiree health care costs. The Government Accountability Office's Comptroller General, David Walker, has pointed to the urgent need for ''fundamental reforms to minimize the risk of a significant taxpayer bailout or dramatic postal rate increases.'' The Postal Service has been on GAO's ''High-Risk'' List since April of 2001. The Postal Service is at risk of a ''death spiral'' of decreasing volume and increasing rates that lead to further decreases in volume.

In December of 2003, President Bush announced the creation of a bipartisan commission charged with identifying the operational, structural, and financial challenges facing the U.S. Postal Service. The President charged this commission with examining all significant aspects of the Postal Service with the goal of recommending legislative and administrative reforms to ensure its long-term viability.

The President's Commission conducted seven public hearings across the country at which they heard from numerous witnesses. On July 31, 2003, the Commission released its final report, making 35 legislative and administrative recommendations for the reform of the Postal Service.

As I read through the Commission's report, I was struck by what I considered the Commission's wake up call to Congress: its statement that ''an incremental approach to Postal Service reform will yield too little, too late given the enterprise's bleak fiscal outlook, the depth of current debt and unfunded obligations, the downward trend in First-Class mail volumes and the limited potential of its legacy postal network that was built for a bygone era.'' That is a very strong statement, and one that challenged both the Postal Service and Congress to embrace far-reaching reforms.

To the relief of many, including myself, the Commission did not recommend privatization of the Postal Service. Instead, the Commission sought to find a way for the Postal Service to do, as Co-Chair Jim Johnson described to me, ''an overwhelmingly better job under the same general structure.''

The Postal Service plays a vital role in our economy. The Service itself employs more than 750,000 career employees. Less well known is the fact that it is also the linchpin of a $900-billion mailing industry that employs 9 million Americans in fields as diverse as direct mailing, printing, catalog production, paper manufacturing, and financial services. The health of the Postal Service is essential to the vitality of thousands of companies and the millions that they employ.

One of the greatest challenges for the Postal Service is the decrease in mail volume as business communications, bills and payments move more and more to the Internet. The Postal Service has experienced declining volumes of First-Class mail for three straight years. This is highly significant, given that First-Class mail accounts for 48 percent of total mail volume, and the revenue it generates pays for more than two-thirds of the Postal Service's institutional costs.

The Postal Service also faces the difficult task of trying to cut costs from its nationwide infrastructure and transportation network. These costs are difficult to cut. Even though volumes may be decreasing, carriers must still deliver six days a week to more than 139 million addresses.

As Chairman of the Committee on Homeland Security and Governmental Affairs, I held a series of eight hearings, including a joint hearing with the House, during which we reviewed the recommendations of the President's Commission. The bill Senator CARPER and I introduce today reflects what the Committee learned from dozens of witnesses.

First and foremost, the Collins-Carper bill preserves the basic features of universal service—affordable rates, frequent delivery, and convenient community access to retail postal services. As a Senator representing a large, rural State, I want to ensure that my constituents living in the northern woods, or on the islands, or in our many rural small towns have the same access to postal services as the people of our cities. If the Postal Service were no longer to provide universal service and deliver mail to every customer, the affordable communication link upon which many Americans rely would be jeopardized. Most commercial enterprises would find it uneconomical, if not impossible, to deliver mail and packages to rural Americans at rates charged by the Postal Service.

The Collins-Carper bill allows the Postal Service to maintain its current mail monopoly, and retain its sole access to customer mailboxes. It grants the Postal Service Board of Governors the authority to set rates for competitive products like Express Mail and Parcel Post, as long as these prices do not result in cross subsidy from market-dominant products. As a safeguard, our bill establishes a 30 day prior review period during which the proposed rate changes shall be reviewed by the Postal Regulatory Commission.

It replaces the current lengthy and litigious rate-setting process with a rate cap-based structure for market-dominant products such as First-Class Mail, periodicals and library mail. This would allow the Postal Service to react more quickly to changes in the mailing industry. The rate caps would be linked to the Consumer Price Index. The goal would be to make rate increases more predictable and less frequent and to provide incentives for the Postal Service to operate efficiently. Price changes for market-dominant products would be subject to a 45 day prior review period by the Postal Regulatory Commission.

Our bill would introduce new safeguards against unfair competition by the Postal Service in competitive markets. Subsidization of competitive products by market-dominant products would be expressly forbidden, and an equitable allocation of institutional costs to competitive products would be required.

The President's Commission recommended that the regulator be granted the authority to make changes to the Postal Service's universal service obligation and monopoly. The vast majority of the postal community, however, shared my belief that these are important policy determinations that should be retained by Congress. The Collins-Carper bill keeps those public policy decisions in congressional hands.

The existing Postal Rate Commission would be transformed into the Postal Regulatory Commission with greatly enhanced authority. Under current law, the Rate Commission has very narrow authority. We wanted to ensure that the Postal Service management has both greater latitude and stronger oversight. Among other things, the Postal Regulatory Commission will have the authority to regulate rates for non-competitive products and services; ensure financial transparency; establish limits on the accumulation of retained earnings by the Postal Service; obtain information from the Postal Service, if need be, through the use of new subpoena power; and review and act on complaints filed by those who believe the Postal Service has exceeded its authority. Members of the Postal

Regulatory Board will be selected solely on the basis of their demonstrated experience and professional standing. Senate confirmation of all Board Members will be required.

To meet the Presidential Commission's call for increased financial transparency, the Collins-Carper bill will require the Postal Service to file with the Postal Regulatory Commission certain Securities and Exchange Commission financial disclosure forms, along with detailed annual reports on the status of the Postal Service's pension and postretirement health obligations.

The Governmental Affairs Committee dedicated two hearings to the examination of the Commission's workforce-related recommendations. The Postal Service is a highly labor intensive organization, using $3 out of every $4 to pay the wages and benefits of its employees. Their workforce is comprised of more than 700,000 dedicated letter carriers, clerks, mail handlers, postmasters, and others, many of whom place great value on their right to collectively bargain. Our bill reaffirms that right. This bill only makes changes to the bargaining process that have been agreed to by both the Postal Service and the four major unions. We replace the rarely used fact-finding process with mediation, and shorten statutory deadlines for certain phases of the bargaining process.

Additionally, the Collins-Carper bill corrects what I believe to be an anomaly in the federal workers' compensation law that results in high costs for the Postal Service. Under the Federal Employees Compensation Act (FECA), federal employees with dependents are eligible for 75 percent of their take-home pay, tax free, plus cost of living allowances. In addition, there is no maximum dollar cap on FECA payments. As a result, employees often opt not to retire, staying on the more generous workers' compensation program permanently.

According to a March 2003 audit issued by the Postal Service's Office of Inspector General, the Postal Service's workers' compensation rolls include 81 cases that originated 40 to 50 years ago, with the oldest recipient being 102 years old. The IG's office found 778 cases that originated 30 to 40 years ago; and 1,189 cases that originated 20 to 29 years ago.

The Collins-Carper bill works to protect the financial resources of the Postal Service by converting workers' compensation benefits for total or partial disability to a retirement annuity when the affected employee reaches 65 years of age. This change would reflect the fact that disabled postal employees would likely retire at some point were they not receiving workers' compensation. I would like to note that the average postal employee retires far earlier than age 65, so this is still a generous program. It is important to point out that the Postal Service has reduced their workplace injury rate by twenty-eight percent over the past three years.

The Collins—Carper bill also puts into place a three-day waiting period before an employee is eligible to receive 45 days of continuation of pay. This is consistent with every state's workers' compensation program that requires a three- to seven-day waiting period before benefits are paid.

To address the President's Commission's recommendation for improved executive compensation, this bill will allow the Postal Service to raise their overall executive compensation level from Executive Level 1 to that of the Vice President. This would bring the Postal Service in line with authority granted to federal agencies. This new authority will be contingent upon the development of a meaningful performance appraisal system.

Our bill has reached an important compromise on the issue of workshare discounts. The workshare program was developed by the Postal Service and the Postal Rate Commission to enable customers to pay lower rates when they perform mail preparation or transportation activities. The language in our bill supports the principle that workshare discounts should generally not exceed the costs that the Postal Service avoids as a result of the worksharing activity. However, the bill spells out certain circumstances under which workshare discounts in excess of avoided costs are warranted.

Finally, our bill would repeal a provision of Public Law 108–18 which requires that money owed to the Postal Service due to an overpayment into the Civil Service Retirement System Fund be held in an escrow account. Repealing this provision would essentially ''free up'' $78 billion over a period of 60 years. These savings would be used to not only pay off debt to the U.S. Treasury and to fund health care liabilities, but also to mitigate rate increases as well. In fact, failure to release these escrow funds could mean, for mailers, a double-digit rate increase in 2006—an expense most American businesses and many consumers are ill-equipped to afford.

The bill would also return to the Department of Treasury the responsibility for funding CSRS pension benefits relating to the military service of postal retirees. No other agency is required to make this payment. Ratepayers should not be held responsible for this $27 billion obligation.

The Postal Service has reached a critical juncture. If we are to save and strengthen this vital service upon which so many Americans rely for communication and their livelihoods, the time to act is now.

I look forward to working with all of my colleagues in the Senate, and House Government Reform and Oversight Committee Chairman TOM DAVIS, who, together with Congressman JOHN MCHUGH, also recently introduced a postal reform bill, H.R. 22.

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

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

S. 662

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Postal Accountability and Enhancement Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other functions ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate or rates are applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Except as provided in section 411, nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621 and 3622 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters and sealed parcels;

''(2) first-class mail cards;

''(3) periodicals;

''(4) standard mail;

''(5) single-piece parcel post;

''(6) media mail;

''(7) bound printed matter;

''(8) library mail;

''(9) special services; and

''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process while affording reasonable opportunities for interested parties to participate in that process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

''(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

''(3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

''(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

''(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

''(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

''(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable, universal postal service; and

''(13) the policies of this title as well as such other factors as the Commission determines appropriate.

''(d) REQUIREMENTS.—

''(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

''(A) require the Postal Regulatory Commission to set annual limitations on the percentage changes in rates based on inflation using indices, such as the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the 12-month period preceding the date the Postal Service proposes to increase rates;

''(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

''(C) not later than 45 days before the implementation of any adjustment in rates under this section—

''(i) require the Postal Service to provide public notice of the adjustment;

''(ii) provide an opportunity for review by the Postal Regulatory Commission;

''(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

''(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A); and

''(D) notwithstanding any limitation set under subparagraphs (A) and (C), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(2) LIMITATIONS.—

''(A) CLASSES OF MAIL.—The annual limitations under paragraph (1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

''(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time; or

''(D) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value.

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

''(A) explains the Postal Service's reasons for establishing or maintaining the rate;

''(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

''(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

''(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section.''.

(b) REPEALED SECTIONS.—Sections 3623, 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

''(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Regulatory Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

''§ 3633. Provisions applicable to rates for competitive products

''(a) IN GENERAL.—The Postal Regulatory Commission shall, within 180 days after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

''(1) prohibit the subsidization of competitive products by market-dominant products;

''(2) ensure that each competitive product covers its costs attributable; and

''(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.

''(b) REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

''§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 3651. Annual reports by the Commission

''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

''§ 3652. Annual reports to the Commission

''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall report such data as the Postal Regulatory Commission requires.

''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

''(e) CONTENT AND FORM OF REPORTS.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe

the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

''(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

''(C) protecting the confidentiality of commercially sensitive information.

''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(f) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Any person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

''(A) begin proceedings on such complaint; or

''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

''§ 3663. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—Not later than 12 months after the date of enactment of this section, the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with the Postal Service's universal service obligation as defined in sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance the value of postal services to both senders and recipients.

''(2) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.

''(3) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(4) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(c) FACTORS.—In establishing or revising such standards, the Postal Service shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) the needs of Postal Service customers, including those with physical impairments;

''(4) mail volume and revenues projected for future years;

''(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(6) the current and projected future cost of serving Postal Service customers;

''(7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

''(8) the policies of this title and such other factors as the Commission determines appropriate.

''(d) REVIEW.—The regulations promulgated pursuant to this section (and any revisions thereto) shall be subject to review upon complaint under sections 3662 and 3663.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENTS.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals;

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals; and

(4) contain the matters relating to postal facilities provided under subsection (c).

(c) POSTAL FACILITIES.—

(1) FINDINGS.—Congress finds that—

(A) the Postal Service has more than 400 logistics facilities, separate from its post office network;

(B) as noted by the President's Commission on the United States Postal Service, the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;

(C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and

(D) Congress strongly encourages the Postal Service to—

(i) expeditiously move forward in its streamlining efforts; and

(ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(2) IN GENERAL.—The Postal Service plan shall include a description of—

(A) the long-term vision of the Postal Service for rationalizing its infrastructure and workforce; and

(B) how the Postal Service intends to implement that vision.

(3) CONTENT OF FACILITIES PLAN.—The plan under this subsection shall include—

(A) a strategy for how the Postal Service intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria, and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(B) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(C) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

(4) ANNUAL REPORTS.—

(A) IN GENERAL.—Not later than 90 days after the end of each fiscal year, the Postal Service shall prepare and submit a report to Congress on how postal decisions have impacted or will impact rationalization plans.

(B) CONTENTS.—Each report under this paragraph shall include—

(i) an account of actions taken during the preceding fiscal year to improve the efficiency and effectiveness of its processing, transportation, and distribution networks while preserving the timely delivery of postal services, including overall estimated costs and cost savings;

(ii) an account of actions taken to identify any excess capacity within its processing, transportation, and distribution networks and implement savings through realignment or consolidation of facilities including overall estimated costs and cost savings;

(iii) an estimate of how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, excess capacity, consolidating and closing facilities, and other areas will impact rationalization plans;

(iv) identification of any statutory or regulatory obstacles that prevented or will prevent or hinder the Postal Service from taking action to realign or consolidate facilities; and

(v) such additional topics and recommendations as the Postal Service considers appropriate.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) Postal Service employees on delivery routes;

(4) retail facilities in which overhead costs are shared with private businesses and other government agencies; or

(5) any other nonpost office access channel providing market retail access to postal services.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under subsection (a) and each annual report under subsection (c) to Congress, the Postal Service shall submit the plan and each annual report to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan and each annual report under subsection (c)—

(A) are consistent with the continuing obligations of the Postal Service under title 39, United States Code;

(B) provide for the Postal Service to meet the service standards established under section 3691 of title 39, United States Code; and

(C) allow progress toward improving overall efficiency and effectiveness consistent with the need to maintain universal postal service at affordable rates.

(g) CONTINUED AUTHORITY.—Nothing in this section shall be construed to prohibit the Postal Service from implementing any change to its processing, transportation, delivery, and retail networks under any authority granted to the Postal Service for those purposes.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

''§ 2011. Provisions relating to competitive products

''(a)(1) In this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

''(A) costs attributable to competitive products; and

''(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

''(1) revenues from competitive products;

''(2) amounts received from obligations issued by Postal Service under subsection (e);

''(3) interest and dividends earned on investments of the Competitive Products Fund; and

''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

''(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

''(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

''(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

''(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

''(A) the establishment of reserve, sinking, and other funds;

''(B) application and use of revenues and receipts of the Competitive Products Fund;

''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

''(D) such other matters as the Postal Service, considers necessary or desirable to enhance the marketability of such obligations.

''(3) Obligations issued by the Postal Service under this subsection—

''(A) shall be in such forms and denominations;

''(B) shall be sold at such times and in such amounts;

''(C) shall mature at such time or times;

''(D) shall be sold at such prices;

''(E) shall bear such rates of interest;

''(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

''(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

''(H) shall be subject to such other terms and conditions,

as the Postal Service determines.

''(4) Obligations issued by the Postal Service under this subsection—

''(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

''(B) shall contain a recital that such obligations are issued under this subsection, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

''(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

''(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

''(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

''(5)(A) Subject to subparagraph (B), the Postal Service shall make payments of principal, or interest, or both on obligations issued under this subsection from—

''(i) revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)); or

''(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e).

''(B) Based on the audited financial statements for the most recently completed fiscal year, the total assets of the Competitive Products Fund may not be less than the amount determined by multiplying—

''(i) the quotient resulting from the total revenue of the Competitive Products Fund divided by the total revenue of the Postal Service; and

''(ii) the total assets of the Postal Service.

''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

''(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

''(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

''(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

''(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

''(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

''(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

''(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

''(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

''(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

''(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

''(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

''(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

''(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission may revise such rules.

''(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

''(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

''(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

''(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

''(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) COMPETITIVE PRODUCTS FUND.—The term 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (a), in the first sentence, by inserting ''or 2011'' after ''section 2005'';

(B) in subsection (b)—

(i) in the first sentence, by inserting ''under section 2005'' before ''in such amounts''; and

(ii) in the second sentence, by inserting ''under section 2005'' before ''in excess of such amount.''; and

(C) in subsection (c), by inserting ''or 2011(e)(4)(E)'' after ''section 2005(d)(5)''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 3634. Assumed Federal income tax on competitive products income

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

''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

''(1) compute its assumed Federal income tax on competitive products income for such year; and

''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

''§ 404a. Specific limitations

''(a) Except as specifically authorized by law, the Postal Service may not—

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

''(2) This subsection applies with respect to—

''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

''(i) the antitrust laws (as defined in such subsection); and

''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

''(2) No damages, interest on damages, costs or attorney's fees may be recovered, and no criminal liability may be imposed, under the antitrust laws (as so defined) from any officer or employee of the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, acting in an official capacity.

''(3) This subsection shall not apply with respect to conduct occurring before the date of enactment of this subsection.

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes. To the extent practicable, model building codes should meet the voluntary consensus criteria established for codes and standards as required in the National Technology Transfer and Advancement Act of 1995 as defined in Office of Management and Budget Circular A1190. For purposes of life safety, the Postal Service shall continue to comply with the most current edition of the Life Safety Code of the National Fire Protection Association (NFPA 101).

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of

its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

''(A) Subsection (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

''§ 407. International postal arrangements

''(a) It is the policy of the United States—

''(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

''(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

''(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services; and

''(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

''(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and shall have the power to conclude postal treaties and conventions, except that the Secretary may not conclude any postal treaty or convention if such treaty or convention would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal services, or any other person.

''(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

''(A) shall coordinate with other agencies as appropriate, and in particular, should consider the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

''(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

''(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

''(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

''(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

''(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

''(c) Before concluding any postal treaty or convention that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

''(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services as it deems appropriate, except that—

''(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be binding under international law; and

''(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

''(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

''(2) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary's control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

''(3) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Customs Service may determine in writing.''.

(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking

the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. Experience in the fields of law and accounting shall be considered in making appointments of Governors. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

(c) 5-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 3 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2) Notwithstanding any other provision of this section—

''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also be carried out of the mails when—

''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

''(2) the letter weighs at least 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 1207. Labor disputes

''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days after such notice, if no agreement has been reached by that time.

''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days after the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of

their differences. If the parties fail to reach agreement within 180 days after the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

SEC. 506. BONUS AUTHORITY.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3685 the following:

''§ 3686. Bonus authority

''(a) IN GENERAL.—The Postal Service may establish 1 or more programs to provide bonuses or other rewards to officers and employees of the Postal Service in senior executive or equivalent positions to achieve the objectives of this chapter.

''(b) LIMITATION ON TOTAL COMPENSATION.—

''(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2). Any such award or bonus may not cause the total compensation of such officer or employee to exceed the total annual compensation payable to the Vice President under section 104 of title 3 as of the end of the calendar year in which the bonus or award is paid.

''(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation set forth in the last sentence of section 1003(a)—

''(A) the Postal Service shall make an appropriate request to the Board of Governors of the Postal Service in such form and manner as the Board requires; and

''(B) the Board of Governors shall approve any such request if the Board certifies, for the annual appraisal period involved, that the performance appraisal system for affected officers and employees of the Postal Service (as designed and applied) makes meaningful distinctions based on relative performance.

''(3) REVOCATION AUTHORITY.—If the Board of Governors of the Postal Service finds that a performance appraisal system previously approved under paragraph (2)(B) does not (as designed and applied) make meaningful distinctions based on relative performance, the Board may revoke or suspend the authority of the Postal Service to continue a program approved under paragraph (2) until such time as appropriate corrective measures have, in the judgment of the Board, been taken.

''(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

''(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (b);

''(2) the amount of the bonus or other reward; and

''(3) the amount by which the limitation referred to in subsection (b)(1) was exceeded as a result of such bonus or other reward.''.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602;

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)); and

(4) by adding after such section 504 the following:

''§ 505. Officer of the Postal Regulatory Commission representing the general public

''The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings who shall represent the interests of the general public.''.

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission .. 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

''(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

''(A) use such information for purposes other than the purposes for which it is supplied; or

''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

''(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

(a) IN GENERAL.—Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

(b) FINANCIAL REPORTING REQUIREMENTS AND ENFORCEMENT POWERS APPLICABLE TO POSTAL SERVICE.—Section 503 of title 39, United States Code (as so redesignated by section 601 and 604) is amended by—

(1) inserting ''(a)'' before ''The Postal Regulatory Commission shall promulgate''; and

(2) adding at the end the following:

''(b)(1) Beginning with the first full fiscal year following the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service shall file with the Postal Regulatory Commission —

''(A) within 35 days after the end of each fiscal quarter, a quarterly report containing the information prescribed in Form 10–Q of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form;

''(B) within 60 days after the end of each fiscal year, an annual report containing the information prescribed in Form 10–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form; and

''(C) periodic reports within the time frame and containing the information prescribed in Form 8–K of the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), or any revised or successor form.

''(2) For purposes of preparing the reports required under paragraph (1), the Postal Service shall be deemed to be the registrant described in the Securities and Exchange Commission forms, and references contained in such forms to Securities and Exchange Commission regulations are applicable.

''(3) For purposes of preparing the reports required under paragraph (1), the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262; Public Law 107–204) beginning with fiscal year 2007 and in each fiscal year thereafter.

''(c)(1) The reports required under subsection (b)(1)(B) shall include, with respect to the financial obligations of the Postal Service under chapters 83, 84, and 89 of title 5 for retirees of the Postal Service—

''(A) the funded status of such obligations of the Postal Service;

''(B) components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

''(C) components of net periodic costs;

''(D) cost methods and assumptions underlying the relevant actuarial valuations;

''(E) the effect of a one-percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic cost and the accumulated obligation of the Postal Service under chapter 89 of title 5 for retirees of the Postal Service;

''(F) actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

''(G) the composition of plan assets reflected in the fund balances; and

''(H) the assumed rate of return on fund balances and the actual rates of return for the years presented.

''(2)(A) Beginning with the fiscal year 2007 and in each fiscal year thereafter, for purposes of the reports required under subsection (b)(1) (A) and (B), the Postal Service shall include segment reporting.

''(B) The Postal Service shall determine the appropriate segment reporting under subparagraph (A), after consultation with the Postal Regulatory Commission.

''(d) For purposes of the annual reports required under subsection (b)(1)(B), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed under subsection (c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

''(e) The Postal Regulatory Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under subsection (b)(1)(B).

''(f) The Postal Regulatory Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this section whenever it shall appear that the data—

''(1) have become significantly inaccurate;

''(2) can be significantly improved; or

''(3) are not cost beneficial.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL REGULATORY COMMISSION.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

SEC. 704. REPORT ON POSTAL WORKPLACE SAFETY AND WORKPLACE-RELATED INJURIES.

(a) REPORT BY THE INSPECTOR GENERAL.—

(1) IN GENERAL.—Not later than 6 months after the enactment of this Act, the Inspector General of the United States Postal Service shall submit a report to Congress and the Postal Service that—

(A) details and assesses any progress the Postal Service has made in improving workplace safety and reducing workplace-related injuries nationwide; and

(B) identifies opportunities for improvement that remain with respect to such improvements and reductions.

(2) CONTENTS.—The report under this subsection shall also—

(A) discuss any injury reduction goals established by the Postal Service;

(B) describe the actions that the Postal Service has taken to improve workplace safety and reduce workplace-related injuries, and assess how successful the Postal Service has been in meeting its injury reduction goal; and

(C) identify areas where the Postal Service has failed to meet its injury reduction goals, explain the reasons why these goals were not met, and identify opportunities for making further progress in meeting these goals.

(b) REPORT BY THE POSTAL SERVICE.—

(1) REPORT TO CONGRESS.—Not later than 6 months after receiving the report under subsection (a), the Postal Service shall submit a report to Congress detailing how it plans to improve workplace safety and reduce workplace-related injuries nationwide, including goals and metrics.

(2) PROBLEM AREAS.—The report under this subsection shall also include plans, developed in consultation with the Inspector General and employee representatives, including representatives of each postal labor union and management association, for addressing the problem areas identified by the Inspector General in the report under subsection (a)(2)(C).

SEC. 705. STUDY ON RECYCLED PAPER.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Government Accountability Office shall study and submit to the Congress, the Board of Governors of the Postal Service, and to the Postal Regulatory Commission a report concerning—

(1) the economic and environmental efficacy of establishing rate incentives for mailers linked to the use of recycled paper;

(2) a description of the accomplishments of the Postal Service in each of the preceding 5 years involving recycling activities, including the amount of annual revenue generated and savings achieved by the Postal Service as a result of its use of recycled paper and other recycled products and its efforts to recycle undeliverable and discarded mail and other materials; and

(3) additional opportunities that may be available for the United States Postal Service to engage in recycling initiatives and the projected costs and revenues of undertaking such opportunities.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative or legislative actions that may be appropriate.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with

generally accepted actuarial practices and principles.

''(2)(A) Not later than June 15, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2006. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—

(1) FUNDING.—Chapter 89 of title 5, United States Code, is amended—

(A) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(B) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than June 30, 2006, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than June 30, 2006, the Office shall compute, and by June 30 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by September 30, 2045, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than September 30, 2006, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

(b) TRANSITIONAL ADJUSTMENT FOR FISCAL YEAR 2006.—For fiscal year 2006, the amounts paid by the Postal Service in Government contributions under section 8906(g)(2)(A) of title 5, United States Code, for fiscal year 2006 contributions shall be deducted from the initial payment otherwise due from the Postal Service to the Postal Service Retiree Health Benefits Fund under section 8909a(d)(3) of such title as added by this section.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117(b), unless controverted under regulations of the Secretary''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability

is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

TITLE X—MISCELLANEOUS

SEC. 1001. EMPLOYMENT OF POSTAL POLICE OFFICERS.

Section 404 of title 39, United States Code (as amended by this Act), is further amended by adding at the end the following:

''(d) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and may give such guards, with respect to such property, any of the powers of special policemen provided under section 1315 of title 40. The Postmaster General, or the designee of the Postmaster General, may take any action that the Secretary of Homeland Security may take under section 1315 of title 40, with respect to that property.

SEC. 1002. EXPANDED CONTRACTING AUTHORITY.

(a) AMENDMENT TO TITLE 39, UNITED STATES CODE.—

(1) CONTRACTS WITH AIR CARRIERS.—Subsection (e) of section 5402 of title 39, United States Code, is amended—

(A) by striking the matter preceding paragraph (2) and inserting the following:

''(e)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates for that transportation, either through negotiations or competitive bidding.'';

(B) by redesignating paragraph (2) as paragraph (4); and

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

''(2) Notwithstanding subsections (b) through (d), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates for that transportation, either through negotiations or competitive bidding, except that—

''(A) any such contract may be awarded only to—

''(i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation;

''(ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation; or

''(iii) a combination of such air carriers or foreign air carriers (or both);

''(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;

''(C) during the 5-year period beginning 1 year after the date of enactment of the Postal Accountability and Enhancement Act, the Postal Service may not under this paragraph—

''(i) contract for service between a pair or combination of pairs of points in foreign air transportation with—

''(I) a foreign air carrier; or

''(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier; or

''(ii) tender mail in foreign air transportation under contracts providing for the carriage of mail in foreign air transportation over all (or substantially all, as determined by the Postal Service) of a carrier's routes or all or substantially all of a carrier's routes within a geographic area determined by the Postal Service on the basis of a common unit price per mile and a separate terminal price to—

''(I) a foreign air carrier; or

''(II) an air carrier to the extent that service provided would be offered through a code sharing arrangement in which the air carrier's designator code is used to identify a flight operated by a foreign air carrier, unless—

''(aa) with respect to clause (i) and this clause, fewer than 2 air carriers capable of providing service to the Postal Service adequate for its purposes between the pair or combination of pairs of points in foreign air transportation offer scheduled service between the pair or combination of pairs of points in foreign air transportation which are the subject of the contract or tender;

''(bb) with respect to clause (i), after competitive solicitation, the Postal Service has not received at least 2 offers from eligible air carriers capable of providing service to the Postal Service adequate for its purposes between the pair of combination of pairs of points in foreign air transportation; or

''(cc) with respect to this clause, after competitive solicitation, fewer than 2 air carriers under contract with the Postal Service offer service adequate for the Postal Service's purposes between the pair or combination of pairs of points in foreign air transportation for which tender is being made;

''(D) beginning 6 years after the date of enactment of the Postal Accountability and Enhancement Act, every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and

''(E) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.

''(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.''.

(2) DEFINITIONS.—Section 5402(a) of title 39, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) The terms 'air carrier', 'air transportation', 'foreign air carrier', 'foreign air transportation', 'interstate air transportation', and 'mail' have the meanings given such terms in section 40102(a) of title 49.''.

(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.—

(1) AUTHORITY OF POSTAL SERVICE TO PROVIDE FOR INTERSTATE AIR TRANSPORTATION OF MAIL.—Section 41901(a) of title 49, United States Code, is amended to read as follows:

''(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39.''.

(2) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902 of title 49, United States Code, is amended—

(A) by striking subsection (b) and inserting the following:

''(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

''(1) the places between which the carrier is authorized to transport mail in Alaska;

''(2) every schedule of aircraft regularly operated by the carrier between places described under paragraph (1) and every change in each schedule; and

''(3) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.'';

(B) in subsection (c), by striking ''(b)(3)'' and inserting ''(b)''; and

(C) in subsection (d), in the first sentence, by striking ''(b)(3)'' and inserting ''(b)''.

(3) PRICES FOR FOREIGN TRANSPORTATION OF MAIL.—Section 41907 of title 49, United States Code, is amended—

(A) by striking ''(a) LIMITATIONS.—''; and

(B) by striking subsection (b).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Sections 41107, 41901(b)(1), 41902(a), and 41903 (a) and (b) of title 49, United States Code, are amended by striking ''in foreign air transportation or''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

SEC. 1003. REPORT ON THE UNITED STATES POSTAL INSPECTION SERVICE AND THE OFFICE OF THE INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Government Accountability Office shall review the functions, responsibilities, and areas of possible duplication of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service and submit a report on the review to the Committee on Homeland Security and Governmental Affairs of the Senate.

(b) CONTENTS.—The report under this section shall include recommendations for legislative actions necessary to clarify the roles of the United States Postal Inspection Service and the Office of the Inspector General of the United States Postal Service to strengthen oversight of postal operations.

SEC. 1004. SENSE OF CONGRESS REGARDING POSTAL SERVICE PURCHASING REFORM.

It is the sense of Congress that the Postal Service should—

(1) ensure the fair and consistent treatment of suppliers and contractors in its current purchasing policies and any revision or replacement of such policies, such as through the use of competitive contract award procedures, effective dispute resolution mechanisms, and socioeconomic programs; and

(2) implement commercial best practices in Postal Service purchasing policies to achieve greater efficiency and cost savings as recommended in July 2003 by the President's Commission on the United States Postal Service, in a manner that is compatible with the fair and consistent treatment of suppliers and contractors, as befitting an establishment in the United States Government.

POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT OF 2005

Mr. CARPER. Mr. President, I rise today to join my friend from Maine, Senator COLLINS, in introducing the Postal Accountability and Enhancement Act of 2005, legislation that makes the reforms necessary for the Postal Service to thrive in the 21st Century and to better serve the American people. This bill is almost identical to S. 2468, the version of the Postal Accountability and Enhancement Act that was unanimously reported out of the Governmental Affairs Committee last June on a 17–0 vote.

When I rose with Senator COLLINS to introduce S. 2468 last year, I noted that some of our colleagues may wonder why we need postal reform. Most of us probably receive few complaints from our constituents about the Postal Service. Most Americans like the Postal Service just the way it is and don't want to see it changed. We must keep in mind, however, that, despite the fact that the mailing industry, and the economy as a whole, have changed radically over the years, the Postal Service has, for the most part, remained unchanged for more than three decades now.

Senator COLLINS and I are re-introducing this bill today, then, because the Postal Service continues to operate under a business model created a generation ago.

In the early 1970s, Senator STEVENS led the effort in the Senate to create the Postal Service out of the failing Post Office Department. At the time, the Post Office Department received about 20 percent of its revenue from taxpayer subsidies. Labor-management relations were at their worst, service was suffering and there was little hope the department would be able to muster the resources necessary to service a growing delivery network.

By all accounts, the product of Senator STEVENS' labors, the Postal Reorganization Act signed into law by President Nixon in 1971, has been a phenomenal success. The Postal Service today receives virtually no taxpayer support. The service its hundreds of thousands of employees provide to every American, nearly every day is second to none. The Postal Service now delivers to 141 million addresses each day and is the anchor of a $900 billion mailing industry.

As we celebrate the success of the Postal Reorganization Act, however, we need to be thinking about what needs to be done to help the Postal Service continue to thrive in the years to come.

The Postal Service is clearly in need of modernization once again. Back in the early 1970s, none of the Postal Service's customers had access to fax machines, cell phones or pagers. Nobody imagined that we would ever enjoy conveniences like e-mail and electronic bill pay that could replace a First Class letter. That, of course, is no longer the case. Most of the mall I receive from my constituents these days arrives via fax and e-mail instead of hard copy mail, a marked change from my days in the House and even from my more recent days as Governor of Delaware.

This continuing electronic diversion of mail, coupled with a slow economy and the threat of terrorism, has made for some rough going at the Postal Service of late. In 2001, as Postmaster General Potter came onboard, the Postal Service was projecting its third consecutive year of deficits. They lost $199 million in 2000 and $1.68 billion in 2001. They were projecting losses of up to $4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend $4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives. The Postal Service was also perilously close to its $15 billion debt ceiling and had been forced to raise rates three times in less than two years in order to pay for its operations.

A number of positive steps have been taken since 2001. General Potter has led a commendable effort to improve productivity and make the Postal Service more efficient. Billions of dollars in costs have been taken out of the system—some $4.3 billion since 2002—according to the Postal Service's most recent annual report. Thousands of positions have been eliminated through attrition and successful automation programs have yielded great benefits, resulting in the smallest workforce seen at the Postal Service since the early 1980s.

Perhaps most dramatically, the Postal Service learned in 2002 that an unfunded pension liability they once believed was as high as $32 billion was actually significantly lower. Senator COLLINS and I responded with legislation, the Postal Civil Service Retirement System Funding Reform Act, which cut the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly $3 billion. This has freed up money for debt reduction and prevented the need for further rate increases until at least next year. The Postal Service's debt to the Treasury now stands at about $1.8 billion—the lowest it's been in more than 20 years—and rates have remained stable since the passage of the pension bill.

Aggressive cost cutting and a lower pension payment, then, have put off the postal emergency we thought was right around the corner just a few years ago. But cost cutting can only go so far and will not solve the Postal Service's long-term challenges. These long-term challenges were laid out in stark detail last year when Postmaster General Potter and then-Postal Board of Governors Chairman David Fineman testified before the House Government Reform Committee's Special Panel on Postal Reform. Mr. Fineman pointed out in his testimony that the total volume of mail delivered by the Postal Service has declined by more than 5 billion pieces since 2000. Over the same period, the number of homes and businesses the Postal Service delivers to have increased by more than 5 million. First Class mail, the largest contributor to the Postal Service's bottom line, is leading the decline in volume. Some of those disappearing First Class letters are being replaced by advertising mail, which earns significantly less. Many First Class letters have likely been lost for good to fax machines, e-mail and electronic bill pay.

Despite electronic diversion, the Postal Service continues to add between 1.6 million and 1.9 million new delivery points each year, creating the need for thousands of new routes and thousands of new letter carriers to work them. In addition, faster-growing parts of the country will need new or expanded postal facilities in the coming years. As more and more customers turn to electronic forms of communication, however, letter carriers are bringing fewer pieces of mail to each address they serve. The rate increases that will be needed to maintain the Postal Service's current infrastructure, finance retirement obligations to its current employees, pay for new letter carriers and build facilities in growing parts of the country will only erode mail volume further.

The Postal Service has been trying to modernize on its own. General Potter and his management team are making progress, but there is only so much they can do without legislative change. Even if the Postal Service begins to see volume and revenues pick up, we will still need to make fundamental changes in the way the Postal Service operates in order to make them as successful in the 21st Century as they were in the 20th Century.

This is where the Postal Accountability and Enhancement Act comes in. First, our bill begins the process of developing a modern rate system for pricing Postal Service products. The new system, to be developed by a strengthened Postal Rate Commission, renamed the Postal Regulatory Commission, would allow retained earnings, provide the Postal Service significantly more flexibility in setting prices and streamline today's burdensome rate making process. To provide stability, predictability and fairness for the Postal Service's customers, rates would remain within a cap to be set each year by the Regulatory Commission.

The second major provision in the Postal Accountability and Enhancement Act requires the Postal Service to set strong service standards for its Market Dominant products, a category made up mostly of those products, like First Class mail, that are part of the postal monopoly. The new standards will improve service and will be used by the Postal Service to establish performance goals, rationalize its physical infrastructure and streamline its workforce.

Third, the Postal Accountability and Enhancement Act ensures that the Postal Service competes fairly. The bill prohibits the Postal Service from issuing anti-competitive regulations. It also subjects the Postal Service to state zoning, planning and land use laws, requires them to pay an assumed Federal income tax on products like packages and Express Mail that private firms also offer and requires that these products as a whole pay their share of the Postal Service's institutional costs. The Federal Trade Commission will further study any additional legal benefits the Postal Service enjoys that

its private sector competitors do not. The Regulatory Commission will then find a way to use the rate system to level the playing field.

Fourth, the Postal Accountability and Enhancement Act improves Postal Service accountability, mostly by strengthening oversight. Qualifications for membership on the Regulatory Commission would be stronger than those for the Rate Commission so that Commissioners would have a background in finance or economics. Commissioners would also have the power to demand information from the Postal Service, including by subpoena, and have the power to punish the Postal Service for violating rate and service regulations. In addition, the Regulatory Commission will make an annual determination as to whether the Postal Service is in compliance with existing rate regulations and service standards and will have the power to punish them for any transgressions.

Fifth, the Postal Accountability and Enhancement Act revises two provisions from the ''Postal Civil Service Retirement System Funding Reform Act in an effort to shore up the Postal Service's finances in the years to come. As our colleagues may be aware, that bill required the Postal Service, beginning in 2006, to deposit any savings it enjoys by virtue of lower pension payments into an escrow account. In this bill, we eliminate that requirement in order to allow the Postal Service to spend the money that would have gone into escrow to begin pre-funding on a current basis its $50 billion retiree health obligation. Leftover savings would be used to continue paying down debt to the Treasury and to maintain rate stability.

The bill Senator COLLINS and I are introducing today also reverses the provision in the Postal Civil Service Retirement System Funding Reform Act that made the Postal Service the only Federal agency shouldered with the burden of paying the additional pension benefits owed to their employees by virtue of past military service.

Finally, and most importantly, the Postal Accountability and Enhancement Act preserves universal service and the postal monopoly and forces the Postal Service to concentrate solely on what it does best—processing and delivering the mail to all Americans. Our bill limits the Postal 'Service, for the first time, to providing ''postal services,'' meaning they would be prohibited from engaging in other lines of business, such as e-commerce, that draw time and resources away from letter and package delivery. It also explicitly preserves the requirement that the Postal Service ''bind the Nation together through the mail'' and serve all parts of the country, urban, suburban and rural, in a non-discriminatory fashion. Any service standards established by the Postal Service will continue to ensure delivery to every address, every day. In addition, the bill maintains the prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and urban customers continue to enjoy full access to retail postal services.

As I mentioned at the beginning of my remarks, this bill that Senator COLLINS and I are introducing today is almost identical to the version of the Postal Accountability and Enhancement Act that was unanimously reported out of the Governmental Affairs Committee last June on a 17–0 vote. A similar bill was unanimously reported out of the House Government Reform Committee last year as well. Neither bill was considered on the floor of the Senate or the House, however, due—I'm told—to objections raised by the administration.

I was deeply disappointed that we were unable to complete action on postal reform last year. However, Senator COLLINS and I, our staffs and our colleagues in the House have had a series of discussions with administration officials since the 108th Congress adjourned last year and have narrowed our differences with them on these issues significantly. I'm pleased to report that this bill contains a handful of new provisions drafted to address specific concerns raised by the Administration.

First, we demand even greater financial transparency from the Postal Service. The Postal Accountability and Enhancement Act gives the Postal Service more room to operate like a private business. For quite some time, however, it's been clear that the financial reporting required of the Postal Service has been lacking. It's difficult to look at the Postal Service's financial reports and learn as much as we'd like to learn about its current condition and its future liabilities. For this reason, our bill requires the Postal Service to begin filing the very same quarterly and annual Securities and Exchange Commission disclosure forms that private sector firms must file.

Second, we add language drafted at the request of the Treasury Department that would ensure that the Postal Service does its banking and investing with the Federal Financing Bank. Our original bill would have given the Postal Service almost total freedom to invest any revenue earned by its competitive products in the market as if they were a private business. Treasury feared this could have a negative impact on the markets and the issuance of federal debt.

Third, we give the Postal Board of Governors the ability to better reward top Postal Service executives for their performance and recruit top talent. We accomplish this by raising the cap on executive pay at the Postal Service to the level of compensation given to the Vice President. This will allow the Board to reward high-performing managers. It should also make it easier to recruit and retain qualified managers.

Fourth, we ensure that the rate cap to be developed by the Postal Regulatory Commission is truly workable by requiring that the cap be based on the Consumer Price Index. A CPI-based cap should guarantee that the Postal Service has the room to operate each year without breaking the cap or turning to the Treasury for assistance while still giving mailers the predictability they need.

This is significant progress but we still have our work cut out for us. I look forward to working in the coming weeks with Chairman COLLINS, my colleagues on the Homeland Security and Governmental Affairs Committee, our House counterparts and the administration to work out any remaining differences we have. It's vitally important that we succeed.

The Postal Board of Governors voted last month to go forward with a rate increase. If approved by the Postal Rate Commission, this increase will go into effect sometime next year. Thanks to increased productivity, this is expected to be a lower increase than many observers feared. Without postal reform, however, especially the language freeing the Postal Service from the escrow requirement and the military pension obligation, future rate increases will be higher. Probably much higher. This will only speed the flight from hard copy mail to electronic forms of communication. The impact of this flight will be significant, not just at the Postal Service but throughout the entire economy.

A recent study conducted by the Envelope Manufacturers Association Foundation's Institute for Postal Studies found that, if mail volume were to decline by 10 percent more than 780,000 mail-related jobs will be at risk across the country. More than 2,000 of those jobs are in Delaware. If mail volume were to decline by 20 percent more than 1,500,000 mailing industry jobs will be at risk across the country. More than 4,000 of those jobs are in Delaware. We need to act soon to prevent this from happening.

In closing, I'd like to point out how amazing it is to me to think that the Postal Service, something Senator STEVENS was literally able to put together at his kitchen table at the very beginning of his career, could have lasted so long and had such an enduring impact on every American. I'm hopeful that the model Senator COLLINS and I have set out in this bill today can last at least that long and have just as positive an impact on our nation and our economy as the Postal Service has had over the past 35 years.

COLLINS AND GREGG COLLOQUY ON POSTAL REFORM

Ms. COLLINS. Mr. President, today I introduce the Postal Accountability and Enhancement Act of 2005, a bill designed to help the 225-year-old Postal Service meet the challenges of the 21st century. I originally introduced this bill last May. In June of 2004, the bill was unanimously reported out of the Homeland Security and Governmental Affairs Committee. That bill, S. 2468,

had the strong endorsements of the National Rural Letter Carriers Association, the National Association of Letter Carriers, the National Association of Postmasters of the United States, and the Coalition for a 21st Century Postal Service—which represents thousands of the major mailers, employee groups, small business, and other users of the mail. It also had the strong bipartisan support of twenty-two members of the United States Senate. Unfortunately, the 108th Congress expired before my bill passed the Senate.

It has long been acknowledged that the financial and operational problems confronting the Postal Service are serious. At present, the Postal Service has roughly $70 billion to $80 billion in unfunded liabilities and obligations, which include $1.8 billion in debt to the U.S. Treasury, $7.6 billion for workers' compensation claims, $3.5 billion for retirement costs, and as much as $47 billion to cover retiree health care costs. The Government Accountability Office's Comptroller General, David Walker, has pointed to the urgent need for ''fundamental reforms to minimize the risk of a significant taxpayer bailout or dramatic postal rate increases.'' The Postal Service has been on GAO's ''High-Risk'' List since April of 2001. The Postal Service is at risk of a ''death spiral'' of decreasing volume and increasing rates that lead to further decreases in volume.

The Postal Service is the linchpin of a $900-billion mailing industry that employs 9 million Americans in fields as diverse as direct mailing, printing, catalog production, and paper manufacturing. The health of the Postal Service is essential to the vitality of thousands of companies and the millions that they employ.

First and foremost, my bill preserves the basic features of universal service—affordable rates, frequent delivery, and convenient community access to retail postal services. If the Postal Service were no longer to provide universal service and deliver mail to every customer, the affordable communication link upon which many Americans rely would be jeopardized.

This postal reform legislation grants the Postal Service Board of Governors the authority to set rates for competitive products like Express Mail and Parcel Post, as long as these prices do not result in cross subsidy from market-dominant products. It replaces the current lengthy and litigious rate-setting process with a rate cap-based structure for market-dominant products such as first-class mail, periodicals, and library mail. The bill also introduces new safeguards against unfair competition by the Postal Service in competitive markets.

The Postal Accountability and Enhancement Act will greatly improve the financial transparency of the Postal Service. The USPS would be required to file with the Postal Regulatory Commission certain Securities and Exchange Commission financial disclosure forms, along with detailed annual reports on the status of the Postal Service's pension and post-retirement health obligations in order to ensure increased financial transparency.

The legislation repeals a provision of Public Law 108–18 which requires that money owed to the Postal Service due to an overpayment into the Civil Service Retirement System Fund be held in an escrow account, which would essentially ''free up'' $78 billion over a period of 60 years. These savings would be used to not only pay off debt to the U.S. Treasury and to fund health care liabilities, but also to mitigate rate increases. It also returns to the Department of the Treasury the responsibility for funding CSRS pension benefits relating to the military service of postal retirees—a responsibility that the Treasury Department bears for all executive branch departments and agencies.

The bill also converts workers' compensation benefits for total or partial disability to a retirement annuity when the affected employee reaches 65 years of age, and puts into place a 3-day waiting period before an employee is eligible to receive 45 days of continuation of pay. These changes will save the Postal Service approximately $50 million in workers' compensation costs over a 10-year period.

The Postal Service has reached a critical juncture. If we are to save and strengthen this vital service upon which so many Americans rely for communication and their livelihoods, the time to act is now.

I therefore ask the Senior Senator from New Hampshire and chairman of the Senate Budget Committee whether I can count on his assistance and support to help pass this legislation this Congress.

Mr. GREGG. I thank the chairman of the Homeland Security and Governmental Affairs Committee for her question. I do recognize the economic importance of a healthy postal service, and as a Senator from the rural State of New Hampshire, I appreciate the role of a healthy Postal Service in meeting the universal service needs of rural residents. I look forward to reading the bill, reading the CBO cost estimate of the bill, and working with the Senator from Maine to ensure that a true, fiscally responsible postal reform bill is enacted.

Ms. COLLINS. I thank my friend from New Hampshire and look forward to working with him on this important piece of legislation.

By Mr. BINGAMAN (for himself, Mr. THOMAS, Mr. ISAKSON, and Mr. BURNS):

S. 663. A bill to amend the Internal Revenue Code of 1986 to allow self-employed individuals to deduct health insurance costs in computing self-employment taxes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today my colleague, Senator THOMAS, and I along with Senator ISAKSON are re-introducing the ''Equity for Our Nation's Self-Employed Act of 2005.'' This important legislation corrects an inequity that currently exists in our tax code that forces self-employed workers to pay payroll taxes on the funds used to pay for their health insurance while larger businesses do not. Because of this inequity, health insurance is more expensive for the self-employed. At a time when the uninsured are growing at an alarming rate, we need to find ways to reduce the cost of health insurance. This legislation is a first logical step.

Under current law, the self-employed are allowed an income tax deduction for the amount they pay for health insurance, but must still calculate their payroll taxes as if they were not allowed this income tax deduction. The result is that the self-employed are paying payroll taxes on the amount they pay for health insurance. As previously stated, larger businesses do not include pay payroll taxes on the amount they pay for health insurance. The legislation we are introducing today would stop this inequitable tax treatment and allow the self-employed to deduct the amount they pay for health insurance from their calculation of payroll taxes.

This problem affects all self-employed who provide health insurance to their families. According to the Census Bureau, there are almost 74,000 self-employed workers in New Mexico. While we have no idea how many of these people in New Mexico have health insurance, we do know that roughly 3.6 million working families in the United States paid self-employment tax on their health insurance premiums. Estimates indicate that roughly 60 percent of our Nation's uninsured are either self-employed or work for a small business. According to the Kaiser Family Foundation, self-employed workers spend more than $9,000 per year to provide health insurance for their family. Because they cannot deduct this as an ordinary business expense, those that spend this amount will pay a 15.3 percent tax on their premiums resulting in almost $1,400 of taxes annually.

This problem was identified by the National Taxpayer Advocate in several of her annual reports to Congress and our legislation to correct it is supported by a variety of groups including the National Association for the Self-Employed, the National Small Business Association, the National Federation of Independent Businesses, the U.S. Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, and the Small Business Legislative Council.

I look forward to working with my colleagues to get this important legislation passed.

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

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

S. 663

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Equity for Our Nation's Self Employed Act of 2005''.

SEC. 2. DEDUCTION FOR HEALTH INSURANCE COSTS IN COMPUTING SELF-EMPLOYMENT TAXES.

(a) IN GENERAL.—Section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

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

By Mr. DORGAN (for himself, Mr. GRAHAM, and Mr. AKAKA):

S. 665. A bil. to reauthorize and improve the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 to establish a program to commercialize hydrogen and fuel cell technology, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DORGAN. Mr. President, I rise today to introduce a piece of legislation, along with Mr. GRAHAM, that I believe is needed to solve our long-term energy need. It is imperative that our Nation implements a roadmap to achieving our goal of creating a hydrogen fuel-cell economy. I believe this measure is the best way to diversify our energy portfolio and protect our national security interests.

This legislation would invest $7.9 billion over 10 years in hydrogen fuel cell research and deployment. Additionally, the measure would change the current direction of the hydrogen program, allowing each program related to developing hydrogen to build off of each other. Similar to what has been recommended by the National Academies, it realizes a more conscious systems approach to program design.

You see, currently the hydrogen program is like a series of small block grants. We send money to the Department of Energy, DOE, and simply tell them to come up with a program. Under this scenario, with little accountability or direction, the program has not moved as swiftly as we would like.

Changing the structure of the hydrogen program will ensure that the long-term goal is reached and the benefits are reaped. What this legislation does is compartmentalize each program at DoE related to hydrogen development. Instead of sending a chunk of money, the funds will now be targeted to programs that will be the foundation for building and commercializing a hydrogen fuel-cell economy.

Additionally, this measure uses the successful ''learning demonstration'' technique of building institutional relationships among key industries and with the Government that has strong support from both the fuels industry and the auto sector, and applies this as a program design to all large scale systems demonstrations. These demonstrations are then linked to refining the R&D tasks again after the demonstrations complete their early phases, so that concrete learning is integrated directly into a final round of more focused R&D.

This bill enables a more strategic approach to program planning in the formation of a hydrogen economy. It also includes more interaction between R&D and demonstrations—with emphasis on development—that is the key to accelerating commercialization and movement to market.

This measure does not reinvent the wheel. Instead, it takes what we have learned thus far and focuses our efforts for the future. Providing developmental targets and accountability will also allow us to adjust our priorities appropriately.

Introduction of this measure could not come at a more critical time. Today, oil prices are at an all time high of $57.00 a barrel. This increase has directly hit consumers where it hurts most—in their wallets. Today in the State of North Dakota, consumers will spend $330,000 more for gasoline than they did this time last year. This is nothing more than an additional tax on hard working families who have to drive around during the course of their daily lives. It is no longer a question of whether you can afford to sign your children up for extra curricular activities like baseball or ballet; it is now a question of whether you can afford to even take them to these activities.

It shouldn't be this way, especially in America. However, we continue to be beholden to the same generational argument: Where can we dig and drill next? We need to jump over this debate and I believe this measure does that.

Let me describe why I think we ought to do this and why focusing our attention and resources is important. I will harken back to the Apollo program. On May 25, 1961, President John F. Kennedy announced our Nation was establishing a goal of sending a man to the Moon and having a safe return by the end of the decade.

The Apollo project was an enormous undertaking. The NASA annual budget increased from $500 million in 1960 to $5.2 billion in 1965. It represented 5.3 percent of the Federal budget in 1965. Think about that. In today's terms, that would be over $115 billion. NASA engaged private industry, university research, and academia in a massive way and contractor employees increased by a factor of 10, to 376,000 people, in 1965.

When President Kennedy said in 1961 it was his vision to have a man walk on the Moon by the end of the decade, there was no technological capability to do so at that moment and no guarantee it could even be done. During the height of the cold war, the Soviets had an advantage in space flight and that advantage was of great concern to us. They had put up a satellite called Sputnik and the technological barriers facing the U.S. in catching up were very significant. The expense and resolve were daunting, but yet, on July 20, 1969, Neil Armstrong and Buzz Aldrin stood on the surface of the Moon and pantomimed a golf game. In a single decade, the President and the country set and reached an unthinkable goal.

Now let's talk about another goal, another big idea, one that we ought to establish now for this country and for its future. That is the goal of deciding, as President Bush has suggested, that we move toward a hydrogen economy and fuel-cells for our vehicles. I will describe why I think this is important.

America's energy security is threatened by our dependence on foreign oil. Oil prices are at record highs and America now imports 62 percent of the oil it consumes. Our import level is expected to grow to 68 percent by 2025. Nearly all of our cars and trucks run on gasoline, and they are the main reason America imports so much oil. Two-thirds of the oil Americans use each day is used for transportation; fuel-cell vehicles offer the best hope of dramatically reducing our long-term dependence on foreign oil and protecting our national security interests.

The American economy is and will be held hostage by our ability to find and import oil from outside of our country's borders. Should this cause all of us great concern? Yes. This is a very serious problem. If we wake up tomorrow morning, God forbid, and terrorists have interrupted the supply of oil to this country—and, yes, that could happen—this country's economy will be flat on its back. It will be flat on its back because we rely on oil from sources outside this country, much of it from very troubled parts of the world. And our dependence is only expected to increase.

Whenever we discuss oil, the debate centers around two issues—drilling in ANWR and CAFÉ standards. If it is only those two issues, we lose. We need to move beyond these issues. Yes, we can address them, but it seems to me if these are our only options, every few years we will debate exactly the same issues: Where do we drill next? and, How much more efficient can we make a carburetor, through which we run gasoline?

If our energy strategy for this country's future is simply digging and drilling, then it is a strategy I call 'yesterday forever,' which means it doesn't really change very much. Every few years we can debate the issue of how dependent we are on oil imports and how dangerous it is for us. I think we should have a different debate, one that breaks our normal cycle.

That does not mean we should not dig and drill. We will, we can, and we should. We will always use fossil fuels. But these resources must be used in a sustainable and efficient manner. We will continue to dig and drill, but that cannot be all we do. If it is, we really

have not moved the ball forward at all. So what else can we do? I believe we should chart a different course.

First of all, using fuel-cells and hydrogen is twice as efficient in getting power to a wheel as using the internal combustion engine. Second, when we use hydrogen fuel-cells in automobiles or vehicles, we are sending water vapor out the tailpipe. What a wonderful thing for our environment and our economy. We double the efficiency of the energy source, while at the same time eliminating the pollution out of the tailpipe. That makes great sense to me.

In the past I have introduced legislation saying let's move to a different kind of technology, a different kind of energy economy; let's move to a hydrogen economy using fuel-cells. This bill is different from my previous bills because it would not only authorize higher funding levels, but just as importantly, it would change the way the program works.

My point is simple. We need accountability and targets and timetables in all the programs developing hydrogen. While this measure specifically states that we should set a target of 100,000 vehicles on the road by 2010 and 2.5 million by 2020, it also includes developmental milestones within each program, essentially giving us a roadmap of where we need to go and how to get there. If we do not set this out, we will not get there. If we do not have the same resolve towards establishing a hydrogen fuel-cell economy as President Kennedy had in putting a man on the Moon then we are not going to get there. Not without the focus and commitment needed.

Are there issues that need to be resolved? Sure there are, but we will never resolve them unless we implement a plan to do so. That is why I feel this legislation is the best approach. We focus on what is needed, while building on what we have. Instead of having two or more projects moving in different directions, with no connection, we set out a more focused approach where we can see exactly the progress we are making.

This commitment is what is needed and this direction is supported throughout the hydrogen industry. We cannot let this opportunity pass us by. If we sit and do nothing when the price of oil is at its highest, then I fear we will never do anything. This type of commitment and resolve is needed for our economic future, as well as to ensure our national security interests.

If we start now, I have no doubt that hydrogen fueled vehicles will be to our grandchildren what gasoline was to our grandparents.

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

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

S. 665

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Hydrogen and Fuel Cell Technology Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. HYDROGEN AND FUEL CELL TECHNOLOGY AUTHORIZATION.

The Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 (42 U.S.C. 12401 et seq.) is amended to read as follows:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990.'.

''(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) CARBON FOOTPRINT.—The term 'carbon footprint' means the sum of carbon equivalent emissions from all energy conversion processes occurring from raw material through hydrogen production, distribution, and use.

''(2) DEPARTMENT.—The term 'Department' means the Department of Energy.

''(3) FUEL CELL.—The term 'fuel cell' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

''(4) INFRASTRUCTURE.—The term 'infrastructure' means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen (except for onboard storage).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

''(6) STATIONARY; PORTABLE.—The terms 'stationary' and 'portable', when used in reference to a fuel cell, include—

''(A) continuous electric power; and

''(B) backup electric power.

''(7) TASK FORCE.—The term 'Task Force' means the Hydrogen and Fuel Cell Technical Task Force established under section 102(a).

''(8) TECHNICAL ADVISORY COMMITTEE.—The term 'Technical Advisory Committee' means the independent Technical Advisory Committee of the Task Force selected under section 102(d).

''SEC. 3. FINDINGS.

''Congress finds that—

''(1) the United States imports 60 percent of all the oil and products that it consumes, most of it used in transportation;

''(2) there is little fuel diversity in the transportation sector of the United States, making it extremely sensitive to volatile oil supplies;

''(3) rapidly rising energy prices have raised the imported oil bill of the United States to nearly $250,000,000,000 in 2004, which is a direct offshore wealth transfer from the U.S. that could otherwise be invested in a hydrogen economy to create many new jobs;

''(4) although the United States has become a more efficient and cleaner user of energy, total energy use continues to grow as the economy expands, along with total vehicle emissions;

''(5) without dramatic action, 68 percent of oil demand will come from imports by 2025;

''(6) over the next 10 years, oil imports could cost nearly $3,000,000,000,000, while protecting foreign supplies adds even more to that cost;

''(7) hydrogen and fuel cells offer the best hope of realizing more efficient, cleaner means of regaining control of the energy security of the United States, and achieving quality economic growth;

''(8) in the spirit of the Apollo project that put us on the Moon, and the practical vision that built the United States interstate highway system, the U.S. needs to commit sufficient public investment to develop and commercialize hydrogen and fuel cell technologies, in partnership with our private sector; and

''(9) economies must grow to sustain their health, and strong public investments in research and development will harness the skills of our universities, national laboratories, and innovative private industry to create the hydrogen economy.

''SEC. 4. PURPOSES.

''The purposes of this Act are—

''(1) to enable and promote comprehensive development, demonstration, and commercialization of hydrogen and fuel cell technology in partnership with industry;

''(2) to make critical public investments in building strong links to private industry, universities, national laboratories, and research institutions to expand innovation and industrial growth;

''(3) to build a mature hydrogen economy that creates fuel diversity in the massive transportation sector of the United States;

''(4) to sharply decrease the dependency of the United States on imported oil, eliminate most emissions from the transportation sector, and greatly enhance our energy security; and

''(5) to create, strengthen, and protect a sustainable national energy economy.

"TITLE I—HYDROGEN AND FUEL CELLS

"SEC. 101. HYDROGEN AND FUEL CELL TECHNOLOGY RESEARCH AND DEVELOPMENT.

''(a) IN GENERAL.—The Secretary, in consultation with other Federal agencies and the private sector, shall conduct a research and development program on technologies relating to the production, purification, distribution, storage, and use of hydrogen energy, fuel cells, and related infrastructure.

''(b) GOAL.—The goal of the program shall be to demonstrate and commercialize the use of hydrogen for transportation (in light and heavy vehicles), utility, industrial, commercial, residential, and defense applications.

''(c) FOCUS.—In carrying out activities under this section, the Secretary shall focus on mutually supportive developmental factors that are common to the development of hydrogen infrastructure and the supply of vehicle and electric power for critical consumer and commercial applications, and that achieve continuous technical evolution and cost reduction, particularly for hydrogen production, the supply of hydrogen, storage of hydrogen, and end uses of hydrogen that—

''(1) steadily increase production, distribution, and end use efficiency and reduce carbon footprints;

''(2) resolve critical problems relating to catalysts, membranes, storage, lightweight materials, electronic controls, and other problems that emerge from research and development;

''(3) enhance sources of renewable fuels and biofuels for hydrogen production; and

''(4) enable widespread use of distributed electricity generation and storage.

''(d) PUBLIC EDUCATION AND RESEARCH.—In carrying out this section, the Secretary shall support enhanced public education and university research in fundamental sciences, application design, and systems concepts (including education and research relating to materials, subsystems, manufacturability, maintenance, and safety) relating to hydrogen and fuel cells.

''(e) FUNDING.—

''(1) IN GENERAL.—The Secretary shall carry out the activities under this section through a competitive, merit-based review process consistent with any generally applicable Federal law (including regulations) that applies to an award of financial assistance, a contract, or another agreement.

''(2) RESEARCH CENTERS.—The Secretary may provide funds to a university-based or Federal laboratory or research center in accordance with paragraph (1) to carry out an activity under this section.

''(f) COST SHARING.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Federal share of the cost of carrying out any project or activity under this section shall be 80 percent.

''(2) WAIVER OF NON-FEDERAL SHARE.—The Secretary may waive the non-Federal share of the cost of carrying out a project or activity under this section if the non-Federal share would otherwise be paid by a small business or an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), as determined by the Secretary.

"SEC. 102. TASK FORCE.

''(a) ESTABLISHMENT.—The Secretary, in cooperation with the Secretary of Defense, the Secretary of Transportation, and the Secretary of Commerce, shall establish an interagency Task Force, to be known as the 'Hydrogen and Fuel Cell Technical Task Force' to advise the Secretary in carrying out programs under this Act.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Task Force shall be comprised of such representatives of the Council on Environmental Quality, the Office of Science and Technology Policy, the Council of Economic Advisors, the Environmental Protection Agency, and the National Security Council, and such other representatives of Federal agencies, conferences of governors, and regional organizations, as the Secretary, Secretary of Defense, Secretary of Transportation, and Secretary of Commerce determine to be appropriate.

''(2) VOTING.—A member of the Task Force that does not represent a Federal agency shall serve on the Task Force only in a nonvoting, advisory capacity.

''(c) DUTIES.—The Task Force shall review and make any necessary recommendations to the Secretary on implementation and conduct of programs under this Act.

''(d) TECHNICAL ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall select such number of members as the Secretary considers to be appropriate to form an independent, nonpolitical Technical Advisory Committee.

''(2) MEMBERSHIP.—

''(A) IN GENERAL.—Each member of the Technical Advisory Committee shall have scientific, technical, or industrial expertise, as determined by the Secretary.

''(B) NATIONAL LABORATORIES.—At least 1 member of the Technical Advisory Committee shall represent a national laboratory.

''(3) DUTIES.—The Technical Advisory Committee shall provide technical advice and assistance to the Task Force and the Secretary.

"SEC. 103. TECHNOLOGY TRANSFER.

''In carrying out this Act, the Secretary shall carry out programs that—

''(1) provide for the transfer of critical hydrogen and fuel cell technologies to the private sector;

''(2) accelerate wider application of those technologies in the global market;

''(3) foster the exchange of generic, nonproprietary information; and

''(4) assess technical and commercial viability of technologies relating to the production, distribution, storage, and use of hydrogen energy and fuel cells.

"SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

''(a) HYDROGEN SUPPLY.—There are authorized to be appropriated to carry out projects and activities relating to hydrogen production, storage, distribution and dispensing, transport, education and coordination, and technology transfer under this title—

''(1) $200,000,000 for fiscal year 2006;
''(2) $210,000,000 for fiscal year 2007;
''(3) $220,000,000 for fiscal year 2008;
''(4) $230,000,000 for fiscal year 2009;
''(5) $250,000,000 for fiscal year 2010;
''(6) $240,000,000 for fiscal year 2011;
''(7) $230,000,000 for fiscal year 2012;
''(8) $220,000,000 for fiscal year 2013;
''(9) $180,000,000 for fiscal year 2014; and
''(10) $120,000,000 for fiscal year 2015.

''(b) FUEL CELL TECHNOLOGIES.—There are authorized to be appropriated to carry out projects and activities relating to fuel cell technologies under this title—

''(1) $160,000,000 for fiscal year 2006;
''(2) $170,000,000 for fiscal year 2007;
''(3) $180,000,000 for fiscal year 2008;
''(4) $200,000,000 for fiscal year 2009;
''(5) $210,000,000 for fiscal year 2010;
''(6) $200,000,000 for fiscal year 2011;
''(7) $190,000,000 for fiscal year 2012;
''(8) $170,000,000 for fiscal year 2013;
''(9) $150,000,000 for fiscal year 2014; and
''(10) $100,000,000 for fiscal year 2015.

"TITLE II—HYDROGEN AND FUEL CELL DEMONSTRATION

"SEC. 201. HYDROGEN SUPPLY AND FUEL CELL DEMONSTRATION PROGRAM.

''(a) IN GENERAL.—The Secretary, in consultation with the Task Force and the Technical Advisory Committee, shall carry out a program to demonstrate developmental hydrogen and fuel cell systems for mobile, portable, and stationary uses, using improved versions of the learning demonstrations program concept of the Department, including demonstrations involving—

''(1) light duty vehicles;
''(2) fleet delivery vans;
''(3) heavier duty vehicles;
''(4) specialty industrial and farm vehicles; and
''(5) commercial and residential portable, continuous, and backup electric power generation.

''(b) OTHER DEMONSTRATION PROGRAMS.—To develop widespread hydrogen supply and use options, and assist evolution of technology, the Secretary shall—

''(1) carry out demonstrations of evolving hydrogen and fuel cell technologies in national parks, remote island areas, and on Indian tribal land, as selected by the Secretary;

''(2) in accordance with any code or standards developed in a region, fund prototype, pilot fleet, and infrastructure regional hydrogen supply corridors along the interstate highway system in varied climates across the United States; and

''(3) fund demonstration programs that explore the use of hydrogen blends, hybrid hydrogen, and hydrogen reformed from renewable agricultural fuels, including the use of hydrogen in hybrid electric, heavier duty, and advanced internal combustion-powered vehicles.

''(c) SYSTEM DEMONSTRATIONS.—

''(1) IN GENERAL.—As a component of the demonstration program under this section, the Secretary shall provide grants, on a cost share basis as appropriate, to eligible entities (as determined by the Secretary) for use in—

''(A) devising system design concepts that provide for the use of advanced composite vehicles in programs under title III that—

''(i) have as a primary goal the reduction of drive energy requirements;

''(ii) after 2010, add another research and development phase to the vehicle and infrastructure partnerships developed under the learning demonstrations program concept of the Department; and

''(iii) are managed through an enhanced FreedomCAR program within the Department that encourages involvement in cost-shared projects by domestic and international manufacturers and governments; and

''(B) designing a local distributed energy system that—

''(i) incorporates renewable hydrogen production, off-grid electricity production, and fleet applications in industrial or commercial service;

''(ii) integrates energy or applications described in clause (i), such as stationary, portable, micro, and mobile fuel cells, into a high-density commercial or residential building complex or agricultural community; and

''(iii) is managed in cooperation with industry, State, tribal, and local governments, agricultural organizations, and nonprofit generators and distributors of electricity.

''(2) COST SHARING.—The Federal share of the cost of a project or activity carried out using funds from a grant under paragraph (1) shall not exceed 50% percent, as determined by the Secretary.

''(d) IDENTIFICATION OF NEW RESEARCH AND DEVELOPMENT REQUIREMENTS.—In carrying out the demonstrations under subsection (a), the Secretary, in consultation with the Task Force and the Technical Advisory Committee, shall—

''(1) after 2008 for stationary and portable applications, and after 2010 for vehicles, identify new research and development requirements that refine technological concepts, planning, and applications; and

''(2) during the second phase of the learning demonstrations under subsection (c)(1)(A)(ii), redesign subsequent research and development to incorporate those requirements.

''SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this title—

''(1) $185,000,000 for fiscal year 2006;
''(2) $200,000,000 for fiscal year 2007;
''(3) $300,000,000 for fiscal year 2008;
''(4) $350,000,000 for fiscal year 2009;
''(5) $425,000,000 for fiscal year 2010;
''(6) $335,000,000 for fiscal year 2011;
''(7) $310,000,000 for fiscal year 2012;
''(8) $270,000,000 for fiscal year 2013;
''(9) $200,000,000 for fiscal year 2014; and
''(10) $100,000,000 for fiscal year 2015.

''TITLE III—TRANSITION TO MARKET

''SEC. 301. FEDERAL PROCUREMENT OF FUEL CELL VEHICLES AND HYDROGEN ENERGY SYSTEMS.

''(a) PURPOSES.—The purposes of this section are—

''(1) to stimulate acceptance by the market of fuel cell vehicles and hydrogen energy systems;

''(2) to support development of technologies relating to fuel cell vehicles, public refueling stations, and hydrogen energy systems; and

''(3) to require the Federal government, which is the largest single user of energy in the United States, to adopt those technologies as soon as practicable after the technologies are developed, in conjunction with private industry partners.

''(b) FEDERAL LEASES AND PURCHASES.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—Not later than January 1, 2010, the head of any Federal agency that uses a light-duty or heavy-duty vehicle fleet shall lease or purchase fuel cell vehicles and hydrogen energy systems to meet any applicable energy savings goal described in subsection (c).

''(B) LEARNING DEMONSTRATION VEHICLES.—The Secretary may lease or purchase appropriate vehicles developed under the learning demonstrations program concept of the Department under title II to meet the requirement in subparagraph (A).

''(2) COSTS OF LEASES AND PURCHASES.—

''(A) IN GENERAL.—The Secretary, in cooperation with the Task Force and the Technical Advisory Committee, shall pay to Federal agencies (or share the cost under interagency agreements) the difference in cost between—

''(i) the cost to the agencies of leasing or purchasing fuel cell vehicles and hydrogen energy systems under paragraph (1); and

''(ii) the cost to the agencies of a feasible alternative to leasing or purchasing fuel cell vehicles and hydrogen energy systems, as determined by the Secretary.

''(B) COMPETITIVE COSTS AND MANAGEMENT STRUCTURES.—In carrying out subparagraph (A), the Secretary, in consultation with the agency, may use the General Services Administration or any commercial vendor to ensure—

''(i) a cost-effective purchase of a fuel cell vehicle or hydrogen energy system; or

''(ii) a cost-effective management structure of the lease of a fuel cell vehicle or hydrogen energy system.

''(3) EXCEPTION.—

''(A) IN GENERAL.—If the Secretary determines that the head of an agency described in paragraph (1) cannot find an appropriately efficient and reliable fuel cell vehicle or hydrogen energy system in accordance with paragraph (1), that agency shall be excepted from compliance with paragraph (1).

''(B) CONSIDERATION.—In making a determination under subparagraph (A), the Secretary shall consider—

''(i) the needs of the agency; and

''(ii) an evaluation performed by—

''(I) the Task Force; or

''(II) the Technical Advisory Committee.

''(c) ENERGY SAVINGS GOALS.—

''(1) IN GENERAL.—

''(A) REGULATIONS.—Not later than December 31, 2006, the Secretary shall—

''(i) in cooperation with the Task Force, promulgate regulations for the period of 2008 through 2010 that extend and augment energy savings goals for each Federal agency, in accordance with any Executive order issued after March 2000; and

''(ii) promulgate regulations to expand the minimum Federal fleet requirement and credit allowances for fuel cell vehicle systems under section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212).

''(B) REVIEW, EVALUATION, AND NEW REGULATIONS.—Not later than December 31, 2010, the Secretary shall—

''(i) review the regulations promulgated under subparagraph (A);

''(ii) evaluate any progress made toward achieving energy savings by Federal agencies; and

''(iii) promulgate new regulations for the period of 2011 through 2015 to achieve additional energy savings by Federal agencies relating to technical and cost-performance standards.

''(2) OFFSETTING ENERGY SAVINGS GOALS.—An agency that leases or purchases a fuel cell vehicle or hydrogen energy system in accordance with subsection (b)(1) may use that lease or purchase to count toward an energy savings goal of the agency.

''(3) USE OF ENERGY SAVINGS PERFORMANCE CONTRACTS.—An agency that leases or purchases a fuel cell vehicle or hydrogen energy system in accordance with subsection (b)(1) may use any energy savings performance contract under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) (including a pilot program for mobility uses in an expanded energy savings performance contract) to count toward an energy savings goal of the agency.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

''(1) $10,000,000 for fiscal year 2008;
''(2) $15,000,000 for fiscal year 2009;
''(3) $50,000,000 for fiscal year 2010;
''(4) $100,000,000 for fiscal year 2011;
''(5) $150,000,000 for fiscal year 2012;
''(6) $165,000,000 for fiscal year 2013;
''(7) $195,000,000 for fiscal year 2014; and
''(8) $200,000,000 for fiscal year 2015.

''SEC. 302. FEDERAL PROCUREMENT OF STATIONARY, PORTABLE, AND MICRO FUEL CELLS.

''(a) PURPOSES.—The purposes of this section are—

''(1) to stimulate acceptance by the market of stationary, portable, and micro fuel cells; and

''(2) to support development of technologies relating to stationary, portable, and micro fuel cells.

''(b) FEDERAL LEASES AND PURCHASES.—

''(1) IN GENERAL.—Not later than January 1, 2006, the head of any Federal agency that uses electrical power from stationary, portable, or microportable devices shall lease or purchase a stationary, portable, or micro fuel cell to meet any applicable energy savings goal described in subsection (c).

''(2) COSTS OF LEASES AND PURCHASES.—

''(A) IN GENERAL.—The Secretary, in cooperation with the Task Force and the Technical Advisory Committee, shall pay the cost to Federal agencies (or share the cost under interagency agreements) of leasing or purchasing stationary, portable, and micro fuel cells under paragraph (1).

''(B) COMPETITIVE COSTS AND MANAGEMENT STRUCTURES.—In carrying out subparagraph (A), the Secretary, in consultation with the agency, may use the General Services Administration or any commercial vendor to ensure—

''(i) a cost-effective purchase of a stationary, portable, or micro fuel cell; or

''(ii) a cost-effective management structure of the lease of a stationary, portable, or micro fuel cell.

''(3) EXCEPTION.—

''(A) IN GENERAL.—If the Secretary determines that the head of an agency described in paragraph (1) cannot find an appropriately efficient and reliable stationary, portable, or micro fuel cell in accordance with paragraph (1), that agency shall be excepted from compliance with paragraph (1).

''(B) CONSIDERATION.—In making a determination under subparagraph (A), the Secretary shall consider—

''(i) the needs of the agency; and

''(ii) an evaluation performed by—

''(I) the Task Force; or

''(II) the Technical Advisory Committee of the Task Force.

''(c) ENERGY SAVINGS GOALS.—

''(1) OFFSETTING ENERGY SAVINGS GOALS.—An agency that leases or purchases a stationary, portable, or micro fuel cell in accordance with subsection (b)(1) may use that lease or purchase to count toward an energy savings goal described in section 301(c)(1) that is applicable to the agency.

''(2) USE OF ENERGY SAVINGS PERFORMANCE CONTRACTS.—An agency that leases or purchases a stationary, portable, or micro fuel cell in accordance with subsection (b)(1) may use any energy savings performance contract under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) (including a pilot program in an expanded energy savings performance contract) to count toward an energy savings goal of the agency.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

''(1) $20,000,000 for fiscal year 2006;
''(2) $50,000,000 for fiscal year 2007;
''(3) $75,000,000 for fiscal year 2008;
''(4) $100,000,000 for fiscal year 2009;
''(5) $100,000,000 for fiscal year 2010;
''(6) $100,000,000 for fiscal year 2011;
''(7) $55,000,000 for fiscal year 2012;
''(8) $50,000,000 for fiscal year 2013;
''(9) $50,000,000 for fiscal year 2014; and
''(10) $25,000,000 for fiscal year 2015.

''TITLE IV—REGULATORY MANAGEMENT

''SEC. 401. CODES AND STANDARDS.

''(a) IN GENERAL.—The Secretary, in cooperation with the Task Force, shall provide grants to, or offer to enter into contracts with such professional organizations, public service organizations, and government agencies as the Secretary determines appropriate to support timely and extensive development of safety codes and standards relating to fuel cell vehicles, hydrogen energy systems, and stationary, portable, and micro fuel cells.

''(b) EDUCATIONAL EFFORTS.—The Secretary shall support educational efforts by organizations and agencies described in subsection (a) to share information, including information relating to best practices, among those organizations and agencies.

''SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this title—

''(1) $4,000,000 for fiscal year 2006;
''(2) $7,000,000 for fiscal year 2007;

''(3) $8,000,000 for fiscal year 2008;
''(4) $8,000,000 for fiscal year 2009;
''(5) $10,000,000 for fiscal year 2010;
''(6) $9,000,000 for fiscal year 2011; and
''(7) $9,000,000 for fiscal year 2012.

''TITLE V—REPORTS

''SEC. 501. DEPLOYMENT OF HYDROGEN TECHNOLOGY.

''(a) SECRETARY.—Subject to subsection (c), not later than 2 years after the date of enactment of the Hydrogen and Fuel Cell Technology Act of 2005, and biannually thereafter, the Secretary shall submit to Congress—

''(1) a report describing—

''(A) any activity carried out by the Department of Energy under this Act, including a research, development, demonstration, and commercial application program for hydrogen and fuel cell technology;

''(B) measures the Secretary has taken during the preceding 2 years to support the transition of primary industry (or a related industry) to a fully-commercialized hydrogen economy;

''(C) any change made to a research, development, or deployment strategy of the Secretary relating to hydrogen and fuel cell technology to reflect the results of a learning demonstration under title II;

''(D) progress, including progress in infrastructure, made toward achieving the goal of producing and deploying not less than—

''(i) 100,000 hydrogen-fueled vehicles in the United States by 2010; and

''(ii) 2,500,000 hydrogen-fueled vehicles by 2020;

''(E) progress made toward achieving the goal of supplying hydrogen at a sufficient number of fueling stations in the United States by 2010 can be achieved by integrating—

''(i) hydrogen activities; and

''(ii) associated targets and timetables for the development of hydrogen technologies;

''(F) any problem relating to the design, execution, or funding of a program under this Act; and

''(G) progress made toward and goals achieved in carrying out this Act and updates to the developmental roadmap, including the results of the reviews conducted by the National Academy of Sciences under subsection (d) for the fiscal years covered by the report; and

''(2) a strategic plan describing—

''(A) a remedy for any problems described in paragraph (1)(D); and

''(B) any approach by which the Secretary could achieve a substantial decrease in the dependence on and consumption of natural gas and imported oil by the Federal Government, including by increasing the use of fuel cell vehicles, stationary and portable fuel cells, and hydrogen energy systems described in title III.

''(b) TASK FORCE.—Subject to subsection (c), not later than 3 years after the date of enactment of the Hydrogen and Fuel Cell Technology Act of 2005, and triennially thereafter, the Task Force shall submit to Congress a report describing—

''(1) the degree of success of each program under this Act; and

''(2) the degree to which the success of programs under this Act has led to evolution of a hydrogen economy and improved potential for economic growth.

''(c) COMBINATION OF REPORTS.—

''(1) IN GENERAL.—The Secretary may decide to combine the reports under subsections (a) and (b) before the reports are submitted to Congress, as the Secretary determines appropriate.

''(2) REQUIREMENTS.—If the Secretary decides to combine the reports under paragraph (1), the Secretary shall—

''(A) not later than 2 years after the date of enactment of the Hydrogen and Fuel Cell Technology Act of 2005, provide notice of the decision to the Task Force; and

''(B) not later than 3 years after the date of enactment of the Hydrogen and Fuel Cell Technology Act of 2005, and triennially thereafter, submit the combined reports to Congress.

''(3) TASK FORCE.—Not later than 180 days after receiving notice from the Secretary under paragraph (2)(A), and triennially thereafter, the Task Force shall submit to the Secretary a report in accordance with subsection (b).

''(d) NATIONAL ACADEMY OF SCIENCES.—

''(1) IN GENERAL.—Not later than September 30, 2007, and triennially thereafter, the National Academy of Sciences shall conduct and submit to the Secretary—

''(A) the results of a review of the projects and activities carried out under this Act; and

''(B) recommendations for any new authorities or resources needed to achieve strategic goals.

''(2) REAUTHORIZATION.—The Secretary shall use the results of reviews conducted under paragraph (1) in proposing to Congress any legislative changes relating to reauthorization of this Act.

''SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this title $900,000 for each of fiscal years 2006 through 2015.

''TITLE VI—TERMINATION OF AUTHORITY

''SEC. 601. TERMINATION OF AUTHORITY.

''This Act and the authority provided by this Act terminate on September 30, 2015.''.

SEC. 3. TAX INCENTIVES TO BUILD THE HYDROGEN ECONOMY.

It is the sense of the Senate that Congress should provide any necessary tax incentives to encourage investment in and production and use of hydrogen and fuel cell systems during critical stages of market growth, including—

(1) a hydrogen fuel cell motor vehicle credit;

(2) a credit for the installation of hydrogen fuel cell motor vehicle fueling stations;

(3) a credit for residential fuel cell property; and

(4) a credit for business installation of qualified fuel cells.

THE HYDROGEN AND FUEL CELL TECHNOLOGY ACT OF 2005

Mr. AKAKA. Mr. President, I rise today in support of the Hydrogen and Fuel Cell Technology Act of 2005, a bill to amend the Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990. A reauthorization of the Matsunaga Act is badly needed. I have introduced bills in the 106th Congress, in the 107th Congress jointly with my friend Senator HARKIN, and in the 108th Congress to reauthorize the essential hydrogen research and development programs in the Department of Energy. The core provisions of these bills were included in each of the omnibus energy bills, whether we were in the majority or in the minority, suggesting widespread, bipartisan agreement that we need a robust hydrogen program for the future.

As a founding member of the Senate's Hydrogen and Fuel Cell Caucus, I have worked with my colleagues to draft this bill and am pleased to be an original cosponsor. The caucus has heard from a wide variety of interest groups, engineers, and scientists providing input on the potential for a ''hydrogen economy.'' The caucus, under the able coleadership of my colleagues Senator DORGAN and Senator GRAHAM, has actively solicited input from fuel cell producers anti councils, automobile manufacturers, oil and gas companies, utilities, university research institutes, the Department of Energy, and national associations. The recommendations of the National Commission on Energy Policy and the National Academy of Sciences were instrumental in developing this bill.

I am more convinced than ever that we need to move now to reauthorize the Matsunaga Act and to refine and enhance the Department of Energy's responsibilities while maintaining strong oversight over the progress of the activities. We cannot delay the move to a ''hydrogen economy.''

This bill does several things that are important for the management of hydrogen programs in the Department of Energy and will help move the nation toward using hydrogen as an energy source in our daily lives. It provides greater focus for the hydrogen fuel cell technology research and development programs without losing the focus on renewable sources of hydrogen. It emphasizes factors that are critical to the development of hydrogen infrastructure and the supply of vehicles and electric power. It directs the Secretary to carry out activities to improve technology with the goal of cost reduction, particularly for hydrogen production, the supply of hydrogen, storage of hydrogen, and the end uses of hydrogen. The bill authorizes $200 million for hydrogen supply and $160 million for fuel cell technologies in fiscal year 2006. It emphasizes the importance of enhancing sources of renewable fuels and biofuels for hydrogen production, a factor that is critical to remote areas and island states such as Hawaii where we need local sources of energy.

This bill is a realistic one, providing specific footpaths to the hydrogen economy domestically and internationally. The bill acknowledges that transportation and the availability of reasonably priced cars may be the first market break through for the hydrogen economy.

Title II authorizes demonstration programs through the Department of Energy for fuel cell systems for mobile, portable, and stationary uses. Demonstrations are a critical component of moving a product to market. Title III of the bill, ''Transition to Market,'' succinctly states the goal of this section. Section 301 authorizes Federal procurement of fuel cell vehicles and hydrogen energy systems. This provision is intended to stimulate the market by requiring the Federal Government, the largest single user of energy in the United States, to adopt hydrogen technologies as soon as practicable. Energy savings are an important part of this title. The Department is required to collect data on energy savings as a result of this program and

to evaluate whether the program is achieving energy savings.

Lastly, this bill provides important directions to the Secretary to address the development of safety codes and standards relating to fuel cell vehicles, hydrogen energy systems, and stationary, portable, and micro fuel cells. This provision recognizes the importance of public acceptance of hydrogen as a safe and secure energy source; and it recognizes the industry's needs for standards of safety codes and standards for hydrogen energy systems whether stationary, mobile, or portable. The bill does not require the standards to be developed ''in-house'' within the Department of Energy, but importantly authorizes the Secretary of Energy to enter into cooperative agreements, grants, and contracts with industry groups and with the cooperation of the Federal interagency Hydrogen and Fuel Cell Technical Task Force.

Mr. President, I urge my colleagues in the Senate to support this bill.

By Mr. DEWINE (for himself, Mr. KENNEDY, Mr. LUGAR, Mr. HARKIN, Ms. COLLINS, Mr. DURBIN, Mr. SMITH, Mr. DODD, Mr. CORNYN, Mr. LAUTENBERG, Mr. MCCAIN, Mr. REED, Ms. SNOWE, Ms. MURKOWSKI, Mr. CHAFEE, and Mr. SPECTER):

S. 666. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, today I join our colleagues Senators KENNEDY, LUGAR, COLLINS, SMITH, CORNYN, MCCAIN, SNOWE, HARKIN, DURBIN, DODD, LAUTENBERG, REED, MURKOWSKI, CHAFEE and SPECTER to introduce a bill designed to help protect consumers—especially children—from the dangers of tobacco. Simply, our bill would finally give the Food and Drug Administration (FDA) the authority it needs to effectively regulate the manufacture and sale of tobacco products.

I say finally, because there are some tobacco proponents who would have you believe that the Master Settlement Agreement, which was signed in 1998 by 46 states, resolved the issue of tobacco use by imposing advertising restrictions.

I say finally, because my colleagues—first Senator MCCAIN, then Senator FRIST, then Senator GREGG, and then Senator KENNEDY and I—have been seeking FDA regulation of tobacco products since the mid- to late-1990's.

And, I say finally, because the bill that we are introducing today is the product of long and hard discussions and negotiations that I have had with Senator KENNEDY and public interest groups and industry. Our bill has the support of the Campaign for Tobacco Free Kids, Philip Morris, the American Heart Association, the American Lung Association, and the American Cancer Association. It is a bill that I am proud of—one that is worthy of the Senate's consideration, and one that will provide the FDA—finally—with strong and effective authority over the regulation of tobacco products.

The introduction of this bill couldn't come at a better time. The budget is on the Floor, and people anticipate the slowed-spending in Medicaid, and the economic burden of cigarettes is enormous. According to the 2004 Surgeon General's Report entitled The Health Consequences of Smoking, from 1995 to 1999, smoking-related costs totaled $157.7 billion each year. This figure includes more than $75 billion in direct medical costs for adults (things like ambulatory care, hospital care, prescription drugs, nursing homes, and other care), about $82 billion in indirect costs from lost productivity, and $366 million for neonatal care. This equals an estimated $3,000 per smoker, per year.

In a budget year when Congress is looking to find savings in Medicaid—in the ballpark of $15 billion over 5 years—Congress should look at the cost savings that would be made possible by FDA regulation of tobacco. We already know that doing nothing costs our country, our taxpayers, and our employers and employees $157 billion a year. Isn't it time that the federal government consider that it has a responsibility to find savings through the regulation of tobacco?

Not having access to all the information about this deadly product makes no sense and it is something that needs to change. By introducing this bill, we are saying that. we are not going to let tobacco manufacturers have free reign over their markets and consumers any more. We are taking a step toward making sure the public gets adequate information about whether to continue to smoke or even to start smoking in the first place. With this bill, we are not just saying ''buyer beware.'' We are saying ''tobacco companies be honest.'' We are saying ''tobacco companies stop marketing to innocent children and tell consumers about what they are really buying.''

Ultimately, our bill would give consumers the information they need to make healthier and better choices about tobacco use. I have faith that informed consumers make better choices, and those choices could lead to cost-savings for the society overall.

Our bill would give the FDA the authority to regulate a product that has gone unregulated for far too long—a product that for the past century has not revealed its ingredients to the consumer—a product whose manufacturing facilities are not inspected or accountable for following good manufacturing practices—a product that is never reviewed or approved before reaching the hands of 40 million consumers, many of whom are just children. Mr. President, Congress should put an end to this. Congress should put an end to the marketing of tobacco products to our children. Congress should put an end to the ability of tobacco companies to make claims, whether they are implied claims or direct claims, about their products. Congress should put an end to tobacco companies putting any ingredient they want into their products without disclosing it to the consumer. It is time Congress gives the FDA authority to it needs to fix these problems.

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

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

S. 666

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use

by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2002, the tobacco industry spent more than $12,466,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price-sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the First Amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration and the restriction on the sale and distribution, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion plays a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in insuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express

or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be approved in advance of marketing, and to require that the evidence relied on to support approval of these products is rigorous.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(nn)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetics, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring, coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(11) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(12) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(13) RETAILER.—The term 'retailer' means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(15) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(16) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''(18) TOBACCO PRODUCT MANUFACTURER.—Term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

''(19) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect; or

''(B) it is in violation of the order approving such an application;

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is in violation of section 911.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 921(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(a)(4) of the Federal Cigarette Labeling and Advertising Act.

''(3) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 916 in reporting information under this paragraph, where applicable.

''(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act that relate to health, toxicological, behavioral, or

physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS SHALL REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of

the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2003, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product authorized for sale under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products shall be considered as adult written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult written publications.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—The Secretary may, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Good manufacturing practices may include the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products

Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULE FOR CIGARETTES.—A cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this paragraph.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the

Secretary to issue a regulation establishing a tobacco product standard—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll your own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

Congress expressly reserves to itself such power.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to the Tobacco Products Scientific Advisory Committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of June 1, 2003; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 15-month period, until the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the terms 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time

after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an approval of an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless approval of an application filed pursuant to subsection (d) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to an advisory committee any application submitted under this subsection.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

''(g) APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall approve an application for a modified risk tobacco product filed under this section only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) the approval of the application would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is anticipated in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers

will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) approval of the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF APPROVAL.—

''(i) IN GENERAL.—Applications approved under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such post-market surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the approval of an application under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of post-market surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the approval of the application is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—No distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act.

''SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco related disease.

''(c) AUTHORITY.—The Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in paragraph (1) and subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 554(b)(4) of title 5, United States Code, shall be treated as trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i)

through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''The Secretary shall—

''(1) at the request of the applicant, consider designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence; and

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2005, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2005 shall be $85,000,000;

''(B) for fiscal year 2006 shall be $175,000,000;

''(C) for fiscal year 2007 shall be $300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2005, based on domestic sales of tobacco products during fiscal year 2004 and shall be assessed in each fiscal year thereafter.''.

SEC. 102. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with the Administrative Procedures Act.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) in paragraph (2)(C), by striking ''paragraph (3)(A)'' and inserting ''paragraph (4)(A)'';

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(5) in paragraph (4) as so redesignated—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(6) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(7) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: '', (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers within that State in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the Executive Branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) GUIDANCE AND EFFECTIVE DATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance—

(A) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(B) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet;

(C) providing for an expedited procedure for the administrative appeal of an alleged violation;

(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(E) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not be considered to have been the site of repeated violations when the next violation occurs; and

(F) providing that good faith reliance on the presentation of a false government issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(i) adopting and enforcing a written policy against sales to minors;

(ii) informing its employees of all applicable laws;

(iii) establishing disciplinary sanctions for employee noncompliance; and

(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device.

(2) GENERAL EFFECTIVE DATE.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance described in paragraph (1).

(3) SPECIAL EFFECTIVE DATE.—The amendments made by paragraph (2) of subsection (c) shall take effect on the date of enactment of this Act.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

'WARNING: Cigarettes are addictive'.
'WARNING: Tobacco smoke can harm your children'.
'WARNING: Cigarettes cause fatal lung disease'.
'WARNING: Cigarettes cause cancer'.
'WARNING: Cigarettes cause strokes and heart disease'.
'WARNING: Smoking during pregnancy can harm your baby'.
'WARNING: Smoking can kill you'.
'WARNING: Tobacco smoke causes fatal lung disease in non-smokers'.
'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) HINGED LID BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a hinged lid style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the hinged lid area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection and subsection (b).''.

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(d) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

'WARNING: This product can cause mouth cancer'.

'WARNING: This product can cause gum disease and tooth loss'.

'WARNING: This product is not a safe alternative to cigarettes'.

'WARNING: Smokeless tobacco is addictive'.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word 'WARNING' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 203, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a

change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 201, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements required under this section, except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

''SEC. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.''.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

Mr. KENNEDY. Mr. President, today, Senator DEWINE and I are introducing legislation to give the Food and Drug Administration broad authority to regulate tobacco products for the protection of the public health. We cannot in good conscience allow the fuderal agency most responsible for protecting the public health to remain powerless to deal with the enormous risks of tobacco, the most deadly of all consumer products.

Last year, a large bipartisan majority of the Senate voted to grant the FDA authority to regulate tobacco products. It was a major step forward in the long-term effort to enact this legislation, which health experts believe is the most important action Congress could take to protect children from this deadly addiction. Unfortunately, the legislation was blocked by a small group of House conferees.

We are reintroducing our bill today and we are hopeful that 2005 will be the year when Congress takes the final steps to enact this extraordinarily important health legislation. This bill has majority support in the Senate and strong support amongst rank and file members in the House. Now is the time to make it the law of the land.

The stakes are vast. Five thousand children have their first cigarette every day, and two thousand of them become daily smokers. Nearly a thousand of them will die prematurely from tobacco-induced diseases. Smoking is the number one preventable cause of death in the nation today. Cigarettes kill well over four hundred thousand Americans each year. That is more lives lost than from automobile accidents, alcohol abuse, illegal drugs, AIDS, murder, suicide, and fires combined. Our response to a public health problem of this magnitude must consist of more than half-way measures.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over eleven billion dollars a year to promote its products. Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that more than 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies'

own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products.

If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children. This legislation will give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children. It grants FDA full authority to regulate tobacco advertising ''consistent with and to the full extent permitted by the First Amendment.''

FDA authority must also extend to the sale of tobacco products. Nearly every state makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public health. Over forty million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as ''reduced risk'' cigarettes. This legislation will require manufacturers to submit such ''reduced risk'' products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Smoking is the number one preventable cause of death in America. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

This legislation will give the FDA the legal authority it needs—to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading the public about the dangers of smoking.

Enacting this bill this year is the right thing to do for America's children.

By Mr. SPECTER:

S. 668. A bill to provide enhanced criminal penalties for willful violations of occupational standards for asbestos; to the Committee on Health, Education, Labor, and Pensions.

Mr. SPECTER. Mr. President, today I rise to introduce the ''Asbestos Standards Enforcement Act.'' This legislation provides for enhanced criminal penalties for willful violations of occupational standards for asbestos.

Currently, the Occupational Safety and Health Act provides for criminal sanctions only in those cases where a willful violation of standards results in the death of a worker. This circumstance is not likely to occur when an employer is cited for an asbestos violation, due to the long latency of the disease, and the fact that the Occupational Safety and Health Administration is required to issue citations within six months after inspectors find workplace violations.

This legislation would subject employers who willfully violate OSHA asbestos standards to fines at levels set by the Uniform Criminal Code, as well as imprisonment of up to five years, or both. If the conviction is for a violation committed after a first conviction, this legislation would provide punishment by penalties in accordance with the Uniform Criminal Code, imprisonment for not more than ten years, or both.

Strong enforcement actions against parties that violate OSHA asbestos rules are necessary to avoid putting workers and the public at risk of asbestos related diseases. I have incorporated these strong measures in my discussion draft of the ''Fairness in Asbestos Injury Resolution Act.'' While that legislation is being considered, there is no reason not to proceed with OSHA legislation that would come before the Senate Health, Education, Labor, and Pension Committee.

There are still egregious practices by employers, particularly when it comes to asbestos abatement, that must be stopped. In a recent case, owners of an asbestos removal firm were convicted of exposing hundreds of workers to such high levels of asbestos that many of these workers are almost certain to contract asbestosis, lung cancers, and mesothelioma. Yet this case involved criminal prosecution under environmental laws because the OSHA Act does not contain sufficient authority for criminal prosecution in such cases. In many other asbestos cases, it may not be possible to successfully apply environmental laws to protect workers. The bill I am introducing today would permit criminal prosecution directly under the OSHA Act, the law that is supposed to protect safety and health

in the workplace. I urge the Senate to pass this legislation.

By Mr. MCCAIN (for himself and Mr. SALAZAR):

S. 670. A bill to authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of Cesar Estrada Chavez and the farm labor movement; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I am pleased to be joined today by Senator SALAZAR in introducing the Cesar Estrada Chavez Study Act. This legislation would authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of Cesar Chavez. Mr. Chavez's legacy is an inspiration to us all and he will be remembered for helping Americans to transcend distinctions of experience and share equally in the rights and responsibilities of freedom. It is important that we honor his struggle and do what we can to preserve appropriate sites that are significant to his life.

Cesar Chavez, an Arizonan born in Yuma, was the son of migrant farm workers. While his formal education ended in the eighth grade, his insatiable intellectual curiosity and determination helped make him known as one of the great American leaders for his successes in organizing migrant farm workers. His efforts on behalf of some of the most oppressed individuals in our society is an inspiration and through his work he made America a bigger and a better nation.

While Chavez and his family migrated across the southwest looking for farm work, he evolved into a defender of worker's rights. He founded the National Farm Workers Association in 1962, which later became the United Farm Workers of America. He gave a voice to those who had no voice. In his words, ''We cannot seek achievement for ourselves and forget about progress and prosperity for our community . . . our ambitions must be broad enough to include the aspirations and needs of others, for their sakes and for our own.''

This legislation, which passed the Senate unanimously during the last Congress, has received an overwhelming positive response, not only from my fellow Arizonans, but from Americans all across the Nation. The bill would direct the Secretary of the Interior to determine whether any of the sites significant to Chavez's life meet the criteria for being listed on the National Register of Historic Landmarks. The goal of this legislation is to establish a foundation for future legislation that would then designate land for the appropriate sites to become historic landmarks.

Cesar Chavez was a humble man of deep conviction who understood what it meant to serve and sacrifice for others. His motto in life, ''sí se puede'' or it can be done, epitomizes his life's work and continues to influence those wishing to improve our Nation. Honoring the places of his life will enable his legacy to inspire and serve as an example for our future leaders.

Mr. SALAZAR. Mr. President, I rise today to speak about an exemplary American and passionate champion of human and civil rights, Cesar Estrada Chavez, and to introduce legislation that takes an important first step in memorializing his tremendous contributions to our country.

Together with Senator JOHN MCCAIN, I will introduce the Cesar Estrada Chavez Study Act. This bill will direct the Secretary of the Interior to conduct a study of sites associated with the life of Cesar Chavez and will lay the necessary groundwork for the preservation of these sites as national historic landmarks. In the 108th Congress, Senator MCCAIN and Representative Hilda Solis sponsored similar legislation in the House of Representatives, and I am pleased to join their efforts.

Like many great American heroes, Cesar Chavez came from humble roots, but his strength of character led him to achieve great things. Chavez was born on March 31, 1927 in Yuma, AZ, where he spent his early years on his family's farm. At age 10, his family lost their farm in a bank foreclosure, forcing them to join the thousands of farm workers that wandered the Southwest to find work. They worked in fields and vineyards, harvesting the fresh fruits and vegetables that people throughout the world enjoyed unaware of the daily hardships endured by farm workers.

Cesar Chavez experienced these hardships and witnessed first hand the injustices in farm worker life. He became determined to bring dignity to farm workers and in 1962, he founded the National Farmworkers Association, which would later become the United Farmworkers of America (UFW). Through the UFW, Chavez called attention to the terrible working and living conditions of America's farm workers. Most importantly, he organized thousands of migrant farm workers to fight for fair wages, health care coverage, pension benefits, livable housing, and respect.

Like Cesar Chavez, I am the son of farmers. Everyday, I am reminded of my family's tradition of working the land by the sign on my desk that reads ''No Farms, No Food.'' And without farm workers, who would harvest the fruits and vegetables we all enjoy? Cesar Chavez understood this—he championed the rights of these forgotten Americans and helped shine a light of their plight. He once remarked, ''It is my deepest belief that only by giving our lives do we find life.'' He gave his life to ensure farm workers, and all workers, were afforded the rights and dignity they deserved.

For these reasons and many more, I proudly join my colleague from Arizona in introducing significant legislation that will honor Cesar Chavez. It is my hope that Congress can work together to quickly pass this important bill that honor the places of Chavez' life and allow his legacy to inspire and serve as an example for our future leaders.

By Mr. CORZINE:

S. 674. A bill to provide assistance to combat HIV/AIDS in India, and for other purposes; to the Committee on Foreign Relations.

Mr. CORZINE. Mr. President, today I am introducing legislation to make India eligible for assistance under the Emergency Plan for AIDS Relief (PEPFAR).

India is at a tipping point. A silent tsunami is at hand, and we can either act now or witness the preventable deaths of millions of people. An estimated 5.1 million people are infected with the HIV virus in India, second only to South Africa. HIV/AIDS has been reported in almost all the states and union territories of the country. In some parts of the country, the prevalence rates are similar to those in the hardest-hit areas of sub-Saharan Africa. In Belgaun in Karnataka, for instance, a district whose population is greater than that of Ireland, 4.5 percent are infected.

The epidemic is spreading rapidly from urban to rural areas and from high-risk groups such as sex workers and IV drug users to the general population. The mobility of India's population threatens to spread HIV/AIDS around the country. And with an overall population larger than the whole of Africa, there exists a serious threat of catastrophe. One estimate, by the CIA, predicted that 20 to 25 million could be infected by 2010, more than in any other country in the world.

India's political leaders, public health officials, non-governmental organizations, and medical and scientific communities have taken important steps to combat HIV/AIDS. India, the world's largest democracy, has skilled governmental and civil society actors who are committed to a new awareness of the AIDS crisis and strategic approaches to combating the disease. But significant gaps remain in the Indian health care system's ability to address the crisis. Only 29 cents per capita are spent in India to combat HIV/AIDS. This amount is significantly less than in countries that have succeeded at stemming the disease, such as Thailand (55 cents) and Uganda ($1.85).

There is an urgent need for assistance in care and treatment. More resources are necessary for public education, as demonstrated by the fact that 90 percent of Indians with HIV do not know they are infected. There is also a desperate need for assistance in tracking and monitoring the epidemic, merely to ascertain its full scope. These and other gaps require immediate and sustained U.S. engagement and contribution of resources.

The U.S. government is doing important work to combat HIV/AIDS in India, but the available resources are insufficient. To provide the necessary

assistance, and to demonstrate America's commitment to helping India combat HIV/AIDS, it is critical that India become eligible for the President's Emergency Plan for AIDS Relief. Smaller countries may seem more manageable. Combating HIV/AIDS in a country the size of India may seem daunting. But if we invest now in stopping this epidemic, if we take advantage of this window of opportunity, we can head off a catastrophe.

In addition to adding India to the list of countries eligible for PEPFAR assistance, this bill authorizes whatever funds are necessary to provide this assistance. It thus ensures that confronting the epidemic in India does not come at the expense of other countries. We must continue to expand the list of eligible countries in recognition of the global nature of this pandemic. We must also accelerate assistance to African and Caribbean countries already included as focus countries. Finally, we must increase overall funding to combat HIV/AIDS.

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

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

S. 674

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

SECTION 1. ASSISTANCE TO COMBAT HIV/AIDS IN INDIA.

Section 1(f)(2)(B)(ii)(VII) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(f)(2)(B)(ii)(VII)) is amended by inserting ''India,'' after ''Haiti,''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

In addition to any amounts otherwise available for such purpose, there is authorized to be appropriated to the President such sums as may be necessary for fiscal years 2006 through 2008 to provide assistance to India pursuant to the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (22 U.S.C. 7601 et seq.) and the amendments made by that Act.

By Mr. DORGAN (for himself, Mr. HAGEL, Mr. BROWNBACK, Mr. JOHNSON, Mr. DURBIN, Mr. BURNS, Mr. CONRAD, Mr. DAYTON, and Mr. HARKIN):

S. 675. A bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes; to the Committee on Finance.

Mr. DORGAN. Mr. President, today Senators HAGEL, BROWNBACK, JOHNSON and many of our colleagues are re-introducing the New Homestead Act that will help address one of the most serious threats to the future of America's Heartland—the loss of its residents and Main Street businesses.

Over the past several years, we have described for our colleagues—and the American people—the economic devastation that population loss has had on America's Heartland. Hundreds of thousands of people have left small towns in rural areas throughout the Great Plains in search of opportunities elsewhere.

In North Dakota, we have experienced greater than 10 percent net outmigration in nearly 90 percent of our counties over the past two decades. My home county, Hettinger, saw its population dwindle from 4,257 in 1980 to just 2,715 in 2000. Its population is projected to drop to just 1,877 by 2020.

However, this out-migration problem isn't limited to North Dakota. Nearly all of America's Heartland is facing population losses of epic proportions. Seventy percent of the rural counties in the Great Plains have seen their population shrink by at least one-third.

If you are a business owner, mayor, school board member, minister or resident of one of these rural communities, you know firsthand about this problem. People who are from these areas know that you simply can't grow or run a business in an environment where the overall economy is shrinking, current and potential customers are leaving, and public and private investment is falling. Too many communities in North Dakota and other rural States lack the critical mass of people and resources it takes to keep a community alive and growing.

The New Homestead Act of2005 that we are introducing today will help stem the problem of chronic rural outmigration and allow many rural areas to grow and prosper again. This one-of-a kind bill is virtually identical to the bill we introduced in the last Congress. The New Homestead Act gives people who are willing to commit to live and work in high out-migration areas for 5 years added incentives to buy a home, pay for college, build a nest egg, and start a business—or just plain get ahead in life. These incentives include repaying a portion of college loans, offering a tax credit for the purchase of a new home, protecting home values by allowing losses in home value to be deducted from Federal income taxes, and establishing Individual Homestead Accounts that will help people build savings and have access to credit.

This legislation also would establish a new venture capital fund with state and local governments as partners to ensure that entrepreneurs and companies in these areas get the capital they need to start and grow their businesses.

Our rural areas have been fighting for their very survival for years, yet until recently, most Amen:s didn't even know about this struggle. Today, however, general awareness about the problem of chronic rural out-migration is growing. This issue has been the subject of national symposiums, forums, town hall meetings and congressional hearings.

Last year, the U.S. Senate acted on some provisions from the New Homestead Act that offer state and local governments much-needed tools to encourage businesses to locate or stay in rural areas that are suffering from high out-migration. With the help of the leaders of the tax-writing Senate Finance Committee, Chairman CHUCK GRASSLEY of Iowa and Ranking Democrat MAX BAUCUS of Montana, the Senate passed two key investment tax credit measures in the New Homestead Act as part of a major corporate tax bill considered last year. These investment tax credits would have been used to encourage businesses to move to or expand their operations in high out-migration rural counties. Together, these rural investment tax provisions would have made an estimated $641 million in tax credits available for business over the next decade.

Regrettably, these tax provisions were dropped from the final tax bill sent to the President. But the Senate's action sent a message of hope and opportunity to many rural communities: Federal policymakers do understand that rural out-migration is a serious threat to the economic well-being of the Nation's Heartland and that the New Homestead Act is a serious proposal for addressing it.

I think our colleagues would agree that our Nation's rural areas are great places to live and raise a family. Most rural communities have good schools, low crime rates, and a level of civic involvement that would make any public official proud. But unfortunately it has been a constant struggle for many rural communities in North Dakota and the Great Plains to survive. This shouldn't be the case.

I look forward to working with all of my Senate colleagues to try to reverse the trend of population loss and grow the economies of rural areas in North Dakota, Nebraska, Iowa, Kansas and the rest of America's Heartland. Enacting the policy changes recommended in the New Homestead Act is a very good place to start.

I urge my colleagues to support the New Homestead Act in the 109th Congress by cosponsoring it and helping us move this important bill forward, once again, in the legislative process.

By Mr. STEVENS (for himself, Mr. FRIST, Mr. SPECTER, Mr. ALEXANDER, Mr. DEWINE, Mrs. CLINTON, and Mrs. HUTCHISON):

S. 676. A bill to provide for Project GRAD programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. STEVENS. Mr. President, I have introduced today the Graduation Really Achieves Dreams, GRAD, Act, which will help improve our nation's graduation rate by authorizing a program that has a proven track record—Project GRAD USA. I am joined by my colleagues, Senators FRIST, CLINTON, ALEXANDER, DEWINE, HUTCHISON and SPECTER.

Currently in our Nation, we graduate only 70 percent of our students from high school. In high poverty urban districts, we often graduate fewer than half that many—one in three. In rural areas, where one-third of American students are educated—only 58.8 percent of students attend colleges and

universities, compared with 68.2 percent in urban and suburban areas. The problem is especially acute in Alaska, where Alaska Natives are almost twice as likely as other students to drop out of high school.

We must provide better support and resources for our most vulnerable students. Project GRAD USA is already doing that job in 12 sites nationwide, including one in my own State of Alaska.

Project GRAD USA is a national program to increase the number of low-income and at-risk students who attend college and earn degrees. Unlike other national programs, Project GRAD USA is a comprehensive non-profit K–12 education reform program. It serves at-risk students, beginning in kindergarten, and staying with them through college, by offering research-based programs in reading, math, classroom management, social services, and college preparation. Students who qualify then receive a four-year college scholarship. Scholarships are funded by private-industry donations and foundation grants, as well as previously-appropriated Federal dollars.

In Alaska, Project GRAD established a program in the Kenai Peninsula and serves six K–12 schools and one K–10 school, reaching 600 students. Three schools serve small Alaska Native communities; three serve Russian Old Believer communities; and the seventh school serves a mixed community of Alaska Natives, Russians and other Caucasians. More than 47 percent of the students Project GRAD Kenai serves are at poverty level, and 49.2 percent of Kenai students report that a language other than English is spoken at home. Project GRAD is committed to maintaining cultural relevance in each of the schools it serves and creating individualized components developed with community leaders, teachers and families.

This legislation would provide funds so Project GRAD can continue to grow in the States where it now operates and expand its proven model elsewhere. It also requires the local sites to match federal funds it receives with local dollars and in-kind support. In this way, federal funds are leveraged to increase support for needed educational reform and enhancement.

When I visit the Kenai Peninsula in Alaska, I see first hand the impact Project GRAD has made on the students in this district as well as the significant economic impact to the overall Peninsula. In the first five years of the program, over $6 million will be invested in program development and implementation and nearly $250,000 will be awarded in scholarships.

Project GRAD USA has proven its effectiveness nationwide and now serves over 133,000 students. High school graduation rates for long-term participants have increased by 85 percent, and those who have gone on to college have earned college degrees at a rate of 89 percent above the national average. These results have not gone unnoticed as President Bush and Majority Leader FRIST have both strongly supported the program. Further, Fortune magazine chose GRAD as its ''charity of choice'' for 2004.

Proven education, retention and graduation initiatives aimed at our students most at-risk deserve every policy maker's attention as we aim to do the most good with limited resources. I am proud to support this legislation, and I encourage my colleagues to join me to ensure Project GRAD's continued success for our children.

By Mr. SANTORUM (for himself, Mr. KERRY, Mr. ENSIGN, Mr. LIEBERMAN, Mr. BROWNBACK, Mrs. CLINTON, Mr. SMITH, Mr. SCHUMER, Mr. TALENT, Mr. CORZINE, Mr. COBURN, and Mr. HATCH):

S. 677. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I rise today to introduce the Workplace Religious Freedom Act. I am pleased to be joined in this effort by Senator KERRY and appreciate the work he has done on this bill over the years. I am also pleased to have a number of Senators, both Democrats and Republicans, liberals and conservatives, join me in cosponsoring this important legislation.

The bill we introduce today is intended to ensure that employees are not forced to choose between their religious beliefs and practices and keeping their jobs. It recognizes that an individual's faith impacts every part of their life, including the many hours spent in the workplace. America is distinguished internationally as a land of religious freedom, and it should be a place where people are not forced to choose between keeping their faith and keeping their job. This simple proposition is why we are re-introducing the Workplace Religious Freedom Act (WRFA), which provides a balanced approach to reconciling the needs of people of faith in the workplace with those of employers.

Title VII of the Civil Rights Act of 1964 was meant to address conflicts between religion and work. It requires employers to reasonably accommodate the religious needs of their employees so long as it does not impose an undue hardship on the employer. The problem is that our federal courts have essentially ruled that any hardship is an undue hardship and have thus left religiously observant workers with little or no legal protection. WRFA will reestablish the principle that employers must reasonably accommodate the religious needs of employees. This legislation is carefully crafted and strikes an appropriate balance, respecting religious accommodation while ensuring that an undue burden is not forced upon employers. WRFA is also careful to ensure that the accommodation of an individual employee's religious conscience will not adversely affect the delivery of products or services to an employer's customers or clients.

The balance that this legislation seeks to establish is evident in the broad spectrum of groups supporting this bill, including the Union of Orthodox Jewish Congregations, the Southern Baptist Convention, the National Council of Churches, the North American Council for Muslim Women, the Sikh Resource Taskforce, the Seventh Day Adventist Church, the American Jewish Committee, Agudath Israel of America, the U.S. Conference of Catholic Bishops and many others.

America is a great nation because we honor not only the freedom of conscience, but also the freedom to exercise one's religion according to the dictates of that religious conscience. This fundamental freedom is protected and strengthened in this legislation by reestablishing an appropriate balance between the demands of work and the principles of faith.

Mr. President, I ask unanimous consent that a copy of this legislation be printed in the RECORD after my statement.

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

S. 677

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Workplace Religious Freedom Act of 2005''.

SEC. 2. AMENDMENTS.

(a) DEFINITIONS.—Section 701(j) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(j)) is amended—

(1) by inserting ''(1)'' after ''(j)'';

(2) by inserting '', after initiating and engaging in an affirmative and bona fide effort,'' after ''unable'';

(3) by striking ''an employee's'' and all that follows through ''religious'' and inserting ''an employee's religious''; and

(4) by adding at the end the following:

''(2)(A) In this subsection, the term 'employee' includes an employee (as defined in subsection (f)), or a prospective employee, who, with or without reasonable accommodation, is qualified to perform the essential functions of the employment position that such individual holds or desires.

''(B) In this paragraph, the term 'perform the essential functions' includes carrying out the core requirements of an employment position and does not include carrying out practices relating to clothing, practices relating to taking time off, or other practices that may have a temporary or tangential impact on the ability to perform job functions, if any of the practices described in this subparagraph restrict the ability to wear religious clothing, to take time off for a holy day, or to participate in a religious observance or practice.

''(3) In this subsection, the term 'undue hardship' means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expense, factors to be considered in making the determination shall include—

''(A) the identifiable cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from 1 facility to another;

''(B) the overall financial resources and size of the employer involved, relative to the number of its employees; and

''(C) for an employer with multiple facilities, the geographic separateness or administrative or fiscal relationship of the facilities.''.

(b) EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e–2) is amended by adding at the end the following:

''(o)(1) In this subsection:

''(A) The term 'employee' has the meaning given the term in section 701(j)(2).

''(B) The term 'leave of general usage' means leave provided under the policy or program of an employer, under which—

''(i) an employee may take leave by adjusting or altering the work schedule or assignment of the employee according to criteria determined by the employer; and

''(ii) the employee may determine the purpose for which the leave is to be utilized.

''(2) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee, for an accommodation to be considered to be reasonable, the accommodation shall remove the conflict between employment requirements and the religious observance or practice of the employee.

''(3) An employer shall be considered to commit such a practice by failing to provide such a reasonable accommodation for an employee if the employer refuses to permit the employee to utilize leave of general usage to remove such a conflict solely because the leave will be used to accommodate the religious observance or practice of the employee.''.

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by section 2 take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by section 2 do not apply with respect to conduct occurring before the date of enactment of this Act.

By Mr. REID:

S. 678. A bill to amend the Federal Election Campaign Act of 1971 to exclude communications over the Internet from the definition of public communication; to the Committee on Rules and Administration.

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

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

S. 678

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

SECTION 1. MODIFICATION OF DEFINITION OF PUBLIC COMMUNICATION.

Paragraph (22) of section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(22)) is amended by adding at the end the following new sentence: ''Such term shall not include communications over the Internet.''.

By Mr. COLEMAN (for himself and Mr. LEVIN):

S. 679. A bill to amend title 10, United States Code, to require the registration of contractors' taxpayer identification numbers in the Central Contractor Registry database of the Department of Defense, and for other purposes; to the Committee on Armed Services.

Mr. COLEMAN. Mr. President, today I am reintroducing the Central Contractor Registry Act. This legislation is particularly relevant this week, as we debate a tough budget to restore fiscal discipline.

Last year the Government Accountability Office testified at a hearing before the Permanent Subcommittee on Investigations that over 27,000 contractors at the Department of Defense owed over $3 billion in unpaid Federal taxes. If we want to demonstrate fiscal discipline, it seems to me that we ought to be looking at places like this before we start talking about cuts to Medicaid or the farm bill. Asking companies that win lucrative government contracts to simply pay their taxes seems like common sense to me.

That's why I have introduced the Central Contractor Registry Act. This bill will close a $3 billion tax loophole and will help to recover over $100 million annually from federal contractors who have not filed federal tax returns or who have not paid the taxes they owe the government.

The bill is simple: it establishes a centralized contractor database within the Department of Defense, and requires federal contractors who register in that database to provide their taxpayer identification number and their consent to verifying that number with the Internal Revenue Service as a condition that must precede the awarding of a contract by the Department of Defense.

Normally, companies that are delinquent in paying their taxes are levied 15 percent of the payments they receive as government contractors. In fiscal year 2002, this should have amounted to over $100 million from tax delinquent Department of Defense contractors. However, actual collections for that year were less than $500,000. And in 2001, over 26,000 of the defense contracts submitted to the IRS to determine contractors' tax liability were unusable.

One of the principal reasons for this anemic state of collections and the large volume of unusable information returns is the inability of the Department of Defense and the Internal Revenue Service to reach an accord on verifying the taxpayer identification numbers of the contractors who have registered in the Department of Defense's Central Contractor Registration database. Under current law, the Department of Defense's authority to verify contractors' taxpayer identification numbers is limited to those contractors who have contracts with the Department of Defense and for whom the department is required to report miscellaneous income to the Internal Revenue Service on a Form 1099 information return. However, there are contractors who have registered in the Central Contractor Registration for whom the Department of Defense lacks authority to verify their taxpayer identification numbers, including individuals and companies who would like to contract with the federal government and contractors who have contracts with agencies and departments other than the Department of Defense. And often the numbers provided are incorrect, but there is no recourse.

My bill will resolve the impasse between the Department of Defense and the Internal Revenue Service by requesting contractors' consent to the validation of their taxpayer identification number as part of the registration process. Contractors will not be required to provide their consent. But if they do not, they will not be awarded a contract by the Department of Defense.

Further, my bill requires the Department of Defense to warn contractors as part of the registration process that if they do not provide a valid taxpayer identification number they may be subject to backup withholding. This would apply to those contractors who list an invalid taxpayer identification number, have a contract with the Department of Defense, and will earn miscellaneous income that is required to be reported to the Internal Revenue Service.

I would like to briefly summarize the major provisions of my bill. It provides a statutory basis for the Central Contractor Registration and renames the database as the Central Contractor Registry. It requires that the registry contain contractors' taxpayer identification numbers, their consent to verifying their numbers with the Internal Revenue Service and for the Internal Revenue Service to provide a corrected number if possible. It requires that registrants furnish this information as a condition for registration, and requires the Department of Defense to warn contractors who fail to provide a valid taxpayer identification number that they may be subject to backup withholding and requires implementation of backup withholding in cases where it is required. It precludes awarding a contract to any registrant who has not provided a valid taxpayer identification number and excludes from coverage any registrant who is not required to have a taxpayer identification number. It directs the Secretary of Defense to apply to the Internal Revenue Service for inclusion in the Taxpayer Identification Number Matching Program and directs the Commissioner of Internal Revenue to provide response to the Department of Defense. It directs the Secretary of Defense to provide any registrant who is determined to have an invalid taxpayer identification number with an opportunity to provide a valid number. It further requires that the Central Contractor Registry clearly indicate whether a registrant's taxpayer identification number is valid, under review,

invalid, or not required. Finally, it requires that contractors' taxpayer identification numbers be treated as confidential by federal contract officers who have access to the Central Contractor Registry.

This bill will ensure that tax cheats are not rewarded with Federal contracts. As we debate the budget this week, I encourage my colleagues to join me in supporting this bill.

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

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

S. 679

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Central Contractor Registry Act of 2005''.

SEC. 2. CENTRAL CONTRACTOR REGISTRY DATABASE.

(a) AUTHORITY.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2302d the following new section:

''§ 2302e. Central contractor registry

''(a) ESTABLISHMENT.—The Secretary of Defense shall maintain a centralized, electronic database for the registration of sources of property and services who seek to participate in contracts and other procurements entered into by the various procurement officials of the United States. The database shall be known as the 'Central Contractor Registry'.

''(b) TAXPAYER INFORMATION.—(1) The Central Contractor Registry shall include the following tax-related information for each source registered in that registry:

''(A) Each of that source's taxpayer identification numbers.

''(B) The source's authorization for the Secretary of Defense to obtain from the Commissioner of Internal Revenue—

''(i) verification of the validity of each of that source's taxpayer identification numbers; and

''(ii) in the case of any of such source's registered taxpayer identification numbers that is determined invalid, the correct taxpayer identification number (if any).

''(2)(A) The Secretary of Defense shall require each source, as a condition for registration in the Central Contractor Registry, to provide the Secretary with the information and authorization described in paragraph (1).

''(B) The Secretary shall—

''(i) warn each source seeking to register in the Central Contractor Registry that the source may be subject to backup withholding for a failure to submit each such number to the Secretary; and

''(ii) take the actions necessary to initiate the backup withholding in the case of a registrant who fails to register each taxpayer identification number valid for the registrant and is subject to the backup withholding requirement.

''(3) A source registered in the Central Contractor Registry is not eligible for a contract entered into under this chapter or title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) if that source—

''(A) has failed to provide the authorization described in paragraph (1)(B);

''(B) has failed to register in that registry all valid taxpayer identification numbers for that source; or

''(C) has registered in that registry an invalid taxpayer identification number and fails to correct that registration.

''(4)(A) The Secretary of Defense shall make arrangements with the Commissioner of Internal Revenue for each head of an agency within the Department of Defense to participate in the taxpayer identification number matching program of the Internal Revenue Service.

''(B) The Commissioner of Internal Revenue shall cooperate with the Secretary of Defense to determine the validity of taxpayer identification numbers registered in the Central Contractor Registry. As part of the cooperation, the Commissioner shall promptly respond to a request of the Secretary of Defense or the head of an agency within the Department of Defense for electronic validation of a taxpayer identification number for a registrant by notifying the Secretary or head of an agency, respectively, of—

''(i) the validity of that number; and

''(ii) in the case of an invalid taxpayer identification number, any correct taxpayer identification number for such registrant that the Commissioner can promptly and reasonably determine.

''(C) The Secretary shall transmit to a registrant a notification of each of the registrant's taxpayer identification numbers, if any, that is determined invalid by the Commissioner of Internal Revenue and shall provide the registrant with an opportunity to substitute a valid taxpayer identification number.

''(5) The Secretary of Defense shall require that, at the place in the Central Contractor Registry where the taxpayer identification numbers of a registrant are to be displayed, the display bear (as applicable)—

''(A) for each taxpayer identification number of that registrant, an indicator of whether such number has been determined valid, is being reviewed for validity, or has been determined invalid; or

''(B) an indicator that no taxpayer identification number is required for the registrant.

''(6) This subsection applies to each source who registers any information regarding that source in the Central Contractor Registry after December 31, 2005, except that paragraphs (1), (2), and (3) do not apply to a source who establishes to the satisfaction of the Secretary of Defense that such source is not required to have a taxpayer identification number.

''(c) CONFIDENTIALITY OF INFORMATION.—The Secretary of Defense shall ensure that taxpayer identification numbers in the Central Contractor Registry are not made available to the public. The Secretary shall prescribe a requirement for procurement officials of the United States having access to such numbers in that registry to maintain the confidentiality of those numbers.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2302d the following new item:

''2302e. Central Contractor Registry.''.

INTRODUCING CENTRAL CONTRACTOR REGISTRY ACT

Mr. LEVIN. Mr. President, I join my colleagues, Senators NORM COLEMAN, SUSAN COLLINS and JACK REED, in introducing the Central Contractor Registry Act of 2005. The purpose of this bipartisan bill is to strengthen the ability of the Federal Government to stop tax cheats from obtaining Federal contracts, and for those who have managed to obtain contracts, to use a portion of their contract payments to repay their tax debts.

Now, even more than when we introduced a similar bill in May 2004, it is clear that new legislation is essential to confront the problem of Federal contractor tax debt. Last year the Permanent Subcommittee on Investigations, on which Senator COLEMAN and I sit, raised this issue in a hearing based on a report issued by the Government Accountability Office, GAO. The report showed that over 27,000 contractors at the Department of Defense, DOD, owed $3 billion in unpaid taxes. Approximately 90 percent of these unpaid taxes were payroll taxes, money that should be going to help fund the social security and medicare expenditures that are climbing so rapidly. Too many contractors are continuing to duck payment of these payroll taxes, while at the same time holding out their hands for taxpayer dollars.

Beyond the loss in substantial government revenue, allowing tax cheats to bid on Federal contracts is a disservice to all citizens who meet their tax obligations. It is also a disservice to all of the honest companies that compete for the same government contracts, since companies that do not pay their taxes have lower costs and a competitive advantage over the companies that do.

Current law requires DOD and other government agencies to identify any government contractor with unpaid taxes, to withhold 15 percent or more of their contract payments, and to forward that money to the IRS to be applied to the contractor's tax debt. The official title of the DOD program to carry out this obligation is the Federal Payment Levy Program, sometimes referred to as the DOD tax levy program.

In order to identify tax delinquent contractors before they receive payment, DOD and other agencies participate in a computer matching program administered by the Treasury Department that cross-checks lists of upcoming contractor payments with IRS lists of delinquent taxpayers. If a match occurs, DOD—in the case of defense contractors—and the Treasury Department for all other government contractors is supposed to withhold money from the identified contractor's upcoming contract payments.

The problem is that the computer matching program has so far produced relatively few matches. In 2003, for example, DOD collected only about $680,000 of back taxes through its tax levy program instead of the $100 million that GAO estimates should have been collected. That means DOD collected less than one percent of the back taxes it should have.

One major impediment to the computer matching program has been that it depends upon a Federal agency's providing the correct taxpayer identification number or TIN for each of its contractors, when many contractors have either failed to submit a TIN or supplied an incorrect number. When a TIN is incorrect or missing, the computer matching program is unable to determine whether the relevant government

contractor is on the IRS list of delinquent taxpayers. For example, in 1 year, data indicates that DOD sent the IRS over 26,000 invalid TINs that could not be used.

To increase the efficiency of the computer matching program, the IRS has tried to improve the accuracy of the TINs in agency contractor data. The IRS has, for example, set up a computer-based TIN validation system that can electronically verify a TIN number in seconds. This electronic system is available for use by DOD and all other federal agencies. Unfortunately, the IRS has also interpreted certain tax laws as prohibiting DOD from obtaining TIN validations for many types of contracts. In addition, in the case of TIN numbers with clerical errors, the IRS has interpreted current taxpayer confidentiality laws as prohibiting it from supplying a DOD with a corrected number.

The bill we are introducing today would eliminate this bureaucratic redtape and significantly increase the effectiveness of the tax levy program by increasing the accuracy of the TINs used by DOD.

The bill would strengthen TIN accuracy by focusing primarily on the TINs in the Central Contractor Registry, a government-wide database of persons wishing to bid on Federal contracts. This registry is currently administered by DOD, and current Federal regulations require potential bidders to self-register in the system by supplying specified information. As part of the process, registrants are supposed to supply a TIN, but many either do not or supply an incorrect number. The bill would, for the first time, impose a legal requirement on registrants to supply a valid TIN and would also bar contracts from being awarded to contractors who fail to supply a valid TIN.

In addition, the bill would require registrants to authorize DOD to validate their TINs with the IRS and obtain a corrected TIN from the IRS, if needed and possible. This requirement would apply to all registrants in the Central Contractor Registry, no matter what type of contract is involved and whether the contract is with DOD or another Federal agency. It would also allow the IRS to supply corrected TINs where it can promptly and reasonably do so.

If, by chance, a registrant managed to obtain a DOD contract without having supplied a valid TIN, the bill would direct DOD to withhold a portion of their contract payments to satisfy their tax debt as specified under existing law. Although this backup holding requirement has been on the books for years, DOD has not implemented it. The bill would require DOD to start doing so.

Finally, the bill would provide a number of protections. It would protect privacy by prohibiting DOD and other Federal procurement officials from making TIN numbers available to the public. The information would be kept confidential within the procurement community using the Central Contractor Registry. It would explicitly exempt from the TIN requirements any contractor, such as a foreign business, not required by U.S. law to have a taxpayer identification number. The bill would also require DOD to show in the registry database whether a particular TIN has been validated, is awaiting validation, has been found invalid, or is not required, so that procurement officials using the database will know the status of a contractor's TIN. If the IRS were to determine that a particular TIN was invalid, the bill would require DOD to give the relevant contractor an opportunity to correct the number. The bill would also require DOD to warn all registrants in the Central Contractor Registry of the possibility of backup withholding in the event a contractor fails to provide a valid TIN.

DOD and the IRS have indicated that they are willing to undertake many of the changes suggested in the legislation, such as requiring all CCR registrants, as a condition of their registration, to authorize DOD to validate their TINs with the IRS and obtain a corrected TIN from the IRS, if needed and possible. DOD has even drafted possible language to accomplish this objective. The IRS, however, has yet to agree to the specific language or to take steps to improve TIN validation efforts, despite the passage of nearly a year since we introduced this bill in last Congress, and despite the fact that some CCR registrants continue either to omit their TINs or to provide an invalid TIN. Even if the IRS and DOD were to act as promised, the CCR and the privacy protections mentioned earlier would benefit from specific statutory language addressing this issue. That is why we are re-introducing this bill in the 109th Congress.

It is common business sense for the Federal Government to require contractors who want to be paid with Federal taxpayer dollars to allow the United States to determine whether they owe any taxes and, if so, to offset a portion of their contract payments to reduce their tax debts. To accomplish that objective, the Federal Government has to do a better job in identifying federal contractors with unpaid taxes. Our bill, by improving the accuracy of taxpayer identification numbers in the Central Contractor Registry, will strengthen DOD's ability to identify tax delinquent contractors and either deny them new contracts or reduce their tax debts.

I hope all my colleagues will join us in supporting this legislation's enactment during this Congress.

By Mr. HATCH (for himself, Mr. DODD, Mr. BROWNBACK, Mr. HARKIN, and Mr. SPECTER):

S. 681. A bill to amend the Public Health Service Act to establish a National Cord Blood Stem Cell Bank Network to prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients and to support peer-reviewed research using such cells; to the Committee on Health, Education, Labor, and Pensions.

Mr. HATCH. Mr. President, I am pleased to introduce ''The Cord Blood Stem Cell Act of 2005.'' I am particularly gratified that Senators DODD, BROWNBACK, HARKIN, and SPECTER have joined me as cosponsors of this bipartisan bill. Since I first introduced this bill last Congress, there has been strong interest in Federal support for public cord blood banks as a widely accepted source of hematopoietic stem cells for transplant and research. The purpose of the Cord Blood Stem Cell Act is to create an easily accessible network to prepare, store, and distribute human umbilical cord blood stem cells for the treatment of patients and to support research using such cells.

Today, thousands of Americans receive and are saved by bone marrow transplants each year. But thousands more die for lack of an appropriate donor. The good news is that research now suggests that the blood and stem cells from human placenta and umbilical cords may in some cases provide an alternative to bone marrow transplantation. For some patients, particularly those for whom a bone marrow match cannot be found, transplantation of these cells may be a life-saving therapy. Cord blood stem cell transplants are readily available, and they require less stringent matching from donors to recipients, thus decreasing the difficulty of finding a fully matched donor.

Cord blood transplantation has been used successfully to treat leukemia, lymphoma, immunodeficiency diseases, sickle cell anemia, and certain metabolic diseases. However, the number of available cord blood stem cell units in the United States is insufficient to meet the need. The Cord Blood Stem Cell Act of 2005 proposes to establish an inventory of 150,000 cord blood stem cell units that reflects the diversity of the United States. In conjunction with the 5 million registered bone marrow donors, this registry will enable 95 percent of Americans to receive an appropriately matched transplant. The inventory would provide a critical additional resource for those in need of transplants and allocate a certain proportion of units to sustain further research on cord blood stem cells.

In 2004, Congress asked the Institute of Medicine to provide an assessment of existing cord blood programs and inventories and to make recommendations to enhance the structure, function, and utility of such programs. Following a year-long process of review and evaluation, the Institute of Medicine will soon issue recommendations on the best methods to create and implement this public cord blood bank network. I look forward to reviewing these recommendations and ensuring that they are appropriately reflected in any legislation.

Let me be clear—I am open to all options. It is my goal to create the best system to provide patients, clinicians, and families with access to these lifesaving treatments by ensuring that the number of cord blood units available for transplant and research increases in the coming years.

The system will include a network of qualified donor banks which will collect, test, and preserve cord blood stem cells. In addition, the system should educate and recruit donors, facilitate the rapid matching of donors and recipients, and quickly make such cells available to transplant centers for stem cell transplantation.

I also strongly endorse the excellent work done by the National Marrow Donor Program (NMDP), which Congress created in 1986 and continues to fund. This registry already lists more than 42,000 units of umbilical cord blood and provides important patient advocacy and support services. It also provides an online service which allows physicians to compare potential cord blood matches with potential adult volunteer donor matches so that they can select the source of cells that best meets their patients' needs. Cord blood should be used to expand patient choices, not to restrict them. Patients, in consultation with their physicians, should have the ability to decide which is best for them.

The establishment of a national infrastructure for cord blood will help save the lives of thousands of critically ill Americans. And while this legislation is not perfect, it is my hope that its introduction will encourage discussions on cord blood and the federal government's role in helping to increase the inventory of cord blood units in the United States.

In my opinion, we must be sure that our nation can meet the needs of patients and physicians by ensuring a strong future for cord blood in this country. My primary goal is to ensure that the number of cord blood units available for transplant and research increases in the coming years. The only way that goal may be accomplished is through strong federal support. I look forward to working with my colleagues on doing everything possible to provide transplant patients with the best possible options by ensuring a strong future for cord blood transplantation in this country.

Mr. DODD. Mr. President, I am pleased to join Senator HATCH and Senator BROWNBACK in introducing legislation to advance the use of umbilical cord blood for clinical applications and research. I first became aware of the potential therapeutic benefits of cord blood when my first daughter was born three and a half years ago. At that time, our doctor informed me and my wife that preserving a small amount of blood from the umbilical cord could prove enormously beneficial later in her life. Should she become ill with a disease requiring bone marrow reconstitution, such as leukemia, her own cord blood stem cells could be used. This would eliminate the need to find a suitable bone marrow donor.

The bill that we are introducing today will begin a new national commitment to the development of this technology—which has the potential to reduce pain and suffering and save the lives of so many Americans afflicted with some of the most debilitating illnesses. Cord blood has already been used successfully in treating a number of diseases, including sickle cell anemia and certain childhood cancers. However, the use of cord blood is still fledgling. Recent developments have suggested that the stem cells derived from cord blood may be useful in treating a much wider range of diseases, such as Parkinson's disease, diabetes, and heart disease.

Like many Americans, I had never heard of cord blood before the birth of my daughter. It is not widely used—at least in this country. Approximately 95 percent of all bone marrow reconstitutions were done using a bone marrow transplant. Only five percent used cord blood. This figure is surprising when we consider the potential benefits of cord blood relative to bone marrow.

First, it can be very difficult to find a suitable bone marrow donor. According to a General Accounting Office (GAO) report, of the 15,231 individuals needing bone marrow transplants between 1997 and 2000 who conducted a preliminary search of the National Bone Marrow Donor Registry (NBMDR), only 4,056 received a transplant—a 27 percent success rate. This number is even lower for minorities. Cord blood would not only produce an additional source of donation; it also does not require as exact a match as bone marrow.

In addition, cord blood is readily available. While it can take months between finding a bone marrow match and actually receiving a transplant, a unit of cord blood can be utilized in a matter of days or weeks. Cord blood also lowers the risk of complications for both the donor and the recipient. The need to extract bone marrow from the donor is eliminated, and the risk of infection or rejection by the recipient is significantly reduced. Finally, research has suggested that cord blood might produce better outcomes than bone marrow in children.

Why then, given all of these benefits, has the use of cord blood not become much more prevalent in the United States? In Japan, where the use of cord blood in clinical setting is more advanced, nearly half of all transplants now use cord blood rather than bone marrow.

The relatively infrequent use of cord blood in our country is at least partly attributable to the lack of a national infrastructure for the matching and distribution of cord blood units. There are a handful of cord blood banks around the country doing excellent work, but there is a much more developed infrastructure for bone marrow. This is thanks to legislation passed by Congress in 1986 that established a National Registry for bone marrow. By the way, that legislation is due to be reauthorized—and I would like to voice my strong support for that reauthorization.

Our bill would create a similar infrastructure for cord blood. Specifically, it would direct the Secretary of Health and Human Services (HHS), acting through the Administrator of the Health Resources and Services Administration (HRSA), to establish a National Cord Blood Stem Cell Bank Network, as well as a registry of available cord blood units. The network and registry would be required to collect a minimum of 150,000 units, which should be sufficient to provide a suitable match for 90 percent of the U.S. population.

Donor banks would also be required to educate the general public about the potential benefits of cord blood, and encourage an ethnically diverse population of cord blood donors. Given the untapped potential of cord blood, at least ten percent of the available units must also be made available for research. Finally, the legislation authorizes an appropriation of $15 million for fiscal year 2006, and such sums as may be necessary for fiscal years 2007 through 2010.

Before finishing today I would like to make it clear that I strongly support the continuation of the excellent work done by the National Marrow Donor Program (NMDP). Cord blood should act as a complement to—not a replacement for—bone marrow. In many cases, a bone marrow transplant is still the preferred therapy. Physicians should have the ability to decide on a case by case basis which is best for their patient.

In the coming weeks, the Institute of Medicine (IOM) will release a report with recommendations about the appropriate structure for a cord blood registry. I look forward to reviewing those recommendations and, if necessary, making the appropriate changes to our legislation.

I firmly believe that the creation of a national infrastructure for cord blood will, in time, save the lives of thousands of gravely ill Americans. We have a responsibility to encourage use of cord blood where appropriate today, and invest in research to fully tap the potential of this technology. I urge my colleagues to support this legislation.

By Mr. DODD:

S. 682. A bill to authorize the establishment of a Social Investment and Economic Development Fund for the Americans to provide assistance to reduce poverty and foster increased economic opportunity in the countries of the Western Hemisphere, and for other purposes; to the Committee on Foreign Relations.

Mr. DODD. Mr. President, I rise today to introduce the Social Investment and Economic Development Fund

for the Americas Act of 2005. This legislation would authorize critical assistance to fight poverty and increase economic opportunity in the countries of the Western Hemisphere.

In January, my colleagues Senator BILL NELSON, Senator LINCOLN CHAFEE and I visited Venezuela, Paraguay, Argentina, Peru and Ecuador. Our trip and discussions with political and economic leaders throughout the region underscored to me the danger that poverty and economic inequality continue to pose to regional stability, the rule of law, and to the continuation of market reforms.

One third of the population in Latin America currently lives in poverty. 128 million people survive on less than two dollars a day, and 50 million people on less than one dollar a day. In Haiti, the poorest country in the Western Hemisphere, 65 percent of the population lives below the poverty line. Despite economic growth throughout the 1990s, moreover, unemployment in Latin America actually increased. And as we all know such factors have the potential to increase instability and undermine democratic reforms and the rule of law. Indeed, individuals living in poverty are often forced by circumstances to engage in illicit activity, including narco-trafficking and even supporting terrorist related activities.

But there is not only tremendous poverty. Income inequality in Latin America is the highest in the world. To illustrate that fact, consider that the richest one-tenth of all Latin Americans earn 48 percent of the total national income, whereas the bottom one tenth earns only 1.6 percent. By contrast, in developed countries, the top ten percent earns 29.1 percent, and the bottom 10 percent earns 2.5 percent. Is it any wonder that economic inequality in Uruguay, the most equal country in Latin America, is still greater than in the most unequal country in Eastern Europe?

Poverty and inequality are not simply social injustices. They threaten the political stability of Latin America and the national interests of the United States. Indeed, according to a 2004 report by the United Nations Development Program, progress in extending elective democracy across Latin America is threatened by ongoing social and economic turmoil. Most troubling, the report suggests that over 50 percent of the population of Latin America would be willing to sacrifice democratic government for real progress on the economic and social fronts. That is a frightening statistic. And it should make crystal clear the urgency of this situation. Two decades of progress in our hemisphere is at risk.

The Social Investment and Economic Development Fund for the Americas Act of 2005 would seek to address these issues by investing in the peoples of the Americas. This important legislation would make it United States policy to promote market-based principles, economic integration, social development, and inter-American trade. To that end, it would authorize $250 million annually in bilateral economic assistance to the hemisphere through fiscal year 2010. It would also authorize multilateral assistance, directed through the Inter-American Development Bank, of no more than $250 million per year and $1.25 billion in total.

Certainly, strong trade relations remain a key to creating healthy economies both here in the United States and throughout the region. But trade alone cannot address the myriad challenges facing Latin America, when millions of citizens in the hemisphere remain marginalized by economic insecurity and social dislocation. That is another reason why this bill is so critical.

To confront these challenges, we have to start at the grass roots. We have to start with the people. And the Social Investment and Economic Development Fund for the Americas would do that by supporting public-private partnerships and micro-enterprise developments. It would give honest, hardworking families the chance to become entrepreneurial and to create a broad based ownership society in their countries. We promote these values here at home, and we should do so abroad.

Investing in people also means investing in human capital. And there is clearly a need. According to the World Bank large portions of the population do not receive adequate services such as education and health care. Education, in particular, is identified as critical to development. Yet the quality of education varies significantly based on social status and income distribution. In Mexico, for example, the average individual in the bottom 20 percent income bracket has only 3.5 years of schooling, whereas an individual in the top 20 percent income bracket has 11.6 years. My legislation would address these inequities by targeting assistance at projects which would invest in education. It would also build human capital by investing in basic needs such as health care, disease prevention, nutrition, and housing.

To move forward, we also have to help the people invest in good governance. Public corruption remains an especially persistent and pernicious problem in this hemisphere. Both Transparency International and the World Economic Forum report high levels of corruption throughout the region. Moreover, while full citizen participation in government is a key to strengthening democracy and ensuring that civil services work, many Latin American citizens do not express confidence in their political institutions. This Act would attempt to overcome these barriers to progress by enhancing efficiency and transparency in government services as well as increasing civil society participation in government.

Lastly, marginalized populations, including indigenous groups, people of African descent, women, and people with disabilities, are particularly affected by problems of poverty and income inequality. This act would target funds to reduce poverty and decrease social dislocation among these populations.

The funds authorized by this act would be distributed on the basis of competitive bidding and inter-American cooperation. To do so, this legislation would establish technical review committees which will partner with consultative committees in each country to make determinations on funding requests.

Finally, the historic Summits of the Americas made it clear that economic and social integration are the responsibilities of all nations in the Western Hemisphere. Through this act, the United States would send a strong signal to others in the region that we take these responsibilities seriously. And it will challenge the other countries in the hemisphere to collectively match our efforts.

We stand today at a moment of great opportunity and great risk in this hemisphere. The past two decades have witnessed the rise of democratic governments in nations that long languished under dictatorship. Yet this progress is endangered. Economic and social conditions for millions of men and women continue to lag dangerously far behind. It is in our moral and strategic interests to provide the necessary economic assistance to fight the scourges of poverty and social dislocation in this hemisphere. The Social Investment and Economic Development Fund for the Americas Act of 2005 is a vital first step to achieving this goal. I ask my colleagues to join me in supporting this important legislation.

I ask unamimous consent that the text of the bill be printed in the RECORD.

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

S. 682

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Social Investment and Economic Development Fund for the Americas Act of 2005''.

SEC. 2. FINDINGS; STATEMENT OF POLICY.

(a) FINDINGS.—Congress finds the following:

(1) The historic economic, political, cultural, and geographic relationships among the countries of the Western Hemisphere are unique and of continuing special significance to the United States.

(2) The interests of the countries of the Western Hemisphere are more interrelated today than ever before. Consequently, sound economic, social, and democratic progress in each of the countries continues to benefit other countries, and lack of it in any country may have serious repercussions in others.

(3) Following the historic Summits of the Americas, the 1994 Summit in Miami, the

1998 Summit in Santiago, Chile, the 2001 Summit in Quebec City, Canada, and the 2004 Special Summit in Monterrey, Mexico, the heads of state of the countries of the Western Hemisphere accepted the formidable challenge of economic and social integration in and between their respective countries.

(4) To make progress toward economic and social integration, there is a compelling need to focus on the social development of the people of the Americas which, in turn, will promote the economic and political development of the region.

(5) Investment in social development in the Americas, including investment in human and social capital, specifically in education, health, housing, and labor markets with the goal of combating social exclusion and social ills, will consolidate political democracy and the rule of law and promote regional economic integration and trade in the region.

(6) The challenge of achieving economic integration between one of the world's most developed economies and some of the poorest and most vulnerable countries requires a special effort to promote social equality, develop skills, and modernize the infrastructure in poorer countries that will enable the people of these countries to maximize the amount of benefits accrued from economic integration.

(7) The particular challenge facing social and economic development in Latin America is the historic and persistent highly unequal distribution of wealth. Latin America suffers from the most unequal distribution of wealth in the world with huge inequities in the distribution of assets including education, land, and credit.

(8) Latin America also confronts the challenge of an increasing number of poor people. As of today, approximately one-third of the population lives in poverty and increasing numbers live in extreme poverty. Poverty exists in all Latin American countries but 70 percent of the region's poor live in the five largest middle-income countries.

(9) Marginalized groups, including indigenous populations, people of African descent, women, people with disabilities, and rural populations, are socially excluded and suffer from poverty, stigma, and discrimination.

(10) Democratic values are dominant throughout the Americas, and nearly all governments in the region have come to power through democratic elections.

(11) Nonetheless, existing democratic governments and their constituent institutions remain fragile and face critical challenges including effective democratic civilian authority over these institutions, including the military, the consolidation or establishment of independent judicial institutions and the rule of law, and the elimination of corruption.

(12) The prosperity, security, and well-being of the United States is linked directly to peace, prosperity, and democracy in the Americas. The entire region benefits by reducing poverty, strengthening the middle class, and promoting the rule of law which will also increase markets for United States goods and create a better environment for regional investment by United States businesses.

(13) Section 101 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151) establishes as a principal objective of United States foreign assistance the ''encouragement and sustained support of the people of developing countries in their efforts to acquire the knowledge and resources essential to development and to build the economic, political, and social institutions which will improve the quality of their lives''.

(14) It is in the national interests of the United States to assist developing countries in the Western Hemisphere as they implement the economic and political policies which are necessary to achieve equitable economic growth.

(15) The Summit of the Americas has directly charged the multilateral institutions of the Americas, including the Organization of American States (OAS), the Inter-American Development Bank (IADB), and the Inter-American Agency for Cooperation and Development with mobilizing private-public sector partnerships among industry and civil society to help achieve equitable development objectives.

(16) By supporting the purposes and objectives of development and applying such purposes and objectives to the Americas, a Social Investment and Economic Development Fund for the Americas has the potential to advance the national interests of the United States and directly improve the lives of the poor and marginalized groups, encourage broad-based economic growth while protecting the environment, build human capital and knowledge, support meaningful participation in democracy, and promote peace and justice in the Americas.

(b) STATEMENT OF POLICY.—It is the policy of the United States—

(1) to promote market-based principles, economic integration, social development, and trade in and between countries of the Americas by—

(A) nurturing public-private partnerships and microenterprise development;

(B) improving the quality of life and investing in human capital, specifically targeting education, health and disease prevention, nutrition, and housing;

(C) strengthening the rule of law through improved efficiency and transparency in government services and increasing civil society participation in government; and

(D) reducing poverty and eliminating the exclusion of marginalized populations, including people of African descent, indigenous groups, women, and people with disabilities; and

(2) to establish an investment fund for the Western Hemisphere to advance the national interests of the United States, directly improve the lives of the poor and marginalized, encourage broad-based economic growth while protecting the environment, build human capital and knowledge, support meaningful participation in democratic institutions and processes, and promote peace and justice in the Americas.

SEC. 3. AMENDMENT TO FOREIGN ASSISTANCE ACT OF 1961.

Part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following:

''CHAPTER 13—SOCIAL INVESTMENT AND ECONOMIC DEVELOPMENT FUND FOR THE AMERICAS

''SEC. 499H. AUTHORIZATION OF ASSISTANCE.

''(a) STATEMENT OF POLICY.—It is the policy of the United States—

''(1) to promote market-based principles, economic integration, social development, and trade in and between countries of the Americas by—

''(A) nurturing public-private partnerships and microenterprise development;

''(B) improving the quality of life and investing in human capital, specifically targeting education, health and disease prevention, nutrition, and housing;

''(C) strengthening the rule of law through improved efficiency and transparency in government services and increasing civil society participation in government; and

''(D) reducing poverty and eliminating the exclusion of marginalized populations, including people of African descent, indigenous groups, women, and people with disabilities; and

''(2) to establish an investment fund for the Western Hemisphere to advance the national interests of the United States, directly improve the lives of the poor and marginalized, encourage broad-based economic growth while protecting the environment, build human capital and knowledge, support meaningful participation in democratic institutions and processes, and promote peace and justice in the Americas.

''(b) IN GENERAL.—The President, acting through the Administrator of the United States Agency for International Development, shall provide assistance to reduce poverty and foster increased economic opportunity in the countries of the Western Hemisphere by—

''(1) nurturing public-private partnerships and microenterprise development;

''(2) improving the quality of life and investing in human capital, specifically targeting education, health and disease prevention, nutrition, and housing;

''(3) strengthening the rule of law through improved efficiency and transparency in government services and increasing civil society participation in government; and

''(4) reducing poverty and eliminating the exclusion of marginalized populations, including people of African descent, indigenous groups, women, and people with disabilities.

''(c) TERMS AND CONDITIONS.—Assistance under this chapter may be provided on such other terms and conditions as the President may determine, consistent with the goal of promoting economic and social development.

''SEC. 499I. TECHNICAL REVIEW COMMITTEE.

''(a) IN GENERAL.—There is established within the United States Agency for International Development a technical review committee.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The President, by and with the advice and consent of the Senate, shall appoint to serve on the technical review committee—

''(A) individuals with technical expertise with respect to the development projects, including grassroots development of Latin America and the Caribbean; and

''(B) citizens of the United States with technical expertise with respect to development projects and business experience.

''(2) CRITERIA FOR APPOINTMENT.—Technical expertise shall be the sole criterion in making appointments to the technical review committee.

''(c) DUTIES.—The technical review committee shall review all projects proposed for funding using assistance provided under section 499H(a), and make recommendations to the President with respect to the guidelines to be used in evaluating project proposals and the suitability of the proposed projects for funding.

''(d) CONFLICTS OF INTEREST.—A member of the technical review committee shall not be permitted to review an application submitted by an organization with which the member has been or is affiliated.

''SEC. 499J. CONSULTATIVE COMMITTEE.

''(a) IN GENERAL.—A country that receives assistance under this chapter shall establish a Consultative Committee to make recommendations regarding how such assistance should be used to carry out the policy set out in section 499H(a).

''(b) MEMBERSHIP.—A Consultative Committee should include individuals from civil society organizations that represent or have experience in working in the following:

''(1) Marginalized populations.

''(2) Trade and small farmer unions.

''(3) Rural development and agrarian reform.

''(4) Microenterprise and grassroots development.

''(5) Access to government social services.

''(6) Rule of law and government reform.

''(c) DUTIES.—A Consultative Committee for a country shall—

''(1) make recommendations to the technical review committee established under section 499I and to the appropriate country mission of the United States Agency for International Development on projects proposed to receive assistance under section 499H(a) that affect such country;

''(2) have access documents and other information related to project proposals and funding decisions that affect such country; and

''(3) develop and publish rules and procedures under which the Committee will carry out its duties.

''(d) CONFLICTS OF INTEREST.—A member of the Consultative Committee may not be permitted to review an application submitted by an organization with which the member has been or is affiliated.

''SEC. 499K. REPORT.

''The President shall prepare and transmit to the Committee on Foreign Relations of the Senate, the Committee on International Relations of the House of Representatives, and other appropriate congressional committees an annual report on the specific programs, projects, and activities carried out under this chapter during the preceding year, including an evaluation of the results of such programs, projects, and activities.

''SEC. 499L. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this chapter $250,000,000 for each of the fiscal years 2006 through 2010.

''(b) ADDITIONAL AUTHORITIES.—Amounts appropriated pursuant to subsection (a)—

''(1) may be referred to as the 'United States Social Investment and Economic Development Fund for the Americas';

''(2) are authorized to remain available until expended; and

''(3) are in addition to amounts otherwise available for such purposes.

''(c) FUNDING LIMITATION.—Not more than 7 percent of the amounts appropriated pursuant to subsection (a) for a fiscal year may be used for administrative expenses.''.

SEC. 4. AMENDMENT TO THE INTER-AMERICAN DEVELOPMENT BANK ACT.

The Inter-American Development Bank Act (22 U.S.C. 283 et seq.) is amended by adding at the end the following:

''SEC. 39. SOCIAL INVESTMENT AND ECONOMIC DEVELOPMENT FUND FOR THE AMERICAS.

''(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the Bank to use the voice, vote, and influence of the United States to urge the Bank to establish an account to be known as the 'Social Investment and Economic Development Fund for the Americas' (in this section referred to as the 'Fund'), which is to be operated and administered by the Board of Executive Directors of the Bank consistent with subsection (b). The United States Governor of the Bank may vote for a resolution transmitted by the Board of Executive Directors which provides for the establishment of such an account, and the operation and administration of the account consistent with subsection (b).

''(b) GOVERNING RULES.—

''(1) USE OF FUNDS.—The Fund shall be used to provide assistance to reduce poverty and foster increased economic opportunity in the countries of the Western Hemisphere by—

''(A) nurturing public-private partnerships and microenterprise development;

''(B) improving the quality of life and investing in human capital, specifically targeting education, health and disease prevention, nutrition, and housing;

''(C) strengthening the rule of law through improved efficiency and transparency in government services and increasing civil society participation in government; and

''(D) reducing poverty and eliminating the exclusion of marginalized populations, including people of African descent, indigenous groups, women, and people with disabilities.

''(2) APPLICATION FOR FUNDING THROUGH A COMPETITIVE PROCESS.—Any interested person or organization may submit an application for funding by the Fund.

''(3) TECHNICAL REVIEW COMMITTEE.—

''(A) IN GENERAL.—The Fund shall have a technical review committee.

''(B) MEMBERSHIP.—

''(i) IN GENERAL.—The Board of Executive Directors of the Bank shall appoint to serve on the technical review committee individuals with technical expertise with respect to the development of Latin America and the Caribbean.

''(ii) CRITERIA FOR APPOINTMENT.—Technical expertise shall be the sole criterion in making appointments to the technical review committee.

''(C) DUTIES.—The technical review committee shall review all projects proposed for funding by the Fund, and make recommendations to the Board of Executive Directors of the Bank with respect to the guidelines to be used in evaluating project proposals and the suitability of the proposed projects for funding.

''(D) CONFLICTS OF INTEREST.—A member of the technical review committee shall not be permitted to review an application submitted by an organization with which the member has been or is affiliated.

''(4) REVIEW OF PROPOSED PROJECTS.—Not more frequently than once each year, the Board of Executive Directors of the Bank shall review and make decisions on applications for projects to be funded by the Fund, in accordance with procedures which provide for transparency. The Board of Executive Directors shall provide advance notice to all interested parties of any date on which such a review will be conducted.

''(5) CONSULTATIVE COMMITTEE.—

''(A) IN GENERAL.—Each country that receives assistance under this section shall establish a Consultative Committee to make recommendations regarding how such assistance should be used to carry out the policy set out in section 2(b) of the Social Investment and Economic Development Fund for the Americas Act of 2005.

''(B) MEMBERSHIP.—A Consultative Committee should include individuals from civil society organizations that represent or have experience in the following:

''(i) Marginalized populations.

''(ii) Trade and small farmer unions.

''(iii) Rural development and agrarian reform.

''(iv) Microenterprise and grassroots development.

''(v) Access to government social services.

''(vi) Rule of law and government reform.

''(C) DUTIES.—A Consultative Committee in a country shall—

''(i) make recommendations to the technical review committee established under paragraph (3) and appropriate country representative of the Bank on projects to receive assistance provided under this section that affect such country;

''(ii) have access documents and other information related to project proposals and funding decisions that affect such country; and

''(iii) develop and publish rules and procedures under which the Committee will carry out its duties.

''(D) CONFLICTS OF INTEREST.—A member of a Consultative Committee may not be permitted to review an application submitted by an organization with which the member has been or is affiliated.

''(c) CONTRIBUTION AUTHORITY.—To the extent and in the amounts provided in advance in appropriations Acts, the United States Governor of the Bank may contribute $1,250,000,000 to the Fund.

''(d) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—For the contribution authorized by subsection (c), there are authorized to be appropriated for payment to the Secretary of the Treasury $250,000,000 for each fiscal year beginning with the fiscal year in which the resolution described in subsection (a) is adopted.

''(2) ADDITIONAL AUTHORITIES.—Amounts appropriated pursuant to paragraph (1)—

''(A) are authorized to remain available until expended; and

''(B) are in addition to amounts otherwise available for such purposes.

''(3) FUNDING LIMITATION.—Not more than 7 percent of the amounts appropriated pursuant to paragraph (1) for a fiscal year may be used for administrative expenses.''.

SEC. 5. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the countries of the Western Hemisphere should collectively provide assistance equal to the amount of United States bilateral assistance provided under chapter 13 of part I of the Foreign Assistance Act of 1961, as added by section 3 of this Act, and multilateral assistance provided by the Social Investment and Economic Development Fund for the Americas under section 39 of the Inter-American Development Bank Act, as added by section 4 of this Act, for the same purpose for which such assistance was provided;

(2) funds authorized to be appropriated to carry out this Act or the amendments made by this Act should be in addition to funds otherwise made available on an annual basis to countries in the Americas pursuant to other United States foreign assistance programs; and

(3) it should be the policy of the United States to seek to increase the amount of assistance provided to the countries of the Americas from the United States and other members of the Inter-American Development Bank for a fiscal year beginning after the date of the enactment of this Act to an amount that is more than such amount provided during fiscal years beginning prior to such date.

By Mr. REED:

S. 684. A bill to amend the Natural Gas Act to provide additional requirements for the siting, construction, or operation of liquefied natural gas import facilities; to the Committee on Energy and Natural Resources.

Mr. REED. Mr. President, today I introduce the Liquefied Natural Gas Safety and Security Act of 2005.

The siting of liquefied natural gas (LNG) import terminals is an issue that has taken on critical importance for me and for the people of Rhode Island in recent months, as the Federal Energy Regulatory Commission (FERC) is now considering proposals by KeySpan Energy and Weaver's Cove Energy to establish LNG marine terminals in Providence, RI and Fall River, MA, respectively.

I recognize that natural gas is an important and growing component of New

England's and the Nation's energy supply, and that imported LNG offers a promising new supply source to complement our domestic natural gas supplies. In a post-September 11 world, however, we must consider the substantial safety and security risks associated with siting LNG marine terminals in urban communities and requiring LNG tankers to pass within close proximity to miles of densely populated coastline.

The LNG Safety and Security Act would address these concerns by improving FERC's siting process, requiring closer collaboration between FERC and the Coast Guard, and protecting States' permitting rights under Federal and State law.

First, the bill would improve FERC's approval process for LNG terminals. Instead of reviewing proposed LNG projects on a first come-first served basis, the bill would require FERC to work with states and the Coast Guard to pursue a regional approach to LNG terminal siting, including a review of offshore and remote sites and a determination of how many LNG terminals a region needs. To address the substantial new costs faced by state and local agencies responsible for security and safety at the LNG terminal and along shipping routes, the bill would require the developer to create a cost-sharing plan describing direct cost reimbursements to these agencies. To make sure that FERC addresses all relevant safety and security issues in its Final Environmental Impact Statement (EIS) for an LNG terminal—and that the public has access to this information before FERC makes a final decision—the bill requires FERC to await the completion of an Incident Action Plan by the Coast Guard before issuing a Final EIS. It would require FERC to incorporate the non-security sensitive components of the Incident Action Plan into the Final EIS, including all safety and security resource requirements identified by the Coast Guard.

Second, to ensure that States continue to have the authority to establish meaningful safety and security standards and to protect their fragile coastal environments, the bill requires FERC to comply with Federal laws that may be enforced by States, including the National Historic Preservation Act, the Coastal Zone Management Act, the Clean Water Act, and the Clean Air Act; clarifies the right of a State to review an application to site an LNG facility under any of these laws; and establishes that FERC has no authority to preempt a State permitting determination under federal or state law.

Third, to ensure that the Department of Transportation's safety standards for LNG terminals truly encourage remote siting as Congress intended, the bill requires the Secretary of Transportation to issue new regulations establishing standards to promote the remote siting of LNG terminals.

Finally, to protect coastal communities along LNG shipping routes, the bill requires the Coast Guard to issue regulations establishing thermal and vapor exclusion zones for vessels transporting LNG, based on existing DOT regulations for LNG terminals on land.

I again want to emphasize that I recognize LNG's important role in the energy infrastructure of Rhode Island and the Nation, and I look forward to working with my colleagues to ensure reliable supplies of natural gas to our homes and businesses without siting LNG import terminals in densely populated urban areas. I am confident that we can achieve this goal by requiring FERC and other federal agencies to explore a broad list of alternatives—including offshore LNG facilities—to bring more natural gas to our communities while minimizing the risk to our citizens.

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

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

S. 684

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Liquefied Natural Gas Safety and Security Act of 2005''.

SEC. 2. SITING OF LIQUEFIED NATURAL GAS IMPORT FACILITIES.

Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding at the end the following:

''(d)(1) Before issuing an order authorizing an applicant to site, construct, expand, or operate a liquefied natural gas import facility, the Commission shall require the applicant, in cooperation with the Commandant of the Coast Guard and State and local agencies that provide for the safety and security of the liquefied natural gas import facility and any vessels that serve the facility, to develop a cost-sharing plan.

''(2) A cost-sharing plan developed under paragraph (1) shall include a description of any direct cost reimbursements that the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

''(A) at the liquefied natural gas import facility; and

''(B) in proximity to vessels that serve the facility.

''(e)(1) In this subsection, the term 'region' means a census region designated by the Bureau of the Census as of the date of enactment of this subsection.

''(2) Not later than 90 days after the date of enactment of this subsection and annually thereafter, the Commission shall—

''(A) review all applications for the siting, construction, expansion, or operation of a liquefied natural gas import facility in a region that are pending with the Commission;

''(B) consult with States in the region to identify remote sites for the development of potential liquefied natural gas import facilities in the region; and

''(C) in collaboration with the Commandant of the Coast Guard, review—

''(i) any offshore liquefied natural gas projects proposed for a region; and

''(ii) other potential offshore sites for the development of liquefied natural gas.

''(3) Based on the reviews and consultations under paragraph (1), the Commission shall determine—

''(A) whether liquefied natural gas import facilities are needed in a region; and

''(B) if the Commission determines under subparagraph (A) that liquefied natural gas import facilities are needed for a region, the number of liquefied natural gas import facilities that are needed for the region.

''(4) The Commission shall cooperate with the Commandant of the Coast Guard and States to ensure that—

''(A) the Commission approves only the number of liquefied natural gas import facilities that are needed for a region, as determined under paragraph (3)(B); and

''(B) any liquefied natural gas import facilities approved under subparagraph (A) are sited in locations that provide maximum safety and security to the public.

''(f)(1) Notwithstanding any other provision of law, the Commission shall not issue a final environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to a proposed liquefied natural gas facility before the date on which—

''(A) the applicant completes—

''(i) a security assessment for the proposed facility; and

''(ii) a security plan for the proposed facility; and

''(B) the Commandant of the Coast Guard completes an incident action plan that identifies the resources needed to support appropriate air, land, and sea security measures during the transit and offload of a liquefied natural gas vessel.

''(2) The Commission shall incorporate into the final environmental impact statement or similar analysis the non-security sensitive components of the incident action plan and all other safety and security resource requirements identified by the Commandant of the Coast Guard for a proposed liquefied natural gas import facility.

''(g)(1) For purposes of reviewing and approving or disapproving an application to site, construct, or operate a liquefied natural gas import facility, the Commission shall—

''(A) consult with the State in which the facility is proposed to be located; and

''(B) comply with all applicable Federal laws, including—

''(i) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

''(ii) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

''(iii) sections 401 and 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1341, 1342(b)); and

''(iv) sections 107, 111(c), and 116 of the Clean Air Act (42 U.S.C. 7401, 7411(c), 7416).

''(2) Nothing in this section precludes or denies the right of any State to review an application to site, construct, or operate a liquefied natural gas import facility under—

''(A) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

''(B) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

''(C) sections 401 and 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1341, 1342(b)); and

''(D) sections 107, 111(c), and 116 of the Clean Air Act (42 U.S.C. 7401, 7411(c), 7416).

''(3) Notwithstanding any other provision of law, the Commission shall have no authority to preempt a State permitting determination with respect to a liquefied natural gas import facility that is made under Federal or State law.''.

SEC. 3. STANDARDS FOR LIQUEFIED NATURAL GAS PIPELINE FACILITIES.

Section 60103 of title 49, United States Code, is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following:

''(e) REMOTE SITING STANDARDS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations establishing standards to promote the remote siting of liquefied natural gas pipeline facilities.''.

SEC. 4. THERMAL AND VAPOR DISPERSION EXCLUSION ZONES.

As soon as practicable after the date of enactment of this Act, the Commandant of the Coast Guard shall issue regulations establishing thermal and vapor dispersion exclusion zone requirements for vessels transporting liquefied natural gas that are based on sections 193.2057 and 193.2059 of title 49, Code of Federal Regulations (or any successor regulations).

By Mr. AKAKA:

S. 685. A bill to amend title IV of the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation, in the case of airline pilots who are required by regulation to retire at age 60, to compute the actuarial value of monthly benefits in the form of a life annuity commencing at age 60; to the Committee on Health, Education, Labor, and Pensions.

Mr. AKAKA. Mr. President, last year, the Pension Benefit Guaranty Corporation, PBGC, announced that it was moving to assume responsibility for the pensions of more than 14,000 active and retired pilots at United Airlines. Today, the Air Line Pilots Association, which represents 6,400 active United pilots, is trying to negotiate an alternative to such a takeover.

Mr. President, one of the reasons I am here today talking about United's pilots is that they are at risk of losing a significant amount of their pension, not just because the PBGC may be taking over their pension, but because of the age that they are mandated to retire. While I believe that Congress needs to address the issue of underfunded pension plans, I believe that it is also important for us to address an inequity with airline pilots that are mandated to retire at age 60.

The bill that I introduced in the 108th Congress, and am reintroducing today, will ensure the fair treatment of commercial airline pilot retirees. The Pension Benefit Guaranty Corporation Pilots Equitable Treatment Act will lower the age requirement to receive the maximum pension benefits allowed by Pension Benefit Guaranty Corporation to age 60 for pilots, who are mandated by the Federal Aviation Administration, FAA, to retire before age 65.

Again, with the airline industry experiencing severe financial distress, we need to enact this legislation to assist pilots whose companies have been or will be unable to continue their defined benefit pension plans. My bill will slightly alter Title IV ofthe Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation to take into account the fact that pilots are required to retire at the age of 60, when calculating their benefits.

The Pension Benefit Guaranty Corporation was established to ensure that workers with defined benefit pension plans are able to receive some portion of their retirement income in cases where the employer does not have enough money to pay for all of the benefits owed. After the employer proves to the PBGC that the business is financially unable to support the plan, the PBGC takes over the plan as a trustee and ensures that the current and future retirees receive their pension benefits within the legal limits. Four of the ten largest claims in PBGC's history have been for airline pension plans. Although airline employees account for only two percent of participants historically covered by the PBGC, they have constituted approximately 17 percent of claims. For example, Eastern Airlines, Pan American, Trans World Airlines, and US Airways have terminated their pension plans and their retirees rely on the PBGC for their basic pension benefits.

The FAA requires commercial aviation pilots to retire when they reach the age of 60. Pilots are therefore denied the maximum pension benefit administered by the PBGC because they are required to retire before the age of 65. Herein lies the problem. Mr. President, if pilots want to work beyond the age 60, they have to request a waiver from the FAA. It is my understanding that the FAA does not grant many of these waivers, and I have even heard from some pilots that the FAA has never granted these waivers. Therefore, most of the pilots, if not all, do not receive the maximum pension guarantee because they are forced to retire at age 60.

The maximum guaranteed pension at the age of 65 for plans that terminate in 2003 is $43,977.24. However, the maximum pension guarantee for a retiree is decreased to $28,585.20 if a participant retires at the age of 60. This significant reduction in benefits puts pilots in a difficult position. With drastically reduced pensions and a prohibition on reentering the piloting profession because of age, many pilots are subjected to undue hardship. While it is my sincere hope that existing airlines will be able to maintain their pension programs and that the change this bill makes will not be needed for any additional airline pension programs, I believe that my legislation is necessary to ensure that, at the minimum, airline pilots are not unfairly penalized for their employer's ability to maintain a pension plan. My legislation ensures that pilots can obtain the maximum PBGC benefit without being unfairly penalized for having to retire at 60, if their pension plan is terminated.

I urge my colleagues to support this bill. I ask that the text of my bill be printed in the RECORD.

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

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

S. 685

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pension Benefit Guaranty Corporation Pilots Equitable Treatment Act''.

SEC. 2. AGE REQUIREMENT FOR EMPLOYEES.

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)) is amended in the flush matter following paragraph (3), by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, paragraph (3) shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(b) MULTIEMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022B(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322b(a)) is amended by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, this subsection shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to benefits payable on or after the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 84—CONDEMNING VIOLENCE AND CRIMINALITY BY THE IRISH REPUBLICAN ARMY IN NORTHERN IRELAND

Mr. KENNEDY (for himself, Mr. MCCAIN, Mr. DODD, Mrs. CLINTON, Mr. BIDEN, Mr. LEAHY, Mr. LAUTENBERG, Mr. SMITH, and Mr. GREGG) submitted the following resolution; which was considered and agreed to:

S. RES. 84

Whereas on January 30, 2005, a Catholic citizen of Belfast, Northern Ireland, Robert McCartney, was brutally murdered by members of the Irish Republican Army, who attempted to cover-up the crime and ordered all witnesses to be silent about the involvement of Irish Republican Army members;

Whereas the sisters of Robert McCartney, Catherine McCartney, Paula Arnold, Gemma McMacken, Claire McCartney, and Donna Mary McCartney, and his fiancée, Bridgeen Karen Hagans, refused to accept the code of silence and have bravely challenged the Irish Republican Army by demanding justice for the murder of Robert McCartney;

Whereas when outcry over the murder increased, the Irish Republican Army expelled 3 members, and 7 members of Sinn Fein, the political wing of the Irish Republican Army, were suspended from the party;

Whereas the leadership of Sinn Fein has called for justice, but has not called on those responsible for the murder or any of those who witnessed the murder to cooperate directly with the Police Service of Northern Ireland;