emerged—a lot of trial, a lot of tribulation. But I owe a great deal to Senator SNOWE. I want her to know that. I thank her for her solidarity, for her intelligence, for working with me over these past 6 years. It has been a wonderful bipartisan relationship and one I will treasure.

I also thank Senator INOUYE as chairman of the committee and Senator STEVENS, Senators CANTWELL, KERRY, CARPER, DORGAN, and my pal and friend, Senator BOXER.

We had some great staff from my office. I thank them: John Watts, Matt Nelson, my LD, Chris Thompson, who participated in much of the negotiations. But I also give kudos to a member of Senator INOUYE's Commerce Committee staff, and his name is David Strickland. David Strickland knows more about automobiles than most people all put together in this Chamber. There may be a few exceptions, but I have never met anyone who knows more about the automobile. He conducted the negotiations with the House and worked very late hours. I want him to know how much his talent, his technical expertise is appreciated.

I see Senator CARPER. I think I mentioned him. We had many conversations over the recess on the bill. I thank him for his support and for his commitment to this bill.

This is not an easy bill to do because we know we have automobile producers in this country, and we know these companies have problems. Yet we also know time is marching on and the need to move fuel efficiency, which has not happened for 32 years, is important if we are going to solve the problems of climate change. This is a first big step.

Transportation is about a third of our greenhouse gas emissions. By 2025, this bill will reduce these emission from automobiles by about 18 percent from projected levels. It is about, by 2020, a 40-percent increase in mileage of automobiles. So it is important.

Oh, there is so much we do in this Chamber that is minutiae and often unrewarded. Once in a great while, you participate in the making of a bill which can change how things are done in the country. Once in a while, we all together can make a difference, and that happens when it is bipartisan. This bill was bipartisan. For that, I am very grateful.

So for all those who fought the good fight, who talked and walked the march, I say thank you. I think we have achieved something that is major, that is real, and that will greatly improve the situation. It may not be perfect, but the perfect, as they say, should not be the enemy of the good.

I also pay tribute and thank Senator LEVIN and Senator STABENOW. I know this is difficult, and I know how I would feel. I also believe the greater good of the United States is served by this legislation and, after all, that is all of our objectives.

I look forward to working with everyone in the future. It is a very happy evening for me. I thank everyone very much.

The PRESIDING OFFICER. The Senator from Iowa.

FARM, NUTRITION, AND BIOENERGY ACT OF 2007—Continued

Mr. GRASSLEY. Mr. President, I ask for the regular order on amendment No. 3823.

Mr. REID. Mr. President, was there a request?

Mr. GRASSLEY. I am asking for the regular order on amendment No. 3823.

Mr. REID. Mr. President, I am confident this is the right thing to do. The two managers of the bill are not here right now. Until they return, I think we should wait.

Mr. GRASSLEY. I ask for the regular order.

Mr. REID. I suggest the absence of a quorum.

I have no right to suggest the absence of a quorum. The Senator has the floor. I interrupted him.

Mr. GRASSLEY. The managers of the amendments are trying to get amendments brought up. I am ready to go, and they asked if I was ready to go.

Mr. REID. I say to my friend, I had conversations with the two of them. They are in the back coming up with something in writing to proceed through these amendments.

Go ahead. Regular order, Mr. President, fine.

AMENDMENT NO. 3823

The PRESIDING OFFICER. The amendment is now pending. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, amendment No. 3823 deals with agricultural competition and increased consolidation in the agricultural industry. The amendment is cosponsored by me, Senator GRASSLEY, and two Democrats—Senator KOHL and Senator HARKIN.

I wish to make it very clear—and I will get into some detail—there may be some people who feel the amendment I have put before the Senate is exactly the same as a bill Senator KOHL and I had introduced previously. It is very slimmed down from that bill. So any staff who is watching the debate and getting nervous about an amendment coming up that every big industry in the United States may find fault with, we are talking about a very slimmed-down version of it. I will explain all that shortly.

I have been concerned with competition in the agricultural marketplace and increased competition in the agricultural industry for quite some time now. You have heard me speak about it on the floor. We have had hearings on it. I had hearings in the Senate Finance Committee, as well as hearings I participated in under both Republican and Democratic chairmanships of the Judiciary Committee.

Agriculture, as you know, is a fairly risky business. I know that from personal experience because I have lived and worked on a farm all my life. But for some time, working in agriculture has become even more difficult for the little guy. The trend has been for companies in the agricultural sector to consolidate. I am talking about businesses that serve agriculture with input. I am talking about industry that processes agriculture. So there has been consolidation in that industry. I am not talking about the consolidation of farms. There has been that as well. That has been going on since 1790, when 90 percent of the people in this country were farmers. Today, 2 percent of the people in this country are farmers. I am talking about the impact of agriculture agribusiness consolidation and the impact upon the 2 percent of the people in this country who are farmers.

This consolidation has created new business giants impacting competition in the marketplace for the family farmers, for producers, and for consumers. Family farms and independent producers are feeling the pressure of concentration in agriculture. Small and independent producers are seeing fewer choices—who the farmer can buy from and to whom the farmer can sell.

All this consolidation in industry at both the horizontal and vertical levels leads to the very real possibility of fewer product choices and higher prices for consumers.

I don't believe all mergers are, per se, bad, and I don't believe all are wrong and all lead to unfairness. But I think at the same time we need to make sure—we need to make very sure—open and fair access to the marketplace is preserved for everyone. We need to make sure large businesses are not acting in a predatory or anticompetitive manner. We need to make sure family farmers and independent producers can compete on a level playing field. We need to make sure consumers have as many choices as possible.

So I am not talking just about mergers and lack of competition being harmful just to farmers, I am talking about the impact that might have on consumers paying more. The antitrust laws are all about protecting consumers, not about protecting producers. But in the case of family farmers, they are purchasers of input, and so they are consumers. But they also have to make sure that the marketplace is protected for the ultimate end-consumer, the consumer of our agricultural products.

By looking out for these things, you know what we end up doing, Mr. President? We keep our economy strong because of competition. We keep our agricultural community vibrant. We keep it competitive. And hopefully, in the end, we keep our consumers happy, with quality food at a relatively inexpensive price. American consumers don't know that, but they already have that environment from our farmers. We take too much for granted in America, so I am not so sure consumers know that, and I like to remind them from time to time.

So we have this amendment before us. It is an amendment cosponsored, as I said, by Senator KOHL and Senator HARKIN. The language of this amendment draws from a bill that Senator KOHL, Senator THUNE, and I introduced earlier this year—S. 1759. It is called the Agriculture Competition Enhancement Act, ACE for short. We call it the ACE Act. However—and this is the point I started out with—I wish to make clear that this amendment which is being offered to the farm bill is quite different from the ACE Act as originally introduced earlier this year. Amendment No. 3823, which I have called up here under regular order, does not include all the provisions of S. 1759 and either eliminates provisions in that bill or incorporates many changes to address concerns raised by members of the agricultural industry, by the administration, as well as Senators on both sides of the aisle.

I also worked with the chairman and ranking member of the Judiciary Committee because this bill, S. 1759, was referred to the Judiciary Committee. Because we are offering it as an amendment to this bill, I also worked with the ranking member of the Agriculture Committee to address issues that were in that original S. 1759, which I was hoping to offer here, to take care of some opposition to this bill coming up and yet still accomplishing quite a bit about the problems I see with lack of competition. So the amendment I have called up under regular order is the product of these discussions we had with business, with agricultural leaders, with the White House—or I should say with the administration generally, not necessarily the White House—and, of course, with the Judiciary Committee members and the ranking member of the Agriculture Committee.

Now, I want to explain what this bill does after having explained to you, as I just did, that it is not what we had introduced as a bill.

First, the amendment would create an Agriculture Competition Task Force to study problems in agricultural competition, establish ways to coordinate Federal and State activities to address competition problems in agriculture, and make recommendations to Congress. In particular, the task force would establish a smaller working group on buyer power to study the effects of concentration, the effects of monopsony, and the effects of oligopsony in agriculture, and make recommendations to the Department of Justice and to the Federal Trade Commission on and for agricultural guidelines. The task force will help give our antitrust regulators real insight and expertise specific to the farm community that I believe is currently lacking when they address competition issues in agriculture.

Second, the amendment would require the Justice Department and the Federal Trade Commission to issue agricultural guidelines, taking into account the special conditions of the agriculture industry, and require the Department of Justice and the Federal Trade Commission to report to Congress on the guidelines.

Both the Senate Judiciary Committee and the Agriculture Committee heard witnesses in several hearings testify that there is a need for agriculture-specific guidelines when the Department of Justice and the Federal Trade Commission look at agriculture mergers.

Currently, the Department of Justice and the Federal Trade Commission have guidelines for specific industries and issues, such as health care and intellectual property, but not for agriculture. So it makes sense—not just to me but to these many experts in agriculture and antitrust law that we heard in these several hearings before our committees—that our Federal regulators should have agricultural guidelines because of the special circumstances and special characteristics particular to the agriculture industry and particularly because there tends to be, in Washington, DC, outside of the Agriculture Department, little consideration and understanding of the unique industry of agriculture. Some people would say that even within the U.S. Department of Agriculture there is a lack of understanding in Washington, DC, of what the problems of agriculture are all about.

I don't pretend that even with the adoption of this amendment we are necessarily going to bring about the total understanding that there ought to be for the 2 percent of the people in this country who produce food for the other 98 percent, as well as a lot of surplus that is exported beyond. But whatever we can do to help, and particularly when there are policy decisions made dealing with agriculture when it is not fully understood, if we can just get some attention on agriculture in those areas, I think we will be taking a giant step forward.

Those characteristics I am talking about include monopsony, which is a situation where there is a single purchaser of goods, and oligopsony, which is a situation where there are few buyers who, at the same time, have a disproportionate amount of market power.

Third, the amendment would formalize the Department of Agriculture's review of agriculture mergers with the Justice Department and the Federal Trade Commission, requiring the Department of Agriculture to provide comments on larger mergers in the industry—mergers that submitted second requests for information under the Clayton Act. That is already a process that is in law.

Currently, the Justice Department or the Federal Trade Commission informally consults with the Department of Agriculture when they analyze ag mergers. These agencies have what we call a memorandum of understanding to consult with each other. But I believe, following on the advice of experts who have testified on this matter before the Agriculture Committee, that the current process—meaning the current process of the memorandum of understanding—does not sufficiently ensure that farm community concerns are adequately considered.

Far more than the Justice Department and far more than the Federal Trade Commission, the Department of Agriculture has extraordinary knowledge and expertise in agricultural matters. The Department of Agriculture formulates agricultural policy for our great Nation and works closely with the farm community and agricultural industry about various concerns. They have experts and economists who know and work with the data on a daily basis. The Department of Agriculture is the office that can best assess the true impact of ag mergers and other business transactions for farmers, ranchers, and independent producers, as well as the trickle-down effect on the consumer. So that is why it makes sense that the role the Department of Agriculture plays presently in antitrust review of ag mergers be more than just a memorandum of understanding; that, in fact, it be permanent and a formal role, not one that is informal and loosely contained in the memorandums.

Moreover, having such a requirement of formal participation or consultation is not some new novel idea. I wish I could claim a new novel idea. Other agencies, such as the Federal Communication Commission or the Department of Transportation, formally participate in the review of mergers in their industries. They render formal decisions that are then shared with the FTC or the Department of Justice. So along the lines of the precedent set by the FCC and the Department of Transportation, I am asking that we do the same thing with the Department of Agriculture and the FTC and the Department of Justice.

I hope I have described to you what is a very modest approach, much more modest than the ideas Senator KOHL and I had in the bill that I am saying I am offering a stripped-down version of here. I basically put in statute what the Department of Justice and the Federal Trade Commission are allegedly already supposed to be doing with the U.S. Department of Agriculture. The approach we advocate in this amendment will ensure that all of agriculture's concerns and needs are fully discussed when Federal agencies examine proposed ag business mergers. By guaranteeing inclusion and openness, we will go a long way toward alleviating understandable anxiety about an increasingly concentrated industry.

Finally, the amendment would provide for additional resources to the Department of Justice and the U.S. Department of Agriculture's GIPSA division to enhance their ability to look at agricultural transactions and competition issues.

I want my colleagues to know that we worked very closely with several

agricultural and antitrust experts on the language contained in this very amendment, as we did in the original bill. The amendment is supported by a number of farm groups, and I would like to read these to you: the Organization for Competitive Markets, the Campaign for Contract Agriculture Reform, the Center for Rural Affairs, Food and Water Watch, the Institute for Agriculture and Trade Policy, R-CALF USA—and just in case people don't understand that acronym, those are people who are cattle producers but who aren't necessarily affiliated with the National Cattlemen's Association. They could have dual memberships, but they do have some different points of view. Then another organization is the Sustainable Agriculture Coalition, and lastly the Western Organization of Resource Councils.

Mr. President, I ask unanimous consent to have printed in the RECORD a December 10, 2007, letter in support of this amendment.

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

DECEMBER 10, 2007.

Re Agricultural Competition Enhancement Act.

Hon. CHARLES GRASSLEY,
Senate Office Building,
Washington, DC.
Hon. HERB KOHL,
Senate Office Building,
Washington, DC.

DEAR SENATORS GRASSLEY AND KOHL: We would like to thank you and express our support for the Agricultural Competition Enhancement Act, Amendments 3717, 3823 and 3631, proposed for inclusion in the Farm Bill. Agricultural producers face buyer power when selling their products—and seller power when buying. This market power scissors effect has devastated the economy of rural America. These Amendments can begin to reverse the process.

Congress created antitrust law in 1890. This body of law did not exist previously, except through a patchwork of common law doctrines and state statutes. The courts weakened the Sherman Act. Congress responded by enacting the Clayton Act. Then the Federal Trade Commission Act was passed. Some updating occurred in the 1970's. However, the last 30 years has seen competition falter in agriculture as antitrust law has been incrementally neutered. Powerful companies have opposed antitrust law for decades, with substantial recent success.

AMENDMENTS 3717 AND 3823

This Amendment will create the Agriculture Competition Task Force. The Task Force is necessary to focus on the agricultural concentration problem and solutions. We can no longer pretend that unfair and deceptive practices do not exist in the U.S. food industry, America's biggest industry.

New guidelines are needed at the Department of Justice specific to agriculture. DOJ admits that antitrust laws apply unaltered across the economy—thereby conceding the problem that must be solved. The current economywide guidelines are of only passing relevance to farmers, ranchers and growers. Those guidelines may apply to an industry dominated by five firms dealing vertically with an industry dominated by three firms. But the guidelines do not tackle the real problems of disparate farmers with no market power doing business with sophisticated, multinational firms.

Better methods must be developed to establish geographic and product markets. Black and white concentration thresholds must be devised to provide certainty and concentration. Neither judges nor Department of Justice officials have sufficiently grasped these issues in the recent past.

Rather they accept pleasing theories of competition that work in textbooks, but not on the ground.

The failures have been astounding. In this year alone, the Department of Justice approved a Southeast U.S. hog packing monopoly by allowing Smithfield Foods to acquire Premium Standard Farms. And DOJ also allowed Monsanto to acquire a near monopoly in the cotton seed market when acquiring Delta & Pine Land Company. Legislation is clearly needed.

AMENDMENT 3631

We also support Amendment 3631. The Post Merger Review provisions are needed to correct the past mistakes of DOJ that have harmed the agricultural economy by extracting wealth from farmers, ranchers and rural communities. We cannot continue protecting those accumulating market power. Studying those past mergers will reveal the worst past mistakes, and enable correction when warranted.

The Special Counsel for Agricultural Competition is also needed at the USDA. The Grain Inspection, Packers & Stockyards Administration has not been up to the task. GIPSA's competition activities should be transferred to more professional, accountable and well-funded staff.

We strongly support the Amendment's clarifications regarding the burden of proof in a merger case. Congress can and should make the policy decision that competition is often harmed by concentration. It is sensible to exempt mergers that are not problematic by allowing a defendant to prove the deal does not substantially lessen competition or create a monopoly.

This Amendment could be improved if it clarified that the benefits of any alleged efficiencies created by an acquisition must be passed on to consumers or producers, not merely maintained by the merged entities. Efficiencies benefiting the merged entities are emblematic of market power, not competition. Those efficiencies should be proved by clear and convincing evidence to dissuade judges from lazily accepting mere theories and arguments rather than factual proof.

DEPARTMENT OF JUSTICE OPPOSITION

We note the surprisingly strident opposition of the Department of Justice in a November 15, 2007 letter to Chairman Leahy. That opposition is ideological and turf-based, not substantive. Indeed, the letter is akin to an industry association press release.

Both DOJ and USDA have repeatedly failed their charge to enforce the law, protect competition, and eliminate ideology from decision making. Congress should not enable further failure.

DOJ makes some fairly large leaps of logic, stating that the Amendments would actually harm competition in agriculture. No sound basis exists for such a claim, and doubt is thus cast on the entire submission. Bureaucratic distaste for legislation does not beget economic harm.

The Constitutional concerns expressed by the Department are consistent with its new Unitary Executive theory that relegates Congress to a minor governmental role. Congress should be assertive in maintaining its authority, including the ability to establish Task Forces that assist the formation of merger review guidelines and enforcement policy.

DOJ also claims a Special Counsel for Competition at USDA ''would harm American agriculture.'' This again is a leap of logic, sprung from ideology and bureaucratic turf protection rather than law or fact. DOJ's defense of USDA's Grain Inspection, Packers & Stockyards Administration fails to acknowledge the repeated GAO and USDA-OIG investigations showing incompetence at best, and falsifying reports to Congress at worst.

Indeed, the protestations prove the point—that change must be imposed from outside the agencies.

We commend you for taking this modest first step in antitrust improvement for production agriculture.

Signatory organizations,
Organization for Competitive Markets; Campaign for Contract Agriculture Reform; Center for Rural Affairs; Food & Water Watch; Institute for Agriculture and Trade Policy; R-CALF USA; Sustainable Agriculture Coalition; Western Organization of Resource Councils.

Mr. GRASSLEY. So my colleagues are clear, once again to repeat, Senator KOHL and I listened very carefully to the concerns expressed by companies and groups that contacted us about S. 1759, the original Agriculture Competition Enhancement Act—we call that ACE for short—and in response to those concerns, we made significant changes and elimination to the language which has been incorporated in this amendment. This amendment does not make any substantive changes in antitrust laws. I am going to address that a little more specifically because that is one of the things we have heard against this amendment. Maybe it would be an applicable criticism of the bill but not of this amendment.

Also, there is no mandatory adoption of the task force recommendations on the guidelines to which I have referred. The constitutional issues raised have been taken care of and more contentious provisions have been eliminated. The bottom line is the concerns that were raised by certain companies, as well as the Justice Department and the FTC, about our previous iterations of the ACE bill have been taken care of in the amendment. The bottom line is, this amendment is very much an attempt to address everyone's concerns and to reach a fair compromise because I think we could have gone a lot further and been even a lot more aggressive in dealing with agricultural competition issues. I had a hard time convincing Senator KOHL we ought to make these changes, but he has agreed as well.

There is a real need for this amendment. We need it to beef up our ability to address competition issues in agriculture and to address concerns with consolidation in the industry. My amendment is an itty-bitty step in the right direction; maybe some would say too small of a step but still a good first step at getting something done.

I urge my colleagues to support the Grassley-Kohl-Harkin amendment.

I do have some other things I want to say, but I do not want to take all the time right now. I do want to speak about some of the differences between what was in our bill and what is in our

amendment. I am willing to yield the floor if other people want to speak on the amendment that I have before us.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I would like to speak on the Grassley amendment. I am certainly willing to yield to the Senator from Iowa, if he wants to have his colleague from Wisconsin speak right with him or if he wants to go afterwards.

Mr. KOHL. Mr. President, I rise today with Senator GRASSLEY in support of amendment No. 3823. Our amendment will significantly enhance the antitrust review given to mergers and acquisitions in the agricultural sector.

Concentration and consolidation in agriculture is a major concern for our hard working farmers. Due to the wave of mergers and acquisitions that have occurred throughout the agricultural sector in recent years, fewer and fewer food processors have captured a greater and greater share of the market for purchasing agricultural goods. Farmers have less choice of where to sell their products, and as a result the prices they receive continue to decline.

Our Nation's farmers—who comprise less than 2 percent of the population—produce the most abundant, wholesome, and by far the cheapest supply of food on the face of the Earth. However, the way in which that food is produced is rapidly changing, creating significant new challenges. We have witnessed a massive reorganization in our food chain due to the increasing numbers of mergers in the dairy, livestock, grain, rail, and biotechnology industries. In fact, the top four beef packers control 71 percent of the market, the top four pork processors control 63 percent of the market and the top four poultry processors control 50 percent of the market. During this period of enormous transformation in the agricultural industry, disparity in market power between family farmers and the large conglomerates all too often leaves the individual farmer with little choice regarding who will buy their products and under what terms.

The effects of this increasing consolidation are felt throughout the agricultural sector. Rather than buying on the open market, processors of farm commodities are relying more and more on contractual arrangements with farmers which bind farmers to sell a specified amount of product, for prices specified by the processors. In many cases, there is no longer a significant open market to which farmers and ranchers can turn. These contractual arrangements damage the independence of family farmers, leaving them little choice regarding what to grow and the terms on which to sell their products.

Agricultural consolidation has also been pronounced in the dairy sector. Mergers among milk processors have greatly concentrated the industry, and resulted in lower prices for dairy farmers. There have been serious allegations of anticompetitive conduct by one large dairy processor in Florida and elsewhere resulting from this highly concentrated market.

Unfortunately, in recent years our antitrust regulators at the Department of Justice have done little to stem the tide of ever increasing agricultural consolidation. This is why we are today offering this amendment to the farm bill.

Our amendment will significantly enhance the scrutiny given to agricultural mergers under the antitrust laws. It will establish an Agricultural Competition Task Force—made up of representatives of antitrust enforcement officials, State and Federal agriculture regulatory officials, State attorneys generals, industry experts, and representatives of small family farmers and ranchers—charged to investigate problems of competition in agriculture and make recommendations to Congress and enforcement agencies on ways to enhance competition.

Our amendment will also direct the Justice Department and Federal Trade Commission to develop, within 2 years, new guidelines for antitrust enforcement in the agricultural sector. These guidelines are to be written to prevent anticompetitive mergers in the agricultural industry. These guidelines will require the antitrust enforcement agencies to challenge any merger or acquisition in the agricultural sector, if the effect of that merger or acquisition may be to substantially lessen competition or to tend to create a monopoly. The development of such strong guidelines should deter anticompetitive mergers from even being attempted in the first place.

Our amendment will also provide a procedure for comments by the Secretary of Agriculture regarding proposed mergers and acquisitions in the agricultural sector. These comments should provide important expertise and enhance the merger review process of the antitrust agencies when reviewing agricultural mergers.

In sum, our amendment is a significant measure to combat the ever rising tide of consolidation in agriculture which threatens to swamp our Nation's hard working family farmers. I urge my colleagues to support amendment No. 3823.

Thank you, Mr. President. I yield the floor.

Mr. BROWNBACK. Mr. President, I want to speak in opposition to the Grassley amendment. I appreciate the heart of the Senator from Iowa, and his intent. He has been consistent. He has been longstanding and heartfelt on this issue. I have been in the meetings he has called with the head of packing and stockyard compensation about concerns of concentration in the agricultural industry. I have seen him press on this issue. I agree with his heart on this amendment and his effort and his desire.

I absolutely disagree with this amendment. I agree with the sentiment, what he is trying to get done. This is not the way. I would like to express to this body what I believe, clearly, will take place in my State were this amendment to pass.

The cattle industry is a major industry in my State. We are third in the number of cattle on ranches and feed yards—6.4 million. There are more than twice as many cattle than people in my State. It is big business. It is a feed yard business where a lot of cattle from all over the country come to be fed out and processed. It is a very big business. It is $6.25 billion in cash receipts a year in my State, my rural State.

This is a business where there are a lot of contractual engagements and obligations back and forth. A man may have cattle from Alabama, and he puts them on a feed yard near Dodge City, KS. The processing plant is near Dodge City and the feed yard may have a contractual arrangement with the processor, saying: I am going to deliver you a thousand head of cattle a day for every working day. That keeps your processing plant orderly and organized. In exchange for that, I am going to get a higher value of cattle that he then passes on to that Alabama cattleman who owns the cattle there.

It is an arrangement that has worked to produce a very highly effective system. Some people do not like the scale of it. In many respects I do not. I would rather it be dispersed to a huge number of family farms across the country the way it used to be, like the farm where I grew up where we had chickens and pigs and cattle. Instead, we have much more integrated operating units. But this would go right at the heart of this industry, as far as changing the burden of proof and changing it on one specific industry. It will not have the intended effect of recreating the family farm system. That is not what is going to be the spill-out of this.

What will end up taking place is the Alabama cattleman is going to end up getting less money for his cattle, and the consumer is going to get less of a directed product they want. I want to develop that for the body, to explain why I like the heart of the people proposing this, but this will not produce the results they want.

The amendment creates an Agricultural Competition Task Force with the stated purpose to examine problems in agricultural competition. The task force has virtually unlimited authority to investigate transactions and business arrangements in the livestock industry—read special counsel for agriculture. It puts in several millions of dollars in that area. The task force is unaccountable to anyone. It is not required to hold public meetings nor abide by the Administrative Procedure Act nor acquire evidence from all parties. Under this amendment, the livestock industry and entire agricultural industry could be subject to limitless reviews of transactions.

I think the biggest piece I have concern about—and I have concerns about

this as a lawyer, and as an agricultural lawyer I have concerns about this. This is the area that I taught in. This is the area I have written in. I have written on the Packers and Stockyards Act. It is an important piece of legislation that this Government passed in the 1920s, when we had a very diffuse agriculture with a very monopolistic packing industry. We said this is not fair, so we are creating the Packers and Stockyards Act to oversee this structure. That is what they have been charged with doing.

In this particular amendment they would shift the burden of proof in the justice system and say this is a guilty transaction, monopolistic in nature, and then you prove your way out of it. To support that, I want to quote from the Department of Justice letter they wrote on the particular provisions. I understand my colleague from Iowa has changed some of the provisions but not this piece of it.

This would change the standards of certain mergers, acquisitions, and actions under the Clayton Act. That is the base bill. In particular, in all agricultural merger cases brought by the Government, Federal and State, and all private cases where the merging parties' combined market share is 20 percent or more—this is the DOJ letter—it puts the burden of proof on the defendant to show the transaction would not substantially impact or lessen competition or tend to create problems in the marketplace.

I am paraphrasing monopoly in the marketplace at the end.

The current setting is, no, we have to prove that against the individual or the group. To date, the Federal antitrust laws apply unaltered to mergers across virtually all industries, with the overriding objective to protect competition to the benefit of consumers because the Department has not been prevented from challenging anticompetitive mergers. They can challenge, and do now, in agriculture under the current legal standards. Shifting the burden of proof is unnecessary. This is a big deal, to shift the burden of proof on one particular industry, and then also to put in industry-specific guidelines.

Let me tell you what is taking place now. I described the situation of an Alabama cattle producer who puts cattle on feed in Kansas, who gets more money for his cattle because they are on feed there and because that feed yard guarantees a certain flow of cattle. If you put this in place, it has lawyers paid for by the Government to go out and examine any contract that is taking place. It can go, pick a feed yard, a Kansas feed yard, and it can go out and say: You have a contractual arrangement with this packer, and we are going to examine that.

Now, you pay for lawyers to say this is not a noncompetitive transaction—and they are going to have to hire lawyers to do that. They are going to end up having a big legal bill on a shifted burden, where the guilt is assumed, not innocence is assumed. It is going to be different from any other industry around. You are going to then have people driving down the price of the commodity. And you have a number of groups that are in these innovative market mechanisms. I described one earlier, a group of people at the Knight Feedyard that have certified hormone-free, antibiotic-free beef. It is a group of producers. They formed an association. They go to a big packer and say: Will you process our cattle and deliver it to the shelves in Connecticut and New York as hormone-free, additive-free, antibiotic-free beef? The packer agrees to do so. That is a contractual arrangement that will be subject to investigation, that will be presumed guilty under this.

My Kansas producers, under this innovative marketing approach that they initiated, get a substantial benefit by being able to market this sort of product that the consumer wants, and they have to go to a major packer to do it because he is the person—that is the group that can process cattle and get it to the shelf in a good quality state.

But my guys are the ones who get the money out of the system. They will be presumed guilty. It will be presumed to violate this. It will be subject to a great deal of legal investigation taking place, and my belief is it will not happen. Then my producers get less money for their cattle, and the consumers do not get the product they want. This is a specialty product that people want. It costs more to produce this type of beef and the consumer is not going to get that product and my cattlemen are going to get less money for their product.

I appreciate the heart of the proposal. What it is going to end up doing is getting less money to cattlemen in particular. I can't speak for other agricultural or livestock industries as well as I can for business that is in my State. The National Cattleman's Beef Association is strongly opposed to this amendment. The Department of Justice is opposed to this amendment for reasons of shifting standards for one industry but not for any others; for having different standards for that industry. The cattlemen believe it is going to hurt them substantially, subject them to a number of legal costs that they do not currently have and that they cannot afford to deal with. It is going to hurt the consumer as well.

While I appreciate the intent, I appreciate the presentation of it—my family farms. My brother is a farmer. This is not going to take us in the right direction. I believe the route to go is what we have been doing in the Packers and Stockyards Administration and having industry standards that are similar across all industries, and that we should support the Packers and Stockyards Administration, support the laws that are there, fund those entities—which I support doing—maintaining those standards but allowing these innovative approaches to take place for a major industry in my State and for my producers and cattle producers across the country.

I know others want to speak on this issue. I may speak on it again in a while.

I yield the floor.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I listened to the Senator from Kansas. I am a farmer. I am not a lawyer like he is. He is a lawyer and farmer, so he might have some intuition. But I would just like to have him come, and I will deliver it to his desk—he needs to read my amendment. What he has said is an analysis of the bill that Senator KOHL and I introduced, but that is not the amendment. Maybe he missed my opening remarks, but I went to great length in those opening remarks to explain how my amendment differs from the bill. I want to point that out to the Senator from Kansas because I think I have addressed every concern he has presented to the Senate in his very good speech.

I have taken care of his concerns, and I am going to mention those concerns he has brought up, and then I am going to go to some length to tell you how I have taken care of that. But there is no special counsel amendment in this bill, as the Senator from Kansas has said. There are no additional reviews of transactions that have already taken place. That was in the original bill. It is not in this amendment.

He spoke two or three times about changing the burden of proof. That was in the original bill. It is not in this slimmed-down amendment. There is no burden of proof shifting in the amendment.

The task force that we provided for has no review or study provisions in the amendment, as indicated by the Senator from Kansas.

Now I am going to go into some detail, because obviously people are not listening to anything I have said. I want to state in a more elaborate way how this bill differs—this amendment differs from the bill that I said Senator KOHL and I first introduced, and the length we went to take care of concerns that the White House, the administration has raised, concerns that both the ranking member and the chairman of the Judiciary Committee raised, because this bill was referred to Judiciary, and then lastly, working with the ranking member of the Agriculture Committee, to address concerns he had.

There has been a lot of smoke and mirrors—I think you heard some of that—about the provision of the bill, and most of those charges are not factual, as I have indicated.

The fact is, this amendment is very different from the bill Senator KOHL and I introduced earlier this year. This amendment is also different from another amendment I had already filed to this bill. Let me list some of the things

that are not in our amendment that are before us in 3823.

I am hearing that people are concerned about the shifting of the burden of proof in the amendment. The burden-of-proof shifting provision that was in the prior iteration has been eliminated. It is not in this amendment. There are no substantive changes to antitrust laws at all.

I am hearing concerns about reviews that will be done after mergers have been approved. The provisions that allow the task force to do a study of agricultural mergers that were approved within the past 10 years have been eliminated, not in this amendment.

In addition, the provisions requiring the Justice Department and the Federal Trade Commission to review ag mergers 5 years after they have been approved have been eliminated as well.

The provision creating an Assistant Attorney General for Agricultural Antitrust at the Justice Department has been eliminated. In other words, it is not in the amendment pending before the Senate.

The constitutional concerns raised by the administration, not by Senator BROWNBACK, about the agricultural competition task force are gone, the constitutional concerns.

We changed the provisions requiring adoption by the Justice Department of task force working group recommendations on agricultural guidelines. The amendment now has the Justice Department and the Federal Trade Commission consulting with the task force working group on the guidelines.

Any so-called constitutional concerns have been eliminated. We have made other changes to the prior writings of this amendment and/or the bill, all of which were incorporated in amendment 3823. We made these changes to address concerns that we agreed with, and we made changes in order to reach a fair compromise.

The fact is, big business and the agricultural giants do not want anything that might put up any sort of review by people who know something about agriculture, of their expansion and concentration efforts. The fact is, our Federal antitrust regulators refuse to recognize that agriculture is unique and should have industry-specific guidelines to make sure that special circumstances of the agricultural landscape are considered.

This brings about consideration, this does not bring about any change. Any movement to them, no matter how small, to try to address concentration and competition issues in agriculture is going to be decried by the powerful interest groups and their lobbyists. So when something reasonable is suggested, such as the Grassley-Kohl-Harkin amendment No. 3823, we still are going to get the outrageous claims that this is a bad amendment. The reality is the sky is not falling.

I advise my colleagues, particularly the Senator from Kansas, to read the amendment. Forget about the bill he has been referring to. Instead, listen, and stop listening to those sensational cries being made by agribusiness and their allies. We need to pass this amendment.

I yield the floor.

Mrs. BOXER. Mr. President, what is the pending business?

The PRESIDING OFFICER. The amendment of the Senator from Iowa.

Mrs. BOXER. I ask my good friend if he would yield 1 minute to me to talk about an amendment that is coming later this evening.

Mr. GRASSLEY. I will probably do that. Let me make an inquiry. Can I do that, Mr. President, without setting aside or yielding my right to continue discussion of this amendment?

The PRESIDING OFFICER. The Senator may address another amendment without prejudice to the pending amendment.

Mr. GRASSLEY. I yield.

AMENDMENT NO. 3771

Mrs. BOXER. I thank my friend very much. I thank the chairman very much as well.

Senator BOND has filed an amendment to the farm bill that I hope the President sitting in the chair will listen to me about, because it would undercut crucial food safety, health, environment, consumer protection, and other laws, most of which come out of the Environment and Public Works Committee.

I am not going to go into it now, because it will be gone into later. But it would stop agencies such as the EPA from adopting or retaining safeguards for the American public.

It is opposed by the following: AFL–CIO, the American Lung Association, the Natural Resources Defense Council, the Consumer Federation, the Sierra Club, the Alliance for Justice, the National Audubon Society, the United Food and Commercial Workers, Humane Society, and many others.

It would require a complex, burdensome, and unnecessary regulatory analysis by Federal agencies. It would impose a maze of ''regulatory flexibility,'' and all kinds of analyses so that it would stop us from moving forward to ensure our laws such as Clean Air, Safe Drinking Water, Clean Water, and Wholesome Meat and the Wholesome Poultry Products Act.

I simply flag this for colleagues who care about food safety, who care about clean water and safe drinking water, and hope we will have a resounding ''no'' vote or perhaps Senator BOND might rethink his amendment.

It gives special treatment to virtually any industry with even tenuous connections to agriculture in rulemakings. It gives special treatment to all ''agricultural entities,'' defined so broadly as to include virtually any industry with any arguable connection to agriculture or forestry, such as the food processing corporations, pesticide companies, railroads, paper mills, shipping companies, and truck and tractor manufacturers.

It gives agribusiness corporations a special private right to privately comment on and seek to weaken Federal protections.

The amendment creates a special process, only applicable to EPA and the Department of the Interior rules in which only agricultural industry representatives get inside information and a private chance to lobby against potential new agency rules before the proposal becomes public. This could allow large corporations to delay or kill vital environmental and health protections against toxic pesticides, water or air pollution, and other important threats.

It creates a new lobbying/litigation shop at USDA to advocate for agribusiness. This new ''Chief Council for Advocacy'' would lobby agencies and even file amicus briefs in litigation challenging agency rules.

It provides special new special judicial review provisions that only ''agricultural entities'' can use, which would delay or undercut Federal safeguards. It gives special standing to ''agricultural entities'' to sue agencies for failing to comply with most of these requirements.

It requires Federal agencies to consider weakening all of its current rules. Every agency must review any rule it has on the books which has, or will have, a ''significant economic impact upon a substantial number of agricultural entities'' to see if ''such rules should be continued without change, or should be amended or rescinded.''

The Bond amendment would keep EPA and other agencies from doing their job to protect the American public. I urge all of my colleagues to vote ''no'' on the Bond amendment, SA 3771. It is bad for America's health and bad for our environment.

Mr. BROWNBACK. Mr. President, I wish to respond to the good Senator from Iowa and a couple of his comments about the amendment. But first I ask unanimous consent to insert in the RECORD after my statement a letter from the Department of Justice opposing the bill.

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

(See Exhibit 1.)

Mr. BROWNBACK. Mr. President, we just received this from the Department of Justice. They state in the first paragraph:

> The Department of Justice strongly opposes the amendment.

To read their summation sentence, which I do not think is fair, given the detail and the work the Senator from Iowa has gone into on this, and substantial changes that he has made—we have been reviewing his amendment. I have the amendment.

But in the DOJ summary sentence, they state this:

> However, DOJ believes certain provisions included in the amendment would not accomplish its stated goal of protecting rural communities and family farms and ranches, but instead would unnecessarily duplicate

existing collaboration efforts, increase costs and uncertainty and may hinder effective antitrust enforcement and harm competition in agriculture and other industries. Therefore DOJ strongly opposes the amendment.

Then they go on further to develop the points they have here. As I said, I appreciate the modifications the Senator from Iowa has made. I can tell you in my State, and in the cattle industry, they view this as hurting the price that they are going to be able to get for cattle is the bottom line issue. They view this as driving up substantially their legal costs, and most farmers do not like to have any legal costs, let alone having a number of legal costs.

They believe this is going to do it, and that is not—that is coming from the National Cattlemen's Beef Association, it is coming from the Kansas Livestock Association, where I was a couple of weeks ago at their annual meeting. This was one of their lead concerns, and the reason it was one of their lead concerns is they are looking at that and saying: Look, we are going into a number of different marketing transactions now, and we feed cattle for a lot of people around the country.

My guess is a fair number of Iowa's cattle are on feed in my State in Kansas, and that that is taking place is a good thing. We invite more farms to come there because of the efficiency, of our feeding operations, because of the weather conditions for those, because of the packers that are located there, and the efficiency of being able to do that, and then of these innovative marketing arrangements so that they can get a premium price for Angus cattle that come out of Iowa or Alabama or California or somewhere else. They are able to get a premium price for those because they do special things. They say we are going to keep these Angus fed separately here, and we are going to track them through the whole system. Then we are going to make sure they are hormone free, if that is what the group wants, or we are going to do something else to have premium beef that is going to be marketed only in certain high-end restaurants.

All of that segments the marketplace, but those segmented marketplaces are through contractual arrangements, and they get a premium to the producer that will be under investigation with this. That is why DOJ opposes it. That is why the Kansas Livestock Association, when I was meeting with them, was very fearful of this.

I appreciate some of the changes that were made and were noted here. The base concerns remain what was stated here by the Department of Justice and by the Kansas livestock producers.

Now, different people look at this different ways. A lot of us are deeply concerned, and have been for some time, about the concentration that has taken place in the agriculture business. How do you go at it differently? I spent 6 years as agriculture secretary in Kansas, and many times was trying to come up with innovative, different market segments, whether we could do it on a small scale, farmers' markets, and getting products closer to consumers, whether we can do different products which are coming out now.

We are a big cotton producer in Kansas, looking at canola oil—some of it got going; some of it did not—or confection of sunflower seeds which are under contract, I might point out as well.

So we went through a period we are not making enough money off of the commodity-based business, and we have got to segment this. But when you segment it, that generally requires some sort of identity being preserved and some sort of contractual relationship. And, yes, you get a benefit for that, you get paid more than someone who just has a commodity product.

Well, now, if you say: You cannot do that, or if you do that, we are going to presume you are guilty and you are going to have to pay a lawyer to fight your way out of it. With all due respect to the people whose intent is pure on this, this is going to hurt producers in my State.

That is why many of them—not all, some—support this approach, but many would be strongly opposed to this, as the Department of Justice is.

I urge my colleagues to vote against it.

EXHIBIT 1

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, December 13, 2007.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of Justice (DOJ) has reviewed Senate Amendment 3823 to H.R. 2419. DOJ works vigorously to ensure that the benefits of competition are maintained in all markets, including agricultural markets, to the benefit of American consumers. However, DOJ believes that certain provisions included in the amendment would not accomplish its stated goal of protecting rural communities and family farms and ranches, but instead would unnecessarily duplicate existing collaboration efforts, increase costs and uncertainty, and may hinder effective antitrust enforcement and harm competition in agriculture and other industries. Therefore, DOJ strongly opposes the Amendment.

Senate Amendment 3823 to H.R. 2419 calls on DOJ and the Federal Trade Commission (FTC) to issue agriculture merger guidelines. To date, the Federal antitrust laws apply unaltered to mergers across virtually all industries, with the overriding objective to protect competition to the benefit of consumers. As such, there is no need for any industry-specific merger guidelines. The Horizontal Merger Guidelines (Guidelines) issued by the DOJ and FTC apply consistently to mergers across the entire economy, and no need has been demonstrated to depart from that generally applicable approach. DOJ has not been prevented from challenging anti competitive mergers in agriculture under the current legal standards. To the extent that there is a suggestion that monopsony is a problem particularly significant to agriculture, the guidelines address monopsony and thus no industry specific guideline is warranted for that concern.

DOJ believes that current merger policy is sufficiently flexible to address market conditions that may be unique to agricultural markets. For example, DOJ and FTC recently issued a Commentary to the Horizontal Merger Guidelines (2006), which provides several examples of how agricultural matters are reviewed. This commentary, DOJ's merger challenges in matters such as General Mills/Pillsbury (2001), Archer-Daniels-Midland/Minnesota Corn Processors (2002), Syngenta/Advanta (2004). and Monsanto/DPt (2007), competitive impact statements issued as part of those challenges, and the closing statements DOJ has issued for certain agricultural matters, demonstrate that merger policy under the Guidelines is effective at protecting consumers and maintaining competition in agriculture industries. Changing the well-established policy is not necessary and could deter efficiency enhancing transactions that would benefit consumers by resulting in lower prices.

Subsection (c) of Senate Amendment 3823 creates an Agriculture Competition Task Force (Task Force), made up of representatives from DOJ, FTC, United States Department of Agriculture (USDA), State governments and attorneys general, small and independent farming interests, and academics or other experts. The Task Force is charged with devoting additional resources focused solely on agriculture industries to study competition issues, coordinate Federal and State activities to address ''unfair and deceptive practices'' and concentration, and work with representatives from rural communities to ''identify abusive practices.'' In addition, the Task Force shall report on the state of family farmers and ranchers. DOJ believes such a task force would at best duplicate existing enforcement activities, and at worst could impede existing coordination between DOJ, USDA, and state governments by creating a bureaucratic structure that would increase the cost to the American taxpayer without any benefit to competition or independent farmers. Furthermore, to the extent the amendment requires consideration of the effects on ''rural communities'' there is no clear explanation regarding how this factor should be considered, and such consideration could be inconsistent with overall antitrust objectives.

Subsection (e) of this amendment requires notification to the USDA of Hart Scott Rodino (HSR) filings with the FTC and DOJ as well as the sharing with the Secretary of Agriculture of any second request materials obtained under such merger reviews. Under this section, USDA may submit and publish comments on whether mergers ''present significant competition and buyer power concerns,'' such that further review by DOJ or the FTC is warranted. Congress provided essential confidentiality for HSR filings and for productions of documents under that process, and no need has been shown to change that important protection. Through the existing Memorandum of Understanding between DOJ, the FTC and USDA, the antitrust agencies seek expertise and information from USDA on agriculture matters, and as part of that cooperative relationship, USDA expresses its views regarding antitrust merger enforcement matters, and thus no need for radical change has been shown. In addition, concurrent jurisdiction likely would increase costs and time delays inherent in duplicative review and has the potential for inconsistent standards and outcomes.

DOJ shares the concern of the amendment's sponsors that agriculture, as a key part of our economy, should maintain its competitive nature so that producers and consumers alike benefit from adequate supply and choice of agricultural products at competitive prices. Moreover, we take seriously concerns expressed in the agriculture community about competitiveness in the agriculture sector. However, because Senate

Amendment 3823 has several provisions that raise concerns for DOJ, both about unintended consequences as well as about competition and public policy, DOJ strongly opposes these provisions.

Thank you for the opportunity to provide our views on this proposed legislation. The Office of Management and Budget has advised us that there is no objection to this letter from the perspective of the Administration's program.

Sincerely,

BRIAN A. BENCZKOWSKI,
Principal Deputy Assistant Attorney General.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I do not have a whole lot more to say about this bill if you want to move on. But I do want to continue to correct a couple of things the Senator from Kansas has spoken about.

First, I was listening as he was quoting from the Department of Justice letter. And he may have a later letter, but those exact words that he was reading from appear in a November 15 letter that Senator LEAHY received as chairman of the Judiciary Committee with objections from the Department of Justice.

But those objections are about the bill S. 1759, the bill that I said we have modified considerably as an amendment here, so that it does not do all of the things that have been attributed to it.

Mr. BROWNBACK. If my colleague will yield, my letter is dated today, December 13. It is a subsequent letter to the letter the Senator is quoting from.

Mr. GRASSLEY. OK.

Mr. BROWNBACK. It is on the amendment.

Mr. GRASSLEY. But in the paragraph you were quoting, it says exactly the same thing in the letter I got of November 15 in which they were commenting on 1759, and they surely can't find the same fault with the amendment that they found with the bill because we met with them and made changes according to what they asked us to do.

My staff corrects me that we didn't actually meet with the Department of Justice, but we were well aware of the changes they were demanding, and those changes are taken into consideration in this legislation.

Then we keep hearing from the Senator from Kansas about investigations and reviews. Get that out of your system. I have spoken twice on that issue—no reviews, no investigation.

Then when you hear all of these faults the bill is going to bring about—you are going to increase the cost of food to the consumer or maybe decrease profitability to the farmer—I don't see that anything like that is a result of a task force that is going to help the Justice Department and the FTC in determining whether mergers are anticompetitive. These are guidelines. They are not making decisions. The Department of Justice and the FTC will be making those decisions. But is there anything wrong with having a little bit of input into agricultural issues before those two agencies from experts in this town in the Department of Agriculture who may have some understanding of agriculture? I don't think the sky is going to fall if you have that sort of input.

I hope we can vote on my amendment and move on. I will only speak to the extent I have to to continue to defend misunderstandings of what the amendment does as opposed to what the original bill did.

Mr. HATCH. Mr. President, today I rise in reluctant opposition to the amendment offered by my friend, the gentleman from Iowa.

Our Nation has been blessed with a judicial system dedicated to the principle of the rule of law. Each one of us no matter how: rich or poor; strong or weak; big or small; receive equal justice under the law.

In part, that is one of the reasons why our national competition policy is framed in general, universal terms. Specifically, the Sherman Act prohibits every ''contract, combination or conspiracy, in restraint of trade;'' and the Clayton Act prohibits all acquisitions whose effect ''may be substantially to lessen competition.''

There are many instances, where we have diverged from these principles, even for good cause. However, in many of these instances we have encountered numerous difficulties and our economy harmed by unexpected consequences.

One need only look at correcting legislation that the chairman of the Antitrust Subcommittee, Senator KOHL, recently offered eliminating railroad antitrust exemptions.

Senator KOHL believes, with a great deal of merit, that many shippers are being charged exorbitant prices to transport their goods by the railroads. In fact, the Antitrust Subcommittee, of which I am ranking Republican member, received a letter, as part of the subcommittee's hearing into railroad antitrust exemptions, from several States' attorneys general that discussed how foreign corporations are very reluctant to invest in new American manufacturing facilities if the proposed location of these facilities is serviced by only one railroad.

Senator KOHL's solution to this problem is to eliminate the special antitrust exemptions granted to railroad mergers.

Indeed, many Senators have argued for the repeal of the McCarran-Ferguson Act. As my colleagues know the McCarran-Ferguson Act exempts the business of insurance from Federal antitrust laws when and to the extent that business is regulated by State law.

These Senators believe that certain insurers took advantage of the McCarran-Ferguson exemption to implement a collective agreement to raise insurance prices on gulf coast residents still recovering from Hurricane Katrina.

Clearly, there is evidence of unattended consequences when special provisions are permitted in antitrust law.

That being said, there is a substantial difference between railroad antitrust exemptions, McCarran-Ferguson exemptions and creating new agriculture antitrust guidelines as called for by the Grassley amendment. I thoroughly recognize that the market relationship between the producer and the food packer desires special attention. However, the underlining concern is well founded: special antitrust rules for specific industries can have profound undesirable consequences and violate one of our national competition policies fundamental tenants: that antitrust law should be framed in general, universal terms. So the question I believe that we should be asking is if the remedy to this situation is additional, special legislation, or greater enforcement? Currently, the Department of Justice has devoted considerable effort to investigate agricultural mergers but the time might be coming where we need to increase those resources for the Department. Perhaps the creation of a new Deputy Assistant Attorney General, whose responsibilities are solely to investigate agriculture mergers, is the correct path.

My trepidations of industry-specific rules, such as those called for by the Grassley amendment, are that they are likely to create legal difficulties. First, industry-specific rules add to the danger of inconsistent enforcement across industries. Second, industry-specific rules introduce additional uncertainty, since it will not always be clear in which industry a particular product should be classified, and thus not clear which legal standard will apply. Finally, has shown that once you enact industry-specific rules other industries and constituency groups will request there own special antitrust rules.

So what should we do? Do we maintain our national competition policy which is framed in general, universal terms, or should we embrace through industry-specific enactments.

Well let's look at the record. During a period of ever increasing complex laws and regulations having general and simple rules makes antitrust law more understandable to both the legal and business community. The general language of current statutes provides courts and enforcement agencies valuable flexibility to incorporate the latest developments in business and economic learning. It should also be noted that, where industry-specific factors are important to reaching a correct decision in a particular case, the agencies and the courts are already fully authorized to consider those factors under current law. In particular, current antitrust principles can address issues of buyer power that have concerned some observers of agricultural mergers.

One should also remember that congressionally created Antitrust Modernization Commission concluded that ''the basic framework for analyzing mergers followed by the U.S. enforcement agencies and courts is sound.''

Therefore, I oppose Senator GRASSLEY's amendment. Senator GRASSLEY has a well-deserved reputation for standing up for and defending the American farmer. I agree that we must be vigilant in ensuring that the Department of Justice and Federal Trade Commission are diligent in enforcing antitrust laws—but those laws should be for all American economic endeavors, not fragmented as all too many of our laws have become.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank the Senator from Iowa for offering this amendment. I am a cosponsor and a proud supporter.

I have been listening to the debate taking place, and quite frankly I do not understand the opposition by the Senator from Kansas. After all, as Senator GRASSLEY pointed out, this is not the original bill. It was modified quite a bit.

All this amendment really does is create an Agriculture Competition Task Force to study problems in agricultural competition, establish ways to coordinate Federal and State activities, address unfair and deceptive practices in concentration, create a working group on buyer power to study effects of concentration in agriculture, and make recommendations to assist the Department of Justice and the Federal Trade Commission in drafting agricultural guidelines. I don't know that anything could be more advisory than that. All we are doing is saying, use the expertise they have at the Department of Agriculture to look at these issues and advise and inform DOJ. It doesn't say that DOJ has to do what they say. It doesn't say they have to follow everything they say. It is advisory. I don't see why there would be such an objection to this kind of advice which would be given to DOJ and the Federal Trade Commission. There are some other things in there, but that is sort of basically the essence.

Again, as many times as we have seen decisions come down from the Department of Justice and the Federal Trade Commission, you wonder if they have anybody over there who understands anything at all about rural America. You wonder how many of these lawyers over there at the Department of Justice—I don't want to pick on any schools; we always say Harvard-trained lawyers and Yale-trained lawyers—have had any dirt under their fingernails from a farm or how many of them know anything about livestock issues.

This is a good amendment. Quite frankly, I am surprised there is this kind of opposition.

Having said that, I wonder if the Senator from Iowa—if we could ask to set the amendment aside temporarily so we can move on to a couple other amendments.

Mr. GRASSLEY. Before I consent to that, and I probably will, as the manager of the amendment, is there any determination you can give me when we can vote on this or are we going to stack votes and vote all at once?

Mr. HARKIN. We are working out a unanimous consent agreement now. It is bouncing back and forth. Hopefully within a few minutes or so, we will have that. I have a feeling these votes might be stacked. I can't say right now. I have a feeling they will probably be stacked.

Mr. GRASSLEY. I will not object.

Mr. BROWNBACK. Mr. President, may I inquire of the Senator from Iowa, if this is voted on, will this require a 60-vote threshold?

Mr. HARKIN. I asked my ranking member about that. He would insist on 60 votes. I am not insisting on 60 votes. He informed me that it would require 60 votes.

AMENDMENT NO. 3851 TO AMENDMENT NO. 3500

(Purpose: To promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes)

Mr. HARKIN. I ask unanimous consent that the pending amendment be set aside. I send an amendment to the desk and ask for its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. CHAMBLISS, Mrs. FEINSTEIN, Mr. LEVIN, Ms. SNOWE, Mr. CRAPO, Mr. CONRAD, and Ms. CANTWELL, proposes an amendment numbered 3851 to amendment No. 3500.

Mr. HARKIN. I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I apologize for interrupting. We have been waiting for a lull in the debate. I will send a cloture motion to the desk.

I ask for the regular order with respect to amendment No. 3830.

While the staff is looking for the amendment, let me just say this is a motion I will file for cloture in regard to the firefighters amendment. We have tried almost all day to work out something. I thought we could work out something—side by sides, a couple of second-degree amendments. We have been unable to do so. We had a suggestion from the Republicans that we would have a voice vote. That didn't work out. We had a suggestion that maybe what we should do is try to do a freestanding bill at some later time. We were unable to get agreement to do that.

What we are going to have to do now, which is really too bad, is we are going to send this cloture motion to the desk. That will ripen 1 hour after we come in on Saturday. If Senators are willing to advance the vote, we can do it tomorrow, of course. That not being the case, we have no choice but to do it on Saturday. We have so many important things to do. We can't be stepping on ourselves with 30 hours postcloture.

I have told everyone, as soon as we finish this vote on this firefighting thing, we will have cloture on the bill. It doesn't matter what is pending, what is going on; we are going to have cloture on the bill. Then, when that is over, we have to have a vote on the motion to invoke cloture on the FISA legislation that has been reported by the Intelligence Committee and the Judiciary Committee. We have to finish that. The law expires on February 4 or 5. Senator FEINGOLD and Senator DODD have indicated to me on more than one occasion that they will not let us go to the bill without a 60-vote margin. So that is where we are. We need to get to that sometime early Monday to get through all the other things we have to do.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARKIN. Mr. President, would the Chair please state what the amendment is before the Senate right now?

The PRESIDING OFFICER. Amendment No. 3851.

Mr. HARKIN. Mr. President, that is the amendment I had sent to the desk prior to the quorum call being established?

The PRESIDING OFFICER. The Senator from Iowa is correct.

Mr. HARKIN. I thank the Chair.

This is basically an extension of the Commodity Exchange Act of 2013. I wish to state for the record we would not ordinarily include the Commodity Exchange Act in the farm bill, but for various reasons we were unable to reauthorize the CEA in the last Congress.

This amendment further regulates energy transactions that perform a significant price discovery function. This is an issue Senators FEINSTEIN and LEVIN have been working hard on.

The amendment also addresses fraud and retail transactions in foreign exchange markets. It gives the CFTC broader authority to prosecute fraud in other commodities such as heating oil. I am very pleased we are able to work through the reauthorization issues with the ranking member, Senator CRAPO, and numerous cosponsors of this amendment.

I yield the floor.

Mr. CHAMBLISS. Mr. President, I wish to thank the chairman for this and thank Senator FEINSTEIN, Senator CRAPO, and Senator LEVIN. All of us have been working on this issue for literally 3 years now. This is the culmination of an awful lot of sweat on the part of not only those individuals but the industry as a whole. This is a huge day for the futures industry. I thank the chairman.

Mr. HARKIN. I thank Senator CHAMBLISS. It is a great effort, a great product.

I see one of the main architects of the provisions of this bill, and I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I would like to indicate my full support for this. This effort actually began 6 years ago. Some of us were here then, including Senator CANTWELL who is here tonight, Senator HARKIN, Senator LEVIN, Senator SNOWE, Senator CONRAD, when we began this effort. It looks like opportunity and timing are once again coming together.

We have a bill that today has the general support of the Commodities Futures Trading Commission, the electronic exchange known as ICE, the New York Mercantile Exchange known as NYMEX, the Chicago Mercantile, and the President's Working Group. This legislation, supported by myself, Senator LEVIN, Senator SNOWE, as well as Senator CANTWELL—I have a list here—Senator CONRAD, obviously Senator CHAMBLISS, and Senator CRAPO would accomplish that. I would like to point out that under Senator LEVIN's leadership and his Permanent Subcommittee on Investigations, which did an investigation into the absence of oversight and transparency on some of these markets, became a guide for this push and effort.

I would like to very briefly say what this legislation does. It increases transparency in energy markets to deter traders from manipulating the price of oil and natural gas futures traded on electronic markets. Here is what it would do. First, it requires energy traders to keep records for a minimum of 5 years so there is transparency and an audit trail. Second, it requires electronic energy traders to report trading in significant price discovery contracts to the Commodities Futures Trading Commission so they would have the information to effectively oversee the energy futures market. Manipulators could then be identified and punished by the CFTC, and in the past there have been plenty of those. It cost the State of Washington—wounded them deeply—and it cost my State $40 billion in fraud and manipulation.

Third, the amendment gives the Commodities Futures Trading Commission new authority to punish manipulation, fraud, and price distortion.

Fourth, it requires electronic trading platforms to actively monitor their markets to prevent manipulation and price distortion of contracts that are significant in determining the price of the market.

These are the factors CFTC will consider in making that determination. The trading volume, whether significant volumes of a commodity are traded on a daily basis. Price referencing, if the contract is used by traders to help determine the price of subsequent contracts. Price linkage, if the contract is equivalent to a NYMEX contract and used the same way by traders.

For example, when Amaranth was directed to reduce their positions in regulated natural gas contracts, they simply moved their positions to the unregulated electronic natural gas contracts. The bottom line: This requirement would essentially say similar contracts on ICE and NYMEX will be regulated the same way.

In October, the four CFTC Commissioners released a report underscoring the critical need for increased oversight in U.S. energy markets. This bill includes what they asked for. We are very pleased. I am delighted the CFTC reauthorization is included in this package. Once again, this is a bipartisan bill. I wish to thank my main cosponsors: Senator LEVIN, Senator SNOWE, Senator CANTWELL, Senator CONRAD, and others who have been very helpful in this area. I believe we can pass this legislation, hopefully unanimously, tonight.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, the distinguished Senator from Maine wishes to speak for 3 minutes on this matter, and then I ask unanimous consent that I be recognized following her statement.

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

The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I wish to express my appreciation to the Senator from California for spearheading this initiative that is so essential and so critical, particularly at this time as we have seen exorbitant increases and historical in energy prices. I also wish to thank Chairman HARKIN for his support and his leadership, as well as Senator CHAMBLISS and Senator CRAPO for their work on this essential issue and for their cooperation in working to help adopt this component as part of the pending farm bill.

Americans have lost confidence in our energy markets—particularly in the futures market. I have heard from numerous constituents who have long been skeptical about the price of gasoline and heating oil prices. Particularly in recent months, we have seen historical increases. Our trucking industry has held numerous meetings across the State because of the rising price of diesel fuel to $3.73 a gallon. These savvy consumers strongly suspect these prices are being manipulated. Frankly, their analysis is supported by a Senate subcommittee report, leading economists, the GAO and most recently the CFTC.

How can a market fundamentally change to such a degree that prices are skyrocketing by 43 percent in less than a year? That question is omnipresent in American society today. It is being asked by Mainers who are struggling with heating bills, the industrial sector struggling with electricity prices, and the transportation industry, which is concerned about how long they can sustain these prices.

The answer is certainly complex, but it is becoming patently clear that speculation in the unregulated exempt commodities market is exacerbating energy prices. Providing transparency to these dark markets is, bluntly, long overdue, and I ask my colleagues to support this legislation which, as Senator FEINSTEIN indicated, will provide transparency and accountability to these exempt security markets.

On October 25, a coalition of more than 80 national, regional, and State organizations came together to form the Energy Market Oversight Coalition and wrote each Member of the Senate asking them to finally close the Enron loophole. As the coalition stated in their letter to the Senate: To restore public confidence, all energy markets must be fair, orderly, and transparent so the prices paid by consumers reflect the true supply and demand.

In 2005, I requested a report from the Government Accountability Office on the issue of futures market manipulation. That report released on October 24 outlined three fundamental components to a functional futures market. One is access to current information; secondly, a large number of participants in the market; and third, transparency. It is this last piece that is sorely lacking in our markets today.

The current system with respect to exempt commercial markets lacks transparency and fails to provide an essential tenet to any futures market. Traders are able to avoid revelations of their identity within these exempt commercial markets. In fact, based on one of the investigations that took place by a Senate subcommittee, they discovered the Amaranth hedge fund had excessively traded natural gas contracts to such a degree that in 2006, it controlled 40 percent of all natural gas contracts in the New York Mercantile. One hedge fund controlled 40 percent of all the natural gas deliveries in the United States. The positions were so substantial the company could unilaterally alter the prices for natural gas. The New York Mercantile, which is subject to the CFTC regulation, required Amaranth in August of 2006 to reduce their holdings of natural gas contracts. Their response, the hedge fund's response, was simply to move its dealings to the exempt commodity market, thereby defeating the entire purpose of the CFTC regulation and cloaking its potentially manipulative market power for further regulation.

This is an unacceptable gap in the law, and that is why the legislation we are presenting tonight will address that, because it is long overdue. Even the CFTC reversed their decision and unanimously supported including this oversight as part of their jurisdiction and responsibility.

So I yield the floor.

Mr. BINGAMAN. Mr. President, I want to congratulate the primary sponsors of this amendment on achieving a hard-won compromise on an issue

that has been intensely debated by Members of this body for a number of years. As I understand the purpose of the amendment, it would essentially close what is come to be known as the ''Enron Loophole'' in the Commodity Exchange Act, CEA.

This loophole in the law, included in the Commodity Futures Modernization Act, CFMA, of 2000, has allowed large volumes of energy derivatives contracts to be traded over-the-counter, OTC, and on electronic platforms, without the federal oversight necessary to protect both the integrity of the market and our nation's energy consumers.

Mr. President, my Committee—the Senate Committee on Energy and Natural Resources—first heard testimony on this issue on January 29, 2002. At that hearing, Mr. James Newsome, then the chairman of the Commodity Futures Trading Commission, described the impacts of the CFMA thusly:

With respect to the energy markets, the CFMA exempts two types of markets from much of the CFTC's oversight. Such markets are described in Section 2(h) of the CEA, as amended by the CFMA. The Act defines exempt commodities as, roughly speaking, all commodities except agricultural and financial products. This category, which for the most part represents futures contracts based on metals and energy products may be traded on the two types of markets covered by Section 2(h). The first is bilateral, principal-to-principal trading between two eligible contract participants . . . The second is electronic multilateral trading among eligible commercial entities, which include, among others, eligible contract participants that can also demonstrate an ability to either make or take delivery of the underlying commodity and dealers that regularly provide hedging services to those with such ability.

It is my understanding that the amendment before us would address the current lack of regulatory authority governing the second category of trading that Mr. Newsome described back in 2002. It would grant the CFTC new authority to impose important requirements on electronic, OTC transactions that rely on the current exemption contained in Section 2(h)(3) of the CEA, but serve a significant price discovery function. These requirements include the implementation of market monitoring, the establishment of position limitations or accountability levels, the daily publication of trading information, and a number of other standards key to restoring transparency to this important corner of our energy markets.

Ensuring that proper oversight exists in these markets is of critical importance to our nation's energy consumers, and to the efficient operation of the physical, or cash, energy markets that fall under the purview of the Federal Energy Regulatory Commission—FERC—and my committee's jurisdiction. To illustrate why, I would like to once again go back to the testimony we heard at our January 2002 hearing. As described by Mr. Vincent Viola, the then-chairman of the NYMEX:

[In] the energy marketplace, there is a very substantial interaction between NYMEX and the unregulated, physical and over-the-counter energy markets. The interaction was clearly apparent in the case of Enron.

Indeed, subsequent to that hearing, FERC, CFTC and the Department of Justice conducted investigations of the various aspects of what became perhaps one of the largest scandals in American corporate history. In its March 2003 ''Final Report on Price Manipulation in Western Markets,'' the FERC staff reported the following:

FERC Staff obtained information indicating that Enron traders potentially manipulated the price of natural gas at the Henry Hub in Louisiana to profit from positions taken in the over-the-counter—OTC—financial derivatives markets—OTC markets. It is staff's opinion that Enron traders, through transactions falling within the commission's jurisdiction and authorized through a blanket certificate, successfully manipulated the physical natural gas markets. The manipulation yielded profits in the financial OTC markets.

It was findings like these that motivated a number of Members of my Committee to work together to ensure FERC had the proper tools at its disposal, to stamp out the kind of manipulation that occurred during the Western energy crisis of 2000–2001. During consideration of the Energy Policy Act of 2005, EPACT 2005, Public Law 109–58, I was pleased to work with Senators CANTWELL, FEINSTEIN and WYDEN on these provisions, along with Senator DOMENICI, who then chaired the Energy Committee, and Senators CRAIG and SMITH.

Indeed, sections 315 and 1283 of EPACT 2005 added anti-manipulation provisions to both the Natural Gas Act and the Federal Power Act, respectively. Both make it unlawful for anyone to use ''any manipulative or deceptive device or contrivance . . . in contravention of'' the rules of the Federal Energy Regulatory Commission. Both closely track the language used in section 10(b) of the Securities and Exchange Act and define ''any manipulative or deceptive device or contrivance'' by reference to section 10(b). The Federal Energy Regulatory Commission issued a final rule implementing the two anti-manipulation provisions in January 2006.

The Energy Policy Act of 2005 provided FERC these much-needed, new authorities in response to the Western energy crisis. However, it is also clear that further regulatory authority is needed, to ensure the CFTC has the tools at its disposal to ensure the integrity of financial energy markets. The present circumstance is one in which the CFTC has essentially been blind to a large portion of these markets for a number of years. This is of critical concern to me, and to my committee, because—as Mr. Viola observed in 2002, and as Enron demonstrated—all of these markets are linked.

In fact, there is also significant reason to believe that these markets have become more fully intertwined since that hearing 5 years ago. In its 2006 State of the Markets Report, FERC devoted an entire section, section 7, to the ''Growing Influence of Futures and Financial Energy Markets'' on physical energy prices. The report notes that this impact is particularly acute as it relates to natural gas prices—but effects electricity prices as well, to the extent that a growing percentage of our nation's electric generating capacity is gas-fired. The FERC report details the link between prices set in the financial derivatives market, and the physical natural gas contracts that ultimately dictate the prices paid by American consumers.

Overall, I believe the current situation was most recently and accurately described by FERC Chairman Joseph Kelliher in December 12, 2007, testimony before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce:

[It] is important to understand that price formation in sophisticated energy markets has become increasingly complex. Regulators must understand and consider the interplay between financial and futures energy markets, on the one hand, and physical energy markets, on the other hand. While FERC has jurisdiction over physical wholesale gas sales, and the Commodity Futures Trading Commission (CFTC) has jurisdiction over futures, the link between futures and physical markets cannot be overstated. In a sense, these markets have effectively converged. Manipulation does not recognize jurisdictional boundaries and we must be vigilant in monitoring the interplay of these markets if we are to adequately protect consumers.

For these reasons, I support the amendment being offered today. It would enhance the CFTC's authority to protect the integrity of financial energy markets, which in turn play an increasingly important price discovery role in physical energy markets. And it would do so in a manner that also preserves FERC's important role in guarding against market manipulation and protecting American natural gas and electricity consumers. For that, I congratulate the sponsors. In addition, I will enter into a colloquy with the distinguished Chairman of the Senate Agriculture Committee, Senator HARKIN, along with Senators FEINSTEIN and LEVIN, regarding the intent of this amendment with respect to its jurisdictional implications for FERC and the CFTC.

Mr. LEVIN. Mr. President, for the past five years, I have been working with my colleagues to close the Enron loophole that, since 2000, has exempted electronic energy markets for large traders from government oversight. This loophole opened the door to price manipulation and excessive speculation, and American consumers have been paying the price ever since with sky-high prices for crude oil, natural gas, gasoline, diesel fuel, home heating oil, propane, and other energy commodities vital to a functioning U.S.

economy. That is why I am pleased to stand before the Senate today in support of bipartisan legislation, sponsored by Senator FEINSTEIN, myself, Senator SNOWE and others, that will close the Enron loophole and put the cop back on the beat in all U.S. energy markets in an effort to stop price manipulation and excessive speculation.

I would like to thank a number of my colleagues for not only making this bipartisan legislation possible, but also agreeing to include it in the farm bill today. Senator Harkin, chairman of the Committee on Agriculture, played a key role in getting us together and encouraging us to resolve our differences. Senator CHAMBLISS, the committee's ranking republican, agreed to address the problems we identified and helped work through our differences. Senator FEINSTEIN of California provided unending determination needed to get this problem solved. There are many more who played a critical role in this legislation as well, including Senator BINGAMAN, Senator SNOWE, Senator DORGAN who cosponsored our original bill, S. 2058, the Close the Enron Loophole Act, and Senator CRAPO who helped us produce a bipartisan product.

I thank not only the Senators, but also their staffs who put in many hours on this legislation, provided invaluable expertise, and repeatedly came up with creative solutions to tough problems. I would like to thank in particular Dan Berkovitz of my subcommittee staff who has lived with this issue for the last 5 years and devoted so much time, work, and expertise to it.

A stable and affordable supply of energy is, of course, vital to the national and economic security of the United States. We need energy to heat and cool our homes and offices, to generate electricity for lighting, manufacturing, and vital services, and to power our transportation sector—automobiles, trucks, boats, and airplanes.

Over 80 percent of our energy comes from fossil fuels—oil, natural gas, and coal. About 50 percent is from oil and natural gas. The U.S. consumes around 20 million barrels of crude oil each day, over half of which is imported. About 90 percent of this oil is refined into products such as gasoline, home heating oil, jet fuel, and diesel fuel.

The crude oil market is the largest commodity market in the world, and hundreds of millions of barrels are traded daily in the various crude oil futures, over-the-counter, and spot markets. The world's leading exchanges for crude oil futures contracts are the New York Mercantile Exchange—NYMEX—and the Intercontinental Exchange, known as ICE Futures in London.

Natural gas heats the majority of American homes, is used to harvest crops, powers 20 percent of our electrical plants, and plays a critical role in many industries, including manufacturers of fertilizers, paints, medicines, and chemicals. It is one of the cleanest fuels we have, and we produce most of it ourselves with only 15 percent being imported, primarily from Canada. In 2005 alone, U.S. consumers and businesses spent about $200 billion on natural gas.

Today, only part of the natural gas futures market is regulated. Natural gas produced in the United States is traded on NYMEX and on an unregulated ICE electronic trading platform headquartered in Atlanta, GA. The price of natural gas in both the futures market and in the spot or physical market depends on the prices on both of these U.S. exchanges.

The ''Enron loophole'' is a provision that was inserted at the last minute, without opportunity for debate, into commodity legislation that was attached to an omnibus appropriations bill and passed by Congress in late December 2000, in the waning hours of the 106th Congress. This loophole exempted from U.S. government oversight the electronic trading of energy commodities by large traders. The loophole has helped foster the explosive growth of trading on unregulated electronic energy exchanges. It has also rendered U.S. energy markets more vulnerable to price manipulation and excessive speculation, with resulting price distortions.

Since 2001, the Permanent Subcommittee on Investigations, which I chair, has been examining the vulnerability of U.S. energy commodity markets to price manipulation and excessive speculation. Beginning in 2002, we have held 6 days of hearings and issued 4 reports on issues related to inflated energy prices.

The subcommittee first documented some of the weaknesses in U.S. crude oil markets in a 2003 staff report I released which found that crude oil prices were

> Affected by trading not only on regulated exchanges like the NYMEX, but also on unregulated ''over-the-counter'' (OTC) markets which have become major trading centers for energy contracts and derivatives. The lack of information on prices and large positions in these OTC markets makes it difficult in many instances, if not impossible in practice, to determine whether traders have manipulated crude oil prices.

In June 2006, the subcommittee issued a staff report entitled, ''The Role of Market Speculation in Rising Oil and Gas Prices: A Need to Put the Cop Back on the Beat.'' This bipartisan staff report analyzed the extent to which the increasing amount of financial speculation in energy markets had contributed to the steep rise in energy prices over the past few years. The report concluded that: ''[s]peculation has contributed to rising U.S. energy prices,'' and endorsed the estimate of various analysts that the influx of speculative investments into crude oil futures accounted for approximately $20 of the then-prevailing crude oil price of approximately $70 per barrel.

The 2006 report recommended that the CFTC be provided with the same authority to regulate and monitor electronic energy exchanges, such as ICE, as it has with respect to the fully regulated futures markets, such as NYMEX, to ensure that excessive speculation in the energy markets did not adversely effect the availability and affordability of vital energy commodities through unwarranted price increases.

In June 2007, the subcommittee released another bipartisan report—''Excessive Speculation in the Natural Gas Market.'' Our report found that a single hedge fund named Amaranth had dominated the U.S. natural gas market during the spring and summer of 2006, and Amaranth's large-scale trading significantly distorted natural gas prices from their fundamental values based on supply and demand.

The report concluded that the current regulatory system was unable to prevent these distortions because much of Amaranth's trading took place on an unregulated electronic market and recommended that Congress close the ''Enron loophole'' that exempted such markets from regulation.

The report describes in detail how Amaranth used the major unregulated electronic market, ICE, to amass huge positions in natural gas contracts, outside regulatory scrutiny, and beyond any regulatory authority. During the spring and summer of 2006, Amaranth held by far the largest positions of any trader in the natural gas market. According to traders interviewed by the subcommittee, during this period natural gas prices for the following winter were ''clearly out of whack,'' at ''ridiculous levels,'' and unrelated to supply and demand. At the subcommittee's hearing in June of this year, natural gas purchasers, such as the American Public Gas Association and the Industrial Energy Consumers of America, explained how these price distortions increased the cost of hedging for natural gas consumers, which ultimately led to increased costs for American industries and households. The Municipal Gas Authority of Georgia calculated that Amaranth's excesses increased the cost of their winter gas purchases by $18 million. Also at the hearing the New England Fuel Institute and the Petroleum Marketers Association of America made clear how rampant speculation in energy trading harms the smaller businesses that trade in energy commodities.

Finally, when Amaranth's positions on the regulated futures market, NYMEX, became so large that NYMEX directed Amaranth to reduce the size of its positions on NYMEX, Amaranth simply switched those positions to ICE, an unregulated market that is beyond the reach of the CFTC. In other words, in response to NYMEX's order, Amaranth did not reduce its size; it merely moved it from a regulated market to an unregulated market.

This regulatory system makes no sense. It is as if a cop on the beat tells a liquor store owner that he must obey the law and stop selling liquor to minors, yet the store owner is allowed to move his store across the street and

sell to whomever he wants because the cop has no jurisdiction on the other side of the street and none of the same laws apply. The Amaranth case history shows it is clearly time to put the cop on the beat in all of our energy exchanges.

At the subcommittee's 2007 hearings, both of the major energy exchanges, NYMEX and ICE, testified that they would support a change in the law to eliminate the current exemption from regulation for electronic energy markets, in order to reduce the potential for manipulation and excessive speculation. Consumers and users of natural gas and other energy commodities—the American Public Gas Association, the New England Fuel Institute, the Petroleum Marketers Association of America, and the Industrial Energy Consumers of America—also testified in favor of closing the Enron loophole. That testimony helped galvanize the current effort to produce legislation in this area.

Just last week, my subcommittee teamed up with Senator DORGAN's Subcommittee on Energy to hold still another hearing examining how excessive speculation is continuing to add to crude oil prices, harming consumers and the American economy as a whole. During that hearing, Senators from both sides of the aisle expressed the need to develop new tools to address this problem.

The legislation being added to the farm bill today will do just that. It will help fix a number of the problems identified in the subcommittee's hearings and reports. Most importantly, it will put an end to the Enron-inspired exemption from government oversight now provided to electronic energy trading markets set up for large traders. By ending that exemption, this legislation will restore the ability of the Commodity Futures Trading Commission—CFTC—to police all U.S. energy exchanges to prevent price manipulation and excessive speculation.

The legislation would do more than require CFTC oversight; it would also require electronic exchanges, for the first time, to begin policing their own trading operations and become self-regulatory organizations in the same manner as futures exchanges like NYMEX. Specifically, the legislation would establish 5 ''core principles'' to which electronic exchanges must adhere, each of which parallels core principles already applicable to other CFTC-regulated exchanges and clearing facilities. Implementing these core principles would require an electronic exchange to monitor the trading of contracts which the CFTC has determined affect energy prices, ensure these contracts are not susceptible to manipulation, require traders to supply information about these contracts when necessary, supply large trader reports to the CFTC related to these contracts, and publish daily trading data on the price, trading volume, opening and closing ranges, and open interest for these contracts.

In addition, the electronic exchanges would have to establish position limits and accountability levels for individual traders buying or selling these contracts in order to prevent price manipulation and excessive speculation. Electronic exchanges are intended to implement these position limits and accountability levels in the same way as futures exchanges like NYMEX. Moreover, it is intended that the CFTC will take steps to ensure that the position limits and accountability levels on all exchanges are comparable to prevent traders from playing one exchange off another.

In implementing these core principles, electronic exchanges are given the same flexibility accorded to other CFTC regulated entities, subject to CFTC approval. In addition, the legislation states explicitly that, when implementing the requirements for position limits, accountability levels, and emergency authority to require reductions of positions, the electronic exchanges are allowed to take into account differences between trades which are cleared and not cleared, and the CFTC would police implementation of those core principles in an appropriate manner recognizing those differences.

Although the legislation provides an electronic trading facility with flexibility to implement the core principles, in the same manner as futures exchanges have with respect to the core principles applicable to them, and the flexibility to take into account the differences between cleared and uncleared trades in certain circumstances, in all instances the CFTC has the ultimate responsibility and authority to interpret the core principles, establish rules or guidance as to how they should be applied, and determine whether a facility or exchange is complying with the core principles.

The legislation would also require electronic exchanges to establish procedures to prevent conflicts of interest and anti-trust violations in their operations. These provisions parallel core principles already applicable to other CFTC-regulated exchanges and clearing facilities and are intended to function in a similar manner. These provisions are not restricted to trades involving contracts that affect energy prices, but apply to the entire exchange to ensure it operates in a fair manner.

In addition to requiring electronic exchanges to become self-regulatory organizations, the legislation would require the CFTC to oversee these exchanges in the same general way that it currently oversees futures exchanges like NYMEX. The legislation also, however, assigns the CFTC a unique responsibility not present in its oversight of other types of exchanges and clearing facilities. The legislation would require the CFTC to review the contracts on each electronic exchange to identify those which ''perform a significant price discovery function'' or, in other words, have a significant effect on energy prices. The CFTC would make this determination by looking at such factors as whether the electronic exchange's contract is explicitly linked to a contract used on a futures exchange; whether the electronic exchange's contract price is used by traders to set prices in other contracts; whether traders take positions in the contract and use those positions to arbitrage prices in other energy markets; and whether the contract is traded in sufficient volume to affect market prices. The CFTC can also look at other factors to determine if a contract is affecting energy prices. Contracts designated by the CFTC as performing a significant price discovery function are those that would be policed by both the exchange and the CFTC.

The legislation directs the CFTC to conduct a rulemaking to implement this requirement. The legislation also states clearly that a CFTC determination that a contract performs a significant price discovery function is a determination that is within the Commission's discretion; this determination is not intended to be subject to formal challenge through administrative proceedings. The legislation would also require the CFTC to review the contracts at an electronic exchange on at least an annual basis to determine which perform significant price discovery functions. This review is not intended to require the CFTC to conduct an exhaustive examination of every contract traded on an electronic exchange, but instead to concentrate on those contracts that are most likely to meet the criteria for performing a significant price discovery function. The legislation also directs the electronic exchange to bring to the CFTC's attention any contract which it believes is affecting energy prices.

To enable the CFTC to conduct oversight of its operations, in particular to prevent price manipulation and excessive speculation, electronic exchanges are required to file large trader reports with the CFTC for trades involving contracts that perform a significant price discovery function. These are the same large trader reports already filed by other CFTC-regulated exchanges and clearing facilities. In addition, electronic exchanges found to be trading contracts that perform a significant price discovery function are treated as a ''registered entity'' under the Commodity Exchange Act. This designation ensures that the CFTC has the same enforcement authority over electronic exchanges as it has with respect to other exchanges and clearing facilities to ensure compliance with its regulatory and statutory requirements.

One last issue. Another provision in the legislation states that its provisions are not intended to limit or affect the jurisdiction of the CFTC or any other agency involved with protecting our markets from price manipulation and excessive speculation. A legal battle is going on in the courts right now over enforcement actions by the CFTC

and the Federal Energy Regulatory Commission accusing Amaranth of manipulating or attempting to manipulate natural gas prices. This legislation is not intended to affect that court battle in any way. We are all waiting to see how it plays out and how the courts will interpret the law. This legislation is intended to play an absolutely neutral role in those enforcement actions, and should not be interpreted as changing the status quo in any way.

The provisions I have just discussed are the product of lengthy negotiations and compromises over the best way to close the Enron loophole. They seek to provide stronger government oversight of U.S. energy markets, while preserving the legitimate trading operations of electronic exchanges like ICE. Senator FEINSTEIN and I have introduced a number of bills over the years to tackle this problem, each of which took a somewhat different approach to strike the right balance. My latest effort, introduced a few months ago with Senator DORGAN and others, was S. 2058, the Close the Enron Loophole Act. While that bill is more comprehensive than the legislation being added to the farm bill today, the combined legislation before us now preserves our bill's intent and ensures that both the exchanges and the CFTC can enforce prohibitions against price manipulation and excessive speculation. That, to me, is the most important aspect of the legislation and why I support it today.

The legislation reflects input from the CFTC, industry, consumer groups, and a wide range of Senators. Some compromises were made, but again, those compromises did not weaken the ability of the CFTC to police out energy markets—in fact, if this legislation is enacted into law, the CFTC will be in a stronger position since 2000 to protect our markets from trading abuses.

The House is working on similar legislation, so I am hopeful that we can get something enacted into law as part of the farm bill early next year. I will be working to ensure that the enforcement provisions we have worked so hard to include in this legislation are preserved.

In addition to these provisions closing the Enron loophole, the farm bill will include a host of other provisions to reauthorize and strengthen the Commodity Exchange Act. Those provisions include stronger civil and criminal penalties for manipulation, better enforcement authority for currency exchange trading abuses, among others, all of which I support. I thank my colleagues for including them in the farm bill as well.

Preventing price manipulation and excessive speculation in U.S. energy markets is not an easy undertaking. I thank my colleagues, industry, consumers and others for their good-faith suggestions to improve the legislation that is now before the Senate. Recent cases have shown that market abuses and failures did not stop with the fall of Enron. They are still with us. We cannot afford to let the current situation continue, allowing energy traders to use unregulated markets to avoid regulated markets. It is time to put the cop back on the beat in all U.S. energy markets. The stakes for our energy security and for competition in the market place are too high to do otherwise.

INTENT OF THE COMMODITY EXCHANGE ACT

Mr. BINGAMAN. Mr. President, I believe the primary sponsors of this amendment, as well as the distinguished chairman of the Senate Agriculture Committee, Senator HARKIN, share my desire for the Federal Energy Regulatory Commission, FERC, and Commodity Futures Trading Commission, CFTC, to coordinate seamlessly in their efforts to oversee the increasingly interdependent energy markets under their respective jurisdictions. Moreover, it is important to clarify that nothing included in this amendment would interfere or prejudice the respective Commissions' ongoing, enforcement-related proceedings and litigation.

I would like to inquire of the chairman of the Agriculture Committee, Senator HARKIN, do you concur in my assessment that nothing in this amendment would prejudice or interfere with ongoing, energy market enforcement-related litigation or administrative proceedings currently involving FERC and the CFTC?

Mr. HARKIN. Yes, I agree with the assessment of the chairman of the Energy and Natural Resources Committee.

Mr. BINGAMAN. Likewise, I believe we have taken pains in this amendment to ensure that the current jurisdictional boundaries between the two Commissions are maintained, with respect to the authorities of FERC under the Federal Power and Natural Gas Acts, and the CFTC under the Commodity Exchange Act. How do you view this matter?

Mr. HARKIN. Again, I concur with the Senator from New Mexico. Nothing in this amendment would erode either Commission's authorities under the statutes that you have cited.

Mr. BINGAMAN. Finally, I ask if, in your view, anything contained in this amendment would limit FERC's existing ability to gain information from market participants?

Mr. HARKIN. No, this amendment would not infringe on FERC's current ability to gain information from market participants.

Mr. BINGMAN. Thank you. I would like to now ask a few questions of the senior senator from California, Senator FEINSTEIN, one of the primary authors of this amendment, as well as one of the coauthors of sections 315 and 1283 in the Energy Policy Act of 2005 (P.L. 109–58), which gave FERC additional antimanipulation authorities under the Federal Power and Natural Gas Acts. In your view, does anything contained in this amendment undermine or alter those authorities?

Mrs. FEINSTEIN. No. In my view, nothing contained in this amendment would or is intended to undermine or alter those important, new authorities. We have sought to make this clear, with the inclusion in section 13203 of paragraph (c)(2), which preserves FERC's existing authorities.

Mr. BINGAMAN. I would also like to make an inquiry of the senior Senator from Michigan, Senator LEVIN, another primary author of the amendment now before the Senate. As I understand this amendment, it expands the CFTC's authorities with respect to the requirements it may impose on transactions it deems ''significant price discovery contracts.'' This ''significant price discovery contract'' determination may be applied to contracts, agreements, and transactions that are conducted in reliance on the exemption included in section 2(h)(3) of the Commodity Exchange Act. As a conforming matter, paragraph (c)(1) of section 13203 extends the CFTC's exclusive jurisdiction over these ''significant price discovery contracts.''

As the Senator from Michigan knows, the meaning and expanse of CFTC's exclusive jurisdiction over the regulation of futures markets is currently the subject of litigation. As we have heard from the chairman of the Agriculture Committee and Senator FEINSTEIN, another one of the amendment's authors, this amendment was written to ensure it would not interfere with any such ongoing litigation; and further, to maintain the current jurisdictional division between FERC and the CFTC. I am satisfied with those assurances.

But in addition, as a forward-looking matter, it is important to clarify the intent of the amendment with respect to this new class of ''significant price discovery contracts.'' I am aware of the fact that certain electronic trading facilities that currently operate under the exemption included in section 2(h)(3) of the Commodity Exchange Act for purposes of trading energy swaps also trade physical—or cash—contracts in electricity and natural gas. For oversight and enforcement purposes, it is crucial that FERC retain its jurisdiction over these physical energy transactions. In your view, how would the amendment impact FERC's jurisdiction over these transactions?

Mr. LEVIN. The Senator from New Mexico raises an interesting and important question, on which I have conferred with the CFTC. In addition to the savings clause in section 13203(c)(2) that preserves FERC's jurisdiction under its statutes as a threshold matter, I believe that FERC's jurisdiction over these transactions would, in any event, be preserved. It is my view that the kinds of cash transactions that you cite would not be captured within the amendment's ''significant price discovery contract'' test. The test is reserved for those transactions conducted ''in reliance'' on the exemption

in paragraph 2(h)(3) of the Commodity Exchange Act. Because the CEA does not apply to cash transactions for purposes of regulation, these transactions cannot, by definition, be conducted ''in reliance'' on this exemption. As such, FERC's authority in this area is preserved on all accounts.

Mr. BINGAMAN. I have a similar question as it relates to the status and functions of regional transmission organizations, RTOs, under this language. RTOs often deal in the auction of financial transmission rights and ancillary services associated with the orderly operation of electricity markets. Do you believe this ''significant price discovery contract'' provision would impact FERC's authority in this area?

Mr. LEVIN. For many of the same reasons I have cited in relation to natural gas markets, I believe—and it is certainly my intention, as one of the amendment's authors—that FERC's authority over RTOs would be unaffected. To my knowledge, no RTO operates pursuant to the exemption in paragraph 2(h)(3) of the Commodity Exchange Act. Moreover, the savings clause in section 13203(c)(2) makes abundantly clear that FERC's existing authorities are preserved.

Mr. BINGAMAN. I thank the Senators for their assurances in this regard, and congratulate them on their amendment.

ROLLING SPOT CONTRACTS

Mr. HARKIN. This bill includes reauthorization of the Commodity Exchange Act. One of the issues addressed in the reauthorization is the problem of so-called ''rolling spot'' contracts, a type of contract that unscrupulous criminals use to defraud retail customers while avoiding the jurisdiction of the Commission. Because of several adverse court decisions addressing rolling spot contracts used in retail foreign exchange fraud, the Commission has been severely hampered in its efforts to protect consumers.

This reauthorization clarifies the jurisdiction of the Commission over these ''rolling spot'' contracts. In addition, because these ''rolling spot'' contracts have begun to be used in other commodities such as metals, this reauthorization clarifies the Commission's authority to address ''rolling spot'' contracts should they spread to other agricultural or exempt commodities.

Mr. CHAMBLISS. Will the gentleman yield for a question?

Mr. HARKIN. Yes.

Mr. CHAMBLISS. Is it the intent of the provision to imply or provide that agricultural or exempt futures contracts that are not currently legal futures contracts, are somehow legal because of these new provisions?

Mr. HARKIN. No. The provisions explicitly say that they have no effect on whether contracts are considered legal futures contracts or not.

Mr. CHAMBLISS. I thank the Senator.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, it is with some consternation that I rise this evening. We have an amendment that is very important to working men and women in this country. Basically, what it allows is firefighters and police to organize collectively. It is very important that they have that opportunity. That is the legislation before this body, the amendment dealing with firefighters.

The pleasant thing about this amendment is that it is bipartisan. We have 64 Senators who would have voted for this amendment. We have tried very hard. Everybody knows that I have four Democratic Senators running for President. They are all wonderful, good legislators, and wonderful human beings. One of them is going to be President of the United States, more than likely, next year. But we have tried all day to get a vote. As I indicated a little while ago, we will take a 60-vote margin, a side-by-side or a second-degree amendment, a freestanding bill or whatever other variation I can think of.

My friends are very good—the opponents of this legislation. There are not a lot of them, but there are a few. They know the rules, and they know how difficult it is when we are less than 3 weeks before the first primary, the caucus in Iowa, to get these four Senators here. They were here this morning. There were two important bills, one on energy and one on a farm issue. They were scheduled to come back here. One of them is on a plane coming back here for a morning vote. The word got out that we needed them here. So there has been this stalling. We have no alternative but to come back and fight another day. I say to all Senators that this is a bipartisan bill.

I see my friend on the floor, Judd Gregg. We would not be where we are tonight but for him. It is true. I mean, it is not often that on a labor issue you have someone of his stature on the other side of the aisle supporting this legislation. But I respect those few Senators who object to this. They have the legal rights and procedural rights that they do, and getting my Presidentials back here on Saturday would be hard. We know it is a difficult time for everybody on a Saturday.

AMENDMENT NO. 3830, WITHDRAWN

Without belaboring the issue, I ask unanimous consent to now withdraw amendment No. 3830.

Mr. KENNEDY. Mr. President, reserving the right to object, I will not object, but I want to, first of all, thank our majority leader for his comments. Just before the request is agreed to, I want to remind the Members of the Senate that private workers have the opportunity under the labor laws to get the kinds of protections and rights we are talking about; public workers do not. The public workers, who have been on the front lines of so many of the challenges we are facing in our society, deserve these rights.

Public safety workers put their lives on the line every day they go to work. They are on the frontlines of our effort to keep America safe.

We ask much from them. When the California wildfires threatened lives and property, we asked that they battle those blazes. When natural disasters strike, we expect them to be the first on the scene. And on September 11th, they were the heroes that restored our hope.

These heroic men and women have earned our thanks and respect. All they asked of this body was the right to enjoy the same basic rights that private sector workers enjoy. The right to have a voice at the table when decisions are made that are critical to their safety and their livelihood.

The bipartisan amendment that we offered would have guaranteed every first responder the right to collective bargaining. Many of our first responders already have this fundamental right. This amendment would have provided these basic rights for those who don't and it would have done so in a reasonable manner. For States that currently accord public safety officers these rights, the amendment would have no affect. For States that don't currently provide these rights, the amendment would not trample on their rights. They would have ample opportunity to establish their own collective bargaining systems, or ask the Federal Labor Relations Authority for help. The choice would belong to the state.

The public safety officers came to us with a modest request. Tonight, a minority of the Senate said no to their request. Despite the broad bipartisan support we had for this amendment, we could not get past the obstructions of those who were determined to deny our Nation's first responders their basic rights.

This fight is not over. I pledge to our Nation's brave firefighters, police officers, and emergency medical technicians, that we will bring this legislation back to the Senate again and again until the Senate says ''yes'' to them. Each day they face hazards that put their lives at risk, and as we enjoy the security that their sacrifice provides, they should know that they have allies in the Senate that will keep fighting for them.

While we may not have succeeded today, we will bring this legislation back to the floor of the U.S. Senate soon and we will pass it.

Our public safety officers deserve no less.

I thank the leader for all of his strong support for this legislation, and I indicate that I, for one—and there are many others—will come back and revisit this issue at an early time. So I don't object to the request, but I do want to state that this issue is going to

be front and center before the Senate in the near future.

The PRESIDING OFFICER (Mr. CASEY). Without objection, the amendment is withdrawn.

AMENDMENT NO. 3851

Mr. REID. Mr. President, it is my understanding that the Feinstein amendment is ready to be adopted.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the Feinstein amendment.

The amendment (No. 3851) was agreed to.

Mr. HARKIN. Mr. President, I ask unanimous consent to add onto that amendment Senators DORGAN, DURBIN, and CONRAD as cosponsors.

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

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. I ask the Chair, under the order now before the Senate—

Mr. SANDERS. I object.

Mr. REID. I haven't said anything yet. Mr. President, I ask that the Chair inform the Senator from Nevada if I am right, that under a previously entered order I have a right, after consultation with the Republican leader, to ask that there be cloture right now or whatever time I choose?

The PRESIDING OFFICER. Under the substitute amendment to the bill, that is correct.

Mr. REID. So, Mr. President, under the order that is before the Senate, we are going to have a cloture vote on the farm bill after weeks and weeks. Now, I understand there are people who are disappointed. We still have a significant number of amendments. After adding up those that have been objected to, there are 15 by one Senator. So we have 15 plus 11—a lot of amendments.

The time has come that we stop this. We need the farm bill. We need to get a conference. I believe, after conversations I have had with the Republican leader, that this is a bill we can go to conference on. So the time is here. We don't have time for 26 more amendments.

We had a briefing in S–407 today. I don't know how people are going to vote on domestic surveillance and other types of surveillance, but it is an important issue that we have an obligation as Senators to resolve. We had the head of the national intelligence agency there, Judge Mukasey. We have to do that. I am going to move to that bill tomorrow.

As I have stated on the floor, Senator FEINGOLD and Senator DODD are not going to let us move to that. I have filed cloture on that bill. I know people are disappointed, but we have no alternative. I guess there is an alternative, but I don't think people want to be around here in the middle of next week to finish the farm bill. We will have cloture on it tonight and, as far as I am concerned, we can have final passage as soon as we finish the cloture vote.

For all Senators, the cloture vote will take place at 9 o'clock tonight on the farm bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SALAZAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANDERS). Without objection, it is so ordered.

Mr. SALAZAR. Mr. President, I ask unanimous consent that I be recognized to speak as in morning business for up to 5 minutes.

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

Mr. SALAZAR. Mr. President, I wish to say a few words about an event that happened earlier this evening, and that is the passage of the Energy bill with a great bipartisan vote in the Senate.

In my view, this is the signature agenda of the 21st century. I am very proud of the work that went into fashioning that bill by the Energy Committee, the Commerce Committee, as well as a package we attempted to get in there by the Finance Committee.

At the end of the day, this package which moves on to the House and then to the President for his signature will do some historic things for the clean energy economy for America.

The first thing it will do is make sure CAFE standards are up to where they should have been a long time ago, with much more highly efficient vehicles in our country as our national fleet will be in a position to have the kind of oil savings that will lead us to energy independence and help get rid of the addiction on foreign oil that currently compromises the foreign policy of the United States.

Second, we will start addressing the issue of global warming by making sure we look at a national carbon assessment, the sequestration program that will help us capture and store carbon as part of the remedy to deal with the problem of global warming.

Finally, moving forward with renewable fuels, many of us recognize it is rural America that is going to help us grow our way to energy independence, and the 25–25 resolution that is included in the energy legislation sets out a national vision for us to get to 25 percent of our energy coming from renewable energy resources.

I know there were many people who worked on this legislation. I thank and commend all of those who were involved in putting it together. On my staff, in particular: Steve Black, who had been very involved in the crafting of the 2005 Energy Policy Act; Suzanne Wells, who has been a fellow in my office and worked on this issue for almost as long as Steve Black; Ben Brown, a new fellow in my office; Tracy Ross, a young employee in my office who was part of this energy team, along with Brendan McGuire, Grant Leslie—a whole host of others—Jeff Lane in my office also was involved.

I also thank the staff of the committees because I know the staff members of both the Energy and Commerce Committees worked day and night to get us a good energy package.

I would be remiss if I did not say something about Russ Sullivan and the great staff of the Finance Committee, headed by our chair, MAX BAUCUS. The Finance Committee functions completely on every cylinder and is a stellar committee, a group of staff members that makes us very proud and serves as a role model for the rest of the committees in the Senate.

It is a historic night for us with the passage of the energy legislation.

As we move closer toward the passage of the 2007 farm bill, I also commend all of my colleagues who have worked so hard in trying to get us to a procedural way forward to get us to the completion of this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. GREGG. Mr. President, I wish to speak briefly on the practical implications of what we are about to do. I appreciate the positions the leaders of the bill are in. They worked hard to get this bill through.

Obviously, I don't support the bill, but I feel they have every right to finish it. They have the votes to pass it, and there is no reason there should be dilatory delays. But there are three major events that are going to be impacted by this exercise.

The first is an amendment which I had pending which would have given people relief when their homes are foreclosed on so they would not get hit with a tax bill. It appears that amendment, on which there was general consensus, will not be brought up and voted on. That is unfortunate. I hope we can come to this from another angle.

I spoke with the chairman of the Finance Committee. He and the Finance Committee members are trying to find some way to accomplish that. I think it is wrong, when people have their home foreclosed, that they have the IRS follow them to wherever they are going, the apartment they have to move to, to hit them with a tax bill for that foreclosure.

The second issue is a proposal I had—the Senator in the chair also had a proposal on this issue—which was to get some funds in LIHEAP. All of us who live in the colder regions of this country have seen our oil bills go up dramatically. There is a lot of pressure on low-income people, and the LIHEAP

funds, which help low-income people deal with that pressure, are simply not going to be adequate. They are just not going to be adequate.

The Senator from Vermont had an amendment in this area. I had an amendment in this area. Unfortunately, they both will fall.

The third issue is the firefighters, fully explained by Senator REID, the majority leader. I appreciate his kind words relative to my efforts in this area. I am sorry we will not be able to accomplish this effort at this time. This is an important issue. I do hope we will come back to it. I know it is high on the list of the majority leader and also high on my list.

I regret the procedure that has to take place. Obviously, it is the prerogative of the leadership to do this. I can understand why they are doing it. They have been on the bill a number of weeks. The first couple of weeks we could not offer amendments. That was not our fault. As a practical matter, this session is coming to a close, and they want to wrap up the bill. And as a practical matter, the bill should be wrapped up.

I regret some of these amendments that I think are very important to Americans, especially those in cold climates having to deal with heating bills and those who have had homes foreclosed, and Americans who protect us through fighting fires, those amendments will not be considered.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise to thank the leadership for taking this bull by the horns and dealing with a circumstance that changed rather dramatically in the last several hours.

I know there are colleagues who are disappointed that they are not going to be able to offer amendments that are unrelated to the farm bill to this legislation. But if you put yourself in the position of the leadership, they were faced with an impossible situation, a situation that was made more difficult by the way events unfolded.

We had 20 amendments on a side that were in order, 40 amendments in total. That could include amendments that were related to the farm bill as well as those unrelated. Amendments were filed. Not all 40 had been filed. There were still, I believe, at least eight slots. So when the leadership looked at the time—and the fact is, here we are, almost 9 o'clock on Thursday night—and they looked at the other business that has to be done, it didn't fit together.

We could be in a circumstance in which things that must be done for us to conclude business for the year could not be concluded because it would take unanimous consent to go off the farm bill now that we are on it. Anybody could object. So they had to find a way to reach conclusion. The rules of the Senate required this circumstance. I know there is disappointment, but our leaders face a very difficult set of choices, and if they wanted to get the business of the Congress done this year by next Friday, they had no alternative but to do what the leaders collectively decided to do tonight.

I know there is disappointment, but there was no choice, if the business of the Senate was to get concluded.

I salute the leadership. I thank Senator REID for his strong leadership. I thank Senator MCCONNELL. I especially thank the bill managers, Senator HARKIN and Senator CHAMBLISS, who have worked tirelessly to get this bill done and under extremely difficult circumstances where they have had the bill interrupted every few hours to handle other legislation, and we have Presidential candidates on both sides who are not here. So these managers are told: You can't vote now, you can't vote then, you have an event here, you have an event there. They were put in an absolutely unbelievably difficult situation, and they have handled it with grace. We should thank them for how well they have done to clear amendments. But they had no choice if this work was to get done.

So thanks to the leaders. I know there are people who are upset, but I say thanks to the leaders.

Mr. HARKIN. Mr. President, will the Senator yield?

Mr. CONRAD. I will be happy to yield.

Mr. HARKIN. Mr. President, I thank the Senator for his comments, and I thank him for all his help throughout a long year in the Agriculture Committee, helping us with our budget problems and getting us to this point.

I appreciated the fact that the Senator said the managers had handled this bill with grace. The Senator doesn't see what I do when I go home. I act out my frustrations later.

I say to the Senator, it has been frustrating, but that is the process of the Senate. The Senator is absolutely right, our leader is correct in calling for cloture. I am not disappointed. I am managing the bill under the rules we had, which was to try to accommodate as many amendments as possible, to move them as rapidly as possible, to get votes on them. Let's face it, we have had enough, and we have had enough amendments and we debated them.

This is a good bill. Some of the amendments that were not adopted maybe I wish were, and some that were adopted maybe I wish were not. That is the process. It is a good bill with which to go to conference. It is a bill that does a lot, as the Senator knows, in energy, it does a lot in conservation, and it provides a great safety net for our farmers, and what we do for specialty crops that we have never done before in any farm bill, and what we do for nutrition. We answer the call of church groups and people around the country who said we had to do more to take care of low-income people in the Nation and to meet our obligations to the poorest among our society. We have done that in this bill. We have done great work in the food stamp and nutrition programs.

It is a good bill. All of us worked very hard on it. We will go to cloture this evening. Quite frankly, I am not disappointed. I am happy we are bringing this to a close so we can get to conference. I hope we can get the conference concluded by the time we get back in January so we can have a conference report sometime toward the end of January.

I thank the Senator from North Dakota for his many kindnesses, for all of the hard work he has done, and his staff through this long process in getting us here. I thank him very much.

Mr. CONRAD. Mr. President, I thank the chairman for his vision and his leadership. This is a bill of which we can all be proud. This is a bill that strengthens the safety net. This is a bill that increases resources for conservation by $4 billion. This increases the resources over the so-called base line for nutrition by $5 billion. This increases the resources for speciality crops by $2.5 billion, an unprecedented commitment of resources for that purpose. This is a bill that has permanent disaster assistance. This is a bill that is paid for and paid for honestly. This is a bill that does not add a dime to the deficit or the debt. It deserves our vote for cloture tonight.

All of those who are concerned about farm and ranch families, this is their opportunity to demonstrate that support and that concern by supporting cloture on this bill.

I especially thank the chairman of the committee, Senator HARKIN, the ranking member, Senator CHAMBLISS, and again the strong leadership of the majority leader, Senator REID, for bringing cloture before the body tonight. This bill needed to end for the Senate to conclude its business for the year.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, it is time for the vote to take place in a minute or two. I inform all Members that we will have this cloture vote tonight, and then we are under the rules that there will be 30 hours following completion of that vote. It is my intention, and I think everyone's intention here, to finish this bill and not have it spill into Saturday. We are going to deal with germane amendments pursuant to the rules of the Senate. The managers will work on those during the evening and hopefully early tomorrow we can finish this bill.

Remember, tomorrow we have to finish FHA modernization, and we have to finish the Defense authorization bill. We have a limited time agreement on both of those, an hour each at this time. There may be other issues we are going to try to do. At least that is what we need to do.

Also, as I indicated, before we close business tomorrow, we are going to file cloture on the FISA legislation.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I, too, wish to urge my colleagues to vote for cloture this evening on the farm bill. This is bringing a long debate to its finality and to a close that is good for American agriculture.

Actually, the American people today are going to get an energy bill to promote renewable energy, and they are going to get a farm bill that strengthens the safety net and makes a strong commitment to conservation. Many of the programs funded in this bill do an awful lot to support conservation across this country. In many respects, the conservation title of the farm bill, I would argue, is probably one of the best environmental stewardship policies we have put in place in the Congress.

It also adds an energy policy that will complement what was done today in the Energy bill—the renewable fuels standard—which will increase the amount of renewable energy that will be used in this country. In order to reach that standard, we are going to have to use more and more cellulosic ethanol, which is the next generation of biofuels in this country, and the farm bill has in its energy title some incentives for energy-dedicated crops that can be used in the production of cellulosic ethanol.

I think this energy policy and the energy title, the conservation title, the commodity title of this bill, and many of the other provisions are good for American agriculture. It has been a long battle, and we still have a long ways ahead of us. We have to go to conference with the House and get a bill the President will sign, but this will help move this process forward, and it is high time we got an opportunity to push to a final vote and final passage.

So I urge my colleagues to vote for cloture this evening.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the Harkin substitute amendment No. 3500 to H.R. 2419, the farm bill.

Tom Harkin, Russell D. Feingold, Jon Tester, Dick Durbin, Benjamin L. Cardin, Frank R. Lautenberg, John Kerry, Ted Kennedy, Byron L. Dorgan, Barack Obama, Ben Nelson, Amy Klobuchar, Sherrod Brown, S. Whitehouse, Tim Johnson, Jim Webb, Hillary Rodham Clinton.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3500, offered by the Senator from Iowa, Mr. HARKIN, to H.R. 2419, farm bill, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Nebraska (Mr. HAGEL), the Senator from Mississippi (Mr. LOTT), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Mr. STEVENS).

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

The yeas and nays resulted—yeas 78, nays 12, as follows:

[Rollcall Vote No. 431 Leg.]

YEAS—78

Akaka	Domenici	McConnell
Alexander	Dorgan	Mikulski
Allard	Durbin	Murkowski
Barrasso	Enzi	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Bennett	Graham	Pryor
Bingaman	Harkin	Reed
Brown	Hatch	Reid
Brownback	Hutchison	Roberts
Bunning	Inhofe	Rockefeller
Byrd	Inouye	Salazar
Cantwell	Isakson	Schumer
Cardin	Johnson	Sessions
Carper	Kennedy	Shelby
Casey	Kerry	Smith
Chambliss	Klobuchar	Snowe
Coburn	Kohl	Stabenow
Cochran	Landrieu	Tester
Coleman	Leahy	Thune
Conrad	Levin	Vitter
Corker	Lieberman	Voinovich
Cornyn	Lincoln	Warner
Craig	Lugar	Webb
Crapo	Martinez	Whitehouse
Dole	McCaskill	Wyden

NAYS—12

Bond	Grassley	Menendez
Collins	Gregg	Sanders
DeMint	Kyl	Specter
Ensign	Lautenberg	Sununu

NOT VOTING—10

Biden	Dodd	Obama
Boxer	Hagel	Stevens
Burr	Lott	
Clinton	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 78, the nays are 12. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HARKIN. Mr. President, we are now operating postcloture on the farm bill. As we know, there are 30 hours. And germane amendments are obviously acceptable postcloture.

Right now I am working with Senator CHAMBLISS to try to come up with a roadmap on how we proceed on this yet this evening and tomorrow. We had basically a kind of a finite list. Since there were only 20 amendments allowed on either side, we kind of know what that universe is.

Prior to the cloture vote, we were down to about 11—if the Chair will indulge me, 11 votes that could be held. Now some of those, it is just my own observation, without being the Parliamentarian, are nongermane.

For example, one of my own amendments I can truthfully say is not germane. The others I do not know, and those will have to be decided by the Parliamentarian. I would say, however, if there is anyone here who has a germane amendment—and I do believe perhaps the Feingold-Menendez amendment appears to be fully germane.

Now, again, there may be an objection raised to that, and the Parliamentarian will have to decide it, but that seems to me—that seems to be one in front of us now that is germane. I would say if the authors of that amendment, either Mr. FEINGOLD or Mr. MENENDEZ, were willing to debate that amendment this evening, under some reasonable time limit, we would like to do that.

So I hope that is at least one we might get to tonight that looks to be thoroughly germane to the bill. There is the Grassley-Kohl amendment. I am not certain about that one. That one is maybe a little bit more uncertain. But, again, that is up to the Parliamentarian to decide. But at least that decision could be made, and we might be able to move ahead.

So with the concurrence of my ranking member——

Mr. CHAMBLISS. I believe the Coburn amendment is also germane.

Mr. HARKIN. Right. The Coburn amendment is probably germane.

Mr. CHAMBLISS. If the Chair would agree, I think we probably ought to maybe go into a quorum call and let the Parliamentarian decide what is germane and what is not. If we find one that is germane, let's go ahead with that one while they are making a decision on the rest of them.

Mr. HARKIN. I agree. The only reason I was saying this is, keep in mind there is a limited amount of time. So I am saying, anyone who believes they have a germane amendment in this list, they ought to probably want to debate it tonight.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 3736 WITHDRAWN

Mr. HARKIN. I ask unanimous consent that the Wyden amendment No. 3736 be withdrawn.

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

CALIFORNIA'S SUGAR ALLOCATION

Mrs. BOXER. Mr. President, I thank Senator HARKIN for joining me to discuss the important issue of California's sugar allocation. I appreciate his leadership in bringing a farm bill forward for the Senate's consideration.

Mr. HARKIN. I thank the Senator. It is my understanding that she would like to speak about an issue facing the sugar beet industry in California.

Mrs. BOXER. That is correct. The sugar marketing allocation formula in the 2002 farm bill took 2.5 percent of the total national allocation away from California because of the closure of sugar refineries in Woodland, CA, and Tracy, CA, between 1998 and 2000.

Since that time, there have been numerous other closures, including Bayrd, NE; Greeley, CO; Moses Lake, WA; Carrollton, MI; Nyssa, OR; and Hereford, TX. However, under the current farm bill structure, only California was penalized by downward allocation adjustments due to refinery closures. Refinery closures in California fell within an arbitrary base period in the 2002 farm bill that penalized States that had refinery closures by reducing their allocation. The six other States that have seen refineries close since the arbitrary period ended have not had any allocation taken away.

Mr. HARKIN. I ask the Senator, how has this decrease in California's portion of the national allocation impacted growers and other sugar beet refineries in your State?

Mrs. BOXER. Sugar beets are an important crop for many growers throughout California's San Joaquin and Imperial Valleys. Growers in California want to keep producing sugar beets, but processing refineries in California are in danger of closing if they do not recover the marketing allocation they lost in the last farm bill.

If the allocation formula is not corrected to provide California with its fair share, the entire sugar beet industry in my State, with the hundreds of jobs it supports, will be in serious jeopardy.

California's sugar beet industry is an important contributor to the economies of the rural communities where they are located. The city of Mendota, located in western Fresno County, has one of the highest unemployment rates in the State, a problem that will certainly be exacerbated by the possible closure of the refinery. The Mendota facility employs 300 full-time workers and as many as 500 to 600 workers when running at full capacity.

The importance of the refinery to the local economy becomes clearer when you consider that according to the city's estimate there are 1,767 jobs available in Mendota. At full capacity the refinery accounts for more than one-third of the city's employment base.

The farm gate value of sugar beets in California is approximately $66.7 million, and when sugar and the value of its byproducts are included, sugar beets in California contribute $130.8 million annually to the California economy.

Mr. HARKIN. How much more in allocation would California need to keep the facility in Mendota open?

Mrs. BOXER. My growers have assured me that if the allocation is there, they will be able to grow the sugar beets necessary to meet the need. They have told me that under the 2002 farm bill, they lost 133,750 tons raw value in allocation and would need near that amount to keep the Mendota refinery open.

Senator HARKIN, as much as 74,900 tons raw value in allocation is being reassigned this year from sugar cane growers, and another 6,800 tons raw value in allocation is being reassigned from growers in Puerto Rico.

Mr. HARKIN. I appreciate the Senator providing that information. Can she suggest a possible solution that would allow the Mendota refinery to remain open?

Mrs. BOXER. My growers tell me that they would be willing to purchase the plant from the Southern Minnesota Company. Southern Minnesota would include 64,200 tons raw value of sugar allotment in selling the plant to California sugar beet growers. With a guarantee that Congress would provide 53,500 tons raw value in additional sugar allotment for California equaling a total allocation of approximately 117,000 tons raw value, the purchase of the Mendota refinery by California's sugar beet growers would be economically viable.

Since it will take approximately 53,500 tons raw value in additional sugar allotment in California to keep the Mendota refinery in operation, and 81,700 tons raw value is being reassigned from sugarcane growers this year, perhaps it would be possible to assign the necessary amount of excess sugarcane allocation to California in order to keep the Mendota refinery operating.

Mr. HARKIN. I will raise this issue when the Senate and House meet to finalize a farm bill conference report.

Mrs. BOXER. I thank the Senator.

Mr. WYDEN. Mr. President, I rise to discuss the amendment that Senator HARKIN and I offered to make some modifications to the bioenergy crop transition program in the committee bill. First, however, I want to thank the Republican manager of the bill, Senator CHAMBLISS, and his staff for working with me and my staff, and with Senator HARKIN and his staff to address this issue.

As I said the other evening, we are importing $1 billion worth of oil a day from other countries. Bioenergy crops provide a real opportunity to spend that money here at home and help our farmers and rural communities in the process.

The bill that was reported by the Agriculture Committee proposed a program to help make this a reality by making payments to farmers to transition to these new energy crops. This was a good idea, but Senator HARKIN and I were concerned that the program would lead to unintended consequences. We have now reached agreement on a managers' amendment that goes a very long way toward addressing our concerns.

The agreement that we have reached improves the program in ways that will protect the environment and make it a more cost-effective program.

The program will now include eligibility criteria for bioenergy crops to ensure that crops that are invasive species or could become invasive species are not eligible for the program.

The program will now ensure that only lands that have already been farmed are eligible and that we are not promoting the conversion of native grasslands or forests to production of bioenergy crops.

The program will now have a formal application and selection process so that we can be sure that the limited amount of funds available is spent in the most productive way.

In deciding how these transition assistance payments are made, the Secretary of Agriculture will now have to consider the likelihood that the proposed establishment of the crop will, in fact, be viable in the proposed location.

The Secretary will also need to consider the impact that the proposed bioenergy crop, and the process of turning it into fuel or energy, will have on wildlife, air, soil, and water quality and availability.

And the Secretary will have to consider the potential for economic benefits to farmers and ranchers and impacts on their communities.

We have also added planning grants to help farmers and ranchers make the decision to grow these new bioenergy crops and to assemble enough acreage that can support the development of bioenergy facilities to use them.

Finally, we have added an additional requirement that participants in the program agree to implement a plan to protect land, water, soil and wildlife.

I think these are real improvements in the bill. I again want to thank Senator CHAMBLISS and his staff for working with us to make this program that truly will help move us toward a new energy future that will benefit our farmers, our rural communities, and the environment.

Mr. SPECTER. Mr. President, I have sought recognition to comment on an amendment to the farm bill that I have cosponsored which will provide needed tax relief to homeowners facing foreclosure as a result of the sub-prime mortgage crisis.

The Gregg amendment No. 3674, will allow foreclosed homeowners to avoid the additional hardship of being taxed on cancelled debt income. Under current law, if a homeowner has an obligation to a bank of $150,000 and the home is foreclosed on and sold for $100,000, the $50,000 difference is treated as personal income and the IRS sends that individual a tax bill. With the rate of foreclosures and mortgage defaults rising to new levels, now is not the time for the Federal Government to be kicking homeowners when they are down. In addition, as some lenders are renegotiating loans with borrowers to keep them in their home, the exclusion

of cancelled mortgage debt income is a necessary step to ensure that homeowner retention efforts are not thwarted by tax policy.

This amendment provides a targeted exclusion from taxation for canceled mortgage debt for those individuals most in need of assistance. It covers discharges of indebtedness between January 1, 2007, and January 1, 2010. In addition, the amendment would only apply if the home facing foreclosure is the taxpayer's principal residence and the exclusion is only available on mortgage indebtedness of up to $1 million.

On a related note, I have introduced S. 2133, the Home Owners ''Mortgage and Equity Savings Act,'' to help distressed homeowners who file for bankruptcy. The amount of a debt forgiven or discharged in bankruptcy is not deemed income. This amendment is important companion legislation in that it would help those who are able to renegotiate their mortgages, or who face foreclosure, but do not go into bankruptcy.

I urge my colleagues to support the Gregg amendment.

Mr. CRAPO. Mr. President, over the past years Congress has wrestled with the question of what was the appropriate level of regulation of futures exchanges and derivative markets. I have been very concerned about the potential efforts to change the manner in which we regulate derivatives or to impact the manner in which derivatives operate in the economy. It is critical that we strike the appropriate balance between protecting consumers and markets from trading abuse while ensuring continued growth and innovation in the U.S. markets.

The President's Working Group on Financial Markets, PWG, has played an important role in this debate by explaining why proposals that we have faced in the last few years for additional regulation of energy derivatives were not warranted, and has urged Congress to be aware of the potential for unintended consequences that would harm America's financial markets.

I have been repeatedly warned by our federal financial regulators that the importance of derivative markets in the U.S. economy should not be taken lightly, as businesses, financial institutions, and investors throughout the economy rely on these risk management tools. Derivatives markets have contributed significantly to our economy's ability to withstand and respond to various market stresses and imbalances.

In September of 2007, the Commodity Futures Trading Commission, CFTC, held a hearing to examine the oversight of trading on regulated futures exchanges or exempt commercial markets. Based on this hearing, the CFTC reported that the current risk-based, tiered regulatory structure has successfully encouraged financial innovation, competition, and modernization. However, the CFTC also found that additional oversight was warranted for certain contracts traded on an ECM that serve a significant price discovery function in order to detect and prevent manipulation. The CFTC proposed four legislative recommendations that were endorsed by the PWG.

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It is for this reason that I decided to work with a bipartisan group of Senators who also wanted to address the appropriate level of regulation of futures exchanges and over-the-counter derivative transactions. I want to thank Senate Agriculture Committee Chairman HARKIN, Senate Agriculture Committee Ranking Member CHAMBLISS, Senator FEINSTEIN, Senator SNOWE, Senator LEVIN, and Senator COLEMAN for all their work.

I appreciate their willingness to work off the framework that was endorsed by the PWG and believe this allowed all of us to reach a deal. This was a significant concession to some Senators who have supported an alternative approach, and I would like to thank them for doing so.

In addition, this amendment extends the reauthorization of the CFTC, clarifies the CFTC authority over off-exchange retail foreign currency transactions, clarifies the antifraud authority over principal-to-principal transactions, increases civil and criminal penalties, and makes technical and conforming amendments. These provisions were also largely based off the framework that was endorsed by the PWG letter of November of 2007.

Earlier this week the House Agriculture Committee approved by voice vote a similar measure to reauthorize the Commodity Futures Trading Commission. It is my hope that in a conference the House and Senate will reconcile their differences over the reauthorization period and Zelener related issues.

I strongly believe that Congress needs to reauthorize the CFTC and frankly, so that we can give this agency all the tools it needs to protect investors and promote the futures industry and preserve the integrity of our markets. Moreover, the Senate must act to confirm Walt Lukken as Chairman of the CFTC. He has demonstrated throughout this reauthorization process the strong leadership that is essential to managing an agency. I want to commend him, his fellow commissioners, and staff for all their tremendous work.

MORNING BUSINESS

Mr. HARKIN. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

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

CIA DESTRUCTION OF INTERROGATION RECORDINGS

Mr. DURBIN. Mr. President, it seems that every week there is a new revelation about how this administration has engaged in activity that is not consistent with American laws or values when it comes to the issue of torture. Last week, CIA Director Michael Hayden acknowledged that Central Intelligence Agency officials destroyed videotapes of detainees being subjected to so-called ''enhanced interrogation techniques.'' These techniques reportedly include forms of torture like waterboarding. The New York Times reported, ''The tapes were destroyed in part because officers were concerned that video showing harsh interrogation methods could expose agency officials to legal risks.''

The CIA apparently withheld information about the existence of interrogation videotapes from official proceedings, including the 9/11 Commission and the Federal court hearing the case of Zacarias Moussaoui. General Hayden asserts that the videotapes were destroyed ''in line with the law,'' but it is the Justice Department's role to determine whether the law was broken.

Last week I asked Attorney General Mukasey to investigate whether CIA officials who covered up the existence of these videotapes violated the law. To his credit, the Attorney General has begun a preliminary inquiry.

This week there is a new revelation. The CIA has already acknowledged videotaping interrogations of detainees in CIA custody. Now it appears that there may be videotapes of detainees who the CIA transferred or rendered to other countries to be interrogated.

According to the Chicago Tribune, in February 2003, the CIA detained a man named Abu Omar in Italy. The CIA then took Abu Omar to Egypt and turned him over to the Egyptian government. Abu Omar claims he was tortured and that his Egyptian interrogators recorded, ''the sounds of my torture and my cries.''

In response to this story, CIA spokesman Paul Gimigliano said he could not ''speak to the taping practices of other intelligence services.'' Notice what he did not say. He did not say whether the CIA is aware of foreign countries recording interrogations of detainees who were transferred to them by the CIA. In fact, if the CIA sends a detainee