the exemption for certain annuity contracts and insurance policies from Federal regulation under the Securities Act of 1933.

S. 1441

At the request of Mr. WYDEN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1441, a bill to amend title 38, United States Code, to grant family of members of the uniformed services temporary annual leave during the deployment of such members.

S. 1472

At the request of Mr. DURBIN, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1472, a bill to establish a section within the Criminal Division of the Department of Justice to enforce human rights laws, to make technical and conforming amendments to criminal and immigration laws pertaining to human rights violations, and for other purposes.

S. 1492

At the request of Ms. MIKULSKI, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1492, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 1535

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1535, a bill to amend the Fish and Wildlife Act of 1956 to establish additional prohibitions on shooting wildlife from aircraft, and for other purposes.

S. 1536

At the request of Mr. SCHUMER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1536, a bill to amend title 23, United States Code, to reduce the amount of Federal highway funding available to States that do not enact a law prohibiting an individual from writing, sending, or reading text messages while operating a motor vehicle.

S. 1553

At the request of Mr. GRASSLEY, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1553, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1583

At the request of Mr. ROCKEFELLER, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 1583, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit through 2014, and for other purposes.

S. 1652

At the request of Mr. HARKIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1652, a bill to amend part B of the Individuals with Disabilities Education Act to provide full Federal funding of such part.

S. 1657

At the request of Mr. NELSON of Florida, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1657, a bill to amend the Internal Revenue Code of 1986 to modify the exception from the 10 percent penalty for early withdrawals from government plans for qualified public safety employees.

S. 1659

At the request of Mr. CASEY, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1659, a bill to enhance penalties for violations of securities protections that involve targeting seniors.

S. 1681

At the request of Mr. LEAHY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1681, a bill to ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers.

S. 1700

At the request of Mr. LUGAR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1700, a bill to require certain issuers to disclose payments to foreign governments for the commercial development of oil, natural gas, and minerals, to express the sense of Congress that the President should disclose any payment relating to the commercial development of oil, natural gas, and minerals on Federal land, and for other purposes.

S. 1739

At the request of Mr. DODD, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1739, a bill to promote freedom of the press around the world.

S. 1749

At the request of Mrs. FEINSTEIN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1749, a bill to amend title 18, United States Code, to prohibit the possession or use of cell phones and similar wireless devices by Federal prisoners.

S. RES. 295

At the request of Mr. BAYH, the names of the Senator from California (Mrs. BOXER) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. Res. 295, a resolution designating October 13, 2009, as ''National Metastatic Breast Cancer Awareness Day''.

AMENDMENT NO. 2644

At the request of Mr. VITTER, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 2644 proposed to H.R. 2847, a bill making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2668

At the request of Mr. REID, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of amendment No. 2668 intended to be proposed to H.R. 3548, a bill to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes.

AMENDMENT NO. 2670

At the request of Mr. DURBIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of amendment No. 2670 intended to be proposed to H.R. 2847, a bill making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. LANDRIEU:

S. 1773. A bill to amend title XVIII of the Social Security Act to provide for coverage of comprehensive cancer care planning under the Medicare Program and to improve the care furnished to individuals diagnosed with cancer by establishing a Medicare hospice care demonstration program and grant programs for cancer palliative care and symptom management programs, provider education, and related research; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, it is my pleasure today to introduce the Comprehensive Cancer Care Improvement Act, a bill to improve cancer care quality by encouraging the development of written plans for cancer care. The U.S. has a system of cancer care that is the envy of all nations for its technical superiority and the sophistication of treatment offered to many patients. Unfortunately, not all Americans receive the best care the Nation has to offer.

The Comprehensive Cancer Care Improvement Act would take a step towards ensuring that all Americans have access to cancer care of the highest quality. The bill would authorize a Medicare service for cancer care planning and encourage the adoption of care planning as a routine practice in all cancer care settings. The Institute of Medicine, IOM, has identified as critical to high-quality cancer care the development of plans of care at the beginning of cancer treatment and at the transition to survivorship. Moreover, the debate on health care reform has highlighted care coordination to improve efficiency and reduce unnecessary utilization of health care resources. Care planning facilitates the coordination of cancer care.

The need for this legislation was first brought to my attention in dramatic

fashion in the aftermath of Hurricane Katrina, when cancer patients and their physicians scurried to recreate their records in order to minimize interruptions in care and to prevent any duplication of care. Some of the problems that cancer patients encountered could have been eliminated if they had possessed written care plans. In a moving statement at a Hill briefing in 2007, one of my constituents described her efforts to create her own care plan by grabbing various documents that had been supplied by her oncologist as she was being evacuated from her home. Although not as useful as a clear care plan, these documents helped that patient and her new physician chart her course of care. The experience taught us that key recommendations from the IOM related to cancer care—and especially the recommendation for cancer care planning should be taken off the shelf and put into action.

There are many advantages of written cancer care plans for patients, physicians, and the entire health care system. Patients report that they are empowered by receiving care plans that spell out choices, facilitate the coordination of treatment and symptom management, and identify the follow-up services they will need post-treatment. Physicians say that communication with their patients is improved by developing and sharing care plans that are clear and concise, and some practices that have adopted care planning say that they are observing the identification and elimination of duplicative tests and procedures and an overall greater efficiency in care, all achieved while enhancing quality of care and patient satisfaction.

The Comprehensive Cancer Care Improvement Act, introduced in the House of Representatives by Representatives LOIS CAPPS and CHARLES BOUSTANY, establishes a new Medicare service for cancer care planning and authorizes programs that are aimed at increasing the utilization of care planning in all cancer care settings and ensuring access to care plans by underserved populations. I urge my colleagues to join me in cosponsoring this legislation to enhance cancer patients' access to quality care.

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

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

S. 1773

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Comprehensive Cancer Care Improvement Act of 2009''.

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

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Individuals with cancer often do not have access to a cancer care system that provides comprehensive and coordinated care of high quality.

(2) The cancer care system has not traditionally offered individuals with cancer a prospective and comprehensive plan for treatment and symptom management, strategies for updating and evaluating such plan with the assistance of a health care professional, and a follow-up plan for monitoring and treating possible late effects of cancer and its treatment.

(3) Cancer survivors often experience the under-diagnosis and under-treatment of the symptoms of cancer, a problem that begins at the time of diagnosis and often becomes more severe at the end of life. The failure to treat the symptoms, side effects, and late effects of cancer and its treatment may have a serious adverse impact on the health, well-being, and quality of life of cancer survivors.

(4) Cancer survivors who are members of racial and ethnic minority groups may face special obstacles in receiving cancer care that is coordinated and includes appropriate management of cancer symptoms and treatment side effects.

(5) Individuals with cancer are sometimes put in the untenable position of choosing between potentially curative therapies and palliative care instead of being assured access to comprehensive care that includes appropriate treatment and symptom management.

(6) Comprehensive cancer care should incorporate access to psychosocial services and management of the symptoms of cancer (and the symptoms of its treatment), including pain, nausea and vomiting, fatigue, and depression.

(7) Comprehensive cancer care should include a means for providing cancer survivors with a comprehensive care summary and a plan for follow-up care after primary treatment to ensure that cancer survivors have access to follow-up monitoring and treatment of possible late effects of cancer and cancer treatment.

(8) The Institute of Medicine report, ''Ensuring Quality Cancer Care'', described the elements of quality care for an individual with cancer to include—

(A) the development of initial treatment recommendations by an experienced health care provider;

(B) the development of a plan for the course of treatment of the individual and communication of the plan to the individual;

(C) access to the resources necessary to implement the course of treatment;

(D) access to high-quality clinical trials;

(E) a mechanism to coordinate services for the treatment of the individual; and

(F) psychosocial support services and compassionate care for the individual.

(9) In its report, ''From Cancer Patient to Cancer Survivor: Lost in Transition'', the Institute of Medicine recommended that individuals with cancer completing primary treatment be provided a comprehensive summary of their care along with a follow-up survivorship plan of treatment.

(10) Since more than half of all cancer diagnoses occur among elderly Medicare beneficiaries, the problems of providing cancer care are problems of the Medicare program.

(11) Shortcomings in providing cancer care, resulting in inadequate management of cancer symptoms and insufficient monitoring and treatment of late effects of cancer and its treatment, are related to problems of Medicare payments for such care, inadequate professional training, and insufficient investment in research on symptom management.

(12) Changes in Medicare payment for comprehensive cancer care, enhanced public and professional education regarding symptom management, and more research related to symptom management and palliative care will enhance patient decision-making about treatment options and will contribute to improved care for individuals with cancer from the time of diagnosis of the individual through the end of the life of the individual.

TITLE I—COMPREHENSIVE CANCER CARE UNDER THE MEDICARE PROGRAM

SEC. 101. COVERAGE OF CANCER CARE PLANNING SERVICES.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking ''and'' at the end of subparagraph (DD);

(B) by adding ''and'' at the end of subparagraph (EE); and

(C) by adding at the end the following new subparagraph:

''(FF) comprehensive cancer care planning services (as defined in subsection (hhh));''; and

(2) by adding at the end the following new subsection:

''Comprehensive Cancer Care Planning Services

''(hhh)(1) The term 'comprehensive cancer care planning services' means—

''(A) with respect to an individual who is diagnosed with cancer, the development of a plan of care that—

''(i) details, to the greatest extent practicable, all aspects of the care to be provided to the individual, with respect to the treatment of such cancer, including any curative treatment and comprehensive symptom management (such as palliative care) involved;

''(ii) is furnished in written form to the individual in person within a period specified by the Secretary that is as soon as practicable after the date on which the individual is so diagnosed;

''(iii) is furnished, to the greatest extent practicable, in a form that appropriately takes into account cultural and linguistic needs of the individual in order to make the plan accessible to the individual; and

''(iv) is in accordance with standards determined by the Secretary to be appropriate;

''(B) with respect to an individual for whom a plan of care has been developed under subparagraph (A), the revision of such plan of care as necessary to account for any substantial change in the condition of the individual, if such revision—

''(i) is in accordance with clauses (i) and (iii) of such subparagraph; and

''(ii) is furnished in written form to the individual within a period specified by the Secretary that is as soon as practicable after the date of such revision;

''(C) with respect to an individual who has completed the primary treatment for cancer, as defined by the Secretary (such as completion of chemotherapy or radiation treatment), the development of a follow-up cancer care plan that—

''(i) describes the elements of the primary treatment, including symptom management, furnished to such individual;

''(ii) provides recommendations for the subsequent care of the individual with respect to the cancer involved;

''(iii) is furnished in written form to the individual in person within a period specified by the Secretary that is as soon as practicable after the completion of such primary treatment;

''(iv) is furnished, to the greatest extent practicable, in a form that appropriately takes into account cultural and linguistic needs of the individual in order to make the plan accessible to the individual; and

''(v) is in accordance with standards determined by the Secretary to be appropriate; and

''(D) with respect to an individual for whom a follow-up cancer care plan has been developed under subparagraph (C), the revision of such plan as necessary to account for any substantial change in the condition of the individual, if such revision—

''(i) is in accordance with clauses (i), (ii), and (iv) of such subparagraph; and

''(ii) is furnished in written form to the individual within a period specified by the Secretary that is as soon as practicable after the date of such revision.

''(2) The Secretary shall establish standards to carry out paragraph (1) in consultation with appropriate organizations representing providers of services related to cancer treatment and organizations representing survivors of cancer. Such standards shall include standards for determining the need and frequency for revisions of the plans of care and follow-up plans based on changes in the condition of the individual and standards for the communication of the plan to the patient.''.

(b) PAYMENT.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 13951(a)(1)) is amended by striking ''and'' before ''(W)'' and inserting before the semicolon at the end the following: '', and (X) with respect to comprehensive cancer care planning services described in any of subparagraphs (A) through (D) of section 1861(hhh)(1), the amount paid shall be an amount equal to the sum of (i) the national average amount under the physician fee schedule established under section 1848 for a new patient office consultation of the highest level of service in the non-facility setting, and (ii) the national average amount under such fee schedule for a physician certification described in section 1814(a)(2) for home health services furnished to an individual by a home health agency under a home health plan of care''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the first day of the first calendar year that begins after the date of the enactment of this Act.

SEC. 102. DEMONSTRATION PROJECT TO PROVIDE COMPREHENSIVE CANCER CARE SYMPTOM MANAGEMENT SERVICES UNDER MEDICARE.

(a) IN GENERAL.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a two-year demonstration project (in this section referred to as the ''demonstration project'') under title XVIII of the Social Security Act under which payment shall be made under such title for comprehensive cancer care symptom management services, including items and services described in subparagraphs (A) through (I) of section 1861(dd)(1) of the Social Security Act, furnished by an eligible entity, in accordance with a plan developed under subparagraph (A) or (C) of section 1861(hhh)(1) of such Act, as added by section 101(a). Sections 1812(d) and 1814(a)(7) of such Act (42 U.S.C. 1395d(d), 1395f(a)(7)) are not applicable to items and services furnished under the demonstration project. Participation of Medicare beneficiaries in the demonstration project shall be voluntary.

(b) QUALIFICATIONS AND SELECTION OF ELIGIBLE ENTITIES.—

(1) QUALIFICATIONS.—For purposes of subsection (a), the term ''eligible entity'' means an entity (such as a cancer center, hospital, academic health center, hospice program, physician practice, school of nursing, visiting nurse association, or other home health agency) that the Secretary determines is capable, directly or through an arrangement with a hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2))), of providing the items and services described in such subsection.

(2) SELECTION.—The Secretary shall select not more than 10 eligible entities to participate in the demonstration project. Such entities shall be selected in a manner so that the demonstration project is conducted in different regions across the United States and in urban and rural locations.

(c) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct a comprehensive evaluation of the demonstration project to determine—

(A) the effectiveness of the project in improving patient outcomes;

(B) the cost of providing comprehensive symptom management, including palliative care, from the time of diagnosis;

(C) the effect of comprehensive cancer care planning and the provision of comprehensive symptom management on patient outcomes, cancer care expenditures, and the utilization of hospitalization and emergent care services; and

(D) potential savings to the Medicare program demonstrated by the project.

(2) REPORT.—Not later than the date that is one year after the date on which the demonstration project concludes, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1).

TITLE II—COMPREHENSIVE PALLIATIVE CARE AND SYMPTOM MANAGEMENT PROGRAMS

SEC. 201. GRANTS FOR COMPREHENSIVE PALLIATIVE CARE AND SYMPTOM MANAGEMENT PROGRAMS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall make grants to eligible entities for the purpose of—

(1) establishing a new palliative care and symptom management program for cancer patients; or

(2) expanding an existing palliative care and symptom management program for cancer patients.

(b) AUTHORIZED ACTIVITIES.—Activities funded through a grant under this section may include—

(1) securing consultative services and advice from institutions with extensive experience in developing and managing comprehensive palliative care and symptom management programs;

(2) expanding an existing program to serve more patients or enhance the range or quality of services, including cancer treatment patient education services, that are provided;

(3) developing a program that would ensure the inclusion of cancer treatment patient education in the coordinated cancer care model; and

(4) establishing an outreach program to partner with an existing comprehensive care program and obtain expert consultative services and advice.

(c) DISTRIBUTION OF FUNDS.—In making grants and distributing the funds under this section, the Secretary shall ensure that—

(1) two-thirds of the funds appropriated to carry out this section for each fiscal year are used for establishing new palliative care and symptom management programs, of which not less than half of such two-thirds shall be for programs in medically underserved communities to address issues of racial and ethnic disparities in access to cancer care; and

(2) one-third of the funds appropriated to carry out this section for each fiscal year are used for expanding existing palliative care and symptom management programs.

(d) DEFINITIONS.—In this section:

(1) The term ''eligible entity'' includes—

(A) an academic medical center, a cancer center, a hospital, a school of nursing, or a health system capable of administering a palliative care and symptom management program for cancer patients;

(B) a physician practice with care teams, including nurses and other professionals trained in palliative care and symptom management;

(C) a visiting nurse association or other home care agency with experience administering a palliative care and symptom management program;

(D) a hospice; and

(E) any other health care agency or entity, as the Secretary determines appropriate.

(2) The term ''medically underserved community'' has the meeting given to that term in section 799B(6) of the Public Health Service Act (42 U.S.C. 295p(6)).

(3) The term ''Secretary'' means the Secretary of Health and Human Services.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.

TITLE III—PROVIDER EDUCATION REGARDING PALLIATIVE CARE AND SYMPTOM MANAGEMENT

SEC. 301. GRANTS TO IMPROVE HEALTH PROFESSIONAL EDUCATION.

(a) IN GENERAL.—The Secretary of Health and Human Services shall make grants to eligible entities to enable the entities to improve the quality of graduate and post-graduate training of physicians, nurses, and other health care providers in palliative care and symptom management for cancer patients.

(b) APPLICATION.—To seek a grant under this section, an eligible entity shall submit an application at such time, in such manner, and containing such information as the Secretary may require. At a minimum, the Secretary shall require that each such application demonstrate—

(1) the ability to incorporate palliative care and symptom management into training programs; and

(2) the ability to collect and analyze data related to the effectiveness of educational efforts.

(c) EVALUATION.—The Secretary shall develop and implement a plan for evaluating the effects of professional training programs funded through this section.

(d) DEFINITIONS.—In this section:

(1) The term ''eligible entity'' means a cancer center (including an NCI-designated cancer center), an academic health center, a physician practice, a school of nursing, or a visiting nurse association or other home care agency.

(2) The term ''NCI-designated cancer center'' means a cancer center receiving funds

through a P30 Cancer Center Support Grant of the National Cancer Institute.

(3) The term ''Secretary'' means the Secretary of Health and Human Services.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.

SEC. 302. GRANTS TO IMPROVE CONTINUING PROFESSIONAL EDUCATION.

(a) IN GENERAL.—The Secretary of Health and Human Services shall make grants to eligible entities to improve the quality of continuing professional education provided to qualified individuals regarding palliative care and symptom management.

(b) APPLICATION.—To seek a grant under this section, an eligible entity shall submit an application at such time, in such manner, and containing such information as the Secretary may require. At a minimum, the Secretary shall require that each such application demonstrate—

(1) experience in sponsoring continuing professional education programs;

(2) the ability to reach health care providers and other professionals who are engaged in cancer care;

(3) the capacity to develop innovative training programs; and

(4) the ability to evaluate the effectiveness of educational efforts.

(c) EVALUATION.—The Secretary shall develop and implement a plan for evaluating the effects of continuing professional education programs funded through this section.

(d) DEFINITIONS.—In this section:

(1) The term ''eligible entity'' means a cancer center (including an NCI-designated cancer center), an academic health center, a school of nursing, or a professional society that supports continuing professional education programs.

(2) The term ''NCI-designated cancer center'' means a cancer center receiving funds through a P30 Cancer Center Support Grant of the National Cancer Institute.

(3) The term ''qualified individual'' means a physician, nurse, social worker, chaplain, psychologist, or other individual who is involved in providing palliative care and symptom management services to cancer patients.

(4) The term ''Secretary'' means the Secretary of Health and Human Services.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.

TITLE IV—RESEARCH ON END-OF-LIFE TOPICS FOR CANCER PATIENTS

SEC. 401. RESEARCH PROGRAM.

(a) IN GENERAL.—The Director of the National Institutes of Health shall establish a program of grants for research on palliative care, symptom management, communication skills, and other end-of-life topics for cancer patients.

(b) INCLUSION OF NATIONAL RESEARCH INSTITUTES.—In carrying out the program established under this section, the Director should provide for the participation of the National Cancer Institute, the National Institute of Nursing Research, and any other national research institute that has been engaged in research described in subsection (a).

(c) DEFINITIONS.—In this section:

(1) The term ''Director'' means the Director of the National Institutes of Health.

(2) The term ''national research institute'' has the meaning given to that term in section 401(g) of the Public Health Service Act (42 U.S.C. 281(g)).

(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.

By Mr. WEBB (for himself, Mr. ALEXANDER, Mr. CORKER, and Mr. UDALL of Colorado).

S. 1774. A bill for the relief of Hotaru Nakama Ferschke; to the Committee on the Judiciary.

Mr. WEBB. Mr. President, we are debating a lot of great long-term issues in this body. I wish to speak for a short period of time today about something on the other end of the political spectrum, about something that I believe is an issue—a small issue—a private bill that all of us should come together on in rather quick measure.

Every now and then, there comes an issue that tells us a lot about who we are and how we live up to our promises, great and small, and particularly the promises that we make to those who step forward and place their lives on the line in order to carry out the policies that we ourselves put in place.

Like all of the Members of this body, I take a back seat to no one in my affection and support for the people who step forward and serve our country. I come from a family that has a long citizen-soldier tradition. I have several ancestors—direct ancestors—who fought in the American Revolution, and we have participated as citizen-soldiers in just about every war since then.

My colleagues know how strongly I feel about the U.S. Marine Corps. I had the great privilege of commanding marines in combat in Vietnam. My brother was a marine. My son is a marine. My son-in-law is a marine.

Many of my colleagues know of my long association with the people of Okinawa, beginning almost 41 years ago when I first was there on my way into Vietnam, but continuing as a journalist, as a government official, as a tourist, as a guest of the government.

As most of my colleagues know, in my nongovernment service, I principally made my living as a writer, as a novelist. All of these issues dovetail in this private bill that I and the two Senators from Tennessee are introducing today.

In the first novel I wrote, which was about the Vietnam war, a subplot was about a young marine who fell in love with an Okinawan girl and who, after being wounded, went back into Vietnam, had left her with child, and was killed. She, not knowing this, bore the burden of carrying his son without having been formally married to this young marine. Flash forward 40 years to the future and to a different war, and we have a situation that I believe needs some prompt action on our part.

This private bill is not asking for any favors. It is not asking for any special consideration. It is simply asking that the young widow of a marine be treated like any other widow.

SGT Michael Ferschke, a 22-year-old marine, had been serving in Okinawa and had met Hotaru Nakama. They dated for a year before he deployed to Iraq. Just before he deployed, they found out that she was with child. They had, by all independent verifications, agreed that they would be married before they discovered she had been with child. He deployed to Iraq, and due to the circumstances of his combat time, they arranged to be married by telephone on July 10, 2008, when he was in Iraq. One month later to the day, he was killed.

That marriage is a marriage that is recognized, including in the State of Virginia, as a valid marriage. And yet because of an idiosyncracy in our immigration laws that dates back 55 years, the Department of Homeland Security, for immigration purposes, will not recognize this marriage.

This quirk in the law was put into place during the Korean war in order to prevent fraudulent marriages that had never been consummated. But clearly in this case, this is a marriage that could not be consummated because this young man was serving our country in Iraq. They have a child.

Every agency of the U.S. Government has done everything they can on this young widow's behalf. She is staying with the young marine's family in Tennessee on a tourist visa. The Department of Homeland Security, the Department of State, the U.S. Marine Corps—all have been as helpful as they can be in assisting this marine's young widow in her desire to have permanent immigration status in this country. There is no way it can happen under present law because of the peculiarities of the law. There is only one way that can happen, and that is if we pass a special bill that will do only one thing, and that is to give her the exact status that she would have had if they had been standing next to each other when they exchanged their vows in marriage. And there is only one reason they were not standing next to each other when they exchanged their vows in marriage, and that is because he was serving his country in Iraq.

I earnestly hope that all of this body and the other body can come together and remove this idiosyncracy from the lives of these people who have suffered so much because Michael Ferschke, sergeant, U.S. Marine Corps, stepped forward and did what we asked him to do and served our country.

By Ms. STABENOW:

S. 1776. A bill to amend title XVIII of the Social Security Act to provide for the update under the Medicare physician fee schedule for years beginning with 2010 and to sunset the application of the sustainable growth rate formula, and for other purposes; read the first time.

Ms. STABENOW. Mr. President, I rise for just a moment because I am introducing a bill today that I will speak more about at another time, but it is a very important bill for the physicians of this country.

We have had a failed, flawed payment system in place for many years as it relates to physicians, and we come back

every year, in fact, and stop the cuts that are proposed under that flawed system to make sure we are not putting our physicians in harm's way as it relates to their Medicare reimbursements.

This has gone on year after year after year after year. We all know that the sustainable growth rate process is flawed and yet we have not fixed it permanently. So the legislation I have would, in fact, fix this permanently and guarantee we are stopping this cycle that we put our physicians and hospitals through every year, where there may be a cut, there may not be a cut, and in the end we have to come in and fix it.

So this is a bill that would permanently change the payment system for physicians to a fairer system. It does have a cost to it. It is less than it was prior to the very positive action the Secretary of Health and Human Services took a few weeks ago, removing the costs of medicine from the formula. It should never have been there in the first place. But by removing that, that means the overall costs are less than they otherwise would be.

But it is important we get this right, we fix what has been a very flawed system. As we go into the health care reform debate, I think it is important we get this done right first so every physician understands we are not going to put them in this position year after year after year.

By Mr. UDALL of Colorado:

S. 1777. A bill to facilitate the remediation of abandoned hardrock mines, and for other purposes; to the Committee on Environment and Public Works.

Mr. UDALL of Colorado. Mr. President, I rise tonight to announce that I am introducing legislation designed to help promote the cleanup of abandoned and inactive hard rock mines that are a menace to the environment and public health throughout the country, but especially to the West.

In previous sessions of Congress when I was a Member of the House of Representatives, I introduced similar bills. Following the introduction of those previous bills, revisions were made to incorporate a number of changes developed in consultation with a wide range of interested parties. These parties included representatives of the Western Governors' Association, the Environmental Protection Agency, the hardrock mining industry, and environmental groups.

The bill I am introducing today is also the product of further consultations. It represents years of effort to reach agreement on establishing a program to advance the cleanup of polluted water from abandoned mines.

For over one hundred years, miners and prospectors have searched for and developed valuable hardrock minerals, such as gold, silver, and copper. Hardrock mining has played a key role in the history of Colorado and many other States. The resulting mineral wealth has been an important aspect of our economy and the development of essential products that we all take for granted.

However, as all westerners know, this history has too often been marked by a series of ''boom'' times followed by ''busts,'' when mines were no longer profitable. When these busts came, too often the miners would abandon their work and move on, seeking riches over the next mountain. The resulting legacy of unsafe open mine shafts and acid mine drainages can be seen throughout the country and especially on the Western public lands where mineral development was encouraged to help settle our region.

The problems caused by abandoned and inactive mines are very real and very large. They include acidic water draining from old tunnels; heavy metals leaching into streams, killing fish and tainting water supplies; open vertical mine shafts; dangerous highwalls; large open pits; waste rock piles that are unsightly and dangerous; and hazardous dilapidated structures.

Unfortunately, many of our current environmental laws, designed to mitigate the impact from operating hard rock mines, are of limited effectiveness when they are applied to abandoned and inactive mines. As a result, many of these old mines go on polluting streams and rivers and potentially risking the health of people who live nearby or downstream.

Right now, there are two serious obstacles to progress. One is a serious lack of funds for cleaning up sites for which no private person or entity can be held liable. The other obstacle is legal.

While the Clean Water Act is one of the most effective and important of our environmental laws, as applied to abandoned hard rock mines, it can mean that someone undertaking to clean up an abandoned or inactive mine will be exposed to the same liability that would apply to a party responsible for creating the site's problems in the first place. As a result, would-be Good Samaritans understandably have been unwilling to volunteer their services to clean up abandoned and inactive mines.

The Governors of our Western States have recognized the need for action to address this serious problem. They have adopted bipartisan resolutions on this subject, such as the position adopted in the 2007 resolution entitled ''Cleaning Up Abandoned Mines.'' In this resolution, the Governors urged Congress to take action to address liability issues and funding concerns. The Governors sent a letter in November 2007 expressing support for the previous version of the bill I am introducing today.

The bill I am filing today will help address this impediment and make it easier for volunteers, who had no role in creating the problem, to help clean up these sites and improve the environment. It does so by providing a new permit program whereby volunteers can, under an approved plan, reduce the water pollution flowing from an abandoned mine. At the same time, volunteers will not be exposed to the full liability and ongoing responsibility provisions of the Clean Water Act.

Unlike other bills that have been introduced on this topic, my bill only addresses Clean Water Act liability and does not waive any other environmental law. This is because I do not believe we have to go that far. There are administrative avenues and options available to Good Samaritans to address compliance without other environmental laws that may apply at these sites. However, such administrative options are not available for Clean Water Act liability. So my bill only addresses this restriction on moving forward on projects to clean up water releases.

The new permit proposed in my bill would help address problems that have frustrated Federal and State agencies throughout the country. As population growth continues near these old mines, more and more risks to public health and safety are likely to occur. We simply must begin to address this issue, not only to improve the environment but also to ensure that our water supplies are safe and usable.

Let me be clear, the bill does not address all the concerns some would-be Good Samaritan may have about initiating cleanup projects. I am committed to continue working to address those additional concerns through additional legislation and in other ways. But the bill I am filing today can make a real difference, and I think it deserves approval without unnecessary delay.

Mr. President, I ask unanimous consent to have printed in the RECORD a longer version of my statement.

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

Mr. UDALL of Colorado. Mr. President, today I am introducing legislation designed to help promote the cleanup of abandoned and inactive hardrock mines that are a menace to the environment and public health throughout the country, but especially in the West.

In the 107, 108, 109, and 110 Congresses, I introduced similar bills aimed at that result. Following the bill's first introduction in the 107 Congress, revisions were made to incorporate a number of changes developed in consultation with interested parties, including representatives of the Western Governors' Association, the Environmental Protection Agency, the hardrock mining industry, and environmental groups.

The bill I am introducing today is also the product of further consultations. It represents years of effort to reach agreement on establishing a program to advance the cleanup of polluted water from abandoned mines.

For over one hundred years, miners and prospectors have searched for and developed valuable ''hardrock'' minerals—gold, silver, copper, molybdenum, and others. Hardrock mining has played a key role in the history of Colorado and other states, and the resulting mineral wealth has been an important aspect of our economy and the development of essential products. However, as all westerners know, this history has too often been

marked by a series of ''boom'' times followed by ''busts'' when mines were no longer profitable. When these busts came, too often the miners would abandon their work and move on, seeking riches over the next mountain. The resulting legacy of unsafe open mine shafts and acid mine drainages can be seen throughout the country and especially on the western public lands where mineral development was encouraged to help settle our region.

The problems caused by abandoned and inactive mines are very real and very large—including acidic water draining from old tunnels; heavy metals leaching into streams, killing fish and tainting water supplies; open vertical mine shafts; dangerous highwalls; large open pits; waste rock piles that are unsightly and dangerous; and hazardous dilapidated structures.

Unfortunately, many of our current environmental laws, designed to mitigate the impact from operating hardrock mines, are of limited effectiveness when applied to abandoned and inactive mines. As a result, many of these old mines go on polluting streams and rivers and potentially risking the health of people who live nearby or downstream.

Right now there are two serious obstacles to progress. One is a serious lack of funds for cleaning up sites for which no private person or entity can be held liable. The other obstacle is legal.

While the Clean Water Act is one of the most effective and important of our environmental laws, as applied it can mean that someone undertaking to clean up an abandoned or inactive mine will be exposed to the same liability that would apply to a party responsible for creating the site's problems in the first place. As a result, would-be ''good Samaritans'' understandably have been unwilling to volunteer their services to clean up abandoned and inactive mines.

Unless these fiscal and legal obstacles are overcome, often the only route to clean up abandoned mines will be to place them on the nation's Superfund list. Colorado has experience with that approach, so Coloradans know that while it can be effective, it also has shortcomings. For one thing, just being placed on the Superfund list does not guarantee prompt cleanup. The site will have to get in line behind other listed sites and await the availability of financial resources.

We need to develop an alternative approach that will mean we are not left only with the options of doing nothing or creating additional Superfund sites—because while in some cases the Superfund approach may make the most sense, in many others there could be a more direct and effective way to remedy the problem.

The Governors of our western States have recognized the need for action to address this serious problem. The Western Governors' Association has several times adopted resolutions on this subject, such as its most recent resolution in 2007 entitled Cleaning Up Abandoned Mines, wherein the governors urge Congress to take action to address liability issues and funding concerns. WGA also sent a letter in November 2007 expressing support for the previous version on the bill I am introducing today.

The bill I am filing today responds to a legal obstacle, the potential liability under the Clean Water Act that now deters many would-be ''good Samaritans'' from undertaking efforts to clean up abandoned hardrock mines. Unlike other bills that have been introduced on this topic, my bill only addresses Clean Water Act liability and does not waive any other environmental law. That's because I do not believe that we need to go that far. There are administrative avenues and options available to good Samaritans to address compliance with other environmental laws that may apply at these sites. However, such administrative options are not available for Clean Water Act liability, and so my bill only addresses this restriction on moving forward on projects to clean up water releases.

To help the efforts of ''good Samaritans,'' this bill would create a new program under the Clean Water Act under which qualifying individuals and entities could obtain permits to conduct cleanups of abandoned or inactive hardrock mines. These permits would give some liability protection to those volunteering to clean up these sites, while also requiring the permit holders to meet certain requirements.

The bill specifies who can secure these permits, what would be required by way of a cleanup plan, and the extent of liability exposure. Notably, unlike regular Clean Water Act point-source permits, these new permits would not require meeting specific standards for specific pollutants and would not impose liabilities for monitoring or long-term maintenance and operations. These permits would terminate upon completion of cleanup, if a regular Clean Water Act permit is issued for the same site, or if a permit holder encounters unforeseen conditions beyond the holder's control. I think this would encourage efforts to fix problems like those at the Pennsylvania Mine.

The new permits proposed in this bill would help address problems that have frustrated federal and state agencies throughout the country. As population growth continues near these old mines, more and more risks to public health and safety are likely to occur. We simply must begin to address this issue—not only to improve the environment, but also to ensure that our water supplies are safe and usable. This bill does not address all the concerns some would-be Good Samaritans may have about initiating cleanup projects—and I am committed to continue working to address those additional concerns, through additional legislation and in other ways. But this bill can make a real difference, and I think it deserves approval without unnecessary delay.

For the benefit of our colleagues, I am including a brief outline of the bill's provisions.

Eligibility for Good Samaritan Permits—Permits could be issued to a person or entity not involved in creation of residue or other conditions resulting from mining at a site within the bill's scope. Any other similar person or entity could be a cooperating party to help with a cleanup.

Sites Covered by the Bill—The bill covers sites of mines and associated facilities in the United States once used for production of a mineral, other than coal, but no longer actively mined, but does not cover sites on the national priority list under Superfund.

Administration—The permits would be issued by the Environmental Protection Agency, EPA, or by a state or tribal government with an approved Clean Water Act permitting program.

Remediation Plans—To obtain a permit, an applicant would have to submit a detailed plan for remediation of the site. After an opportunity for public comments, the EPA or other permitting authority could issue a permit if it determined that implementing the plan would not worsen water quality and could result in improving it toward meeting applicable water quality standards.

Effect of Permit—Compliance with a Good Samaritan permit would constitute compliance with the Clean Water Act, and neither a permit holder nor a cooperating party would be responsible for doing any remediation activities except those specified in the remediation plan. When the cleanup is done, the permit expires, ending the Good Samaritan's responsibility for the project.

Report and Sunset Clause—9 years after enactment, EPA must report to Congress about the way the bill has been implemented, so Congress can consider whether to renew or modify the legislation, which under the bill will terminate after 10 years.

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

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

S. 1777

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Good Samaritan Cleanup of Abandoned Hardrock Mines Act of 2009''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Federal Government and State governments have encouraged hardrock mining in the United States through a wide variety of laws, policies, and actions;

(2) mining operations produce metals and minerals that have important social benefits and values;

(3) many areas in the United States at which historic mining operations took place are now the locations of inactive and abandoned mine sites;

(4) the mining activities that took place prior to the enactment of modern environmental laws often disturbed public and private land, and those disturbances led to environmental pollution, including the discharge of pollutants into surface water and groundwater;

(5) many of the individuals and corporate owners and operators of mines the actions of which caused the pollution described in paragraph (4) are no longer alive or in existence;

(6) many of the historic mining sites have polluted the environment for more than a century and, unless remedied, will continue to do so indefinitely;

(7) unabated discharges from inactive and abandoned mines will continue to pollute surface water, groundwater, and soils;

(8) many of the streams and water bodies impacted by acid mine drainage are important resources for fish and wildlife, recreation, drinking water, agriculture, and other public purposes;

(9) some of the remaining owners and operators of historic mine sites do not have adequate resources to properly conduct the remediation of the mine sites under applicable environmental laws;

(10) from time to time, States, individuals, and companies are willing to remediate historic mine sites for the public good as Good Samaritans, despite the fact that those States, individuals, and companies are not legally required to do so;

(11) Good Samaritan remediation activities may—

(A) vary in size and complexity;

(B) reflect a myriad of methods by which mine residue may be cleaned up; and

(C) include, among other activities—

(i) the removal, relocation, or management of tailings or other waste piles;

(ii) passive or active water treatment; and

(iii) runoff or runon controls;

(12) the potential obligations, requirements, and liabilities under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) that may attach to Good Samaritans as the result of the conduct by the Good Samaritans of remediation activities can dissuade potential Good Samaritans from acting for the public good;

(13) it is in the interest of the United States, the States, and local communities to remediate historic mine sites—

(A) in appropriate circumstances and to the maximum extent practicable; and

(B) so that the detrimental environmental impacts of the historic mine sites are lessened in the future; and

(14) if appropriate protections are provided to Good Samaritans, Good Samaritans will have a greater incentive to remediate historic mine sites for the public good.

(b) PURPOSES.—The purposes of this Act are—

(1) to encourage the partial or complete remediation of inactive and abandoned mine sites for the public good by individuals or entities that are not legally responsible for the remediation;

(2) to allow any individual or entity not legally responsible for environmental conditions relating to an inactive or abandoned mine site—

(A) to make further progress toward the goal of meeting water quality standards in all water of the United States; and

(B) to improve other environmental media affected by past mining activities at the inactive or abandoned mine site without incurring any obligation or liability with respect to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(3) to ensure that remediation activities performed by Good Samaritans—

(A) result in actual and significant environmental benefits; and

(B) are carried out—

(i) with the approval and agreement, and at the discretion, of affected Federal, State, and tribal authorities;

(ii) in a manner that enables the public to conduct a review of, and submit comments relating to, the remediation activities; and

(iii) in a manner that is beneficial to the environment and each community affected by the remediation activities; and

(4) to further the innovations of, and cooperation among, the Federal Government, State and tribal governments, private individuals, and corporations to accelerate efforts relating to conservation and environmental restoration.

SEC. 3. SCOPE.

Nothing in this Act (or an amendment made by this Act)—

(1) reduces any existing liability; or

(2) facilitates the conduct of any mining or processing other than the conduct of any mining or processing that is required for the remediation of historic mine residue for the public good.

SEC. 4. GOOD SAMARITAN DISCHARGE PERMITS.

Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

''(s) GOOD SAMARITAN DISCHARGE PERMITS.—

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

''(A) COOPERATING PERSON.—

''(i) IN GENERAL.—The term 'cooperating person' means any person that—

''(I) is a Good Samaritan;

''(II) assists a permittee in the remediation of an inactive or abandoned mine site; and

''(III) is identified in a Good Samaritan discharge permit issued under paragraph (2).

''(ii) INCLUSION.—The term 'cooperating person' includes the Federal Government.

''(B) ELIGIBLE APPLICANT.—The term 'eligible applicant' means a person that—

''(i) is a Good Samaritan; and

''(ii) proposes a project, the purpose of which is to remediate, in whole or in part, actual or threatened pollution caused by historic mine residue at an inactive or abandoned mine site.

''(C) GOOD SAMARITAN.—The term 'Good Samaritan' means a person that, with respect to historic mine residue at an inactive or abandoned mine site—

''(i) had no role in the creation of the historic mine residue;

''(ii) had no role in creating any environmental pollution caused by the historic mine residue; and

''(iii) is not liable under any Federal, State, tribal, or local law for the remediation of the historic mine residue.

''(D) HISTORIC MINE RESIDUE.—

''(i) IN GENERAL.—The term 'historic mine residue' means mine residue or any condition resulting from activities at an inactive or abandoned mine site prior to October 18, 1972, that—

''(I) causes or contributes to the actual or threatened discharge of pollutants from the inactive or abandoned mine site; or

''(II) otherwise pollutes the environment.

''(ii) INCLUSIONS.—The term 'historic mine residue' includes—

''(I) ores and minerals that—

''(aa) were mined during the active operation of an inactive or abandoned mine site; and

''(bb) contribute to acid mine drainage or other environmental pollution;

''(II) equipment (including materials in equipment);

''(III) any waste or material resulting from any extraction, beneficiation, or other processing activity that occurred during the active operation of an inactive or abandoned mine site; and

''(IV) any acidic or otherwise polluted flow in surface water or groundwater that originates from an inactive or abandoned mine site.

''(E) IDENTIFIABLE OWNER OR OPERATOR.—The term 'identifiable owner or operator' means a person that is—

''(i) legally responsible under section 301 for a discharge that originates from an inactive or abandoned mine site; and

''(ii) financially capable of complying with each requirement described in this section and section 301.

''(F) INACTIVE OR ABANDONED MINE SITE.—

''(i) IN GENERAL.—The term 'inactive or abandoned mine site' means a mine site (including associated facilities) that—

''(I) is located in the United States;

''(II) was used for the production of a mineral other than coal;

''(III) has historic mine residue; and

''(IV) is no longer actively mined on the date on which an eligible applicant submits to a permitting authority a remediation plan relating to an application for a Good Samaritan discharge permit under paragraph (3)(B) for the remediation of the mine site.

''(ii) EXCLUSIONS.—The term 'inactive or abandoned mine site' does not include a mine site (including associated facilities) that is—

''(I) in a temporary shutdown;

''(II) included on the National Priorities List developed by the President in accordance with section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)(8)(B)); or

''(III) the subject of an ongoing or planned remedial action carried out in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

''(G) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(H) PERMITTEE.—The term 'permittee' means a person that is issued a Good Samaritan discharge permit under this subsection.

''(I) PERMITTING AUTHORITY.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'permitting authority' means the Administrator.

''(ii) EXCEPTION.—In the case of a State or Indian tribe with an approved permitting program under paragraph (2)(B), the term 'permitting authority' means the head of the permitting program of the State or Indian tribe.

''(J) PERSON.—The term 'person' includes—

''(i) an individual;

''(ii) a firm;

''(iii) a corporation;

''(iv) an association;

''(v) a partnership;

''(vi) a consortium;

''(vii) a joint venture;

''(viii) a commercial entity;

''(ix) a nonprofit organization;

''(x) the Federal Government;

''(xi) a State (including a political subdivision of a State);

''(xii) an interstate entity;

''(xiii) a commission; and

''(xiv) an Indian tribe.

''(2) GOOD SAMARITAN DISCHARGE PERMITS.—

''(A) IN GENERAL.—A permitting authority may issue a Good Samaritan discharge permit to an eligible applicant in concurrence, if applicable, with—

''(i) the State in which the proposed inactive or abandoned mine site remediation project is located; or

''(ii) the Federal agency or Indian tribe that owns or has jurisdiction over the site at which the proposed inactive or abandoned mine site remediation project is located.

''(B) STATE OR TRIBAL PROGRAMS.—The Administrator shall approve a State or tribal program for the issuance of Good Samaritan discharge permits if—

''(i) the State or Indian tribe has, as of the date of enactment of this subsection, authority to issue a permit under subsection (b); and

''(ii) the State or Indian tribe requests such authority.

''(3) PERMIT PROCESS.—

''(A) SCOPE.—An eligible applicant may apply for a Good Samaritan discharge permit to conduct remediation activities at any inactive or abandoned mine site from which there is, or may be, a discharge or a threatened discharge of pollutants into any water of the United States.

''(B) REMEDIATION PLAN.—To apply for a Good Samaritan discharge permit under subparagraph (A), an eligible applicant shall submit to the permitting authority an application that contains a remediation plan that, to the extent known by the eligible applicant as of the date on which the application is submitted, contains—

''(i) an identification of—

''(I) the eligible applicant (including any cooperating person) with respect to the remediation plan;

''(II) the mine site that is the subject of the remediation plan (including such documentation as the permitting authority determines to be sufficient to demonstrate to the permitting authority that the mine site is an inactive or abandoned mine site); and

''(III) each body of water of the United States that is affected by actual or threatened discharges from the inactive or abandoned mine site;

''(ii) a description of—

''(I) the baseline conditions of each body of water described in clause (i)(III) as of the date on which the eligible applicant submits the application, including—

''(aa) the nature and extent of any adverse impact on the quality of each body of water caused by the drainage of historic mine residue or other discharges from the inactive or abandoned mine site; and

''(bb) as applicable, the level of any pollutant in each body of water that has resulted in an adverse impact described in item (aa);

''(II) the conditions of the inactive or abandoned mine site that cause adverse impacts to the quality of each body of water described in clause (i)(III);

''(III) the reasonable efforts taken by the eligible applicant to identify identifiable owners or operators of the inactive or abandoned mine site that is the subject of the application;

''(IV) each remediation goal and objective proposed by the eligible applicant, including—

''(aa) each pollutant to be addressed by the remediation plan; and

''(bb) each action that the eligible applicant proposes to take that, to the maximum extent reasonable and practicable under the circumstances, will assist in the attainment of each applicable water quality standard;

''(V) the practices (including a schedule and estimated completion date for the implementation of each practice) that are proposed by the eligible applicant to meet each remediation goal and objective described in subclause (IV), including—

''(aa) in the case of a new remediation project, the preliminary system design and construction, operation, and maintenance plans relating to the new remediation project; and

''(bb) in the case of an existing remediation project, available system design and construction, operation, and maintenance plans and any planned improvements with respect to the existing remediation project;

''(VI) any proposed recycling or reprocessing of historic mine residue to be conducted by the eligible applicant (including a description of how each proposed recycling or reprocessing activity relates to the remediation of an inactive or abandoned mine site);

''(VII) the monitoring or other forms of assessment that will be undertaken by the eligible applicant to evaluate the success of the practices described in subclause (V) during and after the implementation of the remediation plan, with respect to the baseline conditions;

''(VIII) each contingency plan that is designed for responding to unplanned adverse events (including the practices to be implemented to achieve each remediation goal and objective described in subclause (IV));

''(IX) the legal authority of the eligible applicant to enter, and conduct activities at, the inactive or abandoned mine site that is the subject of the remediation plan; and

''(X) any public outreach activity to be conducted by the eligible applicant;

''(iii) an explanation of the manner by which the practices described in clause (ii)(V) are expected to achieve each remediation goal and objective described in clause (ii)(IV);

''(iv) a schedule for the periodic reporting by the eligible applicant with respect to any progress in implementing the remediation plan;

''(v) a budget for the remediation plan that includes a description of each funding source that will support the implementation of the remediation plan, including—

''(I) each practice described in clause (ii)(VIII);

''(II) each action described in clause (ii)(IV)(bb); and

''(III) each monitoring or other appropriate activity described in clause (ii)(VII); and

''(vi) any other additional information requested by the Administrator to clarify the remediation plan and each proposed activity covered by the remediation plan.

''(C) CERTIFICATION OF PLAN.—An application for a Good Samaritan discharge permit submitted by an eligible applicant to a permitting authority under subparagraph (B) shall be signed and certified in a manner consistent with section 122.22 of title 40, Code of Federal Regulations.

''(D) INVESTIGATIVE MEASURES.—

''(i) IN GENERAL.—A Good Samaritan discharge permit may include a program of investigative measures to be completed prior to the remediation of the inactive or abandoned mine site that is the subject of the permit if the permitting authority, upon the receipt of the application of an eligible applicant for a Good Samaritan discharge permit, determines the program of investigative measures to be appropriate.

''(ii) PROGRAM REQUIREMENTS.—Any water sampling included in the program of investigative measures described in clause (i) shall be conducted by an eligible applicant in accordance with any applicable method described in part 136 of title 40, Code of Federal Regulations.

''(iii) REQUIREMENTS RELATING TO SAMPLES.—In conducting a program of investigative measures described in clause (i), an eligible applicant shall—

''(I) ensure that each sample collected under the program is representative of the conditions present at the inactive or abandoned mine site that is the subject of the program; and

''(II) retain records of all sampling events for a period of not less than 3 years.

''(iv) INITIAL PLAN.—

''(I) IN GENERAL.—If an eligible applicant proposes to conduct a program of investigative measures, the eligible applicant shall submit to the permitting authority a plan that contains, to the extent known by the eligible applicant as of the date on which the eligible applicant submits the application—

''(aa) each description required under subclauses (I), (II), and (IV) through (VIII) of subparagraph (B)(ii);

''(bb) the explanation required under subparagraph (B)(iii);

''(cc) the schedule required under subparagraph (B)(iv); and

''(dd) the budget required under subparagraph (B)(v).

''(II) RESPONSIBILITY TO SUPPLEMENT DESCRIPTIONS.—An eligible applicant that conducts a program of investigative measures shall, based on the results of the program, supplement each item described in subclause (I), as necessary.

''(v) REPORT OF RESULTS.—The results of the program of investigative measures shall be—

''(I) detailed in a report for the permitting agency; and

''(II) made available by the applicant to any member of the public that requests the report.

''(vi) PERMIT MODIFICATION.—Based upon the results of the investigative measures, a Good Samaritan discharge permit may be modified pursuant to the permit procedures described in this subsection.

''(vii) OPTION TO DECLINE REMEDIATION.—A Good Samaritan discharge permit may allow the permittee to decline to undertake remediation based on the results of the investigative sampling program, if—

''(I) the program of investigative measures is authorized under this subparagraph; and

''(II) the activities under the program of investigative measures have not resulted in surface water quality conditions, taken as a whole, that are worse than the baseline condition of bodies of water described in subparagraph (B)(ii)(I).

''(E) REVIEW OF APPLICATION.—

''(i) INITIAL REVIEW.—The permitting authority shall—

''(I) review each application submitted by an eligible applicant for a Good Samaritan discharge permit;

''(II) provide to the public, with respect to the Good Samaritan discharge permit—

''(aa) notice and a reasonable opportunity to comment; and

''(bb) a public hearing;

''(III) if the Administrator is the permitting authority, provide a copy of the application to each affected State, Indian tribe, and other Federal agency; and

''(IV) determine whether the application for the Good Samaritan discharge permit meets each requirement described in subparagraph (B).

''(ii) REQUIREMENTS NOT MET.—If the permitting authority determines that an application for a Good Samaritan discharge permit does not meet each requirement described in subparagraph (B), the permitting authority shall—

''(I) notify the eligible applicant that the application is disapproved and explain the reasons for the disapproval; and

''(II) allow the eligible applicant to submit a revised application.

''(iii) REQUIREMENTS MET.—If the permitting authority determines that an application for a Good Samaritan discharge permit meets each requirement described in subparagraph (B), the permitting authority shall notify the eligible applicant that the application is accepted.

''(F) PERMIT ISSUANCE.—After notice and opportunity for public comment with respect to a Good Samaritan discharge permit proposed by a permitting authority to be issued under this subsection (including any additional requirement that the permitting authority determines would facilitate the implementation of this subsection), the permitting authority may issue a permit to an eligible applicant if—

''(i) the permitting authority determines that—

''(I) relative to the resources identified by the eligible applicant for funding the proposed remediation activity, the eligible applicant has made a reasonable effort to identify identifiable owners or operators under subparagraph (B)(ii)(III);

''(II) no identifiable owner or operator exists (except, with respect to Federal land, where the only identifiable owner or operator is the Federal Government);

''(III) taking into consideration each funding source (including the amount of each funding source) identified by the eligible applicant for the proposed remediation activity in accordance with subparagraph (B)(v), the remediation plan of the eligible applicant demonstrates that the implementation of the remediation plan will—

''(aa) assist in the attainment of applicable water quality standards to the extent reasonable and practicable under the circumstances; and

''(bb) not result in water quality that is worse than the baseline water condition described in subparagraph (B)(ii)(I);

''(IV) the eligible applicant has provided adequate evidence of financial resources that will enable the eligible applicant to complete the proposed project of the eligible applicant; and

''(V) the proposed project of the eligible applicant meets the requirements of this section;

''(ii) any Federal, State, or tribal land management agency with jurisdiction over any inactive or abandoned mine site that is the subject of the proposed permit, or any public trustee for natural resources affected by historic mine residue associated with any inactive or abandoned mine site that is the subject of the proposed permit, does not object to the issuance of the permit; and

''(iii) if the Administrator is the permitting authority, the affected State or Indian tribe concurs with the issuance of the permit.

''(G) DEADLINE RELATING TO APPROVAL OR DENIAL OF APPLICATION.—Not later than 180 days after the date of receipt by a permitting authority of an application for a Good Samaritan discharge permit that the permitting authority determines to be complete, the permitting authority shall—

''(i) issue to the eligible applicant a Good Samaritan discharge permit; or

''(ii) deny the application of the eligible applicant for a Good Samaritan discharge permit.

''(H) MODIFICATION OF PERMIT.—

''(i) APPROVAL AND DISAPPROVAL PROCESS.—In accordance with clause (ii), after the date of receipt by a permitting authority of a written request by a permittee to modify the Good Samaritan discharge permit of the permittee, the permitting authority shall approve or disapprove the request for modification.

''(ii) PERMIT MODIFICATION.—A permit modification that is approved by a permitting authority under this subparagraph shall be—

''(I) by agreement between the permittee and the permitting authority and, if the Administrator is the permitting authority, the affected State or Indian tribe;

''(II) subject to—

''(aa) a period of public notice and comment; and

''(bb) a public hearing;

''(III) in compliance with each standard described in subparagraph (F)(i)(III); and

''(IV) immediately reflected in, and applicable to, the Good Samaritan discharge permit.

''(4) CONTENTS OF PERMITS.—

''(A) IN GENERAL.—A Good Samaritan discharge permit shall—

''(i) contain—

''(I) a remediation plan approved by the permitting authority; and

''(II) any additional requirement that the permitting authority establishes by regulation under paragraph (10); and

''(ii) provide for compliance with, and implementation of, the remediation plan and any additional requirement described in clause (i)(II).

''(B) SCOPE.—A Good Samaritan discharge permit shall authorize only those activities that are required for the remediation of historic mine residue at an inactive or abandoned mine site, as determined by the permitting authority.

''(C) REVIEW.—A Good Samaritan discharge permit shall contain a schedule for review, to be conducted by the permitting authority, to determine compliance by the permittee with each condition and limitation of the permit.

''(5) EFFECT OF PERMIT COMPLIANCE.—

''(A) COMPLIANCE WITH ACT.—

''(i) IN GENERAL.—A Good Samaritan discharge permit issued under this subsection shall authorize the permittee, and any cooperating persons, to carry out each activity described in the Good Samaritan discharge permit.

''(ii) COMPLIANCE WITH PERMIT.—Compliance by the permittee, and any cooperating persons, with respect to the Good Samaritan discharge permit shall constitute compliance with this Act.

''(B) SCOPE OF LIABILITY.—Except as provided in paragraph (6), the issuance of a Good Samaritan discharge permit to a permittee relieves the permittee, and any cooperating person, of each obligation and liability under this Act.

''(6) FAILURE TO COMPLY.—If a permittee, or any cooperating person fails to comply with any condition or limitation of the permit, the permittee, or cooperating person, shall be subject to liability only under section 309.

''(7) TERMINATION OF PERMIT.—

''(A) IN GENERAL.—A permitting authority shall terminate a Good Samaritan discharge permit if—

''(i) the permittee successfully completes the implementation of the remediation plan; or

''(ii)(I) any discharge covered by the Good Samaritan discharge permit becomes subject to a permit issued for other development that is not part of the implementation of the remediation plan;

''(II) the permittee seeking termination of coverage, and any cooperating person with respect to the remediation plan of the permittee, is not a participant in the development; and

''(III) the permitting authority, upon request of the permittee, agrees that the permit should be terminated.

''(B) UNFORSEEN CIRCUMSTANCES.—

''(i) IN GENERAL.—Except as provided in clause (ii), the permitting authority, in cooperation with the permittee, shall seek to modify a Good Samaritan discharge permit to take into account any event or condition encountered by the permittee if the event or condition encountered by the permittee—

''(I) significantly reduces the feasibility, or significantly increases the cost, of completing the remediation project that is the subject of the Good Samaritan discharge permit;

''(II) was not—

''(aa) contemplated by the permittee; or

''(bb) taken into account in the remediation plan of the permittee; and

''(III) is beyond the control of the permittee, as determined by the permitting authority.

''(ii) EXCEPTION.—If a permittee described in clause (i) does not agree to a modification of the Good Samaritan discharge permit of the permittee, or the permitting authority determines that remediation activities conducted by the permittee pursuant to the permit have resulted or will result in surface water quality conditions that, taken as a whole, are or will be worse than the baseline water conditions described in paragraph (3)(B)(ii)(I), the permitting authority shall terminate the permit.

''(C) NO ENFORCEMENT LIABILITY.—

''(i) DISCHARGES.—Subject to clause (ii), and except as provided in clause (iii), the permittee of a permit, or a cooperating person with respect to the remediation plan of the permittee, shall not be subject to enforcement under any provision of this Act for liability for any past, present, or future discharges at or from the abandoned or inactive mining site that is the subject of the permit.

''(ii) OTHER PARTIES.—Clause (i) does not limit the liability of any person that is not described in clause (i).

''(iii) VIOLATION OF PERMIT PRIOR TO TERMINATION.—The discharge of liability for a permittee of a permit, or a cooperating person with respect to the remediation plan of the permittee, under clause (i) shall not apply with respect to any violation of the permit that occurs before the date on which the permit is terminated.

''(8) LIMITATIONS.—

''(A) EMERGENCY POWERS.—Nothing in this subsection limits the authority of the Administrator to exercise any emergency power under section 504 with respect to persons other than a permittee and any cooperating persons.

''(B) PRIOR VIOLATIONS.—

''(i) ACTIONS AND RELIEF.—Except as provided in clause (ii), with respect to a violation of this subsection or section 301(a) committed by any person prior to the issuance of a Good Samaritan discharge permit under this subsection, the issuance of the Good Samaritan discharge permit does not preclude any enforcement action under section 309.

''(ii) EXCEPTIONS.—

''(I) SCOPE OF PERMIT.—If a Good Samaritan discharge permit covers remediation activities carried out by the permittee on a date before the issuance of the Good Samaritan discharge permit, clause (i) shall not apply to any action that is based on any condition that results from the remediation activities.

''(II) OTHER PARTIES.—A permittee shall not be subject to any action under sections 309 or 505 for any violation committed by any other party.

''(C) OBLIGATIONS OF STATES AND INDIAN TRIBES.—Except as otherwise provided in this section, nothing in this subsection limits any obligation of a State or Indian tribe described in section 303.

''(D) OTHER DEVELOPMENT.—

''(i) IN GENERAL.—Any development of an inactive or abandoned mine site (including any activity relating to mineral exploration, processing, beneficiation, or mining), including development by a permittee or any cooperating person, not authorized in a permit issued by the permitting authority under this subsection shall be subject to this Act.

''(ii) COMMINGLING OF DISCHARGES.—The commingling of any other discharge or water with any discharge or water subject to a Good Samaritan discharge permit issued under this subsection shall not limit or reduce the liability of any person associated with the water or discharge that is not subject to the Good Samaritan discharge permit.

''(E) RECOVERABLE VALUE.—A Good Samaritan to whom a permit is issued may sell or use materials recovered during the implementation of the plan only if the proceeds of any such sale are used to defray the costs of—

''(i) remediation of the site addressed in the permit; or

''(ii) voluntary remediation of any other inactive or abandoned mine site covered by a permit issued under this section.

''(F) STATE CERTIFICATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), to the extent that this subsection relates to water quality standards, certification under section 401 shall not apply to any Good Samaritan discharge permit issued under this subsection.

''(ii) EXCEPTION.—In any case in which certification under section 401 would otherwise be required, no Good Samaritan discharge permit shall be issued by a permitting authority under this subsection without the concurrence of—

''(I) the State in which the site of the discharge is located; or

''(II) the Indian tribe that owns or has jurisdiction over the site on which a remediation project is proposed.

''(G) STATE AND TRIBAL RECLAMATION PROGRAMS.—No State, Indian tribe, or other person shall be required to obtain a Good Samaritan discharge permit pursuant to this subsection for any discharge, including any discharge associated with the remediation of an inactive or abandoned mine site with respect to the conduct of reclamation work under a State or tribal abandoned mine reclamation plan approved under title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.).

''(9) LIABILITY OF OTHER PARTIES.—Nothing in this subsection (including any result caused by any action taken by a permittee or a cooperating person) limits the liability of any person other than a permittee or a cooperating person under this Act or any other law.

''(10) REGULATIONS.—

''(A) IN GENERAL.—Subject to subparagraph (B), not later than 1 year after the date of enactment of this subsection, after providing for public notice and an opportunity to comment and a public hearing, the Administrator, in consultation with the Secretary of the Interior and the Secretary of Agriculture, and appropriate State, tribal, and local officials, shall promulgate regulations to establish—

''(i) generally applicable requirements for remediation plans described in paragraph (3)(B); and

''(ii) any other requirement that the Administrator determines to be necessary.

''(B) SPECIFIC REQUIREMENTS BEFORE PROMULGATION OF REGULATIONS.—Before the date on which the Administrator promulgates regulations under subparagraph (A), a permitting authority may establish, on a case-by-case basis, specific requirements that the permitting authority determines would facilitate the implementation of this subsection with respect to a Good Samaritan discharge permit issued to a permittee.

''(11) FUNDING.—

''(A) ELIGIBILITY FOR SECTION 319 GRANTS.—A permittee shall be eligible to apply for a grant under section 319(h).

''(B) GRANTS.—Subject to the availability of appropriated funds, the Administrator may award to any permittee a grant to assist the permittee in implementing a remediation plan with respect to a Good Samaritan discharge permit of the permittee.

''(12) REPORT TO CONGRESS.—

''(A) IN GENERAL.—Not later than 1 year before the date of termination of the authority of the permitting authority under paragraph (13), the Administrator shall submit to Congress a report describing the activities authorized by this subsection.

''(B) CONTENTS.—The report required under subparagraph (A) shall contain, at a minimum—

''(i) a description of—

''(I) each Good Samaritan discharge permit issued under this subsection;

''(II) each permittee;

''(III) each inactive or abandoned mine site addressed by a Good Samaritan discharge permit issued under this subsection (including each body of water and the baseline water quality of each body of water affected by each inactive or abandoned mine site);

''(IV) the status of the implementation of each remediation plan associated with each Good Samaritan discharge permit issued under this subsection (including specific progress that each remediation activity conducted by a permittee pursuant to each Good Samaritan discharge permit has made toward achieving the goals and objectives of the remediation plan); and

''(V) each enforcement action taken by the Administrator or applicable State or Indian tribe concerning a Good Samaritan discharge permit issued under this subsection (including the disposition of the action);

''(ii) a summary of each remediation plan associated with a Good Samaritan discharge permit issued under this subsection, including—

''(I) the goals and objectives of the remediation plan;

''(II) the budget of the activities conducted pursuant to the remediation plan; and

''(III) the practices to be employed by each permittee in accordance with the remediation plan of the permittee to reduce, control, mitigate, or eliminate adverse impacts to the quality of applicable bodies of water; and

''(iii) any recommendations that may be proposed by the Administrator to modify any law (including this subsection and any regulation promulgated under paragraph (10)) to facilitate the improvement of water quality through the remediation of inactive or abandoned mine sites.

''(13) TERMINATION OF AUTHORITY.—The authority granted to the permitting authority under this subsection to issue Good Samaritan discharge permits terminates on the date that is 10 years after the date of enactment of this subsection.

''(14) SEVERABILITY.—If any provision of this subsection, or the application of any provision of this subsection to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this subsection, shall not be affected thereby.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 311—ENCOURAGING THE UNITED STATES TRADE REPRESENTATIVE TO PURSUE A FREE TRADE AGREEMENT BETWEEN THE UNITED STATES AND THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

Mr. LUGAR (for himself, Mr. INHOFE, and Mr. BOND) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 311

Whereas the Association of Southeast Asian Nations (ASEAN) was established in 1967, with Indonesia, Malaysia, the Philippines, Singapore, and Thailand being original Members;

Whereas ASEAN membership has now expanded and includes 10 countries;

Whereas the United States supports the centrality of ASEAN within East Asia;

Whereas the United States was the first country to appoint an Ambassador to the Association of Southeast Asian Nations;

Whereas ASEAN significantly contributes to regional stability in East Asia;

Whereas approximately 40,000 students from ASEAN are studying in the United States and an increasing number of Americans are studying in ASEAN countries;

Whereas ASEAN partners with the United States Government to combat global terror;

Whereas the United States acceded to the Treaty of Amity and Cooperation in 2009;

Whereas ASEAN constitutes the fourth largest market for United States exports;

Whereas ASEAN has a population of approximately 560,000,000 persons;

Whereas two-way, United States-ASEAN trade totals approximately $180,000,000,000 annually;

Whereas the nations of ASEAN are increasingly economically integrated;

Whereas ASEAN has entered into free trade agreements with India, China, Japan, South Korea, Australia, and New Zealand; and

Whereas the United States and ASEAN signed a Trade and Investment Framework Agreement over three years ago: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States Trade Representative, in consultation with other appropriate Federal agencies and interested stakeholders, should establish a strategy for initiating negotiations for a free trade agreement between the United States and ASEAN; and

(2) at the time of free trade agreement negotiations, any pending bilateral issues between the United States and Burma, including economic sanctions, investment prohibition, travel restrictions or otherwise, should not deter the United States from engaging with other ASEAN nations regarding a potential free trade agreement, nor should the United States encourage trade with Burma, absent significant reforms within that country.

SENATE RESOLUTION 312—EXPRESSING THE SENSE OF THE SENATE ON EMPOWERING AND STRENGTHENING THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)

Mr. DODD (for himself, Mr. DURBIN, Mr. CARDIN, and Mr. BOND) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 312

Whereas foreign development assistance is an important foreign policy tool in addition to diplomacy and the military;

Whereas the United States is currently involved in two wars, both of which military and civilian experts agree can only be solved with sound development strategies to complement military efforts;

Whereas development assistance is part of any comprehensive United States response to regional conflicts, terrorist threats, weapons proliferation, disease pandemics, and persistent widespread poverty;

Whereas, in 2002 and 2006, the United States National Security Strategy included global development, along with the military and diplomacy, as the three pillars of national security;

Whereas, in its early years, the United States Agency for International Development (USAID) had more than 5,000 full-time Foreign Service Officers and 15,000 total staff;

Whereas, in 2008, USAID had slightly more than 1,000 full-time Foreign Service Officers and 3,000 total staff;

Whereas the loss in permanent staff and institutional expertise at USAID has compelled it to rely disproportionally on outside contractors to help manage programs in more than 150 countries;

Whereas the USAID managed program budget, calculated in real dollars, has dropped more than 40 percent since 1985;

Whereas, from the early 1960s until 1992, the Office of Management and Budget enforced a rule mandating that all foreign aid programs and spending must go through USAID, except when USAID chose to contract with other Federal agencies;

Whereas today more than half of all aid programs are administered by Federal agencies other than USAID, and development funding is spread across more than 20 United States Government agencies; and

Whereas this decline in personnel, budgets, and coordinating leadership has diminished the capacity of USAID and the United States Government to provide development assistance and implement foreign assistance programs: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) a highly capable and knowledgeable individual should be nominated with all expediency and exigency to serve as the Administrator of the United States Agency for International Development;

(2) the Administrator should—

(A) serve as the chief advocate for United States development capacity and strategy in top-level national security deliberations;

(B) serve as a powerful advocate and effective leader of an empowered USAID; and

(C) marshal the resources, knowledge, capacity, and experiences of the Agency—