United States Code, to authorize advance appropriations for certain medical care accounts of the Department of Veterans Affairs by providing two-fiscal year budget authority, and for other purposes.

S. 428

At the request of Mr. DORGAN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 428, a bill to allow travel between the United States and Cuba.

S. 435

At the request of Mr. CASEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 435, a bill to provide for evidence-based and promising practices related to juvenile delinquency and criminal street gang activity prevention and intervention to help build individual, family, and community strength and resiliency to ensure that youth lead productive, safe, healthy, gang-free, and law-abiding lives.

S. 451

At the request of Ms. COLLINS, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 451, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of the Girl Scouts of the United States of America.

S. 461

At the request of Mrs. LINCOLN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 461, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 462

At the request of Mrs. BOXER, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 462, a bill to amend the Lacey Act Amendments of 1981 to prohibit the importation, exportation, transportation, and sale, receipt, acquisition, or purchase in interstate or foreign commerce, of any live animal of any prohibited wildlife species, and for other purposes.

S. 486

At the request of Mr. SANDERS, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 486, a bill to achieve access to comprehensive primary health care services for all Americans and to reform the organization of primary care delivery through an expansion of the Community Health Center and National Health Service Corps programs.

S. 491

At the request of Mr. WEBB, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 491, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 525

At the request of Mr. DORGAN, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. 525, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. 527

At the request of Mr. THUNE, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. 527, a bill to amend the Clean Air Act to prohibit the issuance of permits under title V of that Act for certain emissions from agricultural production.

S. 535

At the request of Mr. NELSON of Florida, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 535, a bill to amend title 10, United States Code, to repeal requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation, and for other purposes.

S. 541

At the request of Mr. DODD, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 541, a bill to increase the borrowing authority of the Federal Deposit Insurance Corporation, and for other purposes.

S. 546

At the request of Mr. REID, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 546, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation.

S. RES. 20

At the request of Mr. VOINOVICH, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. Res. 20, a resolution celebrating the 60th anniversary of the North Atlantic Treaty Organization.

S. RES. 49

At the request of Mr. LUGAR, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. Res. 49, a resolution to express the sense of the Senate regarding the importance of public diplomacy.

S. RES. 71

At the request of Mr. WYDEN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Res. 71, a resolution condemning the Government of Iran for its state-sponsored persecution of the Baha'i minority in Iran and its continued violation of the International Convenants on Human Rights.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. UDALL of Colorado:

S. 607. A bill to amend the National Forest Ski Area Permit Act of 1986 to clarify the authority of the Secretary of Agriculture regarding additional recreational uses of National Forest System land that are subject to ski area permits, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. UDALL of Colorado. Mr. President, today I am introducing a bill to revise the 1986 law dealing with use of National Forests for ski areas in order to reflect current ways those areas are used and to provide clear authority for the Forest Service to allow additional recreational uses of those areas.

I have long thought it is in the national interest to encourage Americans to engage in outdoor recreational activities that can contribute to their health and well-being, and that National Forest lands, including ski areas, can play a role by providing opportunities for such activities.

My interest in the subject was heightened last year when representatives of the National Ski Areas Association brought to my attention the fact that the National Forest Ski Areas Permit Act of 1986. This law speaks only to ''nordic and alpine skiing'' and does not reflect the full spectrum of snowsports for which ski areas are now used. They described this problem as the absence of clear authority for the Forest Service to permit use of ski areas for other summer, seasonal, or year-round outdoor recreational activities and facilities in support of those activities.

To better understand the matter, I sent a letter asking the Under Secretary of Agriculture for Natural Resources and the Environment whether current law could be clearer on those points. Under Secretary Mark Rey replied that the 1986 legislation indeed did not address those matters and that, if requested, the USDA ''would be happy to work with you to amend'' the law to provide the Forest Service with clear authority regarding such activities and facilities.

I did request and receive technical suggestions from the Forest Service, and have considered their input as well as suggestions from the National Ski Areas Association and other interested parties in developing the bill that I introduced in the U.S. House of Representatives last year.

Today, I am introducing this bill in the Senate.

The bill intentionally uses a number of terms and phrases based on the terminology of the Forest Service's regulations, manual, or other official documents because those terms and phrases are familiar not only to the Forest Service but also to permittees and others with an interest in the management of the National Forests. Thus, as used in the bill the term ''developed

recreation'' means recreation that occurs at an area which has been improved or developed for that purpose—such as camping in constructed campgrounds or developed opportunities for off-highway-vehicle use as well as downhill skiing. Similarly, the term ''natural-resource-based recreation'' is intended to have the same meaning as when used in the Forest Service manual 2300, Recreation, Wilderness, and Related Resource Management.

It also should be noted that the bill deals only with the 1986 National Forest Ski Areas Act, and would not in any way affect any other law applicable to management of the National Forests or any permits issued under any of those laws.

Ski area permits under the 1986 law do give their holders a priority with respect to commercial use of the lands subject to the permits, but they do not preclude general use of those lands by the public for compatible, non-commercial uses, and the bill would not change that. In fact, the bill does not affect the status, the duration, or any other provision of any permit already issued under the 1986 law, nor does it provide for any new permits. Instead, it makes clear that the Forest Service is authorized—but not required—to allow a current or future holder of a permit under the 1986 law to provide opportunities for additional developed recreational activities, and to place associated facilities, on the lands covered by that permit if the specified requirements are met and if the Forest Service decides it would appropriate for that to occur.

And it would not affect any existing or future permit related to use of lands that are not subject to ski area permits under the 1986 law or in any way reduce or otherwise modify the extent to which the Forest Service can allow any particular use on any of those lands outside ski areas.

This is a narrowly-targeted bill that I think can be valuable regarding an important aspect of the management of the National Forests and in facilitating the provision of additional opportunities for seasonal and year-round recreational activities on the parts of those lands that are subject to permits under the 1986 law.

Mr. President, I ask unanimous consent that a bill summary be printed in the RECORD.

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

OUTLINE OF THE BILL

Section 1 sets forth findings regarding the basis for the legislation, and states its purpose. The findings note that it is in the national interest to provide, and encourage Americans to take advantage of, opportunities to engage in outdoor recreational activities that can contribute to their health and well-being; that National Forests, including those areas used for skiing, can provide such opportunities during all four seasons; that increased use of ski areas for that purpose can reduce impacts on other National Forest lands; and that it is in the national interest to revise the National Forest Ski Area Permit Act. The purpose is to amend that 1986 law so as to reflect that other snowsports, in addition to nordic and alpine skiing, occur at ski areas and to clarify the Forest Service's authority to permit additional appropriate seasonal or year-round recreational uses of lands subject to permits under that law.

Section 2 would amend the National Forest Ski Area Permit Act of 1986 in three ways: (1) by replacing current language that refers only to ''nordic and alpine skiing'' with broader terminology to reflect that additional ski areas are also used for additional snowsports, such as snowboarding.

(2) by providing specific authority for the Forest Service to authorize the holder of a ski area permit under the 1986 law to provide additional recreational opportunities (and to have associated facilities) on lands covered by that permit. This authority is limited to activities and facilities that the Forest Service determines appropriate, that encourage outdoor recreation, and that harmonize to the natural environment to the extent practicable. The bill makes clear that the activities and facilities will be subject to such terms and conditions as the Forest Service determines appropriate. It also specifies that no activity or facility can be authorized if the agency determines that authorization would result in the primary recreational purpose of lands covered by a permit under the 1986 law would not be skiing or other snowsports.

(3) Finally, the bill would delete from the 1986 law obsolete language related to a deadline for conversion of previously-issued ski-area permits to permits under the 1986 law, while retaining the requirement that regulations be promulgated to implement that law—a requirement that will apply to the law as it would be amended by the bill.

Section 3 specifies that the bill will not affect any authority the Forest Service now has under laws other than the National Forest Ski Area Permit Act of 1986, including authority with respect to recreational activities or facilities.

By Mr. TESTER:

S. 608. A bill to amend the Consumer Product Safety Improvement Act of 2008 to exclude secondary sales, repair services, and certain vehicles from the ban on lead in children's products, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. TESTER. Mr. President, I rise today to introduce the Common Sense in Consumer Product Safety Act of 2009 on behalf of the folks across America who are outdoor enthusiasts and budding sportsman and women. This bill will bring a common sense approach to restrictions we place upon access to children's products.

Last fall, in response to the high lead paint content found in a number of toys and products intended for children, the Congress passed legislation to limit children's access to these dangerous products. Many of these products were imports from China and other places where consumer protection is weak or non-existent. I supported this legislation, as did 78 of my colleagues.

Today, however, we have learned that this bill has had some unintended consequences. Any product sold that is intended to be used by children up to the age of 12 must be tested and certified to not contain more than the allowable level of lead.

While the goal is admirable, it is important to inject a little common sense into the process. I want our kids and grandkids to be safe and protected from harmful toys, but we all know that most kids who are past the teething stage do not chew on their toys. It is important to enact responsible safety requirements while at the same time recognizing that overzealous restrictions can interfere with a way of life enjoyed by not just Montanans, but outdoor enthusiasts across America.

As the Vice Chairman of the Congressional Sportsmen's Caucus, I am proud to stand up for Montana's outdoor heritage at every chance. Unfortunately, the new law goes too far and limits younger Montanans' opportunities to be a part of that heritage.

My bill will protect small businesses and allow families better, safer access to the outdoors.

The current law extends to all products intended for the use of children through the age of 12. This includes ATVs, dirt bikes and other vehicles built specifically for the use of older kids and adults; the way the vehicles are built, parts that might include lead are not totally sealed away and therefore they do not pass the standard of inaccessibility required by law. As a result of this requirement, a number of ATV sales and retail establishments have halted the sale of all ATVs for kids. In an abundance of caution, they have also refused to repair any equipment intended for kids use.

I have heard from many Montanans—consumers and retail sales people alike—expressing their concern about the impact of the legislation upon outdoor motor sports. Therefore today, I am introducing this bill to designate an exception for vehicles intended to be used by children between the ages of 7 and 12.

In addition to manufacturers and merchants, thrift stores and other retail establishments are also implicated because of the wide-reaching scope of the legislation. It is possible that even holding a yard sale can lead folks astray from the new law. Therefore, my bill also removes liability for lead paint content in any product that is repaired or is resold by thrift stores, flea markets or at yard sales. The liability in place at the time of primary sale of these products is sufficient and it could cripple the profitability of the secondary merchants if they were to be liable for testing the products they resell or repair.

In this tough economy, second-hand resellers simply can not afford the third-party testing requirement put in place by last fall's bill. At the same time, more and more of Montana's families are finding their budgets tighten and are relying upon thrift and resale stores for toys, children's clothing and other household goods. I want to make sure that laws intended to keep our kids safe end up doing more harm than good.

I think this a very important bill, bringing a dose of common sense to the very important goal of protecting our kids from lead paint and other substances that will harm their health. I urge my colleagues to join me in this effort.

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 placed in the RECORD, as follows:

S. 608

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 ''Common Sense in Consumer Product Safety Act of 2009''.

SEC. 2. EXCLUSION OF SECONDARY SALES, REPAIR SERVICES, AND CERTAIN VEHICLES FROM BAN ON LEAD IN CHILDREN'S PRODUCTS.

(a) EXCLUSION OF SECONDARY SALES AND REPAIR SERVICES.—Subsection (a) of section 101 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 1278a) is amended by adding at the end the following:

''(3) CONSTRUCTION.—

''(A) SECONDARY SALES.—The sale of a children's product described in paragraph (1) after the first retail sale of that product shall not be considered an introduction or delivery for introduction into interstate commerce under section 4(a) of the Federal Hazardous Substances Act (15 U.S.C. 1263(a)) of such product.

''(B) REPAIR SERVICES.—The repair of a children's product described in paragraph (1) shall not be considered an introduction or delivery for introduction into interstate commerce under such section 4(a) of such product.''.

(b) EXCLUSION OF CERTAIN VEHICLES.—Subsection (b) of such section 101(b) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

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

''(5) CERTAIN VEHICLES.—A vehicle designed or intended primarily for children 7 years of age or older shall not be considered a children's product for purposes of the prohibition in subsection (a). In determining whether a vehicle is primarily intended for a child 7 years of age or older, the factors specified in section 3(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(2)) shall be considered except that such section shall be applied by substituting '7 years of age or older' for '12 years of age or younger' each place that term appears.''.

By Mr. KYL:

S. 610. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.

Mr. KYL. 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 placed in the RECORD, as follows:

S. 610

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 ''Patent Reform Act of 2009''.

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

SEC. 2. RIGHT OF THE FIRST INVENTOR TO FILE.

(a) DEFINITIONS.—Section 100 of title 35, United States Code, is amended by adding at the end the following:

''(f) The term 'inventor' means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

''(g) The terms 'joint inventor' and 'coinventor' mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

''(h) The 'effective filing date of a claimed invention' is—

''(1) the filing date of the patent or the application for patent containing the claim to the invention; or

''(2) if the patent or application for patent is entitled to a right of priority of any other application under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c), the filing date of the earliest such application in which the claimed invention is disclosed in the manner provided by the first paragraph of section 112.

''(i) The term 'claimed invention' means the subject matter defined by a claim in a patent or an application for a patent.''.

(b) CONDITIONS FOR PATENTABILITY.—

(1) IN GENERAL.—Section 102 of title 35, United States Code, is amended to read as follows:

''§ 102. Conditions for patentability; novelty

''(a) NOVELTY; PRIOR ART.—A patent for a claimed invention may not be obtained if—

''(1) the claimed invention was patented, described in a printed publication, or otherwise made available to the public (other than through testing undertaken to reduce the invention to practice)—

''(A) more than 1 year before the effective filing date of the claimed invention; or

''(B) 1 year or less before the effective filing date of the claimed invention, other than through disclosures made by the inventor or a joint inventor or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

''(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

''(b) EXCEPTIONS.—

''(1) PRIOR INVENTOR DISCLOSURE EXCEPTION.—Subject matter that would otherwise qualify as prior art based upon a disclosure under subparagraph (B) of subsection (a)(1) shall not be prior art to a claimed invention under that subparagraph if the subject matter had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

''(2) DERIVATION, PRIOR DISCLOSURE, AND COMMON ASSIGNMENT EXCEPTIONS.—Subject matter that would otherwise qualify as prior art only under subsection (a)(2), after taking into account the exception under paragraph (1), shall not be prior art to a claimed invention if—

''(A) the subject matter was obtained directly or indirectly from the inventor or a joint inventor;

''(B) the subject matter had been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed, directly or indirectly, from the inventor or a joint inventor before the effective filing date of the application or patent set forth under subsection (a)(2); or

''(C) the subject matter and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

''(3) JOINT RESEARCH AGREEMENT EXCEPTION.—

''(A) IN GENERAL.—Subject matter and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of paragraph (2) if—

''(i) the subject matter and the claimed invention were made by or on behalf of 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

''(ii) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

''(iii) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

''(B) For purposes of subparagraph (A), the term 'joint research agreement' means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

''(4) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVELY FILED.—A patent or application for patent is effectively filed under subsection (a)(2) with respect to any subject matter described in the patent or application—

''(A) as of the filing date of the patent or the application for patent; or

''(B) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b) or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.''.

(2) CONFORMING AMENDMENT.—The item relating to section 102 in the table of sections for chapter 10 of title 35, United States Code, is amended to read as follows:

''102. Conditions for patentability; novelty.''.

(c) CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.—Section 103 of title 35, United States Code, is amended to read as follows:

''§ 103. Conditions for patentability; nonobvious subject matter

''A patent for a claimed invention may not be obtained though the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would

have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.''.

(d) REPEAL OF REQUIREMENTS FOR INVENTIONS MADE ABROAD.—Section 104 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 10 of title 35, United States Code, are repealed.

(e) REPEAL OF STATUTORY INVENTION REGISTRATION.—

(1) IN GENERAL.—Section 157 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 14 of title 35, United States Code, are repealed.

(2) REMOVAL OF CROSS REFERENCES.—Section 111(b)(8) of title 35, United States Code, is amended by striking ''sections 115, 131, 135, and 157'' and inserting ''sections 131 and 135''.

(f) EARLIER FILING DATE FOR INVENTOR AND JOINT INVENTOR.—Section 120 of title 35, United States Code, is amended by striking ''which is filed by an inventor or inventors named'' and inserting ''which names an inventor or joint inventor''.

(g) CONFORMING AMENDMENTS.—

(1) RIGHT OF PRIORITY.—Section 172 of title 35, United States Code, is amended by striking ''and the time specified in section 102(d)''.

(2) LIMITATION ON REMEDIES.—Section 287(c)(4) of title 35, United States Code, is amended by striking ''the earliest effective filing date of which is prior to'' and inserting ''which has an effective filing date before''.

(3) INTERNATIONAL APPLICATION DESIGNATING THE UNITED STATES: EFFECT.—Section 363 of title 35, United States Code, is amended by striking ''except as otherwise provided in section 102(e) of this title''.

(4) PUBLICATION OF INTERNATIONAL APPLICATION: EFFECT.—Section 374 of title 35, United States Code, is amended by striking ''sections 102(e) and 154(d)'' and inserting ''section 154(d)''.

(5) PATENT ISSUED ON INTERNATIONAL APPLICATION: EFFECT.—The second sentence of section 375(a) of title 35, United States Code, is amended by striking ''Subject to section 102(e) of this title, such'' and inserting ''Such''.

(6) LIMIT ON RIGHT OF PRIORITY.—Section 119(a) of title 35, United States Code, is amended by striking ''; but no patent shall be granted'' and all that follows through ''one year prior to such filing''.

(7) INVENTIONS MADE WITH FEDERAL ASSISTANCE.—Section 202(c) of title 35, United States Code, is amended—

(A) in paragraph (2)—

(i) by striking ''publication, on sale, or public use,'' and all that follows through ''obtained in the United States'' and inserting ''the 1-year period referred to in section 102(a) would end before the end of that 2-year period''; and

(ii) by striking ''the statutory'' and inserting ''that 1-year''; and

(B) in paragraph (3), by striking ''any statutory bar date that may occur under this title due to publication, on sale, or public use'' and inserting ''the expiration of the 1-year period referred to in section 102(a)''.

(h) REPEAL OF INTERFERING PATENT REMEDIES.—Section 291 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 29 of title 35, United States Code, are repealed.

(i) ACTION FOR CLAIM TO PATENT ON DERIVED INVENTION.—Section 135(a) of title 35, United States Code, is amended to read as follows:

''(a) DISPUTE OVER RIGHT TO PATENT.—

''(1) INSTITUTION OF DERIVATION PROCEEDING.—An applicant may request initiation of a derivation proceeding to determine the right of the applicant to a patent by filing a request which sets forth with particularity the basis for finding that an earlier applicant derived the claimed invention from the applicant requesting the proceeding and, without authorization, filed an application claiming such invention. Any such request may only be made within 1 year after the date of first publication of an application or of the issuance of a patent, whichever is earlier, containing a claim that is the same or is substantially the same as the claimed invention, must be made under oath, and must be supported by substantial evidence. Whenever the Director determines that patents or applications for patent naming different individuals as the inventor interfere with one another because of a dispute over the right to patent under section 101, the Director shall institute a derivation proceeding for the purpose of determining which applicant is entitled to a patent.

''(2) DETERMINATION BY PATENT TRIAL AND APPEAL BOARD.—In any proceeding under this subsection, the Patent Trial and Appeal Board—

''(A) shall determine the question of the right to patent;

''(B) in appropriate circumstances, may correct the naming of the inventor in any application or patent at issue; and

''(C) shall issue a final decision on the right to patent.

''(3) DERIVATION PROCEEDING.—The Board may defer action on a request to initiate a derivation proceeding until 3 months after the date on which the Director issues a patent to the applicant whose application has the earlier effective filing date of the commonly claimed invention.

''(4) EFFECT OF FINAL DECISION.—The final decision of the Patent Trial and Appeal Board, if adverse to the claim of an applicant, shall constitute the final refusal by the United States Patent and Trademark Office on the claims involved. The Director may issue a patent to an applicant who is determined by the Patent Trial and Appeal Board to have the right to patent. The final decision of the Board, if adverse to a patentee, shall, if no appeal or other review of the decision has been or can be taken or had, constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the United States Patent and Trademark Office.''.

(j) ELIMINATION OF REFERENCES TO INTERFERENCES.—(1) Sections 6, 41, 134, 141, 145, 146, 154, 305, and 314 of title 35, United States Code, are each amended by striking ''Board of Patent Appeals and Interferences'' each place it appears and inserting ''Patent Trial and Appeal Board''.

(2) Sections 141, 146, and 154 of title 35, United States Code, are each amended—

(A) by striking ''an interference'' each place it appears and inserting ''a derivation proceeding''; and

(B) by striking ''interference'' each additional place it appears and inserting ''derivation proceeding''.

(3) The section heading for section 134 of title 35, United States Code, is amended to read as follows:

''§ 134. Appeal to the Patent Trial and Appeal Board''.

(4) The section heading for section 135 of title 35, United States Code, is amended to read as follows:

''§ 135. Derivation proceedings''.

(5) The section heading for section 146 of title 35, United States Code, is amended to read as follows:

''§ 146. Civil action in case of derivation proceeding''.

(6) Section 154(b)(1)(C) of title 35, United States Code, is amended by striking ''INTERFERENCES'' and inserting ''DERIVATION PROCEEDINGS''.

(7) The item relating to section 6 in the table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

''6. Patent Trial and Appeal Board.''.

(8) The items relating to sections 134 and 135 in the table of sections for chapter 12 of title 35, United States Code, are amended to read as follows:

''134. Appeal to the Patent Trial and Appeal Board.

''135. Derivation proceedings.''.

(9) The item relating to section 146 in the table of sections for chapter 13 of title 35, United States Code, is amended to read as follows:

''146. Civil action in case of derivation proceeding.''.

(10) CERTAIN APPEALS.—Section 1295(a)(4)(A) of title 28, United States Code, is amended to read as follows:

''(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to patent applications, derivation proceedings, and post-grant review proceedings, at the instance of an applicant for a patent or any party to a patent interference (commenced before the effective date of the Patent Reform Act of 2009), derivation proceeding, or post-grant review proceeding, and any such appeal shall waive any right of such applicant or party to proceed under section 145 or 146 of title 35;''.

SEC. 3. INVENTOR'S OATH OR DECLARATION.

(a) INVENTOR'S OATH OR DECLARATION.—

(1) IN GENERAL.—Section 115 of title 35, United States Code, is amended to read as follows:

''§ 115. Inventor's oath or declaration

''(a) NAMING THE INVENTOR; INVENTOR'S OATH OR DECLARATION.—An application for patent that is filed under section 111(a) or that commences the national stage under section 371 (including an application under section 111 that is filed by an inventor for an invention for which an application has previously been filed under this title by that inventor) shall include, or be amended to include, the name of the inventor of any claimed invention in the application. Except as otherwise provided in this section, an individual who is the inventor or a joint inventor of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.

''(b) REQUIRED STATEMENTS.—An oath or declaration under subsection (a) shall contain statements that—

''(1) the application was made or was authorized to be made by the affiant or declarant; and

''(2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.

''(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).

''(d) SUBSTITUTE STATEMENT.—

''(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.

''(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—

''(A) is unable to file the oath or declaration under subsection (a) because the individual—

''(i) is deceased;

''(ii) is under legal incapacity; or

''(iii) cannot be found or reached after diligent effort; or

''(B) is under an obligation to assign the invention but has refused to make the oath or declaration required under subsection (a).

''(3) CONTENTS.—A substitute statement under this subsection shall—

''(A) identify the individual with respect to whom the statement applies;

''(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and

''(C) contain any additional information, including any showing, required by the Director.

''(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation of assignment of an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual, in lieu of filing such statements separately.

''(f) TIME FOR FILING.—A notice of allowance under section 151 may be provided to an applicant for patent only if the applicant for patent has filed each required oath or declaration under subsection (a) or has filed a substitute statement under subsection (d) or recorded an assignment meeting the requirements of subsection (e).

''(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—The requirements under this section shall not apply to an individual with respect to an application for patent in which the individual is named as the inventor or a joint inventor and that claims the benefit under section 120 or 365(c) of the filing of an earlier-filed application, if—

''(1) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;

''(2) a substitute statement meeting the requirements of subsection (d) was filed in the earlier filed application with respect to the individual; or

''(3) an assignment meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.

''(h) SUPPLEMENTAL AND CORRECTED STATEMENTS; FILING ADDITIONAL STATEMENTS.—

''(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time. If a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, the Director shall establish regulations under which such additional statements may be filed.

''(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration under subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the Director may not thereafter require that individual to make any additional oath, declaration, or other statement equivalent to those required by this section in connection with the application for patent or any patent issuing thereon.

''(3) SAVINGS CLAUSE.—No patent shall be invalid or unenforceable based upon the failure to comply with a requirement under this section if the failure is remedied as provided under paragraph (1).

''(i) ACKNOWLEDGMENT OF PENALTIES.—Any declaration or statement filed pursuant to this section shall contain an acknowledgment that any willful false statement made in such declaration or statement is punishable under section 1001 of title 18 by fine or imprisonment of not more than 5 years, or both.''.

(2) RELATIONSHIP TO DIVISIONAL APPLICATIONS.—Section 121 of title 35, United States Code, is amended by striking ''If a divisional application'' and all that follows through ''inventor.''.

(3) REQUIREMENTS FOR NONPROVISIONAL APPLICATIONS.—Section 111(a) of title 35, United States Code, is amended—

(A) in paragraph (2)(C), by striking ''by the applicant'' and inserting ''or declaration'';

(B) in the heading for paragraph (3), by striking ''AND OATH''; and

(C) by striking ''and oath'' each place it appears.

(4) CONFORMING AMENDMENT.—The item relating to section 115 in the table of sections for chapter 10 of title 35, United States Code, is amended to read as follows:

''115. Inventor's oath or declaration.''.

(b) FILING BY OTHER THAN INVENTOR.—Section 118 of title 35, United States Code, is amended to read as follows:

''§ 118. Filing by other than inventor

''A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.''.

(c) SPECIFICATION.—Section 112 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''The specification'' and inserting ''(a) IN GENERAL.—The specification''; and

(B) by striking '', and shall set forth'' and all that follows through ''his invention''; and

(2) in the second paragraph—

(A) by striking ''The specifications'' and inserting ''(b) CONCLUSION.—The specifications''; and

(B) by striking ''applicant regards as his invention'' and inserting ''inventor or a joint inventor regards as the invention'';

(3) in the third paragraph, by striking ''A claim'' and inserting ''(c) FORM.—A claim'';

(4) in the fourth paragraph, by striking ''Subject to the following paragraph,'' and inserting ''(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e),'';

(5) in the fifth paragraph, by striking ''A claim'' and inserting ''(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim''; and

(6) in the last paragraph, by striking ''An element'' and inserting ''(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element''.

SEC. 4. DAMAGES.

(a) DAMAGES.—Section 284 of title 35, United States Code, is amended to read as follows:

''§ 284. Damages

''(a) IN GENERAL.—

''(1) COMPENSATORY DAMAGES.—Upon finding for a claimant, the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as determined by the court.

''(2) INCREASED DAMAGES.—When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to 3 times the amount found or assessed. Increased damages under this paragraph shall not apply to provisional rights under section 154(d) of this title.

''(3) LIMITATION.—Subsections (b) through (h) of this section apply only to the determination of the amount of reasonable royalty and shall not apply to the determination of other types of damages.

''(b) HYPOTHETICAL NEGOTIATION.—For purposes of this section, the term 'reasonable royalty' means the amount that the infringer would have agreed to pay and the claimant would have agreed to accept if the infringer and claimant had voluntarily negotiated a license for use of the invention at the time just prior to when the infringement began. The court or the jury, as the case may be, shall assume that the infringer and claimant would have agreed that the patent is valid, enforceable, and infringed.

''(c) APPROPRIATE FACTORS.—The court or the jury, as the case may be, may consider any factors that are relevant to the determination of the amount of a reasonable royalty.

''(d) COMPARABLE PATENTS.—

''(1) IN GENERAL.—The amount of a reasonable royalty shall not be determined by comparison to royalties paid for patents other than the patent in suit unless—

''(A) such other patents are used in the same or an analogous technological field;

''(B) such other patents are found to be economically comparable to the patent in suit; and

''(C) evidence of the value of such other patents is presented in conjunction with or as confirmation of other evidence for determining the amount of a reasonable royalty.

''(2) FACTORS.—Factors that may be considered to determine whether another patent is economically comparable to the patent in suit under paragraph (1)(A) include whether—

''(A) the other patent is comparable to the patent in suit in terms of the overall significance of the other patent to the product or process licensed under such other patent; and

''(B) the product or process that uses the other patent is comparable to the infringing product or process based upon its profitability or a like measure of value.

''(e) FINANCIAL CONDITION.—The financial condition of the infringer as of the time of the trial shall not be relevant to the determination of the amount of a reasonable royalty.

''(f) SEQUENCING.—Either party may request that a patent-infringement trial be sequenced so that the court or the jury, as the case may be, decides questions of the patent's infringement and validity before the issue of the amount of a reasonable royalty is presented to the court or the jury, as the case may be. The court shall grant such a request absent good cause to reject the request, such as the absence of issues of significant damages or infringement and validity. The sequencing of a trial pursuant to this subsection shall not affect other matters, such as the timing of discovery.

''(g) EXPERTS.—In addition to the expert disclosure requirements under rule 26(a)(2) of the Federal Rules of Civil Procedure, a party that intends to present the testimony of an expert relating to the amount of a reasonable royalty shall provide—

''(1) to the other parties to that civil action, the expert report relating to damages, including all data and other information considered by the expert in forming the opinions of the expert; and

''(2) to the court, at the same time as to the other parties, the complete statement of

all opinions that the expert will express and the basis and reasons for those opinions.

''(h) JURY INSTRUCTIONS.—On the motion of any party and after allowing any other party to the civil action a reasonable opportunity to be heard, the court shall determine whether there is no legally sufficient evidence to support 1 or more of the contentions of a party relating to the amount of a reasonable royalty. The court shall identify for the record those factors that are supported by legally sufficient evidence, and shall instruct the jury to consider only those factors when determining the amount of a reasonable royalty. The jury may not consider any factor for which legally sufficient evidence has not been admitted at trial.''.

(b) TESTIMONY BY EXPERTS.—Chapter 29 of title 35, United States Code, is amended by adding at the end the following:

''§ 298. Testimony by experts

''(a) FEDERAL RULE.—In a patent case, the court shall ensure that the testimony of a witness qualified as an expert by knowledge, skill, experience, training, or education meets the requirements set forth in rule 702 of the Federal Rules of Evidence.

''(b) DETERMINATION OF RELIABILITY.—To determine whether an expert's principles and methods are reliable, the court may consider, among other factors—

''(1) whether the expert's theory or technique can be or has been tested;

''(2) whether the theory or technique has been subjected to peer review and publication;

''(3) the known or potential error rate of the theory or technique, and the existence and maintenance of standards controlling the technique's operation;

''(4) the degree of acceptance of the theory or technique within the relevant scientific or specialized community;

''(5) whether the theory or technique is employed independently of litigation; or

''(6) whether the expert has adequately considered or accounted for readily available alternative theories or techniques.

''(c) REQUIRED EXPLANATION.—The court shall explain its reasons for allowing or barring the introduction of an expert's proposed testimony under this section.''.

SEC. 5. POST-GRANT REVIEW PROCEEDINGS.

(a) REEXAMINATION.—Section 303(a) of title 35, United States Code, is amended to read as follows:

''(a) Within 3 months after the owner of a patent files a request for reexamination under section 302, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.''.

(b) REPEAL OF OPTIONAL INTER PARTES REEXAMINATION PROCEDURES.—

(1) IN GENERAL.—Sections 311, 312, 313, 314, 315, 316, 317, and 318 of title 35, United States Code, and the items relating to those sections in the table of sections, are repealed.

(2) EFFECTIVE DATE.—Notwithstanding paragraph (1), the provisions of sections 311, 312, 313, 314, 315, 316, 317, and 318 of title 35, United States Code, shall continue to apply to any inter partes reexamination determination request filed on or before the effective date of subsection (c).

(c) POST-GRANT REVIEW PROCEEDINGS.—Part III of title 35, United States Code, is amended by adding at the end the following:

''CHAPTER 32—POST-GRANT REVIEW PROCEEDINGS

''Sec.

''§ 321. Petition for post-grant review

''(a) IN GENERAL.—Subject to the provisions of this chapter, a person who has a substantial economic interest adverse to a patent may file with the Office a petition to institute a post-grant review proceeding for that patent. If instituted, such a proceeding shall be deemed to be either a first-period proceeding or a second-period proceeding. The Director shall establish, by regulation, fees to be paid by the person requesting the proceeding, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the post-grant review proceeding and the status of the petitioner.

''(b) FIRST-PERIOD PROCEEDING.—

''(1) SCOPE.—A petitioner in a first-period proceeding may request to cancel as unpatentable 1 or more claims of a patent on any ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to invalidity of the patent or any claim).

''(2) FILING DEADLINE.—A petition for a first-period proceeding shall be filed not later than 9 months after the grant of the patent or issuance of a reissue patent.

''(c) SECOND-PERIOD PROCEEDING.—

''(1) SCOPE.—A petitioner in a second-period proceeding may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.

''(2) FILING DEADLINE.—A petition for a second-period proceeding shall be filed after the later of either—

''(A) 9 months after the grant of a patent or issuance of a reissue of a patent; or

''(B) if a first-period proceeding is instituted under section 327, the date of the termination of such first-period proceeding.

''§ 322. Relation to other proceedings or actions

''(a) EARLY ACTIONS.—A first-period proceeding may not be instituted until after a civil action alleging infringement of the patent is finally concluded if—

''(1) the infringement action is filed within 3 months after the grant of the patent;

''(2) a stay of the proceeding is requested by the patent owner;

''(3) the Director determines that the infringement action is likely to address the same or substantially the same questions of patentability that would be addressed in the proceeding; and

''(4) the Director determines that a stay of the proceeding would not be contrary to the interests of justice.

''(b) PENDING CIVIL ACTIONS.—

''(1) INFRINGER'S ACTION.—A post-grant review proceeding may not be instituted or maintained if the petitioner or real party in interest has filed a civil action challenging the validity of a claim of the patent.

''(2) PATENT OWNER'S ACTION.—A second-period proceeding may not be instituted if the petition requesting the proceeding is filed more than 3 months after the date on which the petitioner, real party in interest, or his privy is required to respond to a civil action alleging infringement of the patent.

''(3) STAY OR DISMISSAL.—The Director may stay or dismiss a second-period proceeding if the petitioner or real party in interest challenges the validity of a claim of the patent in a civil action.

''(c) DUPLICATIVE PROCEEDINGS.—

''(1) PROHIBITION ON POST-GRANT REVIEW AND REEXAMINATION PROCEEDINGS.—A post-grant review or reexamination proceeding may not be instituted if the petition requesting the proceeding identifies the same petitioner or real party in interest and the same patent as a previous petition requesting a post-grant review proceeding.

''(2) PROHIBITION ON FIRST-PERIOD PROCEEDINGS.—A first-period proceeding may not be instituted if the petition requests cancellation of a claim in a reissue patent that is identical to or narrower than a claim in the original patent from which the reissue patent was issued, and the time limitations in section 321(b)(2) would bar filing a post-grant review petition for such original patent.

''(d) ESTOPPEL.—The petitioner in any post-grant review proceeding under this chapter may not request or maintain a proceeding before the Office with respect to a claim, or assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission that a claim in a patent is invalid, on any ground that—

''(1) the petitioner, real party in interest, or his privy raised during a post-grant review proceeding resulting in a final decision under section 334; or

''(2) the petitioner, real party in interest, or his privy could have raised during a second-period proceeding resulting in a final decision under section 334.

''§ 323. Requirements of petition

''A petition filed under section 321 may be considered only if—

''(1) the petition is accompanied by payment of the fee established by the Director under section 321;

''(2) the petition identifies all real parties in interest;

''(3) the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for each challenged claim, including—

''(A) copies of patents and printed publications that the petitioner relies upon in support of the petition; and

''(B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on other factual evidence or on expert opinions;

''(4) the petition provides such other information as the Director may require by regulation; and

''(5) the petitioner provides copies of any of the documents required under paragraphs (3) and (4) to the patent owner or, if applicable, the designated representative of the patent owner.

''§ 324. Publication and public availability of petition

''(a) IN GENERAL.—As soon as practicable after the receipt of a petition under section 321, the Director shall—

''(1) publish the petition in the Federal Register; and

''(2) make that petition available on the website of the United States Patent and Trademark Office.

''(b) PUBLIC AVAILABILITY.—The file of any proceeding under this chapter shall be made

available to the public except that any petition or document filed with the intent that it be sealed shall be accompanied by a motion to seal. Such petition or document shall be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleadings being placed in the public record.

"§ 325. Consolidation or stay of proceedings

''(a) FIRST-PERIOD PROCEEDINGS.—If more than 1 petition for a first-period proceeding is properly filed against the same patent and the Director determines that more than 1 of these petitions warrants the instituting of a first-period proceeding under section 327, the Director shall consolidate such proceedings into a single first-period proceeding.

''(b) SECOND-PERIOD PROCEEDINGS.—If the Director institutes a second-period proceeding, the Director, in his discretion, may join as a party to that second-period proceeding any person who properly files a petition under section 321 that the Director, after receiving a preliminary response under section 330 or the expiration of the time for filing such a response, determines warrants the instituting of a second-period proceeding under section 327.

''(c) OTHER PROCEEDINGS.—Notwithstanding sections 135(a), 251, and 252, and chapter 30, during the pendency of any post-grant review proceeding the Director may determine the manner in which any proceeding or matter involving the patent that is before the Office may proceed, including providing for stay, transfer, consolidation, or termination of any such proceeding or matter.

"§ 326. Submission of additional information

''A petitioner under this chapter shall file such additional information with respect to the petition as the Director may require by regulation.

"§ 327. Institution of post-grant review proceedings

''(a) THRESHOLD.—The Director may not authorize a post-grant review proceeding to commence unless the Director determines that the information presented in the petition, if such information is not rebutted, would provide a sufficient basis to conclude that at least 1 of the claims challenged in the petition is unpatentable.

''(b) ADDITIONAL GROUNDS.—In the case of a petition for a first-period proceeding, the determination required under subsection (a) may be satisfied by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications.

''(c) SUCCESSIVE PETITIONS.—The Director may not institute an additional second-period proceeding if a prior second-period proceeding has been instituted and the time period established under section 329(b)(2) for requesting joinder under section 325(b) has expired, unless the Director determines that—

''(1) the additional petition satisfies the requirements under subsection (a); and

''(2) either—

''(A) the additional petition presents exceptional circumstances; or

''(B) such an additional proceeding is reasonably required in the interests of justice.

''(d) TIMING.—The Director shall determine whether to institute a post-grant review proceeding under this chapter within 3 months after receiving a preliminary response under section 330 or the expiration of the time for filing such a response.

''(e) NOTICE.—The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a). The Director shall publish each notice of institution of a post-grant review proceeding in the Federal Register and make such notice available on the website of the United States Patent and Trademark Office. Such notice shall list the date on which the proceeding shall commence.

"§ 328. Determination not appealable

''The determination by the Director regarding whether to institute a post-grant review proceeding under section 327 shall not be appealable.

"§ 329. Conduct of post-grant review proceedings

''(a) IN GENERAL.—The Director shall prescribe regulations—

''(1) in accordance with section 2(b)(2), establishing and governing post-grant review proceedings under this chapter and their relationship to other proceedings under this title;

''(2) for setting forth the standards for showings of sufficient grounds to institute a proceeding under section 321(a) and subsections (a), (b), and (c) of section 327;

''(3) providing for the publication in the Federal Register all requests for the institution of post-grant proceedings;

''(4) establishing procedures for the submission of supplemental information after the petition is filed; and

''(5) setting forth procedures for discovery of relevant evidence, including that such discovery shall be limited to evidence directly related to factual assertions advanced by either party in the proceeding.

''(b) POST-GRANT REVIEW REGULATIONS.—The regulations required under subsection (a)(1) shall—

''(1) require that the final determination in any post-grant review proceeding be issued not later than 1 year after the date on which the Director notices the institution of a post-grant proceeding under this chapter, except that the Director may, for good cause shown, extend the 1-year period by not more than 6 months, and may adjust the time periods in this paragraph in the case of joinder under section 325(b);

''(2) set a time period for requesting joinder under section 325(b);

''(3) allow for discovery upon order of the Director, provided that in a second-period proceeding discovery shall be limited to—

''(A) the deposition of witnesses submitting affidavits or declarations; and

''(B) what is otherwise necessary in the interest of justice;

''(4) prescribe sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or unnecessary increase in the cost of the proceeding;

''(5) provide for protective orders governing the exchange and submission of confidential information;

''(6) ensure that any information submitted by the patent owner in support of any amendment entered under section 332 is made available to the public as part of the prosecution history of the patent; and

''(7) provide either party with the right to an oral hearing as part of the proceeding.

''(c) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the effect on the economy, the integrity of the patent system, and the efficient administration of the Office.

''(d) CONDUCT OF PROCEEDING.—The Patent Trial and Appeal Board shall, in accordance with section 6(b), conduct each proceeding authorized by the Director.

"§ 330. Patent owner response

''(a) PRELIMINARY RESPONSE.—If a post-grant review petition is filed under section 321, the patent owner shall have the right to file a preliminary response—

''(1) in the case of a first-period proceeding, within 2 months of the expiration of the time for filing a petition for a first-period proceeding; and

''(2) in the case of a second-period proceeding, within a time period set by the Director.

''(b) CONTENT OF RESPONSE.—A preliminary response to a petition for a post-grant review proceeding shall set forth reasons why no post-grant review proceeding should be instituted based upon the failure of the petition to meet any requirement of this chapter.

''(c) ADDITIONAL RESPONSE.—After a post-grant review proceeding under this chapter has been instituted with respect to a patent, the patent owner shall have the right to file, within a time period set by the Director, a response to the petition. The patent owner shall file with the response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response.

"§ 331. Proof and evidentiary standards

''(a) IN GENERAL.—The presumption of validity set forth in section 282 of this title shall apply in post-grant review proceedings instituted under this chapter.

''(b) BURDEN OF PROOF.—The petitioner shall have the burden of proving a proposition of invalidity by a preponderance of the evidence in a first-period proceeding and by clear and convincing evidence in a second-period proceeding.

"§ 332. Amendment of the patent

''(a) IN GENERAL.—During a post-grant review proceeding instituted under this chapter, the patent owner may file 1 motion to amend the patent in 1 or more of the following ways:

''(1) Cancel any challenged patent claim.

''(2) For each challenged claim, propose a reasonable number of substitute claims.

''(b) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under section 333, or upon the request of the patent owner for good cause shown.

''(c) SCOPE OF CLAIMS.—An amendment under this section may not enlarge the scope of the claims of the patent or introduce new matter.

"§ 333. Settlement

''(a) IN GENERAL.—A post-grant review proceeding instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the matter before the request for termination is filed. If the post-grant review proceeding is terminated with respect to a petitioner under this section, no estoppel under this chapter shall apply to that petitioner. If no petitioner remains in the post-grant review proceeding, the Office may terminate the post-grant review proceeding or proceed to a final written decision under section 334.

''(b) AGREEMENTS IN WRITING.—Any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with, or in contemplation of, the termination of a post-grant review proceeding under this section shall be in writing and a true copy of such agreement or understanding shall be filed in the United States Patent and Trademark Office before the termination of the post-grant review proceeding as between the parties to the agreement or understanding. If any party filing such agreement or understanding so requests, the copy shall be kept separate from the file of the post-grant review proceeding, and shall

be made available only to Federal Government agencies upon written request, or to any other person on a showing of good cause.

''§ 334. Decision of the board

''If the post-grant review proceeding is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged and any new claim added under section 332.

''§ 335. Effect of decision

''If the Patent Trial and Appeal Board issues a final decision under section 334 and the time for appeal has expired or any appeal proceeding has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable and incorporating in the patent by operation of the certificate any new claim determined to be patentable.

''§ 336. Appeal

''A party dissatisfied with the final determination of the Patent Trial and Appeal Board in a post-grant review proceeding instituted under this chapter may appeal the determination under sections 141 through 144. Any party to the post-grant review proceeding shall have the right to be a party to the appeal.''.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 35, United States Code, is amended by adding at the end the following:

''32. Post-Grant Review Proceedings 321.''.

(e) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—The Under Secretary of Commerce for Intellectual Property and the Director of the United States Patent and Trademark Office (in this subsection referred to as the ''Director'') shall, not later than the date that is 1 year after the date of the enactment of this Act, issue regulations to carry out chapter 32 of title 35, United States Code, as added by subsection (c) of this section.

(2) APPLICABILITY.—The amendments made by subsection (c) shall take effect on the date that is 1 year after the date of the enactment of this Act and shall apply only to patents issued on or after that date, except that, in the case of a patent issued before the effective date of subsection (c) on an application filed between September 15, 1999 and the effective date of subsection (c), a petition for second-period review may be filed.

(3) PENDING INTERFERENCES.—The Director shall determine the procedures under which interferences commenced before the effective date under paragraph (2) are to proceed, including whether any such interference is to be dismissed without prejudice to the filing of a petition for a post-grant review proceeding under chapter 32 of title 35, United States Code, or is to proceed as if this Act had not been enacted. The Director shall include such procedures in regulations issued under paragraph (1).

SEC. 6. DEFINITION; PATENT TRIAL AND APPEAL BOARD.

(a) DEFINITION.—Section 100 of title 35, United States Code, as amended by section 2 of this Act, is further amended in subsection (e), by striking ''or inter partes reexamination under section 311''.

(b) PATENT TRIAL AND APPEAL BOARD.—Section 6 of title 35, United States Code, is amended to read as follows:

''§ 6. Patent trial and appeal board

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

''(b) DUTIES.—The Patent Trial and Appeal Board shall—

''(1) on written appeal of an applicant, review adverse decisions of examiners upon application for patents;

''(2) on written appeal of a patent owner, review adverse decisions of examiners upon patents in reexamination proceedings under chapter 30;

''(3) determine priority and patentability of invention in derivation proceedings under subsection 135(a); and

''(4) conduct post-grant review proceedings under chapter 32.

Each appeal, derivation, and post-grant review proceeding shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings.''.

SEC. 7. SUBMISSIONS BY THIRD PARTIES AND OTHER QUALITY ENHANCEMENTS.

Section 122 of title 35, United States Code, is amended by adding at the end the following:

''(e) PREISSUANCE SUBMISSIONS BY THIRD PARTIES.—

''(1) IN GENERAL.—Any person may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other publication of potential relevance to the examination of the application, if such submission is made in writing before the earlier of—

''(A) the date a notice of allowance under section 151 is mailed in the application for patent; or

''(B) either—

''(i) 6 months after the date on which the application for patent is published under section 122, or

''(ii) the date of the first rejection under section 132 of any claim by the examiner during the examination of the application for patent,

whichever occurs later.

''(2) OTHER REQUIREMENTS.—Any submission under paragraph (1) shall—

''(A) set forth a concise description of the asserted relevance of each submitted document;

''(B) be accompanied by such fee as the Director may prescribe; and

''(C) include a statement by the person making such submission affirming that the submission was made in compliance with this section.''.

SEC. 8. VENUE.

(a) VENUE FOR PATENT CASES.—Section 1400 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) Notwithstanding subsections (b) and (c) of section 1391 of this title, any civil action for patent infringement or any action for declaratory judgment arising under any Act of Congress relating to patents may be brought only in a judicial district—

''(1) where the defendant has its principal place of business or is incorporated;

''(2) where the defendant has committed acts of infringement and has a regular and established physical facility;

''(3) where the defendant has agreed or consented to be sued;

''(4) where the invention claimed in a patent in suit was conceived or actually reduced to practice;

''(5) where significant research and development of an invention claimed in a patent in suit occurred at a regular and established physical facility;

''(6) where a party has a regular and established physical facility that such party controls and operates and has—

''(A) engaged in management of significant research and development of an invention claimed in a patent in suit;

''(B) manufactured a product that embodies an invention claimed in a patent in suit; or

''(C) implemented a manufacturing process that embodies an invention claimed in a patent in suit;

''(7) where a nonprofit organization whose function is the management of inventions on behalf of an institution of higher education (as that term is defined under section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), including the patent in suit, has its principal place of business; or

''(8) for foreign defendants that do not meet the requirements of paragraphs (1) or (2), according to section 1391(d) of this title.''.

(b) TECHNICAL AMENDMENTS RELATING TO VENUE.—Sections 32, 145, 146, 154(b)(4)(A), and 293 of title 35, United States Code, and section 1071(b)(4) of an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act'') are each amended by striking ''United States District Court for the District of Columbia'' each place that term appears and inserting ''United States District Court for the Eastern District of Virginia''.

SEC. 9. PATENT AND TRADEMARK OFFICE REGULATORY AUTHORITY.

(a) FEE SETTING.—

(1) IN GENERAL.—The Director shall have authority to set or adjust by rule any fee established or charged by the Office under sections 41 and 376 of title 35, United States Code or under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) for the filing or processing of any submission to, and for all other services performed by or materials furnished by, the Office, provided that such fee amounts are set to reasonably compensate the Office for the services performed.

(2) REDUCTION OF FEES IN CERTAIN FISCAL YEARS.—In any fiscal year, the Director—

(A) shall consult with the Patent Public Advisory Committee and the Trademark Public Advisory Committee on the advisability of reducing any fees described in paragraph (1); and

(B) after that consultation may reduce such fees.

(3) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—The Director shall—

(A) submit to the Patent or Trademark Public Advisory Committee, or both, as appropriate, any proposed fee under paragraph (1) not less than 45 days before publishing any proposed fee in the Federal Register;

(B) provide the relevant advisory committee described in subparagraph (A) a 30-day period following the submission of any proposed fee, on which to deliberate, consider, and comment on such proposal, and require that—

(i) during such 30-day period, the relevant advisory committee hold a public hearing related to such proposal; and

(ii) the Director shall assist the relevant advisory committee in carrying out such public hearing, including by offering the use of Office resources to notify and promote the hearing to the public and interested stakeholders;

(C) require the relevant advisory committee to make available to the public a written report detailing the comments, advice, and recommendations of the committee regarding any proposed fee;

(D) consider and analyze any comments, advice, or recommendations received from the relevant advisory committee before setting or adjusting any fee; and

(E) notify, through the Chair and Ranking Member of the Senate and House Judiciary Committees, the Congress of any final decision regarding proposed fees.

(4) PUBLICATION IN THE FEDERAL REGISTER.—

(A) IN GENERAL.—Any rules prescribed under this subsection shall be published in the Federal Register.

(B) RATIONALE.—Any proposal for a change in fees under this section shall—

(i) be published in the Federal Register; and

(ii) include, in such publication, the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change.

(C) PUBLIC COMMENT PERIOD.—Following the publication of any proposed fee in the Federal Register pursuant to subparagraph (A), the Director shall seek public comment for a period of not less than 45 days.

(5) CONGRESSIONAL COMMENT PERIOD.—Following the notification described in paragraph (3)(E), Congress shall have not more than 45 days to consider and comment on any proposed fee under paragraph (1). No proposed fee shall be effective prior to the end of such 45-day comment period.

(6) RULE OF CONSTRUCTION.—No rules prescribed under this subsection may diminish—

(A) an applicant's rights under this title or the Trademark Act of 1946; or

(B) any rights under a ratified treaty.

(b) FEES FOR PATENT SERVICES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 2005, in section 801(a) by striking ''During fiscal years 2005, 2006, and 2007,'', and inserting ''Until such time as the Director sets or adjusts the fees otherwise,''.

(c) ADJUSTMENT OF TRADEMARK FEES.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 802(a) by striking ''During fiscal years 2005, 2006, and 2007,'', and inserting ''Until such time as the Director sets or adjusts the fees otherwise,''.

(d) EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ''and shall apply only with respect to the remaining portion of fiscal year 2005 and fiscal year 2006.''.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any other provision of Division B of Public Law 108–447, including section 801(c) of title VII of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2005.

(f) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(3) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946 or the Lanham Act).

SEC. 10. APPLICANT QUALITY SUBMISSIONS.

(a) IN GENERAL.—Chapter 11 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 123. Additional information

''(a) INCENTIVES.—The Director may, by regulation, offer incentives to applicants who submit a search report, a patentability analysis, or other information relevant to patentability. Such incentives may include prosecution flexibility, modifications to requirements for adjustment of a patent term pursuant to section 154(b) of this title, or modifications to fees imposed pursuant to section 9 of the Patent Reform Act of 2009.

''(b) ADMISSIBILITY OF RECORD.—If the Director certifies that an applicant has satisfied the requirements of the regulations issued pursuant to this section with regard to a patent, the record made in a matter or proceeding before the Office involving that patent or efforts to obtain the patent shall not be admissible to construe the patent in a civil action or in a proceeding before the International Trade Commission, except that such record may be introduced to demonstrate that the patent owner is estopped from asserting that the patent is infringed under the doctrine of equivalents. The Director may, by regulation, identify any material submitted in an attempt to satisfy the requirements of any regulations issued pursuant to this section that also shall not be admissible to construe the patent in a civil action or in a proceeding before the International Trade Commission.''.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply that, prior to the date of enactment of this section, the Director either lacked or possessed the authority to offer incentives to applicants who submit a search report, a patentability analysis, or other information relevant to patentability.

SEC. 11. INEQUITABLE CONDUCT.

(a) IN GENERAL.—Chapter 29 of title 35, United States Code, as amended by section 4(b), is further amended by adding at the end the following:

''§ 299. Civil sanctions for misconduct before the Office

''(a) IN GENERAL.—Except as provided under this section, a patent shall not be held invalid or unenforceable on the basis of misconduct before the Office. Nothing in this section shall be construed to preclude the imposition of sanctions based upon criminal or antitrust laws (including section 1001(a) of title 18, the first section of the Clayton Act, and section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition).

''(b) INFORMATION RELATING TO POSSIBLE MISCONDUCT.—The Director shall provide by regulation procedures for receiving and reviewing information indicating that parties to a matter or proceeding before the Office may have engaged in misconduct in connection with such matter or proceeding.

''(c) ADMINISTRATIVE PROCEEDING.—

''(1) PROBABLE CAUSE.—The Director shall determine, based on information received and reviewed under subsection (b), if there is probable cause to believe that 1 or more individuals or parties engaged in misconduct consisting of intentionally deceptive conduct of a material nature in connection with a matter or proceeding before the Office. A determination of probable cause by the Director under this paragraph shall be final and shall not be reviewable on appeal or otherwise.

''(2) DETERMINATION.—If the Director finds probable cause under paragraph (1), the Director shall, after notice and an opportunity for a hearing, and not later than 1 year after the date of such finding, determine whether misconduct consisting of intentionally deceptive conduct of a material nature in connection with the applicable matter or proceeding before the Office has occurred. The proceeding to determine whether such misconduct occurred shall be before an individual designated by the Director.

''(3) CIVIL SANCTIONS.—

''(A) IN GENERAL.—If the Director determines under paragraph (2) that misconduct has occurred, the Director may levy a civil penalty against the party that committed such misconduct.

''(B) FACTORS.—In establishing the amount of any civil penalty to be levied under subparagraph (A), the Director shall consider—

''(i) the materiality of the misconduct;

''(ii) the impact of the misconduct on a decision of the Director regarding a patent, proceeding, or application; and

''(iii) the impact of the misconduct on the integrity of matters or proceedings before the Office.

''(C) SANCTIONS.—A civil penalty levied under subparagraph (A) may consist of—

''(i) a penalty of up to $150,000 for each act of misconduct;

''(ii) in the case of a finding of a pattern of misconduct, a penalty of up to $1,000,000; or

''(iii) in the case of a finding of exceptional misconduct establishing that an application for a patent amounted to a fraud practiced by or at the behest of a real party in interest of the application—

''(I) a determination that 1 or more claims of the patent is unenforceable; or

''(II) a penalty of up to $10,000,000.

''(D) JOINT AND SEVERAL LIABILITY.—Any party found to have been responsible for misconduct in connection with any matter or proceeding before the Office under this section may be jointly and severally liable for any civil penalty levied under subparagraph (A).

''(E) DEPOSIT WITH THE TREASURY.—Any civil penalty levied under subparagraph (A) shall—

''(i) accrue to the benefit of the United States Government; and

''(ii) be deposited under 'Miscellaneous Receipts' in the United States Treasury.

''(F) AUTHORITY TO BRING ACTION FOR RECOVERY OF PENALTIES.—

''(i) IN GENERAL.—If any party refuses to pay or remit to the United States Government a civil penalty levied under this paragraph, the United States may recover such amounts in a civil action brought by the United States Attorney General on behalf of the Director in the United States District Court for the Eastern District of Virginia.

''(ii) INJUNCTIONS.—In any action brought under clause (i), the United States District Court for the Eastern District of Virginia may, as the court determines appropriate, issue a mandatory injunction incorporating the relief sought by the Director.

''(4) COMBINED PROCEEDINGS.—If the misconduct that is the subject of a proceeding under this subsection is attributed to a practitioner who practices before the Office, the Director may combine such proceeding with any other disciplinary proceeding under section 32 of this title.

''(d) OBTAINING EVIDENCE.—

''(1) IN GENERAL.—During the period in which an investigation for a finding of probable cause or for a determination of whether misconduct occurred in connection with any matter or proceeding before the Office is being conducted, the Director may require, by subpoena issued by the Director, persons

to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

''(2) ADDITIONAL AUTHORITY.—For the purposes of carrying out this section, the Director—

''(A) shall have access to, and the right to copy, any document, paper, or record, the Director determines pertinent to any investigation or determination under this section, in the possession of any person;

''(B) may summon witnesses, take testimony, and administer oaths;

''(C) may require any person to produce books or papers relating to any matter pertaining to such investigation or determination; and

''(D) may require any person to furnish in writing, in such detail and in such form as the Director may prescribe, information in their possession pertaining to such investigation or determination.

''(3) WITNESSES AND EVIDENCE.—

''(A) IN GENERAL.—The Director may require the attendance of any witness and the production of any documentary evidence from any place in the United States at any designated place of hearing.

''(B) CONTUMACY.—

''(i) ORDERS OF THE COURT.—In the case of contumacy or failure to obey a subpoena issued under this subsection, any appropriate United States district court or territorial court of the United States may issue an order requiring such person—

''(I) to appear before the Director;

''(II) to appear at any other designated place to testify; and

''(III) to produce documentary or other evidence.

''(ii) FAILURE TO OBEY.—Any failure to obey an order issued under this subparagraph court may be punished by the court as a contempt of that court.

''(4) DEPOSITIONS.—

''(A) IN GENERAL.—In any proceeding or investigation under this section, the Director may order a person to give testimony by deposition.

''(B) REQUIREMENTS OF DEPOSITION.—

''(i) OATH.—A deposition may be taken before an individual designated by the Director and having the power to administer oaths.

''(ii) NOTICE.—Before taking a deposition, the Director shall give reasonable notice in writing to the person ordered to give testimony by deposition under this paragraph. The notice shall state the name of the witness and the time and place of taking the deposition.

''(iii) WRITTEN TRANSCRIPT.—The testimony of a person deposed under this paragraph shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a written transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Director.

''(e) APPEAL.—

''(1) IN GENERAL.—A party may appeal a determination under subsection (c)(2) that misconduct occurred in connection with any matter or proceeding before the Office to the United States Court of Appeals for the Federal Circuit.

''(2) NOTICE TO USPTO.—A party appealing under this subsection shall file in the Office a written notice of appeal directed to the Director, within such time after the date of the determination from which the appeal is taken as the Director prescribes, but in no case less than 60 days after such date.

''(3) REQUIRED ACTIONS OF THE DIRECTOR.—In any appeal under this subsection, the Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the determination proceeding. The court may request that the Director forward the original or certified copies of such documents during the pendency of the appeal. The court shall, before hearing the appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.

''(4) AUTHORITY OF THE COURT.—The United States Court of Appeals for the Federal Circuit shall have power to enter, upon the pleadings and evidence of record at the time the determination was made, a judgment affirming, modifying, or setting aside, in whole or in part, the determination, with or without remanding the case for a rehearing. The court shall not set aside or remand the determination made under subsection (c)(2) unless there is not substantial evidence on the record to support the findings or the determination is not in accordance with law. Any sanction levied under subsection (c)(3) shall not be set aside or remanded by the court, unless the court determines that such sanction constitutes an abuse of discretion of the Director.

''(f) DEFINITION.—For purposes of this section, the term 'person' means any individual, partnership, corporation, company, association, firm, partnership, society, trust, estate, cooperative, association, or any other entity capable of suing and being sued in a court of law.''.

(b) SUSPENSION OR EXCLUSION FROM PRACTICE.—Section 32 of title 35, United States Code, is amended—

(1) by striking ''The Director may'' and inserting the following:

''(a) IN GENERAL.—The Director may''; and

(2) by adding at the end the following:

''(b) TOLLING OF TIME PERIOD.—The time period for instituting a proceeding under subsection (a), as provided in section 2462 of title 28, shall not begin to run where fraud, concealment, or misconduct is involved until the information regarding fraud, concealment, or misconduct is made known in the manner set forth by regulation under section 2(b)(2)(D) to an officer or employee of the United States Patent and Trademark Office designated by the Director to receive such information.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided under paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) INAPPLICABILITY TO PENDING LITIGATION.—Subsections (a) and (b) of section 298 of title 35, United States Code (as added by the amendment made by subsection (a) of this section), shall apply to any civil action filed on or after the date of the enactment of this Act.

SEC. 12. CONVERSION OF DEADLINES.

(a) Sections 141, 156(d)(2)(A), 156(d)(2)(B)(ii), 156(d)(5)(C), and 282 of title 35, United States Code, are each amended by striking ''30 days'' or ''thirty days'' each place that term appears and inserting ''1 month''.

(b) Sections 135(c), 142, 145, 146, 156(d)(2)(B)(ii), 156(d)(5)(C), and the matter preceding clause (i) of section 156(d)(2)(A) of title 35, United States Code, are each amended by striking ''60 days'' or ''sixty days'' each place that term appears and inserting ''2 months''.

(c) The matter preceding subparagraph (A) of section 156(d)(1) and sections 156(d)(2)(B)(ii) and 156(d)(5)(E) of title 35, United States Code, are each amended by striking ''60-day'' or ''sixty-day'' each place that term appears and inserting ''2-month''.

(d) Sections 155 and 156(d)(2)(B)(i) of title 35, United States Code, are each amended by striking ''90 days'' or ''ninety days'' each place that term appears and inserting ''3 months''.

(e) Sections 154(b)(4)(A) and 156(d)(2)(B)(i) of title 35, United States Code, are each amended by striking ''180 days'' each place that term appears and inserting ''6 months''.

SEC. 13. CHECK IMAGING PATENTS.

(a) LIMITATION.—Section 287 of title 35, United States Code, is amended by adding at the end the following:

''(d)(1) With respect to the use by a financial institution of a check collection system that constitutes an infringement under subsection (a) or (b) of section 271, the provisions of sections 281, 283, 284, and 285 shall not apply against the financial institution with respect to such a check collection system.

''(2) For the purposes of this subsection—

''(A) the term 'check' has the meaning given under section 3(6) of the Check Clearing for the 21st Century Act (12 U.S.C. 5002(6));

''(B) the term 'check collection system' means the use, creation, transmission, receipt, storing, settling, or archiving of truncated checks, substitute checks, check images, or electronic check data associated with or related to any method, system, or process that furthers or effectuates, in whole or in part, any of the purposes of the Check Clearing for the 21st Century Act (12 U.S.C. 5001 et seq.);

''(C) the term 'financial institution' has the meaning given under section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809);

''(D) the term 'substitute check' has the meaning given under section 3(16) of the Check Clearing for the 21st Century Act (12 U.S.C. 5002(16)); and

''(E) the term 'truncate' has the meaning given under section 3(18) of the Check Clearing for the 21st Century Act (12 U.S.C. 5002(18)).

''(3) This subsection shall not limit or affect the enforcement rights of the original owner of a patent where such original owner—

''(A) is directly engaged in the commercial manufacture and distribution of machinery or the commercial development of software; and

''(B) has operated as a subsidiary of a bank holding company, as such term is defined under section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)), prior to July 19, 2007.

''(4) A party shall not manipulate its activities, or conspire with others to manipulate its activities, for purposes of establishing compliance with the requirements of this subsection, including, without limitation, by granting or conveying any rights in the patent, enforcement of the patent, or the result of any such enforcement.''.

(b) TAKINGS.—If this section is found to establish a taking of private property for public use without just compensation, this section shall be null and void. The exclusive remedy for such a finding shall be invalidation of this section. In the event of such invalidation, for purposes of application of the time limitation on damages in section 286 of title 35, United States Code, any action for patent infringement or counterclaim for infringement that could have been filed or continued but for this section, shall be considered to have been filed on the date of enactment of this Act or continued from such date of enactment.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any civil action for patent infringement pending or filed on or after the date of enactment of this Act.

SEC. 14. PATENT AND TRADEMARK OFFICE FUNDING.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) FUND.—The term ''Fund'' means the public enterprise revolving fund established under subsection (c).

(3) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

(4) TRADEMARK ACT OF 1946.—The term ''Trademark Act of 1946'' means an Act entitled ''Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the ''Trademark Act of 1946'' or the ''Lanham Act'').

(5) UNDERSECRETARY.—The term ''Undersecretary'' means the Under Secretary of Commerce for Intellectual Property.

(b) FUNDING.—

(1) IN GENERAL.—Section 42 of title 35, United States Code, is amended—

(A) in subsection (b), by striking ''Patent and Trademark Office Appropriation Account'' and inserting ''United States Patent and Trademark Office Public Enterprise Fund''; and

(B) by amending subsection (c) to read as follows:

''(c)(1) Subject to paragraphs (2) and (3), fees authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall be available to the Director to carry out the activities of the Patent and Trademark Office.

''(2) All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

''(3) All fees available to the Director under paragraphs (1), (2), and (3) of section 41(a) and section 41(d)(1) of this title, and those fees available to the Director which are derived from filing fees, Request for Continued Examination fees, and Information Disclosure Statement submission fees established by regulation pursuant to section 41(d)(2) of this title, shall be used only for funding the portion of the salary of patent examiners attributable to examining patent applications and shall not be applied to fund non-examining activities or supervisory activities.''.

(2) EFFECTIVE DATE; TERMINATION.—The amendments made by paragraph (1) shall take effect on the later of—

(A) October 1, 2009; or

(B) the date of enactment of this Act.

(c) USPTO REVOLVING FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund to be known as the ''United States Patent and Trademark Office Public Enterprise Fund''. Any amounts in the Fund shall be available for use by the Director without fiscal year limitation.

(2) DERIVATION OF RESOURCES.—There shall be deposited into the Fund—

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund; and

(B) any fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113).

(3) EXPENSES.—Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover—

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office, as such services, programs, activities, and duties are described under—

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.

(4) CUSTODIANS OF MONEY.—Notwithstanding section 3302 of title 31, United States Code, any funds received by the Director and transferred to Fund, or any amounts directly deposited into the Fund, may be used—

(A) to cover the expenses described in paragraph (3); and

(B) to purchase obligations of the United States, or any obligations guaranteed by the United States.

(d) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Under Secretary and the Director shall submit a report to Congress which shall—

(1) summarize the operations of the Office for the preceding fiscal year, including financial details and staff levels broken down by each major activity of the Office;

(2) detail the operating plan of the Office, including specific expense and staff needs for the upcoming fiscal year;

(3) describe the long term modernization plans of the Office;

(4) set forth details of any progress towards such modernization plans made in the previous fiscal year; and

(5) include the results of the most recent audit carried out under subsection (e).

(e) ANNUAL SPENDING PLAN.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committees on Appropriations of both Houses of Congress of the plan for the obligation and expenditure of the total amount of the funds for that fiscal year in accordance with section 605 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2334).

(2) CONTENTS.—Each plan under paragraph (1) shall—

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.

(f) AUDIT.—The Under Secretary shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally acceptable accounting procedures.

(g) BUDGET.—In accordance with section 9301 of title 31, United States Code, the Fund shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

SEC. 15. TECHNICAL AMENDMENTS.

(a) JOINT INVENTIONS.—Section 116 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''When'' and inserting ''(a) JOINT INVENTIONS.—When'';

(2) in the second paragraph, by striking ''If a joint inventor'' and inserting ''(b) OMITTED INVENTOR.—If a joint inventor''; and

(3) in the third paragraph—

(A) by striking ''Whenever'' and inserting ''(c) CORRECTION OF ERRORS IN APPLICATION.—Whenever''; and

(B) by striking ''and such error arose without any deceptive intent on his part,''.

(b) FILING OF APPLICATION IN FOREIGN COUNTRY.—Section 184 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''Except when'' and inserting ''(a) FILING IN FOREIGN COUNTRY.—Except when''; and

(B) by striking ''and without deceptive intent'';

(2) in the second paragraph, by striking ''The term'' and inserting ''(b) APPLICATION.—The term''; and

(3) in the third paragraph, by striking ''The scope'' and inserting ''(c) SUBSEQUENT MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS.—The scope''.

(c) FILING WITHOUT A LICENSE.—Section 185 of title 35, United States Code, is amended by striking ''and without deceptive intent''.

(d) REISSUE OF DEFECTIVE PATENTS.—Section 251 of title 35, United States Code, is amended—

(1) in the first paragraph—

(A) by striking ''Whenever'' and inserting ''(a) IN GENERAL.—Whenever reissue of any patent is authorized under section 298 or''; and

(B) by striking ''without deceptive intention'';

(2) in the second paragraph, by striking ''The Director'' and inserting ''(b) MULTIPLE REISSUED PATENTS.—The Director'';

(3) in the third paragraph, by striking ''The provision'' and inserting ''(c) APPLICABILITY OF THIS TITLE.—The provisions''; and

(4) in the last paragraph, by striking ''No reissued patent'' and inserting ''(d) REISSUE PATENT ENLARGING SCOPE OF CLAIMS.—No reissued patent''.

(e) EFFECT OF REISSUE.—Section 253 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever, without deceptive intention'' and inserting ''(a) IN GENERAL.—Whenever''; and

(2) in the second paragraph, by striking ''in like manner'' and inserting ''(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a),''.

(f) CORRECTION OF NAMED INVENTOR.—Section 256 of title 35, United States Code, is amended—

(1) in the first paragraph, by striking ''Whenever'' and inserting ''(a) CORRECTION.—Whenever''; and

(2) in the second paragraph, by striking ''The error'' and inserting ''(b) PATENT VALID IF ERROR CORRECTED.—The error''.

(g) PRESUMPTION OF VALIDITY.—Section 282 of title 35, United States Code, is amended—

(1) in the first undesignated paragraph, by striking ''A patent'' and inserting ''(a) IN GENERAL.—A patent'';

(2) in the second undesignated paragraph, by striking ''The following'' and inserting ''(b) DEFENSES.—The following''; and

(3) in the third undesignated paragraph, by striking ''In actions'' and inserting ''(c) NOTICE OF ACTIONS; ACTIONS DURING EXTENSION OF PATENT TERM.—In actions''.

(h) ACTION FOR INFRINGEMENT.—Section 288 of title 35, United States Code, is amended by striking '', without any deceptive intention,''.

(i) GOVERNMENT-OWNED FACILITIES.—Section 202(c)(7)(E)(i) of title 35, United States Code, is amended by—

(1) striking ''up to an amount equal to 5 percent of the annual budget of the facility,''; and

(2) striking ''provided that'' and all that follows through ''in this clause (D);''.

SEC. 16. EFFECTIVE DATE; RULE OF CONSTRUCTION.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, the provisions of this

Act shall take effect 12 months after the date of the enactment of this Act and shall apply to any patent issued on or after that effective date.

(b) SPECIAL PROVISIONS RELATING TO DETERMINATIONS OF VALIDITY AND PATENTABILITY.—

(1) IN GENERAL.—The amendments made by section 2 shall apply to any application for a patent and any patent issued pursuant to such an application that at any time—

(A) contained a claim to a claimed invention that has an effective filing date, as such date is defined under section 100(h) of title 35, United States Code, 1 year or more after the date of the enactment of this Act;

(B) asserted a claim to a right of priority under section 119, 365(a), or 365(b) of title 35, United States Code, to any application that was filed 1 year or more after the date of the enactment of this Act; or

(C) made a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any application to which the amendments made by section 2 otherwise apply under this subsection.

(2) PATENTABILITY.—For any application for patent and any patent issued pursuant to such an application to which the amendments made by section 2 apply, no claim asserted in such application shall be patentable or valid unless such claim meets the conditions of patentability specified in section 102(g) of title 35, United States Code, as such conditions were in effect on the day prior to the date of enactment of this Act, if the application at any time—

(A) contained a claim to a claimed invention that has an effective filing date as defined in section 100(h) of title 35, United States Code, earlier than 1 year after the date of the enactment of this Act;

(B) asserted a claim to a right of priority under section 119, 365(a), or 365(b) of title 35, United States Code, to any application that was filed earlier than 1 year after the date of the enactment of this Act; or

(C) made a specific reference under section 120, 121, or 365(c) of title 35, United States Code, with respect to which the requirements of section 102(g) applied.

(3) VALIDITY OF PATENTS.—For the purpose of determining the validity of a claim in any patent or the patentability of any claim in a nonprovisional application for patent that is made before the effective date of the amendments made by sections 2 and 3, other than in an action brought in a court before the date of the enactment of this Act—

(A) the provisions of subsections (c), (d), and (f) of section 102 of title 35, United States Code, that were in effect on the day prior to the date of enactment of this Act shall be deemed to be repealed;

(B) the amendments made by section 3 of this Act shall apply, except that a claim in a patent that is otherwise valid under the provisions of section 102(f) of title 35, United States Code, as such provision was in effect on the day prior to the date of enactment of this Act, shall not be invalidated by reason of this paragraph; and

(C) the term ''in public use or on sale'' as used in section 102(b) of title 35, United States Code, as such section was in effect on the day prior to the date of enactment of this Act shall be deemed to exclude the use, sale, or offer for sale of any subject matter that had not become available to the public.

(4) CONTINUITY OF INTENT UNDER THE CREATE ACT.—The enactment of section 102(b)(3) of title 35, United States Code, under section (2)(b) of this Act is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ''CREATE Act''), the amendments of which are stricken by section 2(c) of this Act. The United States Patent and Trademark Office shall administer section 102(b)(3) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.

By Mr. LEAHY (for himself and Mr. CORNYN):

S. 612. A bill to amend section 552(b)(3) of title 5, United States Code (commonly referred to as the Freedom of Information Act) to provide that statutory exemptions to the disclosure requirements of that Act shall specifically cite to the provision of that Act authorizing such exemptions, to ensure an open and deliberative process in Congress by providing for related legislative proposals to explicitly state such required citations, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, this week, our Nation celebrates Sunshine Week—a time to recognize and promote openness in our Government. At this important time of year, I am pleased to join with Senator CORNYN to reintroduce the OPEN FOIA Act—a bipartisan bill to promote more openness regarding statutory exemptions to the Freedom of Information Act, FOIA.

This bipartisan bill builds upon the work that Senator CORNYN and I began several years ago to reinvigorate and strengthen FOIA. Together, we introduced, and Congress ultimately enacted, the OPEN Government Act—the first major reforms to FOIA in more than a decade. I thank Senator CORNYN for his work and leadership on this important issue. I also thank President Obama—who was a cosponsor of the OPEN Government Act when he was in the Senate—for his deep commitment to FOIA. President Obama clearly demonstrated his commitment to open Government when he issued a new directive to strengthen FOIA during his first full day in office.

The OPEN FOIA Act simply requires that when Congress provides for a statutory exemption to FOIA in new legislation, Congress must state its intention to do so explicitly and clearly. This commonsense bill mirrors bipartisan legislation that the Judiciary Committee favorably reported, and the Senate unanimously passed, during the 109th Congress, S. 1181. While no one can fairly question the need to keep certain Government information secret to ensure the public good, excessive Government secrecy is a constant temptation and the enemy of a vibrant democracy.

For more than four decades, FOIA has served as perhaps the most important Federal law to ensure the public's right to know, and to balance the Government's power with the need for Government accountability. The Freedom of Information Act contains a number of exemptions to its disclosure requirements for national security, law enforcement, confidential business information, personal privacy and other circumstances. The FOIA exemption commonly known as the ''(b)(3) exemption,'' requires that Government records that are specifically exempted from FOIA by statute be withheld from the public. In recent years, we have witnessed an alarming number of FOIA (b)(3) exemptions being offered in legislation—often in very ambiguous terms—to the detriment of the American public's right to know.

The bedrock principles of open Government lead me to believe that (b)(3) statutory exemptions should be clear and unambiguous, and vigorously debated before they are enacted into law. Too often, legislative exemptions to FOIA are buried within a few lines of very complex and lengthy bills, and these new exemptions are never debated openly before becoming law. The consequence of this troubling practice is the erosion of the public's right to know, and the shirking of Congress' duty to fully consider these exemptions.

The OPEN FOIA Act will help stop this practice and shine more light on the process of creating legislative exemptions to FOIA. That will be the best antidote to the ''exemption creep'' that we have witnessed in recent years.

When he recently addressed a joint session of the Congress and the American people, President Obama said that ''I know that we haven't agreed on every issue thus far, and there are surely times in the future when we will part ways. But, I also know that every American who is sitting here tonight loves this country and wants it to succeed. That must be the starting point for every debate we have in the coming months, and where we return after those debates are done.''

Sunshine Week reminds all of us that open Government is not a Democratic issue, nor a Republican issue. It is an American issue and a virtue that all Americans can embrace. Democratic and Republican Senators alike have rightly supported and voted for this bill in the past. It is in this same bipartisan spirit that I urge all Members to support this bipartisan FOIA reform bill.

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 placed in the RECORD, as follows:

S. 612

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 ''OPEN FOIA Act of 2009''.

SEC. 2. SPECIFIC CITATIONS IN STATUTORY EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

''(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

''(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

''(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.''.

By Mrs. HUTCHISON (for herself, Ms. MIKULSKI, Mrs. FEINSTEIN, Ms. LANDRIEU, Ms. STABENOW, Mrs. LINCOLN, Mrs. MURRAY, Ms. COLLINS, Ms. SNOWE, Mrs. BOXER, Mrs. GILLIBRAND, Mrs. SHAHEEN, Ms. MURKOWSKI, Ms. KLOBUCHAR, Mrs. HAGAN, Ms. CANTWELL, and Mrs. MCCASKILL):

S. 614. A bill to award a Congressional Gold Medal to the Women Airforce Service Pilots (''WASP''); to the Committee on Banking, Housing, and Urban Affairs.

Mrs. HUTCHISON. Mr. President, I rise today to introduce a bill that is sponsored by every woman in the Senate. All 17 of us have come together to introduce legislation to award the Congressional Gold Medal to the Women Airforce Service Pilots, called the WASP. Senator MIKULSKI and I are taking the lead on this with the other 15 women Senators to finally honor over 1,000 of the bravest, most courageous women in U.S. military history.

This is a picture of those brave World War II pilots. They were the first women in history to fly America's military aircraft. Between 1942 and 1944, they were recruited to fly noncombat missions so every available male pilot could be deployed in combat.

The women pilots who graduated from Army Air Force flight training earned their silver WASP wings in Texas. The first class graduated at Ellington Field in Houston and the remaining classes from Avenger Field in Sweetwater, TX.

Throughout their service, these courageous women flew over 60 million miles in every type of aircraft and on every type of mission flown by Army Air Force male pilots except direct combat missions. Although they took the military oath and were promised military status when they entered training, they were never afforded Active-Duty military status, were never commissioned, and were not granted veteran status until 1977, over 30 years after they had served. All these women volunteered to serve their country in wartime. They paid their own way to Texas for training, and when victory seemed certain and the program was shut down, they paid their own way back home.

Over 25,000 women applied for the program, but only 1,830 qualified women pilots were accepted. Unlike the males, females were required to be qualified pilots before they could even apply for the Army Air Force's military flight training program. By the time the war ended, 38 women pilots had lost their lives while flying for their country. Their families were not allowed to have an American flag placed on their coffins.

I wrote about the WASP in my 2004 book, ''American Heroines: The Spirited Women Who Shaped Our Country.'' I wanted to raise public awareness about these military pioneers who have had a tremendous impact on the role of women in the military today. Their examples paved the way for the Armed Forces to lift the ban on women attending military flight training in the 1970s and opened the door for women to be fully integrated as pilots in the Armed Forces.

Today, women fly every type of aircraft, from combat fighter aircraft to the space shuttle. However, despite their cultural impact, the WASP have never received honors, nor have they been formally recognized by Congress for their wartime military service—until now. We, the women of the Senate, are introducing legislation to award the Congressional Gold Medal to the courageous WASP of World War II.

The Congressional Gold Medal is the highest and most distinguished award this body can award to a civilian. These women are certainly worthy.

There are precedents for this action. In 2000 and 2006, this body awarded the Congressional Gold Medal to the Navajo Code Talkers and the Tuskegee Airmen, respectively. Those heroes deserved the same type of distinction, and they, too, served in World War II and were finally appropriately honored by their Government. Now it is time for Congress to celebrate the courage of another group of remarkable Americans who served with courage and honor and whose example brought historic change to our Nation. Of the 1,102 WASP, approximately 300 are still alive today and are living in almost every State of our Nation. They have earned this honor, and the time to bestow the honor is now before any of them are away from us and not able to come to the ceremony which I hope we will have.

I am so pleased that every female Senator, all 17 of us, are cosponsors of this bill, and I hope the rest of our colleagues will also join and that we can pass this bill expeditiously.

I would like to take a moment, with this wonderful picture in the background, to read from the bill that we have just introduced today:

Congress finds that—

(1) the Women Airforce Service Pilots of WWII, known as the ''WASP'', were the first women in history to fly American military aircraft;

(2) more than 60 years ago, they flew fighter, bomber, transport, and training aircraft in defense of America's freedom;

(3) they faced overwhelming cultural and gender bias against women in nontraditional roles and overcame multiple injustices and inequities in order to serve their country;

(4) through their actions, the WASP eventually were the catalyst for revolutionary reform in the integration of women pilots into the Armed Services;

(5) during the early months of World War II, there was a severe shortage of combat pilots;

(6) Jacqueline Cochran, America's leading woman pilot of the time, convinced General Hap Arnold, Chief of the Army Air Forces, that women, if given the same training as men, would be equally capable of flying military aircraft and could then take over some of the stateside military flying jobs, thereby releasing hundreds of male pilots for combat duty;

(7) the severe loss of male combat pilots made the necessity of utilizing women pilots to help in the war effort clear to General Arnold, and a women's pilot training program was soon approved;

(8) it was not until August, 1943, that the women aviators would receive their official name;

(9) General Arnold ordered that all women pilots flying military aircraft, including 28 civilian women ferry pilots, would be named ''WASP'', Women Airforce Service Pilots;

(10) more than 25,000 American women applied for training, but only 1,830 were accepted and took the oath;

(11) exactly 1,074 of those trainees successfully completed the 21 to 27 weeks of Army Air Force flight training, graduated, and received their Army Air Force orders to report to their assigned air base;

(12) on November 16, 1942, the first class of 29 women pilots reported to the Houston, Texas Municipal Airport and began the same military flight training as the male Army Air Force cadets were taking;

(13) due to a lack of adequate facilities at the airport, 3 months later the training program was moved to Avenger Field in Sweetwater, Texas;

(14) WASP were eventually stationed at 120 Army air bases all across America;

(15) they flew more than 60,000,000 miles for their country in every type of aircraft and on every type of assignment flown by the male Army Air Force pilots, except combat;

(16) WASP assignments included test piloting, instructor piloting, towing targets for air-to-air gunnery practice, ground-to-air anti-aircraft practice, ferrying, transporting personnel and cargo (including parts for the atomic bomb), simulated strafing, smoke laying, night tracking, and flying drones;

In October 1943, male pilots were refusing to fly the B–26 Martin Marauder, known as the Widowmaker, because of its fatality record. General Arnold ordered WASP director Jacqueline Cochran to collect 25 WASP to be trained to fly the B–26 to prove to the male pilots that it was safe to fly.

During the existence of the WASP, 38 women lost their lives while serving their country. Their bodies were sent home in poorly crafted pine boxes. Their burial was at the expense of their families or classmates. There were no gold stars allowed in their parent's windows, and because they were not considered military, no American flags were allowed on their coffins.

In 1944, General Arnold made a personal request to Congress to militarize the WASP, and it was denied.

On December 7, 1944, in a speech to the last graduating class of WASP, General Arnold said:

You and more than 900 of your sisters have shown you can fly wingtip to wingtip with your brothers. I salute you . . . We of the Army Air Force are proud of you. We will never forget our debt to you.

With victory in World War II almost certain, on December 2, 1944, the WASP

were quietly and unceremoniously disbanded. There were no honors, no benefits, and very few thank-yous. Just as they had paid their own way to enter training, they paid their way back home.

After their honorable service in the military, the WASP military records were immediately sealed, stamped ''classified'' or ''secret,'' and filed away in Government archives unavailable to the historians who wrote the history of World War II or the scholars who compiled the history textbooks used today, with many of the records not being declassified until the 1980s. Consequently, the WASP story is a missing chapter in the history of the Air Force, the history of aviation, and the history of the United States of America.

In 1977, 33 years after the WASP were disbanded, the Congress finally voted to give the WASP the veteran status they had earned, but these heroic pilots were not invited to the signing ceremony at the White House, and it was not until 7 years later that their medals were delivered in the mail in plain brown envelopes.

In the late 1970s, more than 30 years after the WASP flew in World War II, women were finally permitted to attend military pilot training in the U.S. Armed Forces. Thousands of women aviators flying support aircraft had benefited from the service of the WASP and followed in their footsteps.

In 1993, the WASP were once again referenced during congressional hearings regarding the contributions women could make to the military, which eventually led to women being able to fly military fighter, bomber, and attack aircraft in combat. Hundreds of U.S. servicewomen combat pilots have seized the opportunity to fly fighter aircraft in recent conflicts, all thanks to the pioneering steps taken by the WASP.

The WASP have maintained a tight-knit community, forged by the common experiences of serving their country during war. As part of their desire to educate America on the WASP history, WASP have assisted Wings Across America, an organization dedicated to educating the American public, with much effort aimed at children, about the remarkable accomplishments of these World War II veterans, and they have been honored with exhibits at museums throughout our country.

Now it is time to give these incredible women pioneers the Congressional Gold Medal, who, along with the Tuskegee Airmen and the Navajo Code Talkers, are people who have served with courage and valor to our country, and they are people who really have not complained. They are people who did their duty, even with some discrimination in the Armed Forces. But they were never bitter, and they always knew what a service they had given. We have now honored the Navajo Code Talkers and the great Tuskegee Airmen, and I hope we will also accord the greatest honor we can bestow as a Congress to the WASP of World War II.

Ms. MIKULSKI. Mr. President, I rise today as an original cosponsor of a bipartisan bill to award the Congressional Gold Medal to the Women Airforce Service Pilots—the WASP. We are introducing this bill in March, which is Women's History Month. It is time to honor and recognize women who have made a difference in our Nation's history. It is a time to honor women who serve as role models. That is exactly what this legislation does.

The WASP were women pilots from across the Nation who volunteered to serve in World War II. They flew America's military aircraft during the war, risking their lives in the service of their nation. They came from all walks of life, but they came together to serve our country as the first women trained to fly American military aircraft. They faced overwhelming cultural and gender bias, received unequal pay, did not have full military status, and were barred from becoming military officers, even though their male counterparts performing similar duties all received officer rank.

In 1943, General Arnold combined two women flying organizations and formed the Women Airforce Service Pilots. Within months, these women paid their own way to Texas to enter training. Each woman was already a licensed pilot, a requirement not imposed on men to apply to flight school. The WASP were still required to learn to fly ''the Army way.''

The WASP were assured they would be militarized and become part of the Army. These promise were not kept. The WASP took the same oath of office, they marched, but as pilots, they received less pay than men. They did not receive benefits. No VA benefits, no GI bill, no burial rights for the 38 WASP who were killed in service to our Nation. Fellow WASP had to ''take the nickels out of the Coke machine'' to help send their bodies home.

Over 25,000 women applied to be part of the war effort in the WASP. Many volunteers received a telegram asking for their service. Ultimately, 1102 women earned their wings as pilots. Thirteen of these brave women were from Maryland: women like Barbara Shoemaker, who joined from the Women's Auxiliary Flying Squadron; Elaine Harmon, who as a WASP trained male pilots in instrument flying; Iola Magruder, who flew the B–18 ''Bolo''; Jane Tedeschi, who stretched all night before joining the WASP so she could meet the minimum height requirement; and Florence Marston, who flew the B–26 ''Widowmaker,'' notorious for its number of early accidents.

These brave women flew over 60 million miles in 2 years. They flew every type of aircraft and every type of mission as the men, except combat missions. They towed aerial targets while being shot at with live ammunition. They transported cargo. They tested repaired aircraft. They ferried aircraft from factories like Fairchild in Hagerstown, MD, to points across the country. They were stationed at 120 air bases throughout the country.

The WASP were not established to be a replacement for the men; instead, they enabled men to fly the combat missions. They found and fulfilled the service they could. These women were committed and they believed they could do what our country needed at the time we needed it.

The WASP were disbanded in December 1944, when they were told they were ''no longer needed.'' Just as they paid for transport to training, they paid their own way home. For 33 years their military records were classified. For 33 years, their contributions were hidden from historians and textbooks. For 33 years, these brave women were denied veterans benefits.

These women were trailblazers. They displayed honor and courage and flew the most complex aircraft of the age. They are patriots. They are an inspiration to today's women in aviation. They opened the door for today's women to fly in the military in aircraft ranging from cargo and trainers, to fighters and bombers, and even the space shuttle. They inspire young girls to pursue technical fields and aviation. They are role models who deserve to be honored. We owe the WASP our ''thank you''—not in words, but in deeds. For their courage, service and dedication to our Nation, they deserve the most distinguished honor Congress can give: the Congressional Gold Medal.

By Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. COBURN, Mr. LEVIN, Mr. GRASSLEY, Mrs. MCCASKILL, Mr. MCCAIN, and Mr. VOINOVICH):

S. 615. A bill to provide additional personnel authorities for the Special Inspector General for Afghanistan Reconstruction; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I am pleased to introduce today, along with Senators LIEBERMAN, COBURN, LEVIN, GRASSLEY, MCCASKILL, MCCAIN, and VOINOVICH, a bill that will provide the Special Inspector General for Afghanistan Reconstruction, SIGAR, with the authority it needs to quickly hire experienced, well-qualified staff to conduct rigorous oversight of reconstruction efforts in Afghanistan.

The United States has provided approximately $32 billion in humanitarian and reconstruction assistance to Afghanistan since 2001. Congress created the SIGAR in the fiscal year 2008 National Defense Authorization Act to conduct and oversee independent and objective audits, inspections, and investigations relating to these funds.

Although the SIGAR was sworn into office on July 22, 2008, the office has not yet conducted any independent audits or investigations. The SIGAR has filed two quarterly reports, but both of those reports were descriptive in nature and reviewed the work of other oversight entities.

Staffing shortages have constrained the SIGAR's oversight efforts. Although authorized a total of 18 auditors, 13 inspectors, and three investigators, SIGAR had only five auditors, two inspectors, and one investigator as of last week.

SIGAR's efforts to quickly hire experienced staff have been hindered by the often long and difficult government hiring process. The office's hiring needs are further complicated by the challenging task of recruiting well-qualified staff willing to spend a year in a dangerous environment.

The bill that we introduce today will provide the SIGAR with the authority to select, appoint, and employ the staff needed to perform effective oversight of Afghanistan reconstruction efforts. The authority is similar to that provided to other government ''temporary organizations.'' The legislation will allow SIGAR to identify and quickly hire candidates, avoiding the bureaucratic hurdles that beset the normal civil service hiring process. Employees hired under this new authority can serve until the termination of the SIGAR's office.

The Special Inspector General for Iraq Reconstruction, which served as the model for the legislation to create the SIGAR, faced comparable hiring challenges. This bill contains hiring authority similar to that provided to the SIGIR so that office could quickly hire experienced staff.

With his staff, the SIGIR has been successful in providing thorough oversight of reconstruction efforts in Iraq. Since 2004, the SIGIR has produced 20 quarterly reports, 135 audits, 141 inspections, and 4 ''lessons-learned'' reports. SIGIR's oversight work has saved or recovered more than $81 million in U.S. taxpayer funds and has put $224 million to better use.

If the SIGAR would have had this authority from the office's inception, it likely would be much further along in conducting its oversight work. We expect that once the SIGAR can quickly hire the skilled and experienced auditors and investigators it needs, the office's oversight activities will greatly increase.

I urge every Senator to support this constructive and bipartisan bill.

By Mr. HARKIN:

S. 618. A bill to improve the calculation of, the reporting of, and the accountability for, secondary graduation rates; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, this past fall our Nation's high school graduation class of 2012 took their first steps into their local high school as freshmen. The best research, based on data from all 50 States, tells us that one third of that class of freshmen will not walk across a stage and receive their diploma with their peers in four years.

The numbers are clear: we face a national high school dropout crisis. Every year, an estimated 1.23 million students drop out of high school. To put that number in perspective, it is equivalent to the entire population of the ninth largest city in the country, Dallas.

The President laid out the crisis we face in his February 24 address to Congress:

''In a global economy where the most valuable skill you can sell is your knowledge, a good education is no longer just a pathway to opportunity—it is a prerequisite.''

''Right now, three-quarters of the fastest-growing occupations require more than a high school diploma. And yet, just over half of our citizens have that level of education. We have one of the highest high school dropout rates of any industrialized nation.''

By any measure, my home state of Iowa is a national leader in terms of graduating students in four years. According to Education Week's Diplomas Count, Iowa has the second highest graduation rate in the country, at almost 83 percent for the class of 2005. Iowa should be applauded for continually graduating such a high percentage of its students in spite of the challenges present in many rural and low-income school districts.

Yet such a lofty number masks a pervasive inability to graduate African-American and Latino students on a level equal to their peers. The graduation rate for African-American children in Iowa is 25 points below the overall 4-year rate. The discrepancy between the rate of Latino children graduating in four years and their peers' rate is even higher at 30 percent.

Just as the data on racial and ethnic minorities paints a grim picture, a look into the Nation's graduation rates for students with disabilities shows many students continue to be failed by the system. The most recent data indicates that slightly more than half of all students with disabilities graduated from high school with a regular diploma. Those rates go down when examining different categories of students with disabilities. For instance, only 43 percent of students with emotional disturbances graduate from high school with a regular diploma. Bear in mind that many of these students do not have a learning disability, and with the proper supports and interventions they can achieve at the same levels expected of their peers.

To reiterate, States like Iowa should be lauded for their success in graduating so many of their young people from high school in four years, but we must also hold those states accountable for their success or failure with vulnerable populations, or we are doomed to pay the price, both morally and economically. That is why I was proud to introduce the Every Student Counts Act last September, and why I am here to reintroduce this legislation in the Senate today.

Since I introduced the first Every Student Counts Act, the Department of Education has taken laudable action to implement a 4-year high school graduation rate through regulations issued last October.

However, the Department's action was not enough to address this crisis. The regulation leaves the specifics of the graduation rate goals and growth targets, and how to calculate Adequate Yearly Progress up to the States. In doing so, the Department indicated that it was more appropriate for Congress to define graduation rate goals, growth targets, and adequate yearly progress through statute. The Every Student Counts Act is designed to do just that.

Because if we do not set clear, consistent, and high graduation rate goals, with aggressive and attainable graduation rate growth targets, we risk falling into the same trap of mediocrity and flat graduation rates that have led us to this crisis.

Schools, school districts and States that are not already graduating a high number of students must be required to make annual progress to high graduation rates.

This act sets a graduation rate goal of 90 percent for all students and disadvantaged populations. Schools, districts and States with graduation rates below 90 percent, in the aggregate or for any subgroup, will be required to increase their graduation rates an average of 3 percentage points per year in order to make adequate yearly progress required under the No Child Left Behind Law.

In addition to setting high standards for graduation rates, the Every Student Counts Act will also make graduation rate calculations uniform and accurate. The bill requires that all states calculate their graduation rates in the same manner, allowing for more consistency and transparency. This bill will bring all 50 States together by requiring each State to report both a 4-year graduation rate and a cumulative graduation rate. A cumulative graduation rate will give parents a clear picture of how many students are graduating, while acknowledging that not all children will graduate in four years.

Before I conclude my remarks, I would like to recognize the work of my colleague in the House, Representative BOBBY SCOTT of Virginia, who first sought to address this issue last year and today joins with me in reintroducing the Every Student Counts Act.

I would also like to thank the growing list of organizations representing the interests of children across the country who have signed on to support the Every Student Counts Act. Specifically, I recognize the Alliance for Excellent Education and their President, former Governor of West Virginia Bob Wise, who have been champions in the movement to improve our high schools and turn back the dropout crisis.

We have no more urgent educational challenge than bringing down the dropout rate, especially for minorities and children with disabilities. For reasons we all understand—poverty, poor nutrition, broken homes, disadvantage

childhoods—not all of our students come to school everyday ready to learn. In some cases, it is as though they have been set up to fail. They grow frustrated. They drop out. And, as a result, they face a lifetime of fewer opportunities and lower earnings. Economically, our nation cannot afford to lose one million students each year. Morally, we cannot allow children to continue to fall through the cracks. I believe the Every Student Counts Act puts us on the right track towards turning back the tide of high school dropouts and I ask my colleagues to support this legislation.

Mr. President, I ask unanimous consent that a letter of support be printed in the RECORD.

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

MARCH 11, 2009.

DEAR SENATOR HARKIN AND REPRESENTATIVE SCOTT: We, the undersigned education, civil rights, and advocacy organizations thank you for introducing the Every Student Counts Act to ensure meaningful accountability for the graduation rates of our nation's students. As you know, educators and policymakers at all levels of government agree that change is necessary on this issue.

Only 70 percent of our nation's students graduate with a regular diploma. Worse, just over half of African American and Hispanic students graduate on time. Special education students also have graduation rates of just over 50 percent. Such poor graduation rates are untenable in a global economy that demands an educated workforce. According to the Department of Labor, 90 percent of the fastest-growing and best-paying jobs in the United States require at least some postsecondary education. It is imperative that the nation's schools prepare their students to succeed in the twenty-first-century workforce.

The No Child Left Behind Act (NCLB) has focused the nation's attention on the unacceptable achievement gap and the need to improve outcomes for all students, particularly minority students, English language learners, and students with disabilities. However, NCLB does not place enough importance on graduating the nation's high school students; this fact—combined with weak state action in this area—has given states, districts, and schools little incentive to improve their graduation rates. As a response, the Secretary of Education released regulations that created a uniform high school graduation rate calculation and ensured that improving high school graduation rates for all schools is part of the federal accountability system. Although the regulations are a laudable step in the right direction, we believe that the Every Student Counts Act is a better approach to graduation rate accountability because it provides clear and high expectations for graduation rate goals and growth.

The Every Student Counts Act would:

Require a consistent and accurate calculation of graduation rates across all fifty states and the District of Columbia to ensure comparability and transparency;

Require that graduation rate calculations be disaggregated for both accountability and reporting purposes to ensure that school improvement activities focus on all students and close achievement gaps;

Ensure that graduation rates and test scores are treated equally in Adequate Yearly Progress (AYP) determinations;

Require aggressive, attainable, and uniform annual growth targets as part of AYP to ensure consistent increases in graduation rates for all schools;

While maintaining the expectation that most students will graduate in four years, recognize that a small number of students take longer than four years to graduate and give credit to schools, school districts, and states for graduating those students; and

Provide incentives for schools, districts, and states to create programs to serve students who have already dropped out and are over-age or undercredited.

Again, we thank you for introducing the Every Student Counts Act and for your leadership on this critical issue.

Sincerely,

Alliance for Excellent Education.
American Association of University Women.
American Federation of the Blind.
American School Counselor Association
America's Promise Alliance.
Bazelon Center for Mental Health Law.
Council of Administrators of Special Education.
First Focus.
Journey Programs.
Knowledge Alliance.
Learning Disabilities Association of America.
Mexican American Legal Defense and Educational Fund.
National Association for the Education of Homeless Children and Youth.
National Association of Federally Impacted Schools.
National Association of School Psychologists.
National Association of Secondary School Principals.
National Association of State Boards of Education.
National Center for Learning Disabilities
National Collaboration for Youth.
National Council of La Raza.
National Education Association.
National Parent Teacher Association.
Project Grad USA.
Public Education Network.
School Social Work Association of America.
Teachers of English to Speakers of Other Languages.
United Way of America.
Youth Service America.

JOEL KLEIN,
Chancellor, New York City Public Schools.

By Mr. REID (for Mr. KENNEDY (for himself and Ms. SNOWE)):

S. 619. A bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases; to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOWE. Mr. President, today we face growing concerns about infectious disease which few could have anticipated. Over a half century ago, following the development of modern antibiotics, Nobel Laureate Sir McFarland Burnet summed up what many experts believed when he stated, ''One can think of the middle of the twentieth century as the end of one of the most important social revolutions in history, the virtual elimination of infectious diseases as a significant factor in social life''.

How things have changed! Today many of the world's greatest killers are infectious diseases—including HIV, tuberculosis, malaria—and increasingly our Nation is susceptible. We have concerns about both natural pandemics—such as those caused by influenza—as well as manmade threats.

At the same time that the threat has grown, we have seen an alarming trend as existing antibiotics are becoming less effective in treating infections. We know that resistance to drugs can be developed, and that the more we expose bacteria to antibiotics, the more resistance we will see. So it is critical to address preserving the lifesaving antibiotic drugs we have today so that they will be of use in treating disease when they are needed.

Today over 9 out of 10 Americans understand that resistance to antibiotics is a problem. Most Americans have learned that colds and flu are caused by viruses, and recognize that treating a cold with an antibiotic is inappropriate. Our health care providers are more careful to discriminate when to use antibiotics, because they know that when a patient who has been inappropriately prescribed an antibiotic actually develops a bacterial infection, it is more likely to be resistant to treatment.

When we overuse antibiotics, we risk eliminating the very cures which scientists fought so hard to develop. The threat of bioterrorism amplifies the danger. We have supported increased NIH research funding, as well as bioshield legislation, in order to promote development of essential drugs, both to address natural and manmade threats. It is so counterproductive to develop antimicrobial drugs and see their misuse render them ineffective.

Yet every day in America antibiotics continue to be used in huge quantities when there is no disease present to treat. I am speaking of the nontherapeutic use of antibiotics in agriculture. Simply put, the practice of feeding antibiotics to healthy animals jeopardizes the effectiveness of these medicines in treating ill people and animals.

Recognizing the public health threat caused by antibiotic resistance, Congress in 2000 amended the Public Health Threats and Emergencies Act to curb antibiotic overuse in human medicine. Yet today, it is estimated that 70 percent of the antimicrobials used in the United States are fed to farm animals for nontherapeutic purposes including growth promotion, poor management practices and crowded, unsanitary conditions.

In March 2003, the National Academies of Sciences stated that a decrease in antimicrobial use in human medicine alone will not solve the problem of drug resistance. Substantial efforts must be made to decrease inappropriate overuse of antibiotics in animals and agriculture.

Four years ago five major medical and environmental groups—the American Academy of Pediatrics, the American Public Health Association, Environmental Defense, the Food Animal Concerns Trust and the Union of Concerned Scientists—jointly filed a formal regulatory petition with the U.S. Food and Drug Administration urging the agency to withdraw approvals for

seven classes of antibiotics which are used as agricultural feed additives. They pointed out what we have known for years—that antibiotics which are crucial to treating human disease should never be used except for their intended purpose—to treat disease.

In a study reported in the New England Journal of Medicine, researchers at the Centers for Disease Control and Prevention found 17 percent of drug-resistant staph infections had no apparent links to health-care settings. Nearly one in five of these resistant infections arose in the community—not in the health care setting. While must do more to address inappropriate antibiotic use in medicine, the use of these drugs in our environment cannot be ignored.

Most distressingly, we have seen the USDA issue a fact sheet on the recently recognized link between antimicrobial drug use in animals and the methicillin resistant staphylococcus aureas, MRSA, infections in humans. These infections literally threaten life and limb!

So it should be clear why I have joined with Senator KENNEDY in again introducing the Preservation of Antibiotics for Medical Treatment Act. Senator KENNEDY is truly a champion of public health and understands how critical it is to preserve the drugs we must have in our arsenal to combat infectious diseases. I am honored to join with him in an effort to preserve vital drugs and reduce the development of drug-resistant organisms which threaten human health.

This bill phases out the nontherapeutic uses of critical medically important antibiotics in livestock and poultry production, unless their manufacturers can show that they pose no danger to public health.

Our legislation requires the Food and Drug Administration to withdraw the approval for nontherapeutic agricultural use of antibiotics in food-producing animals if the antibiotic is used for treating human disease, unless the application is proven harmless within 2 years. The same tough standard of safety will apply to new applications for approval of animal antibiotics.

This legislation places no unreasonable burden on producers. It does not restrict the use of antibiotics to treat sick animals, or for that matter to treat pets and other animals not used for food.

As we are constantly reminded, the discovery and development of a new drug can require great time and expense. It is simply common sense that we preserve the use of the drugs which we already have, and use them appropriately. I call on my colleagues to support us in this effort.

By Mr. REID (for himself, Mr. DURBIN, Mr. SCHUMER, Mrs. MURRAY, Mr. DORGAN, Mr. DODD, Mr. VITTER, and Mr. FEINGOLD):

S. 620. A bill to repeal the provision of law that provides automatic pay adjustments for Members of Congress; considered and passed.

Mr. REID. 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 placed in the RECORD, as follows:

S. 620

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

SECTION 1. ELIMINATION OF AUTOMATIC PAY ADJUSTMENTS FOR MEMBERS OF CONGRESS.

(a) IN GENERAL.—Paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 601(a)(1) of such Act is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)'';

(2) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(3) by striking ''as adjusted by paragraph (2) of this subsection'' and inserting ''adjusted as provided by law''.

(c) EFFECTIVE DATE.—This section shall take effect on December 31, 2010.

By Mr. DURBIN (for himself and Mr. COCHRAN):

S. 621. A bill to amend the Public Health Service Act to coordinate Federal congenital heart disease research efforts and to improve public education and awareness of congenital heart disease, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, I rise to speak on legislation I am introducing today that relates to congenital heart disease research. Congenital heart disease is a rapidly growing national health problem. Congenital heart defects are the most common and most deadly form of birth defects, affecting nearly 1 percent of births, approximately 36,000 a year. In fact, a child is born with a congenital heart defect every 15 minutes. A congenital heart defect occurs when heart structures are malformed, missing or in the wrong place. There are over 30 types of congenital heart defects. These defects cause congenital heart disease—cardiovascular problems caused by the birth defect.

The good news is that modern medicine has made major advances in treating heart defects in newborns. In 1950, a child born with a congenital heart defect only had a 20 percent chance of surviving, but today that number has increased to 90 percent. Due to the increase in childhood survival rates, the congenital heart disease population increases by an estimated 5 percent every year.

However, the bad news is that there is no cure for congenital heart disease. Even survivors of successful childhood intervention face lifelong risks, including heart failure, rhythmic disorders, stroke, renal dysfunction, and neurocognitive dysfunction. Sadly, the estimated life expectancy for those with congenital heart disease is significantly lower than for the general population. The life expectancy for those born with moderately complex heart defects is 55, while the estimated life expectancy for those born with highly complex defects is between 35 and 40.

Unfortunately, fewer than 10 percent of adults living with complex congenital heart disease currently receive the cardiac care they need, and many don't know that they should have lifelong specialized health surveillance. Even with access to the best care, living with congenital heart disease involves risk. But for people who don't have the medical care or who don't have it promptly, the risks of premature death or disability are much higher.

In 2004, the National Heart, Lung, and Blood Institute convened a working group on congenital heart disease. This group recommended developing a research network for clinical research, establishing a national database of patients, and creating an outreach education program on the need for continued cardiac care.

Today, I am pleased to introduce the Congenital Heart Futures Act, which builds on these recommendations in several ways. First, the legislation authorizes the Centers for Disease Control and Prevention, CDC, to lead a comprehensive public education and awareness campaign around congenital heart disease. Next, it authorizes a National Congenital Heart Disease Registry at the CDC to track the epidemiology of congenital heart disease and creates an advisory committee to provide expert information and advice to CDC. And, finally, it authorizes congenital heart disease research through NHLBI.

Despite the prevalence and seriousness of congenital heart disease, research, data collection, education, and awareness are limited. The Congenital Heart Futures Act will help prevent premature death and disability in this rapidly growing but dramatically underserved population.

I say to those who are interested in promoting health research, this is an area where we can expend more effort and save more lives. I hope my colleagues will take a look at this legislation which we are introducing today and join me in cosponsoring it.

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

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

S. 621

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 ''Congenital Heart Futures Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Congenital heart defects are the most common and most deadly group of birth defects and affect nearly 1 percent of all live

births, approximately 36,000 births a year. A child is born with a congenital heart defect every 15 minutes.

(2) Congenital heart disease is a rapidly-growing national health problem. Childhood survival has risen from below 20 percent in 1950 to more than 90 percent today. Due to the increase in childhood survival, the congenital heart disease population increases by an estimated 5 percent every year.

(3) Approximately 800,000 children and 1,000,000 adults in the United States are now living with congenital heart disease and require highly-specialized life-long cardiac care.

(4) There is no cure for congenital heart disease. Even survivors of successful childhood treatment can face life-long risks from congenital heart disease, including heart failure, rhythmic disorders, stroke, renal dysfunction, and neurocognitive dysfunction.

(5) Less than 10 percent of adults living with complex congenital heart disease currently receive recommended cardiac care. Many individuals with congenital heart disease are unaware that they require life-long specialized health surveillance. Delays in care can result in premature death and disability.

(6) The estimated life expectancy for those with congenital heart disease is significantly lower than for the general population. The life expectancy for those born with moderately complex heart defects is 55, while the estimated life expectancy for those born with highly complex defects is between 35 and 40.

(7) Despite the prevalence and seriousness of the disease, Federal research, data collection, education, and awareness activities are limited.

(8) The strategic plan of the National Heart, Lung, and Blood Institute completed in 2007 notes that ''successes over several decades have enabled people with congenital heart diseases to live beyond childhood, but too often inadequate data are available to guide their treatment as adults''.

(9) The strategic plan for the Division of Cardiovascular Diseases at the National Heart, Lung and Blood Institute, completed in 2008, set goals for congenital heart disease research, including understanding the development and genetic basis of congenital heart disease, improving evidence-based care and treatment of children with congenital and acquired pediatric heart disease, and improving evidence-based care and treatment of adults with congenital heart disease.

SEC. 3. PUBLIC EDUCATION AND AWARENESS OF CONGENITAL HEART DISEASE.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

''PART S—PROGRAMS RELATING TO CONGENITAL HEART DISEASE

''SEC. 399HH. PUBLIC EDUCATION AND AWARENESS OF CONGENITAL HEART DISEASE.

''(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with appropriate congenital heart disease patient organizations and professional organizations, may directly or through grants, cooperative agreements, or contracts to eligible entities conduct, support, and promote a comprehensive public education and awareness campaign to increase public and medical community awareness regarding congenital heart disease, including the need for life-long treatment of congenital heart disease survivors.

''(b) ELIGIBILITY FOR GRANTS.—To be eligible to receive a grant, cooperative agreement, or contract under this section, an entity shall be a State or private nonprofit entity and shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.''.

SEC. 4. NATIONAL CONGENITAL HEART DISEASE REGISTRY.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 3, is further amended by adding at the end the following:

''SEC. 399II. NATIONAL CONGENITAL HEART DISEASE REGISTRY.

''(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may—

''(1) enhance and expand infrastructure to track the epidemiology of congenital heart disease and to organize such information into a comprehensive, nationwide registry of actual occurrences of congenital heart disease, to be known as the 'National Congenital Heart Disease Registry'; or

''(2) award a grant to one eligible entity to undertake the activities described in paragraph (1).

''(b) PURPOSE.—The purpose of the Congenital Heart Disease Registry shall be to facilitate further research into the types of health services patients use and to identify possible areas for educational outreach and prevention in accordance with standard practices of the Centers for Disease Control and Prevention.

''(c) CONTENT.—The Congenital Heart Disease Registry—

''(1) may include information concerning the incidence and prevalence of congenital heart disease in the United States;

''(2) may be used to collect and store data on congenital heart disease, including data concerning—

''(A) demographic factors associated with congenital heart disease, such as age, race, ethnicity, sex, and family history of individuals who are diagnosed with the disease;

''(B) risk factors associated with the disease;

''(C) causation of the disease;

''(D) treatment approaches; and

''(E) outcome measures, such that analysis of the outcome measures will allow derivation of evidence-based best practices and guidelines for congenital heart disease patients; and

''(3) may ensure the collection and analysis of longitudinal data related to individuals of all ages with congenital heart disease, including infants, young children, adolescents, and adults of all ages, including the elderly.

''(d) COORDINATION WITH FEDERAL, STATE, AND LOCAL REGISTRIES.—In establishing the National Congenital Heart Registry, the Secretary may identify, build upon, expand, and coordinate among existing data and surveillance systems, surveys, registries, and other Federal public health infrastructure, including—

''(1) State birth defects surveillance systems;

''(2) the State birth defects tracking systems of the Centers for Disease Control and Prevention;

''(3) the Metropolitan Atlanta Congenital Defects Program; and

''(4) the National Birth Defects Prevention Network.

''(e) PUBLIC ACCESS.—The Congenital Heart Disease Registry shall be made available to the public, including congenital heart disease researchers.

''(f) PATIENT PRIVACY.—The Secretary shall ensure that the Congenital Heart Disease Registry is maintained in a manner that complies with the regulations promulgated under section 264 of the Health Insurance Portability and Accountability Act of 1996.

''(g) ELIGIBILITY FOR GRANT.—To be eligible to receive a grant under subsection (a)(2), an entity shall—

''(1) be a public or private nonprofit entity with specialized experience in congenital heart disease; and

''(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.''.

SEC. 5. ADVISORY COMMITTEE ON CONGENITAL HEART DISEASE.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 4, is further amended by adding at the end the following:

''SEC. 399JJ. ADVISORY COMMITTEE ON CONGENITAL HEART DISEASE.

''(a) ESTABLISHMENT.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may establish an advisory committee, to be known as the 'Advisory Committee on Congenital Heart Disease' (referred to in this section as the 'Advisory Committee').

''(b) MEMBERSHIP.—The members of the Advisory Committee may be appointed by the Secretary, acting through the Centers for Disease Control and Prevention, and shall include—

''(1) at least one representative from—

''(A) the National Institutes of Health;

''(B) the Centers for Disease Control and Prevention; and

''(C) a national patient advocacy organization with experience advocating on behalf of patients living with congenital heart disease;

''(2) at least one epidemiologist who has experience working with data registries;

''(3) clinicians, including—

''(A) at least one with experience diagnosing or treating congenital heart disease; and

''(B) at least one with experience using medical data registries; and

''(4) at least one publicly- or privately-funded researcher with experience researching congenital heart disease.

''(c) DUTIES.—The Advisory Committee may review information and make recommendations to the Secretary concerning—

''(1) the development and maintenance of the National Congenital Heart Disease Registry established under section 399II;

''(2) the type of data to be collected and stored in the National Congenital Heart Disease Registry;

''(3) the manner in which such data is to be collected;

''(4) the use and availability of such data, including guidelines for such use; and

''(5) other matters, as the Secretary determines to be appropriate.

''(d) REPORT.—Not later than 180 days after the date on which the Advisory Committee is established and annually thereafter, the Advisory Committee shall submit a report to the Secretary concerning the information described in subsection (c), including recommendations with respect to the results of the Advisory Committee's review of such information.''.

SEC. 6. CONGENITAL HEART DISEASE RESEARCH.

Subpart 2 of part C of title IV of the Public Health Service Act (42 U.S.C. 285b et seq.) is amended by adding at the end the following:

''SEC. 425. CONGENITAL HEART DISEASE.

''(a) IN GENERAL.—The Director of the Institute may expand, intensify, and coordinate research and related activities of the Institute with respect to congenital heart disease, which may include congenital heart disease research with respect to—

''(1) causation of congenital heart disease, including genetic causes;

''(2) long-term outcomes in individuals with congenital heart disease, including infants, children, teenagers, adults, and elderly individuals;

''(3) diagnosis, treatment, and prevention;

''(4) studies using longitudinal data and retrospective analysis to identify effective treatments and outcomes for individuals with congenital heart disease; and

''(5) identifying barriers to life-long care for individuals with congenital heart disease.

''(b) COORDINATION OF RESEARCH ACTIVITIES.—The Director of the Institute may coordinate research efforts related to congenital heart disease among multiple research institutions and may develop research networks.

''(c) MINORITY AND MEDICALLY UNDERSERVED COMMUNITIES.—In carrying out the activities described in this section, the Director of the Institute shall consider the application of such research and other activities to minority and medically underserved communities.''.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the amendments made by this Act such sums as may be necessary for each of fiscal years 2010 through 2014.

By Mrs. FEINSTEIN (for herself, Mr. GREGG, Mr. BINGAMAN, Ms. COLLINS, Ms. CANTWELL, and Mr. MARTINEZ):

S. 622. A bill to ensure parity between the temporary duty imposed on ethanol and tax credits provided on ethanol; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Imported Ethanol Parity Act of 2009.

This legislation is cosponsored by Senators GREGG, BINGAMAN, COLLINS, CANTWELL and MARTINEZ.

First, let me explain what this bill does.

The Imported Ethanol Parity Act instructs the President to lower the secondary ethanol import tariff, so that tariffs on ethanol are no higher than the subsidy for blending ethanol into gasoline.

This would restore parity between the real tariff faced by imported gasoline and ethanol, which currently compete.

This legislation is necessary because last year's Farm Bill shifted the function of ethanol tariffs.

Historically, there has been relative parity between ethanol subsidies and ethanol tariffs. The tariffs served to ''offset'' domestic subsidies for ethanol use, thereby preventing imported ethanol from benefiting from domestic subsidies.

But after passage of the Farm Bill, these tariffs began to serve as a real barrier to trade.

The Farm Bill maintained the primary 2.5 percent tariff and extended the secondary tariff for two more years at $0.54 per gallon, creating a combined tariff of $0.56 to $0.59 per gallon, depending on the sale price. But the Farm Bill reduced the ethanol blending subsidy that these tariffs are intended to offset to $0.45 per gallon.

This disparity means that an ethanol importer pays more tariff than he gets back in subsidy, and parity has been lost.

Specifically, an ethanol importer pays $0.11 to $0.14 per gallon of tariff to the U.S. Treasury that he never gets back from the ethanol subsidy.

Ethanol is therefore disadvantaged when it competes directly with other imported transportation fuels, such as gasoline and diesel.

It increases the cost of gasoline in the United States by making ethanol more expensive.

It prevents Americans from importing ethanol made from sugarcane. Sugar ethanol is the only available transportation fuel that works in today's cars and emits considerably less lifecycle greenhouse gas than gasoline.

It taxes imported transportation fuel from our friends in Brazil, India, and Australia, while oil and gasoline imports from OPEC enter the United States tax free.

It hinders the emergence of a global biofuels marketplace through which countries with a strong biofuel crop could sell fuel to countries that suffered drought or other agricultural difficulties in the same crop year. Such a global market would permit mutually beneficial trade between producing regions and stabilize both fuel and food prices.

It makes us more dependent on the Middle East for fuel when we should be increasing the number of countries from whom we buy fuel. When it comes to energy security for the United States, which has less than 3 percent of proven global oil reserves and 25 percent of demand, we must diversify supply.

Bottom Line: Until the tariff is lowered, the United States will tax the only fuel it can import that increases energy security, reduces greenhouse gas emissions, and lowers gasoline prices.

This legislation responds to the Tariff's defenders.

In 2006 I introduced legislation to eliminate the ethanol tariff entirely, and in 2007 I cosponsored an amendment to the Energy Bill which would have eliminated the tariff.

The Imported Ethanol Parity Act is a different proposal that I believe addresses the concerns of tariff defenders.

The advocates of the $0.54 per gallon secondary tariff on ethanol imports have always argued that the tariff is necessary in order to offset the blender subsidy that applies to the use of all ethanol, whether produced domestically or internationally.

They argue that the ethanol subsidy exists to support American farmers who produce ethanol at higher cost than foreign producers. For instance, on May 6, 2006, the Chairman of the Senate Finance Committee stated on the Senate floor that, ''the U.S. tariff on ethanol operates as an offset to an excise tax credit that applies to both domestically produced and imported ethanol.''

On May 9, 2006, the Renewable Fuels Association stated in a press release: ''the secondary tariff exists as an offset to the tax incentive gasoline refiners receive for every gallon of ethanol they blend, regardless of the ethanol's origin.''

In a letter to Congress dated June 20, 2007, the American Coalition for Ethanol, the American Farm Bureau Federation, the National Corn Growers Association, the National Council of Farmer Cooperatives, the National Sorghum Producers, and the Renewable Fuels Association stated that the blender tax credit is available to refiners regardless of whether the ethanol blended is imported or domestic. To prevent U.S. taxpayers from subsidizing foreign ethanol companies, Congress passed an offset to the tax credit that foreign companies pay in the form of a tariff.

In 2008, the Renewable Fuels Association's Executive Director asserted that ''The tariff is there not so much to protect the industry but the U.S. taxpayer.''

I ask tariff advocates to either support this legislation or explain how a tariff can justifiably be higher than the subsidy it is designed to offset.

Bottom Line: Ethanol from Brazil or Australia should not have to overcome a trade barrier that no drop of OPEC oil must face. The tariffs cannot be justifiably maintained at $0.56–$0.59 per gallon if its intent is to offset a $0.45 per gallon blender subsidy, and it should be reduced.

Climate Change is the most significant environmental challenge we face, and I believe that lowering the ethanol tariff will make it less expensive for the United States to combat global warming.

Here is how: the fuel we burn to power our cars is a major source of the greenhouse gas emissions warming our planet. In California, it accounts for 40 percent of all of our emissions. To reduce this impact, we need to increase the fuel efficiency of our vehicles and lower the lifecycle carbon emissions of the fuel itself.

For this reason, in the 110th Congress I introduced the Clean Fuels and Vehicles Act with Senators OLYMPIA SNOWE and SUSAN COLLINS.

The legislation proposed a ''Low Carbon Fuels Standard,'' which would require each major oil company selling gasoline in the United States to reduce the average lifecycle greenhouse gas emissions per unit of energy in their gasoline by 3 percent by 2015 and by 3 percent more in 2020.

This concept became a major aspect of the Energy Independence and Security Act of 2007, in which Congress requires oil companies to use an increasing quantity of ''advanced biofuels'' that produce at least 50 percent less lifecycle greenhouse gas than gasoline.

Unfortunately the ethanol tariff puts a trade barrier in front of the lowest carbon fuel available, making it considerably more expensive for the United States to lower the lifecycle carbon emissions of transportation fuel.

The lifecycle greenhouse gas emissions of ethanol vary depending on production methods and feedstocks, and these differences will impact the degree to which ethanol may be used to meet ''low-carbon'' fuel requirements under the Energy Independence and Security Act of 2007.

For instance, sugar cane ethanol plants use biomass from sugar stalks as process energy, resulting in less fossil fuel input compared to current corn-to-ethanol processes. By comparison, researchers at the University of California concluded that ''only 5 to 26 percent of the energy content in corn ethanol, is renewable. The rest is primarily natural gas and coal,'' which are used in the production process.

The most recent research compiled by the California Air Resources Board concluded that the direct lifecycle greenhouse gas emissions of imported sugar based ethanol are 73 percent lower than gasoline, while the direct lifecycle greenhouse gas emissions of corn based ethanol from the Midwest are 31 percent lower than gasoline.

Even when land use change is factored in, the lifecycle greenhouse gas emissions of sugar-based ethanol from Brazil is the single least emitting fuel option available for today's vehicles. It is only surpassed on an emissions basis by electric and fuel cell cars, which are unfortunately at least a few years away from widespread adoption.

Biofuels that protect our planet may be produced abroad, and we should not put tariffs in front of these fuels, if we import crude oil and gasoline tariff free.

This legislation accomplishes two goals: it corrects the Farm Bill's mistaken policy that imposed a real trade barrier on clean and climate friendly ethanol imports, giving gasoline imports a competitive advantage over cleaner fuel that simply should not exist at a time we are trying to combat climate change.

It prevents ethanol producers abroad from receiving American ethanol subsidies, which is supposedly the intent of the ethanol tariff.

I think it strikes the right balance, and I urge Congress to pass this legislation.

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 placed in the RECORD, as follows:

S. 622

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 ''Imported Ethanol Parity Act''.

SEC. 2. ETHANOL TAX PARITY.

Not later than 30 days after the date of the enactment of this Act, and semiannually thereafter, the President shall reduce the temporary duty imposed on ethanol under subheading 9901.00.50 of the Harmonized Tariff Schedule of the United States by an amount equal to the reduction in any Federal income or excise tax credit under section 40(h), 6426(b), or 6427(e)(1) of the Internal Revenue Code of 1986 and take any other action necessary to ensure that the combined temporary duty imposed on ethanol under such subheading 9901.00.50 and any other duty imposed under the Harmonized Tariff Schedule of the United States is equal to, or lower than, any Federal income or excise tax credit applicable to ethanol under the Internal Revenue Code of 1986.

By Mr. ROCKEFELLER (for himself, Mr. LAUTENBERG, and Mr. BROWN):

S. 623. A bill to amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Service Act, and the Internal Revenue Code of 1986 to prohibit preexisting condition exclusions in group health plans and in health insurance coverage in the group and individual markets; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Pre-existing Condition Patient Protection Act, legislation to provide crucial protections for individuals with chronic and preexisting conditions. Unfair insurance market rules, including those which allow insurance companies to exclude coverage for preexisting health conditions, have forced thousands of American families into dire medical and financial situations. Addressing this issue is a priority of the President and should be a priority for Congress.

As we begin to consider comprehensive health reform, including significant coverage expansions for the uninsured, this reform should also address the gaps in coverage for the 25 million Americans who are underinsured often due to their preexisting condition. Health insurance coverage should be meaningful and available when people need it.

The Centers for Disease Control and Prevention, CDC, estimates that nearly 45 percent of Americans—or 133 million people—have at least one chronic condition. Furthermore, a report recently published in the Annals of Internal Medicine found that nearly one-third of all uninsured Americans in 2004 had received a chronic condition diagnosis. Early intervention and adequate treatment for those with chronic conditions is vital. Unfortunately, preexisting condition exclusions are often a barrier for individuals seeking access to comprehensive health insurance coverage.

Congress passed the Health Insurance Portability and Accountability Act of 1996, HIPAA, P.L. 104–191, over 10 years ago with the objective of protecting Americans from interruptions in health insurance coverage resulting from job changes or other life transitions. HIPAA provides this protection by restricting when private insurers can use preexisting conditions to limit health insurance coverage. HIPAA has been successful, and many individuals have come to rely on its protections. However, after more than a decade, certain gaps in HIPAA's protection have become apparent.

First, individuals who have been without health insurance coverage for 63 days or more are at risk of being permanently uninsurable. This is particularly true of individuals with preexisting conditions, because a 63-day gap in coverage eliminates any prior creditable coverage. If an employee cannot demonstrate that he or she had prior creditable and continuous coverage, an employer can exclude coverage for preexisting conditions for up to 12 months.

Second, employers can restrict coverage for preexisting conditions to otherwise qualified employees based on a 6-month ''look-back'' period. This means that an employer may use medical recommendations, diagnoses, and treatments within the most recent six months to deny health coverage for a ''preexisting condition'' for up to 12 months.

Third, the protections offered to individuals moving into a group health plan, or moving into the individual insurance market from a group plan, are not available to individuals attempting to shop around for policies within individual market. As a result, individuals who purchase policies in the nongroup market and never have a gap in coverage still have no protection against the preexisting condition exclusions that insurers may choose to impose. In most cases, there is no limit on the length of time an insurer can deny coverage under an individual insurance policy for a preexisting condition. An individual with a chronic condition who is buying coverage in the individual market today is likely to pay a high deductible, have a large monthly premium, and have the very illness they need coverage for written out of their policy.

The Pre-existing Condition Patient Protection Act I am introducing today would address all three of these gaps in the current HIPAA law by eliminating preexisting condition exclusions in every single market. While this change is not the only insurance market reform necessary, it is a great step forward in improving the health coverage available to the 133 million Americans living with at least one chronic condition.

Access to treatment is critical for these individuals, and a permanent fix to the law regarding coverage exclusions is crucial for our Nation in reforming our health care system. Therefore, I urge my colleagues to join me in supporting this important bill. The time for action is now.

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 placed in the RECORD, as follows:

S. 623

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 ''Preexisting Condition Patient Protection Act of 2009''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) According to the United States Census Bureau, 45,700,000 individuals were uninsured in 2007.

(2) According to a recent study by the Commonwealth Fund, the number of underinsured adults ages 19 to 64 has jumped 60 percent over the last 4 years, from 16,000,000 in 2003 to 25,000,000 in 2007.

(3) According to the Center for Disease Control and Prevention, approximately 45 percent of Americans have at least 1 chronic condition.

(4) Forty-four States currently allow insurance companies to deny coverage for, limit coverage for, or charge increased premiums for a pre-existing condition.

(5) Over 26,000,000 individuals were enrolled in private individual market health plans in 2007. Under the amendments made by the Health Insurance Portability and Accountability Act of 1996, these individuals have no protections against pre-existing condition exclusions or waiting periods.

(6) When an individual has a 63-day gap in health insurance coverage, pre-existing condition exclusions, such as limiting coverage, can be placed on them when they become insured under a new health insurance policy.

(7) Eliminating pre-existing condition exclusions for all individuals is a vital safeguard to ensuring all Americans have access to health care when in need.

(8) According to a Kaiser Family Foundation/Harvard School of Public Health public opinion poll, 58 percent of Americans strongly favor the Federal Government requiring health insurance companies to cover anyone who applies for health coverage, even if they have a prior illness.

SEC. 3. ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS UNDER GROUP HEALTH PLANS.

(a) APPLICATION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS.—Section 701 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181) is amended—

(A) by amending the heading to read as follows: ''**ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS**'';

(B) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, with respect to a participant or beneficiary—

''(1) may not impose any pre-existing condition exclusion; and

''(2) in the case of a group health plan that offers medical care through health insurance coverage offered by a health maintenance organization, may not provide for an affiliation period with respect to coverage through the organization.'';

(C) in subsection (b), by striking paragraph (3) and inserting the following:

''(3) AFFILIATION PERIOD.—The term 'affiliation period' means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective.'';

(D) by striking subsections (c), (d), (e), and (g); and

(E) by redesignating subsection (f) (relating to special enrollment periods) as subsection (c).

(2) CLERICAL AMENDMENT.—The item in the table of contents of such Act relating to section 701 is amended to read as follows:

''Sec. 701. Elimination of pre-existing condition exclusions.''.

(b) APPLICATION UNDER PUBLIC HEALTH SERVICE ACT.—

(1) ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS.—Section 2701 of the Public Health Service Act (42 U.S.C. 300gg) is amended—

(A) by amending the heading to read as follows: ''**ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS**'';

(B) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, with respect to a participant or beneficiary—

''(1) may not impose any pre-existing condition exclusion; and

''(2) in the case of a group health plan that offers medical care through health insurance coverage offered by a health maintenance organization, may not provide for an affiliation period with respect to coverage through the organization.'';

(C) in subsection (b), by striking paragraph (3) and inserting the following:

''(3) AFFILIATION PERIOD.—The term 'affiliation period' means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective.'';

(D) by striking subsections (c), (d), (e), and (g); and

(E) by redesignating subsection (f) (relating to special enrollment periods) as subsection (c).

(2) TECHNICAL AMENDMENTS RELATING TO EMPLOYER SIZE.—Section 2711 of such Act (42 U.S.C. 300gg–11) is amended—

(A) in subsection (a)—

(i) in the heading, by striking ''SMALL'';

(ii) in paragraph (1)—

(I) by striking ''(c) through (f)'' and inserting ''(b) through (d)'';

(II) in the matter before subparagraph (A), by striking ''small''; and

(III) in subparagraph (A), by striking ''small employer (as defined in section 2791(e)(4))'' and inserting ''employer''; and

(iii) in paragraph (2)—

(I) by striking ''small'' each place it appears; and

(II) by striking ''coverage to a'' and inserting ''coverage to an'';

(B) by striking subsection (b);

(C) in subsections (c), (d), and (e), by striking ''small'' each place it appears; and

(D) by striking subsection (f).

(c) APPLICATION UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS.—Section 9801 of the Internal Revenue Code of 1986 is amended—

(A) by amending the heading to read as follows: ''**ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS**'';

(B) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—A group health plan with respect to a participant or beneficiary may not impose any pre-existing condition exclusion.'';

(C) by striking paragraph (3) of subsection (b);

(D) by striking subsections (c), (d), and (e); and

(E) by redesignating subsection (f) (relating to special enrollment periods) as subsection (c).

(2) CLERICAL AMENDMENT.—The item in the table of sections of chapter 100 of such Code relating to section 9801 is amended to read as follows:

''Sec. 9801. Elimination of preexisting condition exclusions.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to group health plans for plan years beginning after the end of the 12th calendar month following the date of the enactment of this Act.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act); or

(B) the date that is after the end of the 12th calendar month following the date of enactment of this Act.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by the amendments made by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 4. NONDISCRIMINATION IN INDIVIDUAL HEALTH INSURANCE.

(a) IN GENERAL.—Section 2741 of the Public Health Service Act (42 U.S.C. 300gg–41) is amended by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—

''(1) GUARANTEED ISSUE.—Subject to the succeeding subsections of this section, each health insurance issuer that offers health insurance coverage (as defined in section 2791(b)(1)) in the individual market to individuals residing in an area may not, with respect to an eligible individual (as defined in subsection (b)) residing in the area who desires to enroll in individual health insurance coverage—

''(A) decline to offer such coverage to, or deny enrollment of, such individual; or

''(B) impose any preexisting condition exclusion (as defined in section 2701(b)(1)(A)) with respect to such coverage.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the end of the 12th calendar month following the date of the enactment of this Act.

SEC. 5. TRANSPARENCY IN CLAIMS DATA.

(a) REPORT ON ADVERSE SELECTION.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report concerning the occurrence of adverse selection as a result of the enactment of this Act. Such report shall be based on the data reported under subsection (b).

(b) MANDATORY REPORTING.—A health insurance issuer to which this Act applies, shall upon the request of the Secretary, submit to the Secretary of Health and Human Services, data concerning—

(1) the number of new enrollees in health plans offered by the issuer during the year involved;

(2) the number of enrollees who re-enrolled in health plans offered by the issuer during the year involved;

(3) the demographic characteristics of enrollees;

(4) the number, nature, and dollar amount of claims made by enrollees during the year involved;

(5) the number of enrollees who disenrolled or declined to be reenrolled during the year involved; and

(6) any other information determined appropriate by such Secretary.

(c) ENFORCEMENT.—Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-91 et seq.) is amended by adding at the end the following:

''SEC. 2793. PROVISION OF INFORMATION.

''(a) IN GENERAL.—The Secretary shall require that group health plans and health insurance issuers to which this Act applies provide data to the Secretary, at such times and in such manner as the Secretary may require, in order to permit the Secretary to monitor compliance with the requirements of this Act (including requirements imposed under the Preexisting Condition Patient Protection Act of 2009 (and the amendment made by that Act)).

''(b) CIVIL PENALTIES.—

''(1) IN GENERAL.—A group health plan or health insurance issuer that fails to provide information as required under subsection (a) shall be subject to a civil money penalty under this section.

''(2) AMOUNT OF PENALTY.—

''(A) IN GENERAL.—The maximum amount of penalty imposed under this paragraph is $100 per covered life for each day that the plan or issuer fails to comply with this section.

''(B) CONSIDERATION IN IMPOSITION.—In determining the amount of any penalty to be assessed under this paragraph, the Secretary shall take into account the previous record of compliance of the entity being assessed with this section and the gravity of the violation.''.

SEC. 6. REPORT ON AFFORDABLE HEALTH INSURANCE COVERAGE.

Not later than 12 months after the date of enactment of this Act, the Government Accountability Office shall submit to the Secretary of Health and Human Services a report concerning the impact of this Act and other Federal laws relating to the regulation of health insurance and its effect on the affordability of health insurance coverage for individuals in all insurance markets and a description of the effect of this Act on the expansion of coverage and reductions in the number of uninsured and underinsured.

By Mr. DURBIN (for himself, Mr. CORKER, and Mrs. MURRAY):

S. 624. A bill to provide 100,000,000 people with first-time access to safe drinking water and sanitation on a sustainable basis by 2015 by improving the capacity of the United States Government to fully implement the Senator Paul Simon Water for the Poor Act of 2005; to the Committee on Foreign Relations.

Mr. DURBIN. Later this week we will mark World Water Day. It is an important reminder of the many challenges we continue to face in providing clean water and sanitation to the world's poor.

We have made progress in recent years, but around the world today, nearly 1 billion people continue to lack access to clean, safe water. More than 2 billion people lack access to basic sanitation. Most of these people live on less than $2 a day. They are the voiceless and the powerless of the world.

That is why today, Senator BOB CORKER and Senator PATTY MURRAY and I are introducing the Paul Simon Water for the World Act in the United States Senate. Congressmen BLUMENAUER and PAYNE have introduced the same bill in the House.

Our bill will reestablish U.S. leadership on one of the defining challenges of the 21st century: water.

The goal is to reach an additional 100 million of the world's poorest people with sustainable access to safe drinking water and basic sanitation by 2015. This would represent the largest single commitment of any donor country to meeting the Millennium Development Goal on water, which is to reduce by half the proportion of people without access to safe drinking water and sanitation by 2015.

The bill targets aid to areas with the greatest need. It helps build the capacity of poor nations to meet their own water and sanitation challenges. It supports research on clean water technologies and regional partnerships to find solutions to shared water challenges.

The bill provides technical assistance—best practices, credit authorities, and training—to help countries expand access to clean water and sanitation. Our development experts will design the assistance based on local needs.

The Water for the World Act also designates within the State Department a high-level representative to ensure that water receives priority attention in our foreign policy, and establishes a new Office of Water at USAID to implement development assistance efforts related to water.

We ought to be assigning some of our best minds to solve the global water challenge. Right now, however, we don't have the staff at USAID to meet our goals on water or any other urgent development need.

At a time when it is more important than ever to win the hearts and minds of those around the world, as well as to address the challenges of fragile and failed states, our top development agency is suffering from an inexcusable shortage of expert staff.

In the 1960s, USAID had more than 5,000 Foreign Service Officers; today, when the needs are greater than ever, it has just over 1,000.

To correct this imbalance and help rebuild our smart power, I recently introduced a bill that would triple the number of USAID Foreign Service Officers by 2012. It's called the Increasing America's Development Capacity Act, and it's an essential part of our efforts to rebuild America's smart power role in the world—on food security, health, economic development, and yes, water.

I owe my passion on water to my friend and mentor, the man whose seat I now occupy in the U.S. Senate: the late Senator Paul Simon.

He was a profoundly good and wise man. He was also a visionary. He saw connections that many people missed. He saw answers to problems before most people even saw the problems.

As many of you know, solving the global water crisis was his last great campaign. In 1998, he wrote a book called ''Tapped Out: The Coming World Crisis in Water and What We Can Do About It.''

Paul Simon would go anywhere, and talk to anyone, to try to get people and governments to take the global water crisis seriously. In the last year of his life, he traveled to Israel to moderate a panel between the Israeli and Palestinian water commissioners. He said that he and most of the people in the audience—were amazed that the two commissioners agreed on almost everything.

But when he looked in the newspapers the next day, there was nothing about the meeting. Not a word. He said that was ''because nobody was shouting at each other.'' That's part of the challenge.

The global water crisis is a quiet killer. In the developing world, water-related diseases claim the lives of 5,000 children every day. Diarrhea alone kills nearly 2 million children under the age of 5 each year. As CSIS's ''Global Water Futures'' report hauntingly points out, that is the equivalent of all the children under age 5 in New York and London combined.

Mothers who fear the deaths of their children bear more, in a desperate race against the odds. The lack of clean water enslaves poor women in other ways, as well. In many poor nations, women and girls walk two or three hours or more each way, every day, to collect water that is often dirty and unsafe.

The UN estimates that women and girls in Sub-Saharan Africa spend a total of 40 billion working hours each year collecting water. That is equivalent to all of the hours worked in France in a year.

A developing economy cannot grow if its people are too busy collecting water, or too sick from drinking unsafe water, to work or to go to school.

What Senator Simon knew 10 years ago, and the rest of us are slowly coming around to see, is that we can't begin to solve the problems of global hunger and poverty without addressing the global water crisis.

And water is not simply a humanitarian challenge. It is a threat to global stability and the global economy.

Last June, Goldman Sachs held a meeting to assess the top five risks facing the world economy. Resource scarcity—including competition for water, food and energy—was at the top of the list.

Fortune magazine recently predicted that the global water crisis will be as serious in the 21st century as the oil crises were in the 20th, potentially leading to war.

Paul Simon understood the potential for conflicts over dwindling supplies of clean water. It alarmed him. He used to say, ''Nations go to war for oil, but there are substitutes for oil. There are no substitutes for water.'' We see that in the roots of the conflict in Darfur.

I have seen the challenge of water in so many of my recent trips abroad.

Two years ago I travelled to Jordan after a trip to Iraq. I went to talk with people there about the impact of the

war in Iraq on one of our most important allies in the region.

The Jordanian Minister of Planning and International Cooperation, Ms. Suhair-al-Ali, told me that between 600,000 and 700,000 Iraqi refugees were living in Jordan at that time. That was equivalent to 10 percent of Jordan's entire population. For us in the U.S., that would be the equivalent of 30 million refugees.

The massive influx of Iraqi refugees had strained the ability of Jordan's government to provide basic services almost to the breaking point. What did the minister identify as one of Jordan's biggest problems? Water.

It is not just Jordan. Water is central to the fate of the entire Middle East.

In his book, Paul Simon quoted former Israeli Prime Minister Yitzhak Rabin as saying, ''If we solve every other problem in the Middle East but do not satisfactorily resolve the water problem, our region will explode. Peace will not be possible.''

You do not have to travel halfway around the world to see the devastating consequences of lack of access to clean water.

A few months ago I traveled to Haiti. This was my second visit and it is always a shock. A 90-minute plane ride from Miami takes you to another world.

There are no public sewage treatment or disposal systems anywhere in the country. Even in the capital, Port-au-Prince, a city of 2 million people, the drainage canals are choked with garbage and sewage.

It is no wonder that Haiti has the highest infant and child mortality rate in the Western Hemisphere. One-third of Haiti's children do not live to see the age of 5. The leading killer? Waterborne diseases: hepatitis, thyphoid and diarrhea.

While there, I visited a rural health clinic run by a group called Partners in Health, co-founded by Dr. Paul Farmer. Dr. Farmer is a wonderful man who has improved the lives of so many, from Rwanda to Haiti.

He showed me a water purification kit that his clinic gives to nursing mothers with HIV/AIDS. This allows them to make formula for their babies and not transmit the virus through breastfeeding. It is simple, inexpensive, and life-saving.

Some years ago I visited Bolivia, one of the poorest countries in Latin America. Bolivia is an example of what awaits many countries' water supplies because of global warming.

Much of its population relies on melting glaciers for its water. But because of climate change the glaciers are not being replenished and some are already disappearing. These trends are happening from the snows of Mount Kilimanjaro to the Alps to the Himalayas.

How will the world respond to the water needs such as Bolivia and others who rely on glaciers for their water supplies?

I recently returned from a visit to Cyprus. The island has been divided now for more than 30 years. The leaders on both sides are engaged in brave and important discussions to reunify the island. Amid this hopeful progress toward peace, another problem plagues this island—water.

The groundwater in Cyprus is being depleted too quickly, often for agriculture, and it is being replenished too often with salt water that creeps into the water table. Global warming is causing rainfall to decrease.

In recognition of the vast water challenges we face around the world, two years after Paul Simon died, Congress passed the Paul Simon Water for the Poor Act. President Bush signed it into law in December 2005.

It represents the first time the U.S. has codified our commitment to any of the Millennium Development Goals. The Paul Simon Water for the Poor Act makes safe water and basic sanitation a top priority for all U.S. foreign assistance.

In 2007 alone, it helped provide nearly 2 million people in over 30 countries with access to a better source of drinking water, and more than 1.5 million people with better sanitation.

The Water for the Poor Act is saving lives, but its impact could be greater. The Paul Simon Water for the World Act will help us expand these efforts to make a profound and sustainable difference in the lives of the world's poor.

As we prepare to mark World Water Day this Sunday, let us recommit ourselves to a new effort on safe water and sanitation.

Throughout history, civilized nations have put aside political differences to address compelling issues of life and survival. Our generation owes the world nothing less.

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 placed in the RECORD, as follows:

S. 624

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 ''Senator Paul Simon Water for the World Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Senator Paul Simon Water for the Poor Act of 2005 (Public Law 109–121)—

(A) makes access to safe water and sanitation for developing countries a specific policy objective of United States foreign assistance programs;

(B) requires the Secretary of State to—

(i) develop a strategy to elevate the role of water and sanitation policy; and

(ii) improve the effectiveness of United States assistance programs undertaken in support of that strategy;

(C) codifies Target 10 of the United Nations Millennium Development Goals; and

(D) seeks to reduce by half between 1990 (the baseline year) and 2015—

(i) the proportion of people who are unable to reach or afford safe drinking water; and

(ii) the proportion of people without access to basic sanitation.

(2) On December 20, 2006, the United Nations General Assembly, in GA Resolution 61/192, declared 2008 as the International Year of Sanitation, in recognition of the impact of sanitation on public health, poverty reduction, economic and social development, and the environment.

(3) On August 1, 2008, Congress passed H. Con. Res. 318, which—

(A) supports the goals and ideals of the International Year of Sanitation; and

(B) recognizes the importance of sanitation on public health, poverty reduction, economic and social development, and the environment.

(4) While progress is being made on safe water and sanitation efforts—

(A) more than 884,000,000 people throughout the world lack access to safe drinking water; and

(B) 2 of every 5 people in the world do not have access to basic sanitation services.

(5) The health consequences of unsafe drinking water and poor sanitation are significant, accounting for—

(A) nearly 10 percent of the global burden of disease; and

(B) more than 2,000,000 deaths each year.

(6) The effects of climate change are expected to produce severe consequences for water availability and resource management in the future, with 2,800,000,000 people in more than 48 countries expected to face severe and chronic water shortages by 2025.

(7) According to the November 2008 report entitled, ''Global Trends 2025: A Transformed World'', the National Intelligence Council expects rapid urbanization and future population growth to exacerbate already limited access to water, particularly in agriculture-based economies.

(8) A 2009 report published in the Proceedings of the National Academy of Sciences projects that the effects of climate change will produce long-term droughts and raise sea levels for the next 1,000 years, regardless of future efforts to combat climate change.

(9) According to the 2005 Millennium Ecosystem Assessment, commissioned by the United Nations, more than ⅛ of the world population relies on freshwater that is either polluted or excessively withdrawn.

(10) The impact of water scarcity on conflict and instability is evident in many parts of the world, including the Darfur region of Sudan, where demand for water resources has contributed to armed conflict between nomadic ethnic groups and local farming communities.

(11) In order to further the United States contribution to safe water and sanitation efforts, it is necessary to—

(A) expand foreign assistance capacity to address the challenges described in this section; and

(B) represent issues related to water and sanitation at the highest levels of United States foreign assistance and diplomatic deliberations, including those related to issues of global health, food security, the environment, global warming, and maternal and child mortality.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that the United States should lead a global effort to bring sustainable access to clean water and sanitation to poor people throughout the world.

SEC. 4. PURPOSE.

The purpose of this Act is—

(1) to provide first-time access to safe water and sanitation, on a sustainable basis, for 100,000,000 people in high priority countries (as designated under section 6(f) of the Senator Paul Simon Water for the Poor Act of 2005 (22 U.S.C. 2152h note) by 2015; and

(2) to enhance the capacity of the United States Government to fully implement the Senator Paul Simon Water for the Poor Act of 2005 (Public Law 109–121).

SEC. 5. DEVELOPING UNITED STATES GOVERNMENT CAPACITY.

Section 135 of the Foreign Assistance Act of 1961 (22 U.S.C. 2152h) is amended by adding at the end the following:

''(e) OFFICE OF WATER.—

''(1) ESTABLISHMENT.—To carry out the purposes of subsection (a), the Administrator of the United States Agency for International Development shall establish the Office of Water within the Bureau for Economic Growth, Agriculture, and Trade.

''(2) LEADERSHIP.—The Office of Water shall be headed by a Director for Safe Water and Sanitation, who shall report directly to the Assistant Administrator of the Bureau for Economic Growth, Agriculture, and Trade.

''(3) DUTIES.—The Director shall—

''(A) implement this section and the Senator Paul Simon Water for the Poor Act of 2005 (Public Law 109–121);

''(B) develop and implement country-specific water strategies and expertise, in collaboration with appropriate United States Agency for International Development Mission Directors, to meet the goal of providing 100,000,000 additional people with sustainable access to safe water and sanitation by 2015; and

''(C) place primary emphasis on providing safe, affordable, and sustainable drinking water, sanitation, and hygiene in a manner that—

''(i) is consistent with sound water resource management principles; and

''(ii) utilizes such approaches as direct service provision, capacity building, institutional strengthening, regulatory reform, and partnership collaboration.

''(4) CAPACITY.—The Director may utilize interagency details or partnerships with universities, civil society, and the private sector, as needed, to strengthen implementation capacity.

''(f) SPECIAL COORDINATOR FOR INTERNATIONAL WATER.—

''(1) ESTABLISHMENT.—To increase the capacity of the Department of State to address international issues regarding safe water, sanitation, integrated river basin management, and other international water programs, the Secretary of State shall establish a Special Coordinator for International Water (referred to in this subsection as the 'Special Coordinator'), who shall report to the Under Secretary for Democracy and Global Affairs.

''(2) DUTIES.—The Special Coordinator shall—

''(A) oversee and coordinate the diplomatic policy of the United States Government with respect to global freshwater issues, including interagency coordination related to—

''(i) sustainable access to safe drinking water, sanitation, and hygiene;

''(ii) integrated river basin and watershed management;

''(iii) transboundary conflict;

''(iv) agricultural and urban productivity of water resources;

''(v) disaster recovery, response, and rebuilding,

''(vi) pollution mitigation; and

''(vii) adaptation to hydrologic change due to climate variability; and

''(B) ensure that international freshwater issues are represented—

''(i) within the United States Government; and

''(ii) in key diplomatic, development, and scientific efforts with other nations and multilateral organizations.

''(3) STAFF.—The Special Coordinator is authorized to hire a limited number of staff to carry out the duties described in paragraph (2).''.

SEC. 6. SAFE WATER, SANITATION, AND HYGIENE STRATEGY.

Section 6 of the Senator Paul Simon Water for the Poor Act of 2005 (22 U.S.C. 2152h note) is amended—

(1) in subsection (c), by adding at the end the following: ''In developing the program activities needed to implement the strategy, the Secretary shall consider the results of the assessment described in subsection (e)(9).''; and

(2) in subsection (e)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(7) an assessment of all United States Government foreign assistance allocated to the drinking water and sanitation sector during the 3 previous fiscal years, across all United States Government agencies and programs, including an assessment of the extent to which the United States Government's efforts are reaching the goal of providing first-time access to safe water and sanitation on a sustainable basis for 100,000,000 people in high priority countries;

''(8) recommendations on what the United States Government would need to do to achieve the goals referred to in paragraph (7), in support of the United Nation's Millennium Development Goal on access to safe drinking water; and

''(9) an assessment of best practices for mobilizing and leveraging the financial and technical capacity of business, governments, nongovernmental organizations, and civil society in forming public-private partnerships that measurably increase access to safe drinking water and sanitation.''.

SEC. 7. DEVELOPING LOCAL CAPACITY.

The Senator Paul Simon Water for the Poor Act of 2005 (Public Law 109–121) is amended—

(1) by redesignating sections 9, 10, and 11 as sections 10, 11, and 12, respectively; and

(2) by inserting after section 8 the following:

''SEC. 9. WATER AND SANITATION INSTITUTIONAL CAPACITY-BUILDING PROGRAM.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary of State and the Administrator of the United States Agency for International Development (referred to in this section as the 'Secretary' and the 'Administrator', respectively), in consultation with host country institutions, the Centers for Disease Control and Prevention, the Department of Agriculture, and other agencies, as appropriate, shall establish, in every high priority country, a program to build the capacity of host country institutions and officials responsible for water and sanitation in countries that receive assistance under section 135 of the Foreign Assistance Act of 1961, including training at appropriate levels, to—

''(A) provide affordable, equitable, and sustainable access to safe drinking water and sanitation;

''(B) educate the populations of such countries about the dangers of unsafe drinking water and lack of proper sanitation; and

''(C) encourage behavior change to reduce individuals' risk of disease from unsafe drinking water and lack of proper sanitation and hygiene.

''(2) COORDINATION.—The programs established under subsection (a) shall be coordinated in each country by the lead country water manager designated in subsection (b)(2).

''(3) EXPANSION.—The Secretary and the Administrator may establish the program described in this section in additional countries if the receipt of such capacity building would be beneficial for promoting access to safe drinking water and sanitation, with due consideration given to good governance.

''(4) CAPACITY.—The Secretary and the Administrator—

''(A) shall designate staff with appropriate expertise to carry out the strategy developed under section 4; and

''(B) may utilize, as needed, interagency details or partnerships with universities, civil society, and the private sector to strengthen implementation capacity.

''(b) DESIGNATION.—The United States Agency for International Development Mission Director for each country receiving a 'high priority' designation under section 6(f) and for each region containing a country receiving such designation shall—

''(1) designate safe drinking water and sanitation as a strategic objective;

''(2) appoint an employee of the United States Agency for International Development as in-country water and sanitation manager to coordinate the in-country implementation of this Act and section 135 of the Foreign Assistance Act of 1961 (22 U.S.C. 2152h) with host country officials at various levels of government responsible for water and sanitation, the Department of State, and other relevant United States Government agencies; and

''(3) coordinate with the Development Credit Authority and the Global Development Alliance to further the purposes of this Act.''.

SEC. 8. OTHER ACTIVITIES SUPPORTED.

Section 135(c) of the Foreign Assistance Act (22 U.S.C. 2152h(c)) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end; and

(3) by adding at the end the following:

''(5) foster global cooperation on research and technology development, including regional partnerships among water experts to address safe drinking water, sanitation, water resource management, and other water-related issues;

''(6) establish regional and cross-border cooperative activities between scientists and specialists that work to share technologies and best practices, mitigate shared water challenges, foster international cooperation, and defuse cross-border tensions;

''(7) provide grants through the United States Agency for International Development to foster the development, dissemination, and increased and consistent use of low cost and sustainable technologies, such as household water treatment, hand washing stations, and latrines, for providing safe drinking water, sanitation, and hygiene that are suitable for use in high priority countries, particularly in places with limited resources and infrastructure;

''(8) in collaboration with the Centers for Disease Control and Prevention, Department of Agriculture, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and other agencies, as appropriate, conduct formative and operational research and monitor and evaluate the effectiveness of programs that provide safe drinking water and sanitation; and

''(9) integrate efforts to promote safe drinking water, sanitation and hygiene with existing foreign assistance programs, as appropriate, including activities focused on HIV/AIDS, malaria, tuberculosis, maternal and child health, food security, and nutritional support.''.

SEC. 9. UPDATED REPORT REGARDING WATER FOR PEACE AND SECURITY.

Section 11(b) of the Senator Paul Simon Water for the Poor Act of 2005, as redesignated by section 7, is amended by adding at the end the following: ''The report submitted under this subsection shall include an assessment of current and likely future political tensions over water sources and multidisciplinary assessment of the expected impacts of global climate change on water supplies in 10, 25, and 50 years.''.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for fiscal year 2009 and for each subsequent fiscal year such sums as may be necessary to carry out this Act and the amendments made by this Act, pursuant to the criteria set forth in the Senator Paul Simon Water for the Poor Act of 2005 (Public Law 109–121).

(b) USE OF FUNDS.—

(1) GENERAL WATER RESOURCE MANAGEMENT ACTIVITIES.—Up to 20 percent of the amounts appropriated to implement this Act may be used to support general water resource management activities that improve countries' overall water sources.

(2) OTHER ACTIVITIES.—Any amounts appropriated to implement this Act that are not used to carry out the activities described in paragraph (1) shall be allocated for activities related to safe drinking water, sanitation, and hygiene.

By Ms. LANDRIEU:

S. 626. A bill to direct the Secretary of the Interior to study the suitability and feasibility of designating sites in the Lower Mississippi River Area in the State of Louisiana as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. LANDRIEU. Mr. President, I rise today to introduce legislation entitled the Lower Mississippi River National Historic Site Study Act. This bill will direct the Secretary of the Interior to study the suitability and feasibility of designating sites in Plaquemines Parish along the Lower Mississippi River Area as a unit of the National Park System. I cannot think of a more timely occasion to reintroduce this bill as Secretary Salazar is expected to be touring southeast Louisiana tomorrow.

The first step to becoming a unit in the National Park System is to conduct a special resources study to determine whether an area possesses nationally significant natural, cultural, or recreational resources to be eligible for favorable consideration. This is exactly what my bill does—it asks the Department of the Interior to take the first step in determining what I already know—that the Lower Mississippi River Area would be a suitable and feasible asset to the National Park Service.

I am proud to come to the floor today to reintroduce this bill. This area has vast historical significance and is an area with rich cultural history. In the 1500s, Spanish explorers traveled along the banks of the river. In 1682, Robert de LaSalle claimed all the land drained by the area. In 1699, the area became the site of the first fortification on the Lower Mississippi river, known as Fort Mississippi. Since then, it has been the home to 10 different fortifications, including Fort St. Philip and Fort Jackson.

Fort St. Philip, which was originally built in 1749, played a key role during the Battle of New Orleans when soldiers blocked the British navy from going upriver. Fort Jackson was built at the request of GEN Andrew Jackson and partially constructed by famous local Civil War General P.G.T. Beauregard. This fort was the site of the famous Civil War battle know as the Battle of Forts which is also referred to as the ''night the war was lost.'' Mr. President, as you can see, from a historical perspective, this area has many treasures that provide us a glimpse into our past. These are areas that have national significance. They should be maintained and preserved.

There are also many other important and unique attributes to this area. This area is home to the longest continuous river road and levee system in the United States. It is also home to the ancient Head of Passes site, to the Plaquemines Bend, and to two national wildlife refuges.

Finally, this area has a rich cultural heritage. Over the years, many different cultures have made this area home including Creoles, Europeans, Indians, Yugoslavs, African-Americans and Vietnamese. These cultures have worked together to create the infrastructure for transportation of our nation's energy which is being produced by these same people out in the Gulf of Mexico off our shores. They have also created a fishing industry that contributes to Louisiana's economy.

I think it is easy to see why this area would make an excellent addition to the National Park Service. That is why I am reintroducing this bill—to begin the process of adding this area as a unit to the National Park Service by conducting a study to determine the suitability and feasibility of bringing this area into the system. I look forward to working with my colleagues to quickly enact this bill.

AMENDMENTS SUBMITTED AND PROPOSED

SA 675. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 684 proposed by Mr. BINGAMAN to the bill H.R. 146, to establish a battlefield acquisition grant program for the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812, and for other purposes.

SA 676. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, supra; which was ordered to lie on the table.

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SA 678. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, supra; which was ordered to lie on the table.

SA 679. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 684 proposed by Mr. BINGAMAN to the bill H.R. 146, supra.

SA 680. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 684 proposed by Mr. BINGAMAN to the bill H.R. 146, supra.

SA 681. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, supra; which was ordered to lie on the table.

SA 682. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, supra; which was ordered to lie on the table.

SA 683. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, supra; which was ordered to lie on the table.

SA 684. Mr. BINGAMAN proposed an amendment to the bill H.R. 146, supra.

TEXT OF AMENDMENTS

SA 675. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 684 proposed by Mr. BINGAMAN to the bill H.R. 146, to establish a battlefield acquisition grant program for the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. EMINENT DOMAIN.

Notwithstanding any other provision of this Act (or an amendment made by this Act), no land or interest in land (other than access easements) shall be acquired under this Act by eminent domain.

SA 676. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, to establish a battlefield acquisition grant program for the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. LIMITATIONS ON NEW CONSTRUCTION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Interior (acting through the Director of the National Park Service) (referred to in this section as the ''Secretary'') shall not begin any new construction in units of the National Park System until the Secretary determines that all existing sites, structures, trails, and transportation infrastructure of the National Park Service are—

(1) fully operational;

(2) fully accessible to the public; and

(3) pose no health or safety risk to the general public or employees of the National Park Service.

(b) EXCLUSIONS.—Subsection (a) shall not affect—

(1) the replacement of existing structures in cases in which rehabilitation costs exceed new construction costs; or

(2) any new construction that the Secretary determines to be necessary for public safety.

SA 677. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 146, to establish a battlefield acquisition grant program