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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Ms. BERKLEY).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 3, 2009.

I hereby appoint the Honorable SHELLEY BERKLEY to act as Speaker pro tempore on this day.

NANCY PELOSI,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, source of eternal light, on this new day we offer not only our prayer but all the work of Congress as a living sacrifice of praise. Born of human effort, the fruit of experience and right judgment, pressed by negotiations and compromise, with the result of common concern for Your people, the decisions of this Congress are raised up before the people of this democracy to realize their best intuitions, inspire their hopes for the future, and foster their goodness.

At the same time, this work is raised up before You as the sovereign ruler of all times and nations and the compassionate defender of Your people, both now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Kentucky (Mr. DAVIS) come forward and lead the House in the Pledge of Allegiance.

Mr. DAVIS of Kentucky led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to 15 requests for 1-minute speeches on each side of the aisle.

INTRODUCING THE ARMED FORCES BEHAVIORAL HEALTH AWARENESS ACT AND THE VETERANS AND SURVIVORS BEHAVIORAL HEALTH AWARENESS ACT

(Ms. GIFFORDS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. GIFFORDS. Madam Speaker, a couple weeks ago our Nation celebrated Memorial Day, a day to give tribute to the men and women who have given their lives for our country. But I think it's important for those of us who serve in the Congress to realize that we, on a regular basis, have to do everything we can to protect and defend those who protect and defend us.

Later today I will be introducing the Armed Forces Behavioral Health Awareness Act as well as the Veterans and Survivors Behavioral Health Awareness Act with Congressman AKIN. These bills represent a strong bipartisan commitment to expanding and protecting access to mental health treatment and services for our active duty and retired military. These bills will provide all servicemembers with equal access to readjustment counseling and mental health services at Vet Centers. We will provide dedicated funding for nonprofits supporting military families and create a program for proactive mental health outreach to soldiers. We will also provide a program for Vet Centers aimed at growing the number of mental health trainers as well as providers.

These bills will dramatically expand our ability to provide mental health coverage to our warriors who are doing so much for all of us both here at home and abroad.

I encourage my colleagues to join me in moving these bills toward swift passage.

TIANANMEN ANNIVERSARY

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Madam Speaker, 20 years ago today the brutal massacre of peaceful student demonstrators occurred in Tiananmen Square, Beijing, China, by the People's Liberation Army. Hundreds, perhaps thousands were shot, killed or wounded, including being run over by tanks. The extraordinary image of a man standing unarmed in front of a row of Chinese tanks has become one of the most famous photos of the 21st century and will forever be ingrained in our memories. That man represents thousands of others thirsting for freedom, thousands who were arrested and detained. Some of those are still in labor camps today.

This week we pause to remember the lives of those who were tragically lost in the massacre and imprisoned in the gulag. We honor their courage and their stand for freedom. China has made significant progress towards economic reform, but political reform is still needed to ensure the fundamental rights of the people, such as freedom of religion, expression and assembly.

The Chinese Government continues to intimidate reporters, block Web sites, jam broadcasts and censor the Internet. We look forward to a day when the people of China are truly free. That day will surely come.

INTRODUCTION OF CLEAN ENERGY PROMOTION ACT

(Mr. HEINRICH asked and was given permission to address the House for 1 minute.)

Mr. HEINRICH. Madam Speaker, I rise today to introduce the Clean Energy Promotion Act. This bill will help create thousands of clean energy jobs across America and help end our dependence on foreign oil. Today some 200 solar energy projects, 25 wind energy projects and 200 wind energy production test sites are on hold because the Bureau of Land Management doesn't have the resources to evaluate their applications. Madam Speaker, bureaucratic bottlenecks should not stand in the way of thousands of clean energy jobs. My bill will help eliminate these bottlenecks by creating a dedicated funding stream so that the BLM can remove the current backlog in applications and facilitate future projects. This is a long-term, commonsense investment in America's energy leadership. Not only will we jump-start clean energy job creation today, we'll also be laying the foundation for America's clean energy prosperity tomorrow.

I urge your support.

THE FEDERAL RESERVE PRINTS MONEY AS CHINA IS RELUCTANT TO LEND MORE

(Mr. KIRK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KIRK. Madam Speaker, we are running out of other people's money. We borrowed $1 trillion from China, and their leaders are reluctant to lend more. In response, the Federal Reserve has begun electronically printing dollars to cover new debts. Chinese leaders told me that this was unconventional and troubling. They worry that America will try to repay her debts with newly printed dollars. The Fed so far this year has printed $130 billion that it does not have. Rating agencies have already cut Britain's AAA credit rating and warned we are next.

Later this week I will ask the Fed to stop printing money to buy U.S. debt. Unless we stop, the enemy of the middle class and seniors—inflation—will come back to hurt our recovery.

THE D-DAY MEMORIAL IN BEDFORD, VIRGINIA

(Mr. PERRIELLO asked and was given permission to address the House for 1 minute.)

Mr. PERRIELLO. I rise in honor of the lives sacrificed by our brave men in uniform on the beaches of Normandy 65 years ago. This Saturday, let us remember the morning of the 6th of June, 1944, and the bravery of those involved. In the town of Bedford, Virginia, 19 of the 34 servicemen who landed on the beaches gave their lives for freedom. Bedford suffered the largest per capita death toll of any American community during the invasion. These were the famous Bedford Boys, and we mourn the recent loss of the last of the survivors. Our Nation should not forget their sacrifices, which is why this Chamber recognized the D-day Memorial in Bedford as the National D-day Memorial. Sadly, that memorial faces financial difficulties in these grim economic times. Because of this and the sacrifice these men made, I am introducing legislation to ensure this memorial in the memory of the servicemen does not fade. The men we lost were local heroes, but the freedom and security bought with their sacrifice is a national treasure. So too is our D-day memorial, and I urge my colleagues to join me in making this a permanent part of our Nation's life.

THE NECESSITY FOR A BILATERAL INCIDENTS AT SEA AGREEMENT BETWEEN THE U.S. AND IRAN

(Mr. DAVIS of Kentucky asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Kentucky. Madam Speaker, as a former enlisted soldier and Army officer, the lives and safety of our servicemen and -women has always been one of my top priorities. Chairman CONYERS and I are, therefore, calling for the prompt negotiation of a bilateral naval agreement between the United States and Iran.

In January of 2008, Iranian Revolutionary Guards naval speedboats engaged in provocative actions against three U.S. naval vessels, showed little to no regard for maritime safety, and the event very nearly escalated into an armed conflict between the United States and Iranian vessels.

The Strait of Hormuz is one of the most crowded shipping lanes in the world. A conflict in the strait would have dire consequences for the world's oil supply and the international economy. An average of 15 tankers carrying between 16 and 17 million barrels of crude oil pass through the strait each day, making these waters one of the most strategically important oil choke points. The Department of Defense has stressed the importance of preventing future naval interactions in the region from escalating. The U.S. has a significant long-standing naval presence in the Persian Gulf, protecting our soldiers and marines in theater and international shipping lanes critical to global commerce. A military-to-military negotiation of bilateral ''Incidents at Sea'' agreement between the U.S. and Iran would codify vessel-to-vessel communications and improve safety, similar to the agreement during the Cold War.

I ask you to join Chairman CONYERS and me in support of this agreement.

CALLING FOR A BILATERAL INCIDENTS AT SEA AGREEMENT

(Mr. CONYERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONYERS. Madam Speaker, I, along with GEOFF DAVIS and others—BOB FILNER, GENE TAYLOR, WALTER JONES—are putting forward House Concurrent Resolution 94 so that we can avoid the incidents of the sea that could happen in the Straits of Hormuz because of the incredible number of commercial ships that traffic that area. Eight Navy ships, 250 oil tankers and naval craft of a dozen other nations pass through the strait. These negotiations have been done before. We did it with the Soviet Union a generation ago. It's very pragmatic. It avoids any incidents which could start a war, and could change our relationship with the oil cartels.

I urge Members to give it consideration.

RECOGNIZING RICK BARRENTINE

(Mr. PRICE of Georgia asked and was given permission to address the House for 1 minute.)

Mr. PRICE of Georgia. Madam Speaker, I rise today to recognize Rick Barrentine, a talented constituent from my district, the Sixth Congressional District of Georgia. Rick Barrentine and his family will be in Washington this week as he joins a unique group of Americans, an elite circle whose artistic work is displayed upon a United States postage stamp.

On June 5, the U.S. Postal Service will unveil a new stamp; and on the face of this stamp is a photograph taken by Mr. Barrentine, showing a close-up view of an American flag draped upon itself. This same flag was displayed outside of his home until it was retired recently with the respect that it deserves. Though Mr. Barrentine didn't seek this honor, this recognition is a testament to his talents. Looking at this now timeless image, one can easily grasp Mr. Barrentine's appreciation for the sacrifice and dedication of all those individuals, including in his own family, who carried the Star-Spangled Banner in the service of our Nation.

This Congress commends him for his patriotism and for his artistic achievement. Freedom is inspiring.

CLEAN ENERGY JOBS

(Mr. YARMUTH asked and was given permission to address the House for 1 minute.)

Mr. YARMUTH. Madam Speaker, the Clean Energy Jobs plan, which recently

emerged from the House Energy and Commerce Committee, is the next step to create millions of American jobs in clean energy efficiency and modernizing a smart electric grid. Clean energy can provide an engine to drive the Nation out of recession and sustain our economy for years to come.

In my hometown of Louisville, Kentucky, we are already seeing the dividends from investments made in this country with the American Recovery and Reinvestment Act in the form of new green jobs. Earlier this week General Electric announced it would relocate production of a new energy-efficient water heater from China to Louisville's Appliance Park, which is the location of the Consumer Products Division of GE. Federal dollars allocated to the State energy fund from the American Recovery and Reinvestment Act and reserved for the manufacture of energy-efficient products are available to support this project and others like it.

The addition of 450 new green jobs in Louisville is a sign of the growth we had hoped would come from our major investment in the Nation's economic recovery and our commitment to moving this country toward energy independence.

□ 1015

A TRIBUTE TO JIMMY DEE CLARK

(Mr. NEUGEBAUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEUGEBAUER. Madam Speaker, I rise today to recognize a great American. Jimmy Clark has served this country and particularly the 19th District with distinction for 23 years. Starting off with former Congressman Larry Combest and now serving as my deputy chief of staff, Jimmy has served with great pride and excellence the people of this district. It is a large district. He has traveled many miles to represent and make sure that the constituents of the 19th District have the great service that they deserve.

Jimmy brings to the table a lot of experience. And over the 23 years, he helped put valuable input from his farming background into four farm bills, valuable input that helped shape what I think is good policy for this country.

We are going to miss Jimmy Clark. We are going to miss his service to the district. When people talk about Jimmy Clark, they talk about someone of great honor and character and someone who is always willing to help. We wish Jimmy and his lovely wife, Rita, all the best as they embark on a new journey in their life. All of us from the 19th Congressional District, and really the people of the United States of America, thank Jimmy Clark for his great service to his country.

H.R. 2648, AWARDING THE CONGRESSIONAL GOLD MEDAL TO MUHAMMAD ALI

(Mr. CARSON of Indiana asked and was given permission to address the House for 1 minute.)

Mr. CARSON of Indiana. Madam Speaker, yesterday, I introduced a bill that will award the Congressional Gold Medal to Muhammad Ali. Years ago many of my colleagues before my time watched Ali defeat Sonny Liston for the heavyweight title and saw him capture a gold medal at the 1960 Olympics.

His epic fights inspired a generation. But it was outside of the ring where Ali truly made his mark, fighting for civil rights and racial harmony and combating world hunger and disease. Under the shadow of 1960s discrimination, few could have imagined an African American and Muslim would transcend race, religion and culture to promote peace around the world. I believe that today, as so many around the world are struggling, it is more important than ever to pay tribute to those who selflessly devote their lives to others.

I encourage all of my colleagues to recognize a great humanitarian who remains a role model for generations to come. Join me please in supporting H.R. 2648.

AMERICANS DESERVE ENERGY INDEPENDENCE CREATED BY AMERICAN WORKERS

(Ms. FOXX asked and was given permission to address the House for 1 minute.)

Ms. FOXX. Madam Speaker, under the Democrats' national energy tax plan, American households will pay on average $3,100 a year in extra energy costs, and between 1.8 and 7 million American jobs will be lost. The President admitted under his energy plan, energy prices would ''necessarily skyrocket'' and that the cost would be passed on to American consumers.

Manufacturing jobs will be relocated to other parts of the world, like India and China, which have less stringent environmental restrictions, hurting American workers and our environment.

Forcing through Congress an energy plan that raises energy prices and that leads to further job loss during a time of economic crisis is irresponsible and the wrong direction to take our country. The American people know that we can do better.

Republicans want a clean environment and will create comprehensive energy solutions that lessen our dependence on foreign oil and that lead us to a stronger economy.

The American people deserve American energy independence created by American workers.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

JOHN S. WILDER POST OFFICE BUILDING

Mr. LYNCH. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1817) to designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the ''John S. Wilder Post Office Building''.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1817

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

SECTION 1. JOHN S. WILDER POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, shall be known and designated as the ''John S. Wilder Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''John S. Wilder Post Office Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentleman from California (Mr. ISSA) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. Madam Speaker, I now yield myself such time as I may consume.

Madam Speaker, as chairman of the House subcommittee with jurisdiction over the United States Postal Service, I am pleased to present H.R. 1817 for consideration. This legislation will designate the United States postal facility located at 116 North West Street in Somerville, Tennessee, as the ''John S. Wilder Post Office Building.''

Introduced by Representative Marsha Blackburn on March 31, 2009 and reported out of the Oversight Committee by unanimous consent on May 6, 2009, H.R. 1817 enjoys the support of the entire Tennessee delegation.

A longtime resident of Somerville, Tennessee, John Shelton Wilder admirably devoted over 40 years of his life to public service, including over 30 years as the Lieutenant Governor of the State of Tennessee.

Born on June 3, 1921 in Fayette County, John Wilder attended the University of Tennessee College of Agriculture and subsequently received his juris doctor at the Memphis State University Law School. A distinguished United States Army veteran of World War II, Mr. Wilder also served as a member of the Fayette County Quarterly Court, known also as the county commission, for 18 years.

In 1958, Mr. Wilder was first elected to the Tennessee State Senate as a Democrat representing senate district 26, which included Chester, Crockett, Fayette, Hardin, McNairy, and Wayne Counties. While he did not run for reelection in 1960, Mr. Wilder returned to the State senate in 1966.

Following the adoption of a State constitutional amendment that extended the length of terms in the State senate in Tennessee to 4 years, Mr. Wilder was elected to his first 4-year term in 1968 and was subsequently reelected to nine consecutive terms until his retirement in March of 2008.

In 1971, Mr. Wilder's senate colleagues elected him speaker of the State senate, a position that under the State constitution also granted him the title of Lieutenant Governor. And notably Mr. Wilder became the first Tennessee Lieutenant Governor in almost 50 years to serve under a Governor of a different political party, Republican Winfield Dunn.

While the Tennessee General Assembly had not traditionally maintained its own staff or its own offices prior to Mr. Wilder's tenure, State senate Speaker Wilder undertook a variety of efforts to enhance the State legislature's standing, including the construction of General Assembly offices.

Mr. Wilder also made a unique mark by retaining the lieutenant governorship of Tennessee for over 30 years. Notably, the State had not previously seen an individual serve more than three consecutive terms as speaker of the State senate since 1870. In contrast to other elected officials in his position, Mr. Wilder never sought higher office. And he often stated that ''the speaker likes being speaker.'' In fact, Mr. Wilder's service as Lieutenant Governor from 1971 until 2007 is regarded as one of the longest Lieutenant Governor tenures in United States history.

During his simultaneous service as Lieutenant Governor and as State senate speaker, Mr. Wilder was widely admired for his unrivaled and genuine commitment to bipartisanship. Mr. Wilder routinely awarded chairmanships to both Democratic and Republican members. And in 1987, Mr. Wilder, a Democrat, even earned the Republican Caucus's nomination for Lieutenant Governor.

Mr. Wilder's commitment to bipartisanship, for the benefit of the citizens of Tennessee, was further evidenced by his retirement announcement in March of 2008. In that address, Mr. Wilder encouraged his colleagues to ''be statesmen, to do what is good and right for this State of Tennessee and leave partisan politics out of it.'' Mr. Wilder further noted the destructive nature of partisan politics and emphasized that the success of the State of Tennessee greatly depended on legislators voting their conscience, absent the influence of partisan politics.

Madam Speaker, let us honor this dedicated public servant, John Shelton Wilder, through the passage of this legislation to designate the Somerville, Tennessee, post office in his honor. And I urge my colleagues to join me in supporting H.R. 1817.

I reserve the balance of my time.

Mr. ISSA. Madam Speaker, it is with great pleasure that I yield such time as she may consume to the gentlewoman from Tennessee, the author of the bill, MARSHA BLACKBURN.

Mrs. BLACKBURN. Madam Speaker, I want to thank my colleague from Massachusetts for his wonderful words about Governor Wilder. I will tell you, though, we probably are having Governor Wilder and some of his friends listening in Somerville, Tennessee, today who are saying, we need an interpreter on that one so that they can understand that wonderful New England accent to our Southern ears. Thank you so much for those gracious words.

It is indeed an honor to stand and to recognize Governor Wilder. And as the gentleman from Massachusetts said, today is his birthday. He is 88 years old today, so it is wonderful that we are having this resolution come forward today and that we are able to designate the post office in Somerville, Tennessee, for this dedicated public servant.

He chose to be a Democrat, but he legislated from the center. And it is so amazing when you look at his career and all that he accomplished, because, Madam Speaker, he chose to build a bipartisan conservative governing coalition. And he really took a great amount of pride in the fact that he established that for the State of Tennessee. Indeed, when you look at the fact that the legislature in the State of Tennessee is a coequal branch with the executive branch, you see Governor Wilder's handprints on this.

Those of us who had the opportunity to serve in the State senate and serve with Governor Wilder did have the opportunity to participate in the way he addressed that coalition. He really is the embodiment of ''public service.'' And as has been stated, he served under the leadership of both parties.

He served as Lieutenant Governor when our now senior Senator, Senator ALEXANDER, was Governor. Lieutenant Governor Wilder was indeed the Lieutenant Governor under his time of service. And indeed Governor Wilder is the one who granted Governor Alexander an extra 3 days on his term when Governor Wilder moved forward with what he called ''impeachment Tennessee style'' for the incumbent Governor who was in place prior to Senator ALEXANDER taking the reins as Governor of our State.

Indeed, Lieutenant Governor Wilder served as Lieutenant Governor when my predecessor in the Seventh Congressional District seat, former Congressman and former Governor Don Sundquist, was in office. So Lieutenant Governor Wilder has a storied career. I also have the opportunity to serve as his Member of Congress now. And when he was in the State senate and speaker of the senate and Lieutenant Governor, I shared the representation of many of those west Tennessee counties with Governor Wilder.

So he has truly had such an incredible career in public service that it is an honor for me to be able to stand here and to recognize him and to make certain that we in this body pay tribute to him by naming that post office for him there in Somerville, Tennessee. I know some of my colleagues have come to the floor to speak on this resolution. And, Madam Speaker, as we all know, in the State of Tennessee, anyone who serves in public office has sought the advice of John Wilder. So whether you served with him in the State senate or not, everyone went to him for advice and counsel as to how they would carry forth their public duties and how they would serve in the State of Tennessee.

So I thank the gentleman from California for yielding. I thank the gentleman from Massachusetts for his very kind words. And I thank my colleagues for joining me on my bill, H.R. 1817, to appropriately honor and recognize our former Lieutenant Governor.

I rise today to pay tribute to John S. Wilder, former Lieutenant Governor of Tennessee, and to express my support of H.R. 1817, legislation to have a Postal Service office building in Somerville, Tennessee named the ''John S. Wilder Post Office Building.''

Mr. Wilder commendably served the state of Tennessee for just shy of fifty years, in part as a member of the Tennessee Senate and as Lieutenant Governor of Tennessee. He served as Lieutenant Governor of Tennessee and Speaker of the Tennessee Senate from 1971 to 2007, becoming both the longest serving Lieutenant Governor and the longest serving head of a legislative body in United States history. For his extraordinary life achievements, I today honor a man who through example has exhibited devotion to his community and to the state of Tennessee.

Today, June third, Mr. Wilder celebrates his eighty-eighth birthday. The first born son of Martha and John Wilder, John Shelton Wilder grew up in Fayette County. He enlisted in the army and served our country during World War II. After the war, he attended the University of Tennessee School of Agriculture, and then enrolled in Memphis State University, now the University of Memphis, from where he obtained a degree in law.

Mr. Wilder was first elected to the Tennessee Senate in 1959. In January 1971, the Tennessee Senate elected Mr. Wilder to be the Speaker of the State Senate, which also made him Tennessee's Lieutenant Governor. During his tenure in the Tennessee Senate, Mr. Wilder was noted for his exceptional leadership skills and his ability to cross party lines

in garnering the support of both Republicans and Democrats. His reputation with both parties enabled him to be continuously re-elected Lieutenant Governor every four years from 1971 until 2007.

Moreover, he served as a state senator until 2007 concluding his remarkable career in public service.

Mr. Wilder has been a member of many commissions, association and committees, including the Southern Legislative Conference Executive Committee, the Tennessee Judicial Council, Tennessee Industrial and Agricultural Development Commission, and the National Conference of State Legislatures Legislative Leaders. In addition to his legislative work, he has an active business career as director of Health Management and Cumberland Savings Bank, chairman of the board of Cumberland Bank Shares and First Federal Bank FSI Holding Company, and he continues to participate in the management of Longtown Supply Company, a family owned cotton business founded in 1887. Additionally, he has worked as an attorney in the town of Somerville.

Mr. Wilder has been an extraordinary public servant for nearly fifty years. With gratitude for his service to the state of Tennessee, I ask all members to join me in support of H.R. 1817.

Mr. LYNCH. Madam Speaker, at this time, I would like to yield 5 minutes to the gentleman from the Ninth District of Tennessee (Mr. COHEN).

□ 1030

Mr. COHEN. Madam Speaker, I want to thank the Speaker, and Mr. LYNCH and Congressperson BLACKBURN for bringing this to the floor and for extending the time.

I particularly want to thank Congresswoman BLACKBURN for initiating this concept because John Wilder deserves recognition, and he deserves recognition by having this post office named for him. We name post offices quite frequently for people, people that deserve it. But John Wilder put Fayette County on the map. And when you put a county on the map, the post office in those small counties is the place where the county is. That's where mileage is measured from and people congregate and political gatherings occur and all that.

John Wilder was my friend, is my friend, and has had an unbelievable contribution to the people of Tennessee. I know it's been discussed how many years he served as Lieutenant Governor, longest-serving elected official in the free world of a legislative body, and how much he accomplished.

I served in the Tennessee State Senate with John Wilder for 24 years. I think one of his most significant moments came before I knew him, at a time when there was segregation in the South and there were efforts to penalize black farmers in Fayette County, an instance that John Wilder refers to it, and many people do who remember it, as Tent City.

And there were attempts to take advantage of the sharecroppers and to force them in certain ways, and John Wilder didn't go along with the establishment and he stood up for civil rights, and he stood with the black farmers in Fayette County, the African American tenant farmers, and refused to punish those black tenant farmers by evicting them or calling in their crop loans. That's a moment that John Wilder refers to when he speaks, and I believe, for those who are people of conscience, people in the civil rights movement throughout the Midsouth remember John Wilder for that principled stand. It was a stand by which men were known.

One of the other things that John Wilder did that is most significant is he instituted a system in Tennessee where our judges were taken out of the political spectrum to the extent possible and put into a selection system. The Wilder plan, which survived an attempt to eliminate it in this general assembly, has served Tennessee well, provides that appellate judges are selected, not elected but selected, and that that meets the provisions of our State constitution and allows for judges who are not well known by the public to be chosen by a merit process. They have to stand for approval elections at the public ballot, the general election, but they are chosen not initially in contests where people have to go raise money and campaign on name recognition, but are selected based on their qualifications as submitted through a panel and chosen by the Governor from a list of three and then stand for reelection. And I think all but one of those people have been approved by the electorate and maintained. So his stand for civil rights and his stand for meritocracy in the judiciary are the two things I think John Wilder has done that are most, most admirable of the many.

He also set up a Board of Education for the State to help K–12 and to put some common sense into the education processes in our State. No things are more important than civil rights, education, and a fair and impartial judiciary, and John Wilder stood for all of those.

He's been a lawyer and respected in the courtroom. He's a farmer. He's a banker. He has interests in just about any business that's important to west Tennessee, and anything that got done in west Tennessee, rural west, and Memphis included, John Wilder had a stamp on it.

There's a tower at the University of Memphis known as the John Wilder Tower because he was most instrumental in securing funds for the University of Memphis, which is the great State university in west Tennessee.

John Wilder helped me in my career, appointed me chairman of the State and Local Government Committee, for which I served, I think it was, 12 years in that body. And although there were times when he was not as enthusiastic about the Tennessee education lottery as I was, at the end, there were 22 votes on the board in the Tennessee Senate to provide, give the people the right to vote on a lottery provision that had been banned in our constitution since the early 1800s, and that vote, with those essential 22 votes, every one was necessary, Governor John Wilder was one, Congresswoman MARSHA BLACKBURN was another, Congressman LINCOLN DAVIS was another, led to students in Tennessee having the opportunity to go to school.

I thank John Wilder. I thank Congresswoman BLACKBURN for bringing this, and I'm proud to be a cosponsor of the John Wilder Post Office.

Mr. ISSA. Madam Speaker, at this time it is my pleasure to introduce yet another friend of the former Lieutenant Governor, JIMMY DUNCAN, a member of the committee and a fellow Tennesseean. I yield him such time as he may consume.

Mr. DUNCAN. Madam Speaker, I thank the gentleman from California for yielding me this time, and I want to express my appreciation also to my colleague from Tennessee, Congresswoman BLACKBURN for bringing this legislation to the floor, very appropriate legislation.

I have come here to express my great admiration and respect for Governor Wilder, in addition to the very kind things that my colleagues, the gentleman from the 9th District, Congressman COHEN, has said, and also what Congresswoman BLACKBURN has said.

The hills and mountains and valleys of east Tennessee are very, very different from the flat lands of west Tennessee, but we're all Tennesseeans. And even though my district in east Tennessee is very far from Governor Wilder's district in west Tennessee, still, I have known of his work for our State for many years now, and I have great respect for that.

I also have seen him in action each year for many, many years, hosting the annual legislative luncheon at the University of Tennessee. And Governor Wilder did so much for the University of Tennessee, his alma mater and my alma mater.

I read a few years ago that less than 20 percent of the people in the State legislative bodies around the country have served, that less than 20 percent have served more than 12 years. And so turnover in legislative bodies is at a higher rate or level than any time in our history, contrary to what some people think. So anyone who serves in office for such a long number of years as Governor Wilder has really accomplished something that very few people have done in our history. And you don't serve in office for as long as he did without helping thousands and thousands of people and doing many, many good things, both for individual citizens and for the State as a whole.

And so I just wanted to come here briefly. I did not have the privilege of serving in the State senate, as Congressman COHEN and Congresswoman BLACKBURN did. I never served with Governor Wilder, but I certainly met with him many times and saw him at different inaugurations and at various

events in Nashville and in my hometown of Knoxville. And so I appreciate Governor Wilder, and I admire and respect him, as I said earlier.

And I thank the gentlelady from Tennessee for bringing this legislation to the floor.

Mr. LYNCH. Madam Speaker, I don't believe we have any further speakers at this time, but I will continue to reserve our time.

Mr. ISSA. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, it is with great pleasure that I join with the other Members, primarily of the Tennessee delegation, who so aptly are wishing a happy birthday to the Governor today on his 88th birthday. And I do support strongly the naming of this post office after a public servant of such a unique character and longevity of service.

And now that we have dispensed with this portion, the suspension, the noncontroversial part, as is the tradition of this committee, sometimes we make a point of other things on this allocated time. And today I believe that it's appropriate to speak about the impending, before August, cap-and-tax scheme that has been proposed by the Speaker and is likely to come to a vote.

We on this side of the aisle are deeply concerned about a system which is designed to raise the cost of all utilities in America, with no offset, no offset, for the ultimate CO_2 that is likely to be created by moving those jobs overseas. It's very clear that cap-and-tax, if not uniform and enforced, would simply move American jobs overseas. And the bill, which is being considered by the Global Warming, otherwise sometimes called the Junket Committee here, is in fact something that I oppose, and I oppose because it is very clear that we cannot, in this body, simply make a decision that we're going to stop producing a certain amount of CO_2 in the United States. And this, I might mention, while Air Force One consumes an incredible amount of CO_2 or produces an incredible amount of CO_2 while flying empty over New York City.

The world and the air around us is not isolated. If we go forward with a cap-and-trade initiative that is not globally enforced by every single nation, we simply are pollution laundering. We're saying we're going to have cleaner cars here, we're going to have cleaner this here, and yet CO_2 will be produced in other places. Already it is very clear that China, for every single product it produces, is more energy intensive than the same product produced in the United States. Literally, when you import the same product from China that would otherwise be made here, although it may be cheaper, it produces more CO_2 and a great many other pollutants.

I've been to China. I've been to Hanoi. I have been to many of these countries, and what I generally see are leaves blackened from the burning of coal, with not even scrubbers, much less any sequestration.

So, Madam Speaker, as we do not disagree one bit on the naming of this post office, this side of the aisle has to make it very clear that we do object to the present form that is being proposed without any real inclusion of Republicans and with the American jobs at stake.

And with that, I would yield back the balance of my time.

Mr. LYNCH. Madam Speaker, I do want to bring this discussion back to the point at hand and this bill that seeks to honor Governor Wilder. And I would hope that, in taking the moment to dedicate this post office—and I chair this committee, and we do name a lot of post offices here. As a matter of fact, I think sometimes we'll run out of names before we run out of post offices. But I do think that this is one that is so well deserved because of the wonderful career of bipartisanship, and it disappoints me greatly that people would take away the focus of this dedication to harp on a bunch of hot air about some other issues that are going to have plenty of time to be debated.

This is a moment that we have to honor this gentleman, Governor Wilder, for his wonderful accomplishment, and in all the testimony here given this morning by his closest friends and his strongest advocates, he is one of the most bipartisan leaders that we have had in this country, and he has held that position as Lieutenant Governor for over 30 years. So I want to make sure that he gets the recognition that he deserves.

I want to congratulate Mrs. BLACKBURN for being the lead sponsor of this, and Mr. COHEN and all of the House Members, both Republican and Democrat, on behalf of the Tennessee delegation for the wonderful work that they've done.

And I ask all of my colleagues to join with us in giving due honor to Governor Wilder by naming this post office in Somerville, Tennessee, in his name.

Mr. TANNER. Madam Speaker, I rise in support of this resolution, which honors a long-time leader in our state, whose career has been distinguished and historic.

John Shelton Wilder was first elected to the Tennessee State Senate in 1958, and, in 1971, was chosen by his Senate colleagues to serve as Senate Speaker and Lt. Governor. He served in these capacities until 2006, making him the longest-serving leader of a state legislative body anywhere in this country. Because of his trademark bipartisanship and his insistence in wanting "the Senate to be the Senate," the Tennessee State Senate accomplished many things under Lt. Governor Wilder's leadership.

I had the honor of serving alongside Lt. Governor Wilder in the General Assembly when I served in the Tennessee House of Representatives. During my time in this body, I have been honored to represent some of the same counties that Lt. Governor Wilder represented in the Tennessee Senate. I know firsthand how dedicated he has always been to serving the public and helping families in West Tennessee and across our state.

Madam Speaker, I hope you and our colleagues will join us in supporting this resolution to honor Lt. Gov. John S. Wilder—known to many of us in Tennessee simply as "Governor Wilder"—for his long public service.

Mr. LYNCH. I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, H.R. 1817.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. ISSA. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further Proceedings on this motion will be postponed.

□ 1045

FREDERIC REMINGTON POST OFFICE BUILDING

Mr. LYNCH. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2090) to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2090

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

SECTION 1. FREDERIC REMINGTON POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, shall be known and designated as the ''Frederic Remington Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Frederic Remington Post Office Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentleman from California (Mr. ISSA) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. I yield myself such time as I may consume.

Madam Speaker, I am pleased to present H.R. 2090 for consideration. This legislation will designate the United States postal facility located at

431 State Street in Ogdensburg, New York, as the Frederic Remington Post Office Building introduced on April 23, 2009, by the Republican vice chair of my subcommittee—and the recently nominated Secretary of Army—Mr. MCHUGH of New York. H.R. 2090 was reported out of the Oversight Committee by unanimous consent on May 6, 2009. I'm also pleased to report that this legislation enjoys strong support from the New York House delegation.

A long-time resident of the City of Ogdensburg in St. Lawrence County, New York, Frederic Remington was a renowned 19th century painter, illustrator, sculptor and writer who specialized—and I think in many people's minds really captured the essence and legend of the American West.

Born on October 4, 1861, in Canton, New York, Frederic Sackrider Remington moved to Ogdensburg, New York, in 1873 and attended the Yale College School of Art before soon heeding the call to go west.

Remington's early travels through America's new frontier in the late 1800s provided him with the unique opportunity to observe scenes that he had imagined since his childhood and gained an authentic view on America's west that would later translate into his unparalleled and inspirational depictions of frontier life.

Harper's Weekly published Remington's first commercial illustration in 1882 and Remington soon began to receive a steady flow of commissioned work from additional publications, including Collier's, that were searching for authenticity in Western themes. Remington's first full cover appeared in Harper's in 1886 when he was only 25 years old. And in 1887, Remington received a highly regarded commission for 83 illustrations for a book by Theodore Roosevelt entitled ''Ranch Life and the Hunting Trail.'' This latter assignment provided a significant boost to Remington's career and marked the beginning of a lifelong bond between the artist and Roosevelt.

Despite his success as a magazine and book illustrator, Remington was focused on further developing his artistic abilities; and in the mid-1880s and 1890s, he turned his attention to water and full-color oil painting as well as sculpture. In order to retain the authenticity of his work, Remington embarked on annual trips to the West and even created a Western environment in his New York studio by surrounding himself with objects collected from his various travels.

In noted paintings, such as the ''Return of the Blackfoot War Party'' and ''Mule Train Crossing the Sierras,'' and ''A Dash For the Timber,'' Remington continued to evidence a unique ability to handle complex compositions and realistically capture the sweeping landscapes, heroic figures and moments of danger and conflicts which came to epitomize the American West. In 1888, Remington even achieved the honor of having two of his paintings used for reproduction on United States postal stamps.

In the mid-1890s, Remington quickly mastered a new medium and became immersed in sculpture. Similar to his previous illustrations and paintings, well-known Remington bronzes such as ''The Broncho Buster'' and ''The Cheyenne'' were highly regarded for their detail, movement, energy, and overall realism. Notably, Remington's piece ''The Broncho Buster,'' was presented to Theodore Roosevelt following the Rough Riders' return from the Spanish-American War, an honor that Remington deemed the ''greatest compliment I ever had.''

Regrettably, Frederic Remington died on December 26, 1909, at the young age of 48 and at the height of his profession. Nevertheless, he was able to produce over 3,000 drawings and paintings, 22 bronze sculptures, over 100 articles and stories, and even a novel and a Broadway play over the course of a career that inspired the American imagination and immortalized the Western experience.

Madam Speaker, let us honor the great 19th century artist, Mr. Frederic Remington, through the passage of this legislation to designate the Ogdensburg post office in his honor. I urge my colleagues to join me in supporting H.R. 2090.

I reserve the balance of our time.

Mr. ISSA. Madam Speaker, at this time due to the entry of the Ronald Reagan statue here in Statuary Hall, I ask unanimous consent that the gentleman from Ohio (Mr. JORDAN) be able to control my time.

The SPEAKER pro tempore. Without objection, the Chair recognizes the gentleman from Ohio.

There was no objection.

Mr. JORDAN of Ohio. Madam Speaker, I yield myself such time as I may consume.

The pretty long speech here that was put together by staff on Mr. MCHUGH's post office renaming, and some of it will be, I think, redundant from Mr. LYNCH's comments, but I think it's important that we do give the proper respect to the Frederic Remington Post Office Building.

I rise in support of H.R. 2090, a bill designating the postal facility located at 431 State Street in Ogdensburg, New York, as the Frederic Remington Post Office Building in honor of the renowned 19th century sculptor, painter, author and illustrator.

Frederic Remington was born in Canton, New York, in 1861 and moved to Ogdensburg, New York, in 1873. He headed west to the Montana territory and is best known for his depictions of frontier life of the American West, including cowboys taming broncos, cavalry soldiers engaged in battle, and Native American warriors and scouts. He began his career as a magazine illustrator upon his return east, when he sold his first sketches to Harper's Weekly.

In the mid-1880s, Remington moved from illustration to water color and oil painting; and in 1895, he began sculpting in bronze. He ultimately produced nearly 3,000 drawings and paintings, 22 sculptures, and eight volumes of writings throughout his career. Frederic Remington died on December 26, 1909, thus making 2009 the 100th anniversary of his death. Unfortunately, he was only 48 years old and died at the height of his popularity.

In 1961, the U.S. Postal Service issued a postal stamp to commemorate the 100th anniversary of Frederic Remington's birth. The stamp featured an oil painting drawn by Remington in 1905 entitled ''Smoke Signal.'' Over 111 million Remington stamps were issued by the postal service.

Remington's works can be found throughout the Nation in some of America's highly regarded museums, including the Art Institute of Chicago, the Metropolitan Museum of Art, and many others. In fact, ''The Broncho Buster,'' the stirring Remington sculpture to this day remains in a prominent location within the Oval Office at the White House.

Today a comprehensive collection of original Remington paintings, sketches and sculptures are housed at the Frederic Remington Art Museum founded in 1923 and located in Ogdensburg, New York.

Frederic Remington was one of northern New York's most famous residents, and his home town of Ogdensburg is one of the most historic destinations. Located along the St. Lawrence River, Ogdensburg was the site of key battles during the French and Indian War as well as the War of 1812. In fact, the city was captured by British forces during the famed Battle of Ogdensburg in the War of 1812.

Ogdensburg was also the site of the appropriately titled Ogdensburg Agreement of 1940. This was a joint defense pact between the Canadian Prime Minister and President Franklin Roosevelt.

Ogdensburg's post office is also of historic significance and was listed in the National Historic Register in 1977. The building serves as the oldest active post office in New York and among the oldest in the United States. It was constructed between 1867 and 1870; and in August of 1872, President Grant visited the building for a public reception. It is also very likely Frederic Remington himself would have sent some of his correspondence from the very post office that will be dedicated in his name.

I rise today to ask my colleagues to join me in support of this legislation to designate the Ogdensburg, New York, post office as the Frederic Remington Post Office Building.

I reserve the balance of my time

Mr. LYNCH. Madam Speaker, we have no further speakers at this moment. I continue to reserve.

Mr. JORDAN of Ohio. I would yield as much time as she may consume to the gentlelady from North Carolina (Ms. FOXX).

Ms. FOXX. I thank my colleague for yielding.

Madam Speaker, I want to commend my colleague, Mr. MCHUGH, for introducing this legislation to honor Frederic Remington. I'm sure it is a very well-deserved honor, and I'm glad that we have the opportunity to do it here today.

However, there is a really critical issue facing our country these days, and it is the cap-and-tax plan that the Democrats are doing their best to get passed in the House of Representatives. We know that the Commerce and Energy Committee voted it out the night we left for our district work period for Memorial Day. But we also know that it is not good legislation for this country.

The truth behind the Democrats' cap-and-tax plan is that it is a national energy tax which will kill jobs, raise taxes, and lead to more government intrusion in our lives. This is an irresponsible proposal that will do more harm than good. The President's energy plan is a $646 billion national energy tax that will hit every American family, small business and family farm. Family energy costs will rise on average by more than $3,100 a year. Those hardest hit by this massive tax will be the poor, who experts agree spend a greater proportion of their income on energy consumption. So much for the President's promise to cut taxes for everybody who makes less than $200,000 a year.

A devastating consequence will be fewer jobs for hardworking Americans. Various studies suggest anywhere from 1.8 million to 7 million jobs could be lost.

Republicans believe there are better solutions than more taxes, fewer jobs, and more government intrusion. House Republicans want to increase American energy production made by American workers, encourage greater efficiency and conservation, and promote the use of clean alternative fuels. House Republicans offer a plan that is more environmentally friendly than the Democratic plan. The Democrat cap-and-tax plan will relocate manufacturing plants overseas in countries with far less stringent environmental regulations.

Furthermore, the GOP plan will include nuclear energy which does not emit carbon. We find it very interesting that we know very well that the French, who have gotten 80 percent of their electricity from nuclear power, have no problem with their nuclear waste because they recycle everything and wind up with very, very small amounts of waste and yet the Democrats deny this opportunity to create electricity from nuclear power.

We think the American public needs to be made aware of this issue, and we're going to do everything we can to educate the public on the disastrous way that the Democrats are taking this country in terms of cap-and-tax.

Mr. LYNCH. Madam Speaker, I continue to reserve.

Mr. JORDAN of Ohio. Madam Speaker, before I yield back my time, I would just say that I think the gentlelady from North Carolina makes an outstanding point. This cap-and-trade/cap-and-tax concept, all you've got to do is look at the Heritage Foundation study, which rank-orders all 435 Congressional districts in this country who would be most negatively impacted, who would lose jobs because of this proposal. And it hits home because nine of the top 10 most affected districts are in Ohio and Indiana. I happen to represent one of those districts in Ohio. We'd be fourth hardest hit in the country. It doesn't take a genius to figure out if you are heavy into manufacturing, as we are, and frankly, rely on coal, from coal-fired plants on the Ohio River to provide your electricity needs, you're going to get hit hard. This is a terrible move for our country, but it will have disproportionately negative impacts on the Midwest. That's why we should defeat this proposal.

With that, I would yield back the balance of our time.

Mr. LYNCH. Madam Speaker, again, I would like to bring the discussion back to the matter at hand which is the dedication of this post office in Ogdensburg, New York, in memory of Frederic Remington.

I think it's especially notable that people would take away from the honor that's trying to be bestowed here by a Republican colleague and, you know, a nominee for Secretary of the Army. Mr. MCHUGH asked that we take a moment and designate this post office in memory of one of New York's most renowned citizens and someone who has provided great service to this country in his artistic work in capturing an era of our country that is enormously important to all of us.

And I know a lot of people out there must be very confused. What does the French use of nuclear power have to do with the post office being named on behalf of Frederic Remington? And there is no connection.

□ 1100

There is no connection. There is a denigration going on here, a discourtesy, I think, to Mr. MCHUGH, a discourtesy to the people of New York by the Republican Party, and taking this moment of recognition away from Mr. Remington and his memory, away from Mr. MCHUGH and the object of his legislation, to spout on about issues that can be spouted on about at different times and more appropriate times. We do not have to have either discussion of one issue at the cost of reducing the respect and courtesy that are due to Members and particular initiatives that they put forward that they deem important to their districts and to the people that they represent.

I will not do that. I will not go on about cap-and-trade. I will wait for the debate on cap-and-trade. I will not go on about whether I think the French are doing the right thing with nuclear power and the disposal of their waste. I'll wait on that. There will be appropriate times to discuss that.

What we're here about today in this bill is recognizing Frederic Remington for what he provided for in this country in his brief time on this Earth and in a way that is consistent with the wishes of the sponsor of this legislation, the Republican gentleman from New York (Mr. MCHUGH) who deserves our respect.

And with that, I urge all my Members to join with Congressman MCHUGH, the nominee for the Secretary of the Army, a good choice in my opinion, and support this measure unanimously.

Mr. MCHUGH. Madam Speaker, I rise today as the proud sponsor of H.R. 2090, which would designate the Ogdensburg, New York post office in honor of renowned 19th-century American sculptor, painter, author and illustrator Frederic Remington. I want to thank the Gentleman from New York (Mr. TOWNS) and the Gentleman from California (Mr. ISSA) for their work to bring this legislation to the floor today. I also want to thank the members of the New York delegation for cosponsoring this measure along with Representative CHAFFETZ, Ranking Member of the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia.

Frederic Remington was born in Canton, New York, in 1861 and moved to Ogdensburg, New York in 1873. Best known for his depictions of frontier life of the American West, including cowboys taming broncos, cavalry soldiers engaged in battle, and Native American warriors and scouts, Remington first headed west to the Montana Territory in 1881. Upon his return east, he sold his first sketches to Harper's Weekly, thus beginning his career as a magazine illustrator.

In the mid 1880s, Remington moved from illustration to water-color and oil painting, and in 1895 began sculpting in bronze. He ultimately produced nearly 3,000 drawings and paintings, 22 sculptures, and eight volumes of writings throughout his career. Frederic Remington died on December 26, 1909, thus making 2009 the 100th anniversary of his death. Unfortunately, he was only 48 years old and died at the height of his popularity.

In 1961 the U.S. Postal Service issued a stamp to commemorate the 100th anniversary of Frederic Remington's birth. The stamp featured an oil painting drawn by Remington in 1905 entitled "Smoke Signal." Over 111 million Remington stamps were issued by the Postal Service.

Remington's works can be found throughout the nation, in some of America's most highly regarded museums, including the Art Institute in Chicago, the Metropolitan Museum of Art, and many others. Indeed, President Obama has kept "The Bronco Buster," the stirring Remington sculpture, in a prominent location within the Oval Office at the White House.

Today, a comprehensive collection of original Remington paintings, sketches and sculptures are housed at the Frederic Remington Art Museum, founded in 1923, and located in Ogdensburg, New York. The Remington Museum is open year-round, and offers many programs for the public, including school tours, gallery talks, exhibit openings and workshops. Since the Museum's founding, purchases and donations of Remington art and personal artifacts have added significantly to the breadth of

this amazing collection. The Remington Museum's importance to the residents of my Congressional District can be attributed to both its cultural and historical significance, as well as its economic impact on the surrounding community.

Frederic Remington was, indeed, one of Northern New York's most famous residents and it is fitting we honor his artistic contributions to the world. It is also fitting that Ogdensburg, one of America's most historic destinations, be the home of such an equally historic figure. Located along the strategic St. Lawrence River, Ogdensburg was the site of key battles during the French and Indian War as well the War of 1812. In fact, the city was captured by British forces during the famed Battle of Ogdensburg in the War of 1812. Ogdensburg was also the site of the appropriately titled Ogdensburg Agreement of 1940. This was a joint defense pact signed between Canadian Prime Minister Mackenzie King and President Franklin Roosevelt.

It is also fitting that such a storied city has a duly historic post office. In fact, the Ogdensburg Post Office was listed in the National Historic Register in 1977. The building serves as the oldest active post office in New York State and among the oldest in the United States. It was constructed between 1867 and 1870, and is truly a building befitting of this honor. Of note, on August 7, 1872, President Ulysses S. Grant visited the building for a public reception. It is also very likely Frederic Remington himself would have sent some of his correspondence from the very post office that will be dedicated in his name.

Accordingly, I ask my colleagues to support this legislation to designate the Ogdensburg, New York Post Office as the Frederic Remington Post Office Building.

Mr. LYNCH. I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, H.R. 2090.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

CARL B. SMITH POST OFFICE

Mr. LYNCH. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2173) to designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the ''Carl B. Smith Post Office''.

The Clerk read the title of the bill.

The text of the bill is as follows:

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

SECTION 1. CARL B. SMITH POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, shall be known and designated as the ''Carl B. Smith Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Carl B. Smith Post Office''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts (Mr. LYNCH) and the gentleman from Arizona (Mr. FLAKE) each will control 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

GENERAL LEAVE

Mr. LYNCH. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. LYNCH. Madam Speaker, I yield myself as much time as I may consume.

Madam Speaker, I am pleased to present H.R. 2173 for consideration. This legislation will designate the United States postal facility located at 1009 Crystal Roads in Island Falls, Maine, as the ''Carl B. Smith Post Office.''

This bill, introduced by my colleague and friend, Representative MIKE MICHAUD of Maine, on April 29, 2009, was reported out of the Oversight Committee by unanimous consent on May 6, 2009, and enjoys the support of both members of Maine's House delegation.

A lifelong resident of the town of Island Falls, Maine, Carl B. Smith dedicated over half of his life to public service and local and State government, the United States military, and the United States Postal Service.

Born on March 30, 1922, Carl B. Smith graduated from Sherman High School in 1940 and 2 years later joined the United States Army Corps. Representative Smith's subsequent 10-year tenure in the United States Army included service in Europe during World War II, as well as service in Japan and Korea during the Korean conflict. He would go on to become a lifelong member of the Veterans of Foreign Wars Post 7529 out of Island Falls as well.

Following his discharge from the service, Representative Smith attended barber school and proceeded to serve his beloved community of Island Falls as a barber for 30 years. In addition, he also worked as a rural letter carrier with the United States Postal Service and, of course, was a proud member of the Maine Rural Letter Carriers Union.

Representative Smith would subsequently embark on a distinguished career in local and State government.

First, he served as the town clerk of Island Falls for 13 years and later served on the Island Falls Board of Selectmen.

In 1980, Mr. Smith was elected to the Maine State Legislature as the representative serving house district 140, which includes Island Falls, Ludlow, Oakfield, Sherman, and other areas. His admirable career in the Maine House of Representatives would span 10 years, during which time he was a member of the State's Joint Standing Committee on Inland Fisheries and Wildlife, Agriculture, and State and Local Government.

Throughout his tenure in the Maine State House, Mr. Smith was widely noted for his efforts on behalf of environmental causes, as well as his devotion to social issues such as poverty, health, and aging.

In 1987, Mr. Smith received statewide recognition when he was selected by House Speaker John L. Martin to serve on the Maine Commission on Outdoor Recreation. Upon announcing Representative Smith's appointment to the commission, Speaker Martin described Smith as an ''extremely hard-working legislator who has devoted a great amount of time and energy to environmental issues.''

Regrettably, Carl B. Smith passed away on October 4, 2000, at the age of 78.

Madam Speaker, let us honor this dedicated public servant through the passage of this legislation to designate the Island Falls post office in Carl B. Smith's honor.

I urge my colleagues to join me in supporting H.R. 2173.

I reserve the balance of our time.

Mr. FLAKE. Madam Speaker, I thank the gentleman for introducing this. I think it's appropriate that the Congress at times names post offices, but I don't think that it is appropriate that we spend hours and hours doing it.

I think that if we ask our constituents at home if they want us to spend more time naming post offices or talking about post offices that have been named or talking about something important that will really affect them like cap-and-trade or cap-and-tax coming down the road, I think they'd say the latter. And I plan to vote for this post office naming, and I think it's appropriate that Carl B. Smith have a post office named after him in Maine.

Now, I think it's important that people across the country know what we're going to be debating this summer. It's going to affect them and affect them deeply, and if I was convinced that we're going to have adequate debate time on the floor for cap-and-trade, then I might feel more inclined to talk about post offices. But my guess is, when it comes to this, we're going to be having a very small amount of time actually on the floor. Very few amendments, if history is any guide, will be allowed on this cap-and-trade legislation, and there will be a truncated time and space that we actually have to talk about what is going to affect people all across the country.

Now, if I were supporting this cap-and-trade legislation that's coming down the pike, believe me, I wouldn't want to talk about it much here either because I think the more people learn about it, the more they fear about what is coming down the road here.

What is coming down the road are higher energy taxes. Let's be real here. And I think some on the other side of

the aisle have been honest enough to admit that. The Representative from Michigan said it best: I think nobody in this country realizes that cap-and-trade is a tax, and it's a great big one. Even the President, we know, said during his campaign that electricity prices, energy prices would necessarily skyrocket under cap-and-trade.

So we know that that's going to happen, but let's be honest about it. This is a high energy tax that Americans all over the country are going to be paying that's going to come to Washington, and then Washington is going to decide how to spend it, likely on something completely different.

If we want to be honest about helping the environment, then just impose a carbon tax and make it revenue neutral, give commensurate tax relief on the other side. Myself and another Republican colleague have introduced that legislation to do just that. Let's have an honest debate about whether or not we want to help the environment by actually having something that is revenue neutral where you tax consumption as opposed to income. Then you would have a real honest debate at least here.

Instead, this is a revenue source to pay for other items. Not just that, it is a revenue source that is haphazardly imposed, more tax that is haphazardly imposed. I shouldn't say haphazardly because I think it's by design. When you look at this cap-and-trade legislation that is coming through committee now, you realize that certain sectors, certain utilities and others, have been exempted from it, will be given permits instead of sold permits to pollute.

And so this is nothing more than bringing more revenue to Washington, deciding who is going to be taxed in the end, and down the road somehow the environment is supposed to be helped.

But whenever you have just a new revenue source for Washington to decide how you're going to spend it, you don't really have an honest debate about what you're doing, let's face it.

What we're likely to have is something like we've had over the past few decades with ethanol policy where we've subsidized ethanol again and again, every year more and more, by tariffs, by market protections, by all-out subsidies. You name it, we've protected that industry. And in the end, what have we gained by it? I think it's a record that is dubious at best, and we keep saying we are just going to prime the pump just a few more years and it will be on its own, but it never is. Now, it's not working that well, but it's a bridge to something else.

Let's be honest about this debate. Let's have a debate where if you're going to help the environment, if you feel that we ought to put a value on carbon, then do it in a revenue neutral manner so you're not bringing more revenue to Washington, and that's what this cap-and-trade legislation is about.

I don't know how else you can put it. That's why it's important to talk about this rather than simply talk about post offices being named because this will affect the average American family in a big way. Some have estimated a few thousand dollars a year it might impact the average American family.

Whatever it is is going to impose a cost on the economy that is very difficult at this point to bear. And for what? What do we get in return? More revenue that Washington can spend on a different purpose or some other program? That's what this is turning into right now.

So I think it's appropriate, Madam Speaker, that we talk about cap-and-trade today, and I'm glad that we have something on the floor that allows us to do that.

And with that, I reserve the balance of my time.

Mr. LYNCH. Madam Speaker, I continue to reserve.

Mr. FLAKE. I ask unanimous consent that the gentleman from Utah (Mr. CHAFFETZ) be allowed to control the balance of my time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. CHAFFETZ. Madam Speaker, I appreciate and thank my colleague from Massachusetts.

I rise in support of H.R. 2173, to designate the United States postal facility at 1009 Crystal Road in Island Falls, Maine, as the ''Carl B. Smith Post Office Building.''

As an advocate for all of the citizens in Maine's House District 140, State Representative Carl B. Smith was a standout legislator in the Maine House of Representatives.

After graduating from Sherman High School in 1940, and then marrying Annie Jane Porter in 1946, Representative Smith began a long and distinguished career in a number of fields. Prior to his marriage, Mr. Smith joined the Army Air Corps in 1942, serving in Europe during World War II, and in Japan and Korea during the Korean conflict for a total of 10 years. He then returned to his home in Island Falls where he trained and worked for over 30 years as the local barber.

Throughout the years, Mr. Smith served as the town clerk of Island Falls, town selectman, and for 10 years as a rural letter carrier for the United States Postal Service.

Mr. Smith's successful and varied careers made him well-suited for public office. His responsiveness to the needs of the citizens of his district ensured him of a successful 10 years in the State legislature.

He believed that as a true representative of his constituents it was his obligation to introduce legislation when asked to do so by a citizen even though there were times he did not necessarily support the bill. He believed by doing this he was giving the requesting citizens an opportunity to have an issue that was important to them addressed. He had a deep belief in local input on legislation and local control of development issues. Mr. Smith was also a strong advocate in requiring the State to reimburse any locality 75 percent of the cost of all mandated programs.

A true representative of the long-held ideal of Maine's citizens, Mr. Smith felt very strongly about energy and environmental conservation issues.

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He championed many environmental initiatives and served on committees in the legislature related to fisheries and wildlife.

During his time in the legislature, he supported the Clean Indoor Air Act, a nonsmoking ban for the State. Another area of interest to Mr. SMITH was prison reform. While serving on the Corrections Committee, he proposed a bill that would provide a restitution program where imprisoned persons convicted of nonviolent crimes worked to pay their room and board at the prison, supporting their dependents, and pay damages owed to persons as a result of their crimes.

Representative SMITH personified the ideals of this country. He served his country in war, worked hard in his community of Island Falls, and was elected to serve in the State legislature, where he was able to positively affect the lives of citizens of Maine well beyond the borders of his legislative district.

With gratitude for his service to the State of Maine, I ask all Members to join me in the support of H.R. 2173.

Madam Speaker, I reserve the balance of my time.

Mr. LYNCH. Madam Speaker, at this time I'd like to yield 2 minutes to the gentleman from northern Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. Madam Speaker, I thank my colleague and my friend from Massachusetts. I can't help but rise, having heard our friend from Arizona who decided that really we were sort of wasting our time, despite the words of our friend from Utah just now, on the naming of a post office.

I'm reminded of the words from the book of Ecclesiastes that to everything there is a season. Today, at this moment, that season involves the naming of a post office that matters a lot to that community, that family, the memory of that individual, to the Members who represent that area in the United States Congress.

There will be time enough to debate cap-and-trade. In fact, last night we spent over an hour talking about cap-and-trade on our side of the aisle. I was privileged to participate in that.

But I think that it's easy sometimes when one has perfected the politics of ''gotcha'' to sound sanctimonious that one is rising above the trivial and addressing real issues when, as a matter of fact, in this body we address a whole range of issues.

I just rise in defense of the naming of a post office that's not trivial to part

of the folks we represent in this body and hardly represents the avoidance of a vigorous debate that I look forward to on cap-and-trade when that season is right.

I thank my friend from Massachusetts.

Mr. CHAFFETZ. I yield such time as she may consume to my distinguished colleague from the State of North Carolina (Ms. FOXX).

Ms. FOXX. I thank my colleague from Utah for the recognition. I want to make it clear, as my colleague from Arizona made it clear, we mean no disrespect, no denigration to the people for whom these post offices are being named. In fact, we're all very proud of Mr. MCHUGH, the nominee for the Secretary of the Army, whose bill preceded this bill.

I want to commend my colleague from Maine for introducing this legislation to honor Carl B. Smith with a post office named in his honor. However, we know the way that things are handled around here. It's been all too clear a pattern.

When it comes time to debate the legislation that is of major significance to everyone in this country, we wind up with closed rules and we wind up with debate cut off. And so it is up to us to inform the American people at every opportunity that we have what the impact of proposed legislation by the majority is going to be.

We hear over and over again when earmarks are requested by people on the other side that it's important that they bring home the bacon to their districts. Well, it's important to our constituents that they be told how much this cap-and-tax bill is going to cost them, because many Americans do not know it.

And I would say that the things that I have heard in Special Orders and even in the 1-minutes where folks on the other side are talking about cap-and-tax, it's as though we're talking about two different bills.

So we're not really having a debate on the merits of a piece of legislation. We're hearing a lot of propaganda about that legislation, but we're not having a real true debate on it. So it's up to us to inform the American people of the facts of the legislation.

As my colleagues have said before, the cap-and-tax bill that was passed out of the Congress in the Energy Committee a couple of weeks ago is a government planning scheme. It is more of taking all the choices in people's lives in this country up to the Federal Government level.

It will stifle private sector innovation. We are the most innovative country in the world because of the freedom that we have, and yet all the legislation coming through this Congress is aimed at stifling that freedom.

It is going to result in higher consumer energy prices. We know that. The President has admitted it. One of our colleagues from Michigan has admitted it's a huge tax. The President has said the prices are going to skyrocket. So how can they deny it when their own leadership has said it?

We know it's going to result in job losses, lower wages, and stock devaluation. It's not likely to reduce emissions, and there is no guarantee that reducing U.S. emissions is going to stop what is being called global warming. We don't even know that human beings are causing the global warming.

So we're using—I'm not even sure you can call it bad science. I think using the term ''science'' in conjunction with what is the underlying rationale for this bill is too strong a word.

But Republicans do have an alternative. Contrary to what our colleagues are saying over and over, we are not the Party of No. We are the Party of Do, and do right by the American people.

The American Energy Innovation Act, which is the Republican alternative to this, encourages innovation within the energy market to create the renewable fuel options and energy careers of tomorrow. It promotes greater conservation and efficiency by providing incentives for easing energy demand and creating a cleaner, more sustainable environment.

It increases the production of American energy by responsibly utilizing all available resources and technologies and streamlining burdensome regulations.

We have an alternative. It is a viable alternative. But that bill will never be debated. You talk about wanting debate. You talk about wanting discussions. Why not bring that bill up and let it be debated? Why not put it up for a vote just like the cap-and-tax bill will be put up for a vote?

No, that's not the way of this majority. The way of this majority is to stifle every idea that is good for this country and say, We won. We're going to do what we want to do. That's the attitude of the majority party. That is not true debate.

We would love to have true debate. We'd love to see the people on this floor have choices. They are not being given choices. They're not being allowed to debate.

So, Madam Speaker, we don't mean in any way to take away from the honors being given to these people for whom post offices are being named. As was pointed out earlier, one of them was by one of our Republican colleagues that we respect. But we think it's important to inform the American people of what they will be facing if some of the legislation being proposed by the Democrat majority is passed.

Mr. LYNCH. I yield myself such time as I may consume just to rebut the fallacy that the other side of the aisle needs to step on a bill that Mr. MCHUGH put forward to recognize someone from his district because we're naming a post office for that individual; or the gentleman from Tennessee who was honored, Governor Wilder, 30 years served as Lieutenant Governor of that State.

The other side argues that there's a lack of opportunity to talk about these other issues so they have to use the time that was designated to honor these people—a very brief amount of time, by the way. Normally, just a few minutes on each side, we get rid of these bills. They have extended the time we have spent on this floor.

But I just want to take today's schedule. Today's schedule, we have hearings all over the Capitol. We have 14 hearings in the Senate; some of those dealing with cap-and-trade. We have 18 hearings where Members of Congress will stand behind microphones just like this one and expound of their views on issues everywhere from agriculture to appropriations to energy and commerce, which is the subject matter that the other side would like to talk about.

There are ample opportunities for people in Congress to talk and talk and talk. Matter of fact, it reminds me of that movie, ''Charlie Wilson's War.'' Charlie Wilson's secretary, who was not familiar with the workings of Congress, turned to the Congressman and said, Charlie, why do Members of Congress talk and talk and talk and talk and never do anything? And Charlie turned to her and he said, Well, honey, mostly it's tradition. And that's what's going on here.

I have great respect for the ranking member, the gentleman from Utah, who came up and talked about the bill that was on the floor, talked about its merits. And Carl B. Smith; this is a post office being named after a gentleman who worked as a rural letter carrier.

Now you may laugh down your nose at that, but we seem to think that's honorable service to our country. Just because this guy was a letter carrier is no reason for Members on the other side of the aisle to denigrate his service, to denigrate the honor that's being bestowed upon him.

This man worked his entire life. He was a veteran. He was a letter carrier. This is the backbone of America. He was a proud union member. He dedicated his life. He was a good American. He put on the uniform of this country. Served in the Army. What about his service? What about his service?

Instead, we get a bunch of . . . standing up here spouting about stuff that you can talk in any single committee hearing on this schedule.

Mr. CHAFFETZ. Madam Speaker, I ask to take his words down.

Mr. LYNCH. I withdraw my comments. I apologize. I apologize on the word ''blowhard.'' I retract that. I retract that.

Instead, we have Members——

The SPEAKER pro tempore. Without objection, the words are stricken.

There was no objection.

Mr. LYNCH. I ask to strike.

The SPEAKER pro tempore. The gentleman from Massachusetts will proceed.

Mr. LYNCH. That was overreaching on my part.

The SPEAKER pro tempore. The gentleman will proceed.

Mr. LYNCH. Instead of giving those gentlemen—the gentleman from Tennessee, who served 30 years, Carl Smith, 30 years as an elected official and a postal servicemember, and Frederic Remington—giving them their due time on this floor, the brief moment that they have, probably the highest moment of achievement for certainly Mr. Smith in Maine—and, by the way, the sponsor of that resolution, MIKE MICHAUD, is actually chairing a subcommittee on Veterans' Affairs so he can't be here. So he has relied upon us to extend the basic courtesy to someone in his district who dedicated their lives to this country.

He was a man of a common position; just a rural letter carrier—like a lot of folks in this country, from a small town—and we're trying to name a post office after him.

Mr. MICHAUD sent this bill over while he is in committee dealing with veterans' affairs and debating those issues and asked us to handle this. I just think some of us have handled that responsibility poorly. That's what I think. That's my opinion.

And I just wish that even though you may look down your nose at this, you may not think that this is important at all, it's very important for these families and for these individuals to be honored.

With that, Madam Speaker, I reserve the balance of my time.

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Mr. CHAFFETZ. May I inquire as to the remaining time, please.

The SPEAKER pro tempore. The gentleman from Utah has 5 minutes remaining, and the gentleman from Massachusetts has 10 minutes remaining.

Mr. CHAFFETZ. I yield myself as much time as I may consume.

Madam Speaker, let me just say that I appreciate the gentleman from Massachusetts and sometimes the emotions. It seems to me, having just joined this debate, that we have spent more time criticizing what the Republican side of the aisle would like to talk about and that we have started to engage in the politics of personal destruction as opposed to talking about the issues of the day that are going to affect not just this one letter carrier who has served honorably.

I just want to reiterate the great work and dedication that this individual gave to the State. I think it is appropriate that we recognize and have a post office named after him. That's quite an honor that will stay, I hope, for a long, long period of time, for eons of time so that people can appreciate and can get to know and recognize him.

At the same time, I think a fair assessment would be, while we can give these individuals a few minutes of time and can recognize their strengths and contributions to the State, we do need more ample time to deal with what could be the single largest tax increase in the history of the United States of America, an increase that is going to touch every single American's life.

While there may be committee meetings over in the Senate and on committees that I'm not a participant in, I would hope that this body would continue to extend the time to talk about one of the most pertinent issues—the cap-and-trade—and the opposition that many of us here on the Republican side of the aisle feel to this bill.

With that, I reserve the balance of my time.

Mr. LYNCH. Madam Speaker, I welcome the gentleman's remarks. I understand the pressures put on the schedule, but I do know there is enormous opportunity for Congress. Never in the history of this country have we had more outlets and more opportunity to get our message out.

Last night, I know that our side took an hour just to talk about cap-and-trade. I know that your side does the same thing. There are a lot of opportunities and a lot of forums in this building and elsewhere on Capitol Hill to speak about them. We have a lot of issues. We have a lot of issues that confront us today, and there are many, many, many opportunities to express our opinions. I just think that this is one little slice of time that we have put aside for a significant purpose. It may be a narrow purpose in recognizing certain individuals, but I think that it should be dedicated and spent on that purpose without intervening subject matter denigrating that recognition and that honor that is so well deserved.

With that, I welcome the gentleman's remarks. Again, if it were not clear before, I apologize for my earlier remarks. The descriptions were inappropriate, and I do apologize for those remarks. Again, I ask that they be stricken from the RECORD.

I reserve the balance of my time.

Mr. CHAFFETZ. Madam Speaker, I urge all Members to support the passage of H.R. 2173, and I yield back the balance of my time.

Mr. LYNCH. Madam Speaker, with that and on behalf of the gentleman who is the lead sponsor of this resolution, MIKE MICHAUD from Maine, in honor of Carl B. Smith, we ask that this resolution be supported unanimously by the Members of Congress in recognition of a good, good American.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. LYNCH) that the House suspend the rules and pass the bill, H.R. 2173.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

HONORING ANNUAL SUSAN G. KOMEN RACE FOR THE CURE

Mrs. CAPPS. Madam Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 109) honoring the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition to the Susan G. Komen Global Race for the Cure on June 6, 2009, and for other purposes.

The Clerk read the title of the concurrent resolution.

The text of the concurrent resolution is as follows:

H. CON. RES. 109

Whereas breast cancer is the most frequently diagnosed cancer in women worldwide, with more than 1,300,000 diagnosed each year;

Whereas breast cancer is the leading cause of death among women worldwide, more than 465,000 die from the disease each year, and a woman dies from breast cancer every 68 seconds;

Whereas there are more than 2,500,000 breast cancer survivors alive in the United States today, the largest group of all cancer survivors;

Whereas a woman has a one-in-eight lifetime risk of developing breast cancer, and only a small percentage of cases are due to heredity;

Whereas incidence rates for breast cancer are increasing by as much as five percent annually in low-resource countries;

Whereas, since its inception, Susan G. Komen for the Cure has invested more than $1,300,000,000 in breast cancer research, education, and community health services that have raised awareness and improved treatment, helping more people survive the disease and creating a strong support community of breast cancer survivors;

Whereas publicly and privately funded research has resulted in treatment that has raised the 5-year survival rate for women with localized breast cancer from 80 percent in the 1950s to 98 percent in 2008;

Whereas the Susan G. Komen Race for the Cure Series is the organization's signature program and is the world's largest and most successful education and fundraising event for breast cancer;

Whereas more than 120 Komen Race for the Cure events are held across the globe, raising significant funds and awareness for the fight against breast cancer;

Whereas a record $3,700,000 from the 2008 Komen Race for the Cure was granted to 18 organizations in the National Capital area for 2009, a 10 percent increase over last year's local funding;

Whereas these grants are awarded to projects dedicated to addressing gaps and unmet needs in breast health education and breast cancer screening and treatment in underserved populations throughout the National Capital area;

Whereas 2009 marks the 20th anniversary of the first Susan G. Komen National Race for the Cure in Washington, DC;

Whereas this year the Susan G. Komen National Race for the Cure becomes the first-ever Susan G. Komen Global Race for the Cure, reflecting Komen's global mission to end breast cancer wherever we find it, at home or abroad; and

Whereas more than 50,000 participants, including 4,000 breast cancer survivors and hundreds of congressional and Federal agency employees are expected for the 20th annual 5K run/walk on Saturday, June 6, 2009, on the National Mall: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) remembers the lives of the women and men who have lost their fight with breast cancer and expresses support and admiration for those who have survived;

(2) congratulates those survivors, family, friends, and other community members who participate in the Global Race for the Cure in order to raise money for research and education so that many more may survive and encourages Americans to walk this year and to support their family and friends who participate; and

(3) honors the Susan G. Komen Global Race for the Cure for its impact on the National Capital Area, the Nation, and the world.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from California (Mrs. CAPPS) and the gentleman from Nebraska (Mr. TERRY) each will control 20 minutes.

The Chair recognizes the gentlewoman from California.

GENERAL LEAVE

Mrs. CAPPS. I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Mrs. CAPPS. I yield myself such time as I may consume.

Madam Speaker, I rise in strong support of H. Con. Res. 109, a resolution that honors the Susan G. Komen Global Race for the Cure.

More and more women are surviving breast cancer due in no small part to Susan's sister and to the many women and others who took to the streets and, in a variety of grassroots ways, decided to take this curse, really, which is breast cancer, out of the closet and into the spotlight where attention could be paid to it. We have seen that more and more women are surviving, but there is much more work to do in extending screening and treatment here and abroad. More research is needed into how we can better detect and treat breast cancer, and more work needs to be done to ensure that survivors have the tools they need to navigate the complexities of treatment, symptom management and follow-up care.

This Saturday will be the 20th Susan G. Komen Race for the Cure here in Washington, D.C. In recognition of the global scope of breast cancer this year, the race's name has been changed to the Susan G. Komen Global Race for the Cure.

I want to thank our colleagues, Representatives CONNOLLY, WASSERMAN SCHULTZ and SABLAN, for their leadership on this issue. I urge my colleagues to join me in supporting this resolution.

Madam Speaker, I reserve the balance of my time.

Mr. TERRY. I yield myself as much time as I may consume.

Madam Speaker, I appreciate working with the gentlewoman from California. We work on a lot of our health bills together. That's the spirit of comity in the Energy and Commerce Committee.

It is with great pride that I rise today in support of the House Concurrent Resolution 109, honoring the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition to the Susan G. Komen Global Race for the Cure on June 6, 2009.

So this Saturday, here in Washington, D.C., D.C. will be the host of the Susan G. Komen Global Race for the Cure, and participants will be walking, running, volunteering, and even sleeping to help raise money for breast cancer research, education and community awareness. More than 50,000 participants, including 4,000 breast cancer survivors and hundreds of congressional and Federal agency employees are expected for the 20th annual 5K walk on the National Mall.

I would like to at this point inject that Omaha, Nebraska's Susan G. Komen race is in October when it will be a little cooler. We like running and walking, and our office has a team for that race. I would encourage every congressional office, in their districts, to field a team to help raise awareness and research for breast cancer.

My mother was a breast cancer survivor until a different cancer got her a year ago. So I would like to express my gratitude for the $1.3 billion the Susan G. Komen for the Cure has invested, helping more people survive the disease and creating strong community support for breast cancer survivors.

Publicly and privately funded research has resulted in the treatment that has raised the 5-year survival rate for women with localized breast cancer from 80 percent in the 1950s to nearly 98 percent as we stand here today.

I would like to thank the author of the resolution, Mr. GERALD CONNOLLY of Virginia, for his leadership in honoring the Susan G. Komen Global Race for the Cure. I encourage all of my colleagues to vote in favor of this resolution.

I reserve the balance of my time.

Mrs. CAPPS. Madam Speaker, I concur with my colleague from Nebraska as to the significance of our local races, and I have a feeling that this weekend there will be many from Capitol Hill who will also be participating in the Washington, D.C. event. As a sister of a breast cancer survivor, I know this is a very personal story for almost everyone today.

With great pleasure, I yield to the author of the legislation, Representative CONNOLLY from Virginia, for such time as he may consume.

Mr. CONNOLLY of Virginia. Madam Speaker, I thank my colleague from California, and I thank my colleague from Nebraska for his kind remarks.

I rise in strong support of H. Con. Res. 109, honoring the Susan G. Komen National Race for the Cure.

This Saturday, June 6, 2009, marks the 20th anniversary of the race here on the National Mall in the Nation's Capital. More than 50,000 race participants, including 4,000 breast cancer survivors—4,000 breast cancer survivors, Madam Speaker—their families, their friends and supporters, plus hundreds of congressional and Federal agency staff, including staff from my own office and many others, will participate in the annual 5K run and walk. Thanks to last year's race, a record $3.7 million in grants was provided to 18 organizations in the National Capital region alone.

Madam Speaker, Susie Komen, as her sister affectionately called her, was just 36 years old when she was stricken and lost her 3-year battle with breast cancer in 1980. She did not have the benefit of a nationwide support network like the one her sister, Nancy Goodman Brinker, would found in her name 2 years later because, together, they identified large gaps in the system of care as part of Susan's valiant experience.

The first Race for the Cure was held in 1983 in Houston, Texas, and its success has subsequently spread to communities across the Nation. Now the annual race is the primary fund-raising vehicle for the Komen Foundation, which today has invested more than $1.3 billion worldwide for breast cancer research, education and community health services.

Those efforts have raised greater awareness, and have improved the treatment of breast cancer, itself, helping more people survive and creating a strong support of community survivors. Thanks in large part to organizations like Komen for the Cure, nearly 75 percent of women over the age of 40 now receive regular mammograms compared to just 30 percent when the campaign started in 1982. The 5-year survival rate for breast cancer was just 74 percent in 1982. Today, it is 98 percent. Numbering more than 2.5 million fellow Americans, breast cancer survivors now are the largest group of any cancer survivor community in the United States of America, but more needs to be done.

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Through the Department of Defense peer-reviewed Breast Cancer Research Program, we already have invested more than $2.1 billion in the ongoing search for a cure, and the Fiscal Year 2009 Omnibus Appropriations Act included another $150 million for this purpose.

We are also considering legislation, Madam Speaker, initiated by my colleague Congresswoman DEBBIE WASSERMAN SCHULTZ of Florida, who also is an original cosponsor of this resolution and a survivor, to better educate young women about the threat of breast cancer and other related bills that would provide greater protections to patients being treated for breast cancer.

Mr. Speaker, let me also note that we anticipated having our original cosponsor, Congressman GREGORIO SABLAN, with us today on the floor, but he is attending his son's graduation back home in the Northern Mariana Islands.

Succeeding in this effort will require continued persistence from us and from the thousands who will converge this weekend on the National Mall and from races all across the globe in the months to come. The National Race for the Cure is just one of more than 120 Race for the Cure events that will be held internationally this year. With more than 1.3 million diagnoses each year, breast cancer is the most frequently diagnosed cancer worldwide with incident rates increasing by as much as 5 percent annually in low-resource countries. Sadly, despite the progress we've made in 5-year survival rates, it's also the leading cause of death for women worldwide, claiming more than half a million lives each year, according to the World Health Organization. At that rate, a woman will die from breast cancer virtually every minute of every day in the year. To emphasize the significance of those numbers, the Komen Foundation is renaming its annual race as the Global Race for the Cure, reflecting its global mission to end breast cancer wherever it is found, at home or abroad.

Mr. Speaker, as we prepare for this weekend's race, I invite survivors and supporters to join the team from my office if you do not already have somebody to walk with or run. We can be found under CONNOLLY's Cruisers on the race Web site. Much like the cherry blossoms do in the spring, we will turn the National Mall a vibrant shade of pink this weekend as we come together to demonstrate the urgency and necessity for finding a cure.

Mr. Speaker, I urge all of my colleagues to join us in supporting this very important effort.

Mr. TERRY. I continue to reserve the balance of my time.

Mrs. CAPPS. Mr. Speaker, it is with great pleasure that I yield as much time as she may consume to our colleague from Florida (Ms. WASSERMAN SCHULTZ) whose connection to this topic is the most personal you can get.

Ms. WASSERMAN SCHULTZ. I thank the gentlelady from California for the time.

Mr. Speaker, I rise in strong support of House Concurrent Resolution 109, which honors the 20th anniversary of the Susan G. Komen Race for the Cure. Susan G. Komen for the Cure is the largest and most progressive group of breast cancer activists in the world. So it is no surprise that the race, now in its 20th year, is the world's largest and most successful fundraising event in the fight against breast cancer. Over the years, participants have raised tens of millions of dollars to fund screening, treatment and education programs for the medically underserved. And with over 120 races across the globe, it is fitting that when the thousands of runners, walkers and, yes, even sleepers participate this Saturday, they will be part of the newly named Global Race for the Cure. The new name is also fitting because we know that breast cancer respects no national boundaries and is, in fact, the leading cause of death among women worldwide.

To be sure, while we have come a long way in the fight against breast cancer, we still have too far to go. This year in the United States alone, over 190,000 women will be diagnosed with breast cancer. Many of those women will be younger than 45 years old. Each year, 28,000 women younger than 45 are diagnosed with breast cancer, and far too many of them lose their battle. Forty-thousand of the women diagnosed nationwide will not survive. Globally, over 1.3 million women will be diagnosed with breast cancer, and almost half a million will die. That is why we cannot rest in our efforts to fund research and find a cure for this insidious disease, and it is why we cannot rest in our efforts to provide education and awareness for all women. We must ensure that they have access to screening and treatment, and we must do all we can to support the more than 2.5 million survivors in our country alone.

As many of you know, I recently had my own battle with breast cancer. I am both grateful and humbled to count myself among this growing group of passionate survivors. I was fortunate to have access to the treatment and support that I needed to win my own fight. Through efforts like the Race for the Cure, we can all work together to make sure that everyone has that same opportunity.

So thanks to the many people participating in this year's race—the countless volunteers, the supporters, the runners, walkers and all the staff of Susan G. Komen for the Cure for making this event an annual reality. And thanks to my colleague and friend Representative GERRY CONNOLLY for his leadership in sponsoring this important resolution and for working with myself and Delegate GREGORIO SABLAN to honor the work of everyone fighting against breast cancer. And congratulations to Mr. SABLAN's family on his child's high school graduation.

I urge my colleagues to support this wonderful resolution and to take a moment to honor all of those we have lost in this fight and also those that struggle on. Let us not stop until the race is won. Early detection is the key. I did not find my tumor through luck. I found it through education and awareness. All women and all families in this country deserve access to that education and awareness.

Let me just issue a little challenge to the 13 teams in the congressional division competing in the Race for the Cure this Saturday. Let's show all the other teams what our congressional teams can do, step up our efforts in the last few days, and really increase the participation of the Members and staff of the congressional division for the Global Race for the Cure.

Mr. TERRY. I have no further speakers. I will just say that I really appreciate the gentlelady from Florida (Ms. WASSERMAN SCHULTZ) for coming down to the floor and speaking about her personal experiences. The courage that she has in speaking about this openly, educating people across the country, she's very special; and I'm glad she came down.

I want to congratulate all of the D.C. employees of our staffs that will be participating in the Race for the Cure this weekend. I wish them well. Raise lots of money. This is one of the truly great organizations, and it is the symbol of grassroots efforts for a cure for breast cancer. I wish them well this weekend as well as all of the other walks and runs that will occur in most cities across the Nation over the next few months.

I yield back the balance of my time.

Mrs. CAPPS. I want to thank my colleague from Nebraska and to acknowledge that this is truly one bipartisan issue that we all agree upon. And as our colleague from Florida has issued us all a challenge, we now have a goal to try to reach here with our staffs and on the Hill, from the Hill as we participate. I want to thank the sponsors of the race for expanding their scope and now for this resolution being known as the Susan G. Komen Global Race for the Cure and to acknowledge this day coming, June 6, 2009.

Mr. SABLAN. Mr. Speaker, I rise today in support of House Concurrent Resolution 109. Many, many families across the United States have had their lives irrevocably changed because of a diagnosis of breast cancer. Many of these families have lost a loved one, a mother or sister or daughter, or even a father, brother, or son, to this devastating disease.

The statistics surrounding breast cancer are sobering. One in eight women in the United States will be diagnosed with breast cancer in her lifetime. Though there are 2.5 million survivors in the United States today, many more lives could be saved with the benefit of better, earlier detection and more effective treatment.

The problem is just as serious in other nations around the world. Breast cancer is the most frequently diagnosed of all cancers worldwide, with more than 1.3 million diagnoses each year. It is also the leading cause of death among women around the world, with over 465,000 deaths each year.

Imagine that for a moment—465,000 children without mothers, fathers without daughters, sisters and brothers without their siblings. And these are people from every walk of life, of every age, and in every corner of the globe.

Fortunately for all of us, there are many organizations whose mission is to improve research and education surrounding this devastating disease. Through their efforts, groundbreaking treatments have raised the 5-year survival rate for women with localized breast cancer from 80 percent in the 1950s to 98 percent in 2008.

Among these organizations is the Susan G. Komen Foundation. Komen's fundraisers, including the Race for the Cure and the Breast Cancer Three-Day, have raised tens of millions of dollars that will help people around the world improve detection, treatment, and education—since its inception, Komen alone has invested more than $1.3 billion in such programs.

Komen's annual National Race for the Cure will take place this weekend in Washington,

D.C.—the 20th such race. More than 50,000 participants, including survivors of breast cancer, family members of patients, and others, will help medical research move forward and benefit many more men and women in the future.

Last year, my district even fielded its own team to participate in the Breast Cancer 3-Day Walk in Seattle. The ''Saipan Sweet Feet'' team included Bobbi Grizzard, Marian Aldan Pierce, Clarie Kosak, Pam Brown, Rhoda Smith, Roberta Guerrero, Kazuyo Tojo, and Corrine Loprinzi. I hope others will participate in these wonderful events this year.

I wish, along with my colleagues, to congratulate the participants in this race and thank them for dedicating their time and money to such a cause, to express my admiration for the strength and courage of breast cancer survivors, to honor the Susan G. Komen foundation for its work, and to offer my heartfelt condolences to those who have lost friends and family members to this disease.

Ms. WATERS. Mr. Speaker, I rise in strong support of House Concurrent Resolution 109—Honoring the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition to the Susan G. Komen Global Race for the Cure on June 6, 2009. I commend my colleague Representative GERALD E. CONNOLLY for bringing this measure before the floor.

Breast cancer has had a devastating impact on women worldwide, as 1.3 million cases are diagnosed each year. In a 2009 report, the National Cancer Institute estimates there will be 192,370 new breast cancer cases among women living in the United States. And in addition to these statistics, the disease continues to pose unique challenges to the African American community. Clearly, we must continue to educate and inform the American public about breast cancer and the importance of being proactive in having regular medical screenings, particularly focusing on individuals that belong to high-risk demographics. Accordingly, the Susan G. Komen Race for the Cure has achieved great strides in raising money for breast cancer research, community initiatives, and educating women about the disease.

The impact of cancer within the African American community has been particularly devastating. The mortality rates for Blacks with breast, colon, prostate, and lung cancer are much higher than those of any other racial group. Although African American women are less likely to be diagnosed with breast cancer than other racial and ethnic groups, they are 35 percent more likely to die from the disease. This is due in part to the fact that Black and Hispanic women are less likely to receive breast cancer screening with mammograms than White women.

Research has proven that early detection is essential in increasing an individual's chance of beating the disease. Thus, community outreach and education go a long way in combating breast cancer mortality rates. The Susan G. Komen Foundation has invested more than $1.3 billion in breast cancer research, education, and community health services that have raised awareness and improved treatment, helping more people survive the disease and creating a strong support community of breast cancer survivors. Undoubtedly, the organization has done much to advance our national fight against breast cancer, and it certainly deserves our recognition for the great work it has accomplished.

Mr. Speaker, as a strong advocate for breast cancer research, community outreach, and awareness campaigns, I am pleased to add my voice of support for House Concurrent Resolution 109.

Mrs. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to commemorate the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition, on June 6, 2009, to the Susan G. Komen Global Race for the Cure. With its headquarters located within my congressional district in Dallas, Susan G. Komen for the Cure reaches out both nationally and globally to women affected by breast cancer. I am pleased to honor the foundation today as they celebrate their achievements and continue to move forward in creating a world without breast cancer.

Susan G. Komen for the Cure was founded by Nancy G. Brinker in 1982 on the basis of fulfilling a promise she made to her sister, Susan G. Komen. Her promise was to end breast cancer forever. Since its establishment, Susan G. Komen has raised $1.2 billion from events like the Race for the Cure, contributing the largest source of non-profit funds dedicated to fighting breast cancer. As a result, there have been several advances in the fight against breast cancer. There is now increased government funding in cancer research, prevention, and funding, and an increased chance of survival due to earlier detection.

Over the next ten years, Susan G. Komen for the Cure will continue to contribute to the fight against breast cancer. The foundation plans to invest an additional $2 billion to help find a cure for breast cancer and better the lives of women all across the world. As a former nurse, I am honored to congratulate them on their 20th anniversary of the Race for the Cure in the Nation's Capital, as well as their transition to a global organization.

Mrs. CAPPS. I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOLDEN). The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 109.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mrs. CAPPS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

SUPPORTING MENTAL HEALTH MONTH

Mrs. CAPPS. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 437) supporting the goals and ideals of Mental Health Month, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 437

Whereas the mental health and well-being of people in the United States is a issue that affects not only quality of life, but also the health of our communities;

Whereas the stigma associated with mental health continues to persist;

Whereas more than 57,000,000 people in the United States suffer from mental illness;

Whereas approximately 1 in 5 children and adolescents has a diagnosable mental disorder;

Whereas more than a quarter of our troops suffer from psychological or neurological injuries sustained from combat, including major depression and post-traumatic stress disorder;

Whereas more than half of all prison and jail inmates suffer from mental illness;

Whereas major mental illness costs businesses and the United States economy over $193,000,000,000 per year in lost earnings;

Whereas untreated mental illness is a cause of absenteeism and lost productivity in the workplace;

Whereas in 2006, over 33,000 individuals committed suicide in the U.S., nearly twice the rate of homicide;

Whereas suicide is the third leading cause of death among people between the ages of 15 and 24;

Whereas in 2004, individuals age 65 and older comprised only 12.4 percent of the population but accounted for 16.6 percent of all suicides, and the rate of suicide among older people in the United States is higher than for any other age group;

Whereas 1 in 4 Latina adolescents report seriously contemplating suicide, a rate higher than any other demographic;

Whereas studies report that persons with serious mental illness die, on average, 25 years earlier than the general population; and

Whereas it would be appropriate to observe May 2009 as Mental Health Month: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the goals and ideals of Mental Health Month in order to place emphasis on scientific facts and findings regarding mental health and to remove stigma associated therewith;

(2) recognizes that mental well-being is equally as important as physical well-being for our citizens, our communities, our businesses, our economy and our country;

(3) applauds the coalescing of national and community organizations in working to promote public awareness of mental health and providing information and support to the people and families affected by mental illness; and

(4) encourages all organizations and health practitioners to use Mental Health Month as an opportunity to promote mental well-being and awareness, promote access to care, and support quality of life for those living with mental illness.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from California (Mrs. CAPPS) and the gentleman from Nebraska (Mr. TERRY) each will control 20 minutes.

The Chair recognizes the gentlewoman from California

GENERAL LEAVE

Mrs. CAPPS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Mrs. CAPPS. Mr. Speaker, I yield myself such time as I may consume.

I rise today in strong support of House Resolution 437, supporting the goals and ideals of Mental Health Month. I would like to thank my colleague Congresswoman NAPOLITANO for her leadership on this issue. This resolution underscores the importance of mental health for the overall well-being of Americans, the health of our communities and the Nation's economic strength. It's an opportunity to commend the important work of health practitioners who, together with national and community organizations, are so dedicated to the promotion of mental health. These practitioners, these organizations, work tirelessly to improve awareness of mental health issues. As a nurse, I especially welcome this opportunity to recognize the contributions of so many of my colleagues.

Over 57 million Americans suffer from mental illness. Mental illness is the leading cause of disability in our Nation; and when left untreated, mental illness is a leading cause of absenteeism and lost productivity in the workplace. This resolution knows that mental illness disproportionately affects a number of groups, including the elderly, adolescents, young adults, minorities and now, most especially we note, our troops returning home from combat. Despite the prevalence of mental illness in our society, this resolution appropriately highlights the stigma still associated with many of these conditions and that the stigma persists. Even though we have passed mental health parity legislation, we have so much more work to do to fully realize equal benefits for mental illness prevention and treatment. For this very reason, it is important to support the goals and ideals of Mental Health Month while also working to reduce the stigma associated with mental illness.

I urge my colleagues to join the bipartisan sponsors of this bill in supporting Mental Health Month.

Mr. Speaker, I reserve the balance of my time.

Mr. TERRY. Mr. Speaker, I yield myself as much time as I may consume.

I, too, rise in support of House Resolution 437, acknowledging the month of May as National Mental Health Month.

Mental health has been recognized by Congress for over 50 years and has continued to raise awareness in our communities and lower the stigma associated with mental disorders. I would like to express my gratitude to the national and community organizations working to promote public awareness of mental health and providing the proper information for families affected by mental illness. Your work is critical to increasing the quality of life for those with mental illness. I would like to thank the author of the resolution, Mrs. GRACE NAPOLITANO, who was a classmate of mine, for her leadership in helping Americans while addressing mental disorders. I encourage all of my colleagues to vote in favor of this resolution.

I reserve the balance of my time.

Mrs. CAPPS. Mr. Speaker, it's a pleasure to yield to the author of this legislation, our colleague from California (Mrs. NAPOLITANO) as much time as she may consume.

Mrs. NAPOLITANO. I thank the gentlewoman from California.

I certainly am very grateful that this has been put on the agenda, and I'd certainly like to thank Chair WAXMAN and Ranking Member BARTON of the Energy and Commerce Committee for promoting this resolution.

Every year we recognize in the United States May as the National Mental Health Month. Now today with House Resolution 437 we do so with great joy and sometimes with great trepidation. Mental health is an important issue that deserves attention year round. For too long there's been an associated stigma with mental health. You don't want to talk about it. You don't want to hear it. You don't want to see it. But we must continue to work to remove the stigma, the barrier to knowledge, to make more awareness available and increase access to mental health services both to our military and also to our young men and women, whether it's at the schools, at the universities, in the different areas where it's more prevalent. We have found that early detection, intervention and assistance is very key to being able to have productive citizens in this area. Our U.S. Surgeon General has estimated that over 57 million Americans suffer from mental illness, and it affects everybody. It crosses boundaries. It does not rise to gender or political parties. It is affecting everybody. It does not discriminate.

One in five children in the United States has a mental disorder. This is according to the U.S. Surgeon General's report. And fewer than 20 percent of these children receive the mental health services they desperately need.

□ 1200

Seventy to ninety percent of those treated do experience reduction of symptoms. So we know treatment is very effective. We just know that we don't have sufficient funding to allow for that treatment to be made available to everybody that needs it. And based on the Surgeon General's report, suicide is the third leading cause of death of young people ages 10 to 24. We are losing a lot of youngsters who will not have an opportunity to provide us with their knowledge, expertise and support in the future years of America.

Mental illness also disproportionately affects minorities. In 1999, a study done called ''The State of Hispanic Girls in the United States'' said one in three was reported considering suicide in ages 9 to 11. Currently the Hispanic rate for young girls remains the highest. Although it has been lowered somewhat, it still remains the highest percentage in the United States of attempted suicides.

And a new study just recently revealed that fifth-graders who believe they have experienced racial discrimination are at increased risk for depression, attention deficit disorder and other mental health problems. And unfortunately, Hispanics are three times more likely to have those symptoms. And blacks, African Americans, are twice as likely to be affected by these symptoms.

Then we go into our troops, our soldiers, our returning veterans. More than one in five Iraq and Afghanistan veterans will suffer from mental health conditions, whether it is PTSD, depression, even traumatic brain injury. There is increased news coverage on this. It happens every day. We hear and we see the reports about the effect it has on some of our men and women who have gone and served two, three, four and sometimes as many as five deployments. We continue to bring that to the forefront because we owe those servicemen and women the ability to be able to assimilate back into society and help them by delivering mental health services that they will desperately need not 1 month, not 5 months, maybe not years, but maybe somewhere along the line they are going to be able to have somebody help them out.

We must educate ourselves. We must educate our families. We must educate our loved ones what may happen to a returning veteran, how to recognize it and how to refer them for help and assistance in being able to deal with the symptoms that will not enable them to keep a job and be able to be productive citizens. They need to learn the symptoms of post-traumatic stress syndrome.

Families are also impacted, wives, the children, the separation, the long separations of the father or the mother, whatever the case may be, from their parent, the primary care providers and all physicians, nurses, psychologists and psychiatrists must also learn how to be able to recognize PTSD, which is a little bit separate than trauma, to ensure that all these men and women receive the care they need. The most common problem in the military culture, of course, is the fear of how this will impact their military career. And I'm glad to say that some of our military leaders are beginning to recognize that this is an important way to be able to help their men and women in service remain in service and be a part of their troops or their units. And we must continue to bring that forth and be able to assure them that they will not lose their ability to be able to be promoted.

We must train those military leaders and educate them, the doctors, the corpsmen and the nurses on how to treat PTSD and ask the soldiers to identify signs and symptoms of it with mild TBI, traumatic brain injury, to reinforce the collective responsibility

to take care of each other. All of us must work together to ensure our troops, who have given so much, are taken care of. And at home, our economy, as pointed out by my colleague, Mrs. CAPPS, has caused struggle. So have our minds. The recession has taken a toll on our families. Economic uncertainty is causing stress, anxiety and depression. The worrying about losing their homes or their jobs, worrying about the children and the retirement, if they are going to be able to retire or has their retirement fund gone somewhere.

It affects not only the quality of life but also our U.S. economy. Major depression is the leading cause of disability in the United States. The National Institute of Mental Health reports that serious mental illness costs the Nation at least $139 billion a year in lost earnings alone. So we must continue to have businesses know that including them in the health provision of services will help them be able to cut down on lost productivity in other areas. Again we must remove the stigma. We must remove the barrier to knowledge and bring more awareness and increase mental health services. Again, early detection and intervention and assistance is key.

I encourage all my colleagues to support House Resolution 437 to recognize May as Mental Health Month. We all know of someone who suffers from some kind of debilitating disorder. Even women with breast cancer; knowing that they have an issue with cancer is disabling. We must recognize also scientific facts and findings, increase awareness of services and how it affects the quality of life, the health and wellbeing of our communities and our economic stability. Let's work together to improve our lives and ask for support of House Resolution 437.

Mr. TERRY. We greatly appreciate the gentlelady from California's comments. And it was very striking that out of the age group of ninth-grade to eleventh-grade young ladies in that demographic that one in three would contemplate suicide. That is just stunning.

The Energy and Commerce Committee has a real asset on mental health as well as an advocate for treatment, awareness and education in the gentleman from Pennsylvania who is our resident psychologist on the committee. We use him a great deal.

And I would yield as much time as he may consume to the gentleman from Pennsylvania (Mr. TIM MURPHY).

Mr. TIM MURPHY of Pennsylvania. I thank the gentleman from Nebraska. And, Mr. Speaker, I also want to thank my friend and colleague from California, GRACE NAPOLITANO, who has been a great advocate. And I'm pleased to serve with her as leaders on the Mental Health Caucus. Her passion for working to bring awareness to our Nation and more treatment to those with mental illness is truly commendable and admirable.

With 57 million people in this country suffering from mental illness, it is no small problem. With one in five children and adolescents, with somewhere between 17 percent to 24 percent of our returning soldiers affected with mental illness, it is of great concern to us. Unfortunately, the problem that so often comes up with mental illness is not that it is not diagnosable, for it is. It is not that it is not treatable, for it is very treatable. The problem is for so many, the chosen treatment and approach to mental illness is denial. What we do is we deny its significance, we deny its existence, and therefore we deny the treatment to so many.

In some ways, we have not advanced beyond those Puritanical days of the Salem witch trials, where prejudice haunts the ability to get help, so people who have need of mental health treatment avoid it, families are not supportive of it, employers oftentimes will dismiss employees without understanding what it is, and quite frankly even here in Congress people have an awareness that is, well, dated, to say the least, when we do not understand that the way we need to approach mental illness is to vigorously approach it and treat it.

In the workplace, when mental illness is something that is part of someone's treatment insurance plan, we find that it actually saves money for employers because those employees get back to work. When we find that employees are denied mental illness treatment, and may I also add Medicare for the longest time also did not cover mental illness treatment, we find people worse. People who have chronic illness have twice the risk of mental illness. People with chronic illness, which is 75 percent of our health care cost, have twice the risk of mental illness. And yet for many years, Medicaid didn't cover it, and many insurance plans still do not. When you have a chronic illness and you have mental illness combined together, the health care costs double. They double. And it is important that we treat this with all of the tools possible.

Unfortunately, many times mental illness is treated only by pharmaceutical approaches. Some 75 percent of mental illness drugs are prescribed by nonpsychiatrists. That is unfortunate because I'm sure that many heart surgeons with their cardiac patients would not be very happy if noncardiologists treated the heart patients. And it goes on. But unfortunately when insurance plans do not pay for it, that is the only recourse.

There is one particular group of folks suffering from mental illness that have been mentioned a couple of times here, and that is our returning veterans from Iraq. Initial studies have suggested that some 17 percent of combat veterans may suffer from post-traumatic stress disorder. More recent studies suggest that of those who are coming back who actually experienced combat, those numbers may be as high as 24 to 25 percent. The military has made remarkable advances in dealing with suicide and depression and post-traumatic stress disorder in our returning soldiers, and with good reason. Right now, more soldiers die from suicide than from combat. It is also something that is contributing to those soldiers who have returned who have some mental health problems may actually engage in highly risky behavior, driving fast, more drinking and more drugs, which leads to further problems for families and more undetected mental illness.

The Navy, for example, has established programs where they actually send teams of Navy psychologists and sociology workers out to see where they can return with the veterans and work with them while they are onboard ship, helping to identify problems, screen them and get them involved with the help they need. The Army is also advancing in this, as the Marines and the Air Force, and that is good, because over the last couple of centuries in our country, if you look at the pictures, the photographs, the drawings and the paintings of our military, the ships have changed, the uniforms have changed, the guns have changed and the weapons have changed. But the soldiers have remained the same. Over the last century, we referred to such things as ''combat fatigue'' or ''battle fatigue.'' And for the longest time, soldiers were treated with ''three hots and a cot'' as a method of treatment. But now we are recognizing that teams of mental health professionals in the theater of combat are very helpful.

Recently the combat stress center in Iraq at Camp Liberty came literally under some fire, however, when one person they were treating allegedly walked into this combat stress facility and opened fire. He had had his weapons taken away, but then on his way back after he was dismissed from there and told to come back later, he took someone's gun, came back and opened fire. Two therapists and three people waiting for care were all killed. It is worth noting that one of those people waiting for care stood up and tried to stop him from killing others, and that person was killed in the process. So even in the course of trying to get some help, we have somebody who stood as the hero.

I had mentioned early on that denial is a huge problem, and it is important that all of us understand post-traumatic stress disorder and acute anxiety disorders in our returning veterans. Because whether you are a family member, you are a friend or you are a member of the American Legion or the VFW, it is the responsibility of all of us to look out for these returning citizens and help them get the help they need.

Watch for these symptoms:

Recurrent and intrusive distressing recollections of an event, including images, thoughts and perceptions such as seeing a comrade's dead body or experiencing flashbacks of the sounds of explosions and screaming;

Recurrent and distressing nightmares of the traumatic event;

Intense psychological distress when exposed to cues or reminders of any aspect of the trauma, such as the backfiring of a car or an explosion that could set someone off again;

Extreme physical reactivity, such as racing pulse, sweating, and intense fear, when exposed to any cues or reminders of the trauma. This could even be set off in Vietnam veterans or World War II veterans when they watch a program or a movie on television;

Persistent avoidance of any reminder, not wanting to talk about it, avoiding any thoughts, activities, places or people, of the traumatic event;

A general numbing in responsiveness, such as the person feels detached and estranged from others and may have little range in emotion and few strong feelings. Oftentimes this is a concern raised by spouses when their spouse returns home from combat, and they say he or she is just not the same anymore. The emotions are blunted. They have less ability to show the depth of emotions, less interest in the children.

They may also have a sense of a foreshortened future; having come close to death, they may see their own death and problem as imminent and may engage in more risky behavior.

They may have hypervigilance. They may be constantly scanning the environment for danger, even when there are no problems. They may be driving along the highway, if they were perhaps the driver of a Hummer in Iraq, they may be constantly scanning the road to see, are there problems ahead?

They may have an exaggerated startle response, especially to sudden movement or loud noises. They may have poor concentration, irritability and anger. And anger is an important symptom that we need to pay attention to for depression and anxiety disorders and post-traumatic stress disorder for veterans. And of course they may have disturbances in one's ability to sleep.

Many times the veteran will work towards self-medicating, alcohol and drugs, and, of course, keep that quiet from others too. They may find themselves not sleeping at night but having a job where they sleep a lot during the day so they can hide this from others.

But what is so important, as I said in the outset, is that denial is not appropriate treatment, and that the rest of us do not get engaged in denial too. It is absolutely essential that we support our returning veterans no matter what. Regardless of someone's political views, we need to stifle our own comments and understand they were doing what we asked them to do. They were following orders.

□ 1215

And, quite frankly, they were doing it pretty darn well. And they accomplished their mission, and we're happy to see them returning home.

But, that being said, the silent battle that our veterans continue to fight, that invisible, silent battle that goes on inside their own heart and in their own mind is something that we need to be reaching out and paying attention to. And as we look at Mental Health Month, as we have just come back from Memorial Day, as we continue to see the yellow ribbons fly from trees and posts in every hometown of America as our soldiers return home, as we continue to send our notes and our e-mails and our care packages to our veterans, let us remember that we must continue to reach out for the veteran who has borne the battle, for their orphans and for their spouses and for those persons who have come back with that silent problem of the posttraumatic stress disorder and other disorders. We will work with them. We will help them. And God bless our veterans. And again, I thank the sponsor for this bill on Mental Health Month.

Mr. TERRY. Mr. Speaker, I ask unanimous consent that the gentleman from Pennsylvania (Mr. TIM MURPHY) may control the balance of my time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mrs. CAPPS. Mr. Speaker, it is with great honor that I now yield as much time as he may consume to our colleague from Rhode Island, PATRICK KENNEDY, who has championed this issue for as long as he has been a Member of Congress and really made us very much aware of the need, and then the passing of the resolution for the legislation for mental health parity. And I now yield time.

Mr. KENNEDY. Mr. Speaker, I would like to thank the gentlelady from California (Mrs. CAPPS). Thank you for all your good work on health care. As a former nurse, you know full well of the challenges of making sure that we have adequate supply of providers and how important it is for us to address the needs of those with mental illness by making sure that there are enough providers out there who are adequately educated in the field of mental illness. And I appreciate your cosponsorship on the Child Work Force Reduction Act, which will address the need of bringing in more child and adolescent mental health workers into the workforce field to deal with children and adolescents who need mental health care, because right now we're at a critical stage in this country with respect to the need for our children to gain access to providers willing to take care of those special needs that children have in the area of mental health. And nurses and doctors are in great need for those reasons. And LOIS CAPPS has been really one of the champions in the area of trying to provide greater numbers of nurses and professionals who can take on the enormous challenges ahead.

In addition to that, Mrs. CAPPS, you've been very helpful in recognizing the enormous boom that's going to happen with our aging population. We're going to have a baby boom generation that's going to become a senior boom generation, where so many of our baby boomers are going to be elder boomers. They're going to be elderly, and the demand for new nurses is going to be extraordinary. And we don't have, right now, the necessary populations of nurses to deal with that.

Many people write off senior citizens' dementia, if you will, as part of growing older. They say, Oh, Grandma. Well, that's Grandma. That's the way they are when they're nonresponsive.

Well, frankly, I certainly don't want to be treated that way when I grow old, and I dare say anybody watching this doesn't want to be treated that way when they grow old. And the fact of the matter is, for most older people, it isn't dementia that leaves them isolated and with their heads down; it's depression. It's depression. And who wouldn't be depressed if you're a senior citizen and you've lost your life mate after over 40 years of marriage, if you've had to pick up and sell your house because you've no longer been able to afford it any longer, if your children and grandchildren are scattered all across the country and very rarely visit you any longer, if now you're confined to an elderly-only high rise. I would imagine that would be pretty depressing for a lot of elderly people, and for many of them, it is depressing. And so we are working on the Positive Aging Act, which will address the needs of our senior centers and the needs of our seniors with regards to that.

But I also want to acknowledge my good friend and colleague, GRACE NAPOLITANO, who has been so wonderful in her efforts to lead the charge of the Mental Health Caucus. And GRACE NAPOLITANO has been a terrific champion for making sure that our young people are also included in on these issues of mental health because she has seen in her own neighborhoods, that we may talk about war overseas and the posttraumatic stress that our veterans suffer when they go into harm's way, and they come back and they're suffering from reconciling all this violence to the new world they're coming back to, and they have to readjust to the main life of everybody else, and they have to somehow come home, and a lot of them suffer from PTSD. Well, you can imagine, these are adults. These are fighting men and women, the men and women of our Armed Forces, and they have adult coping mechanisms. And even adults, with adult coping mechanisms, have posttraumatic stress disorder.

So imagine what a child is facing in a barrio in East Los Angeles, or in a borough in Upper Manhattan, or a neighborhood in South Providence, or Pawtucket, Rhode Island, imagine the coping mechanisms that the children are going to need to have in those areas when they see violence in their own hometowns. In a very real way, they are suffering from posttraumatic stress, while not even having to go

overseas to go see a war because the war that they are seeing is in their own backyard. They are seeing gunshots in their own backyard on a regular basis.

We have 36,000 people killed by firearms in this country every year, a far cry from the number of people that have been killed in action over in Iraq.

You know, this is a situation where it's not a small wonder that there are so many kids in this country who are acting out and who are having trouble with their own mental health needs and posttraumatic stress.

So, Mr. Speaker, we have a lot to do with addressing the mental health needs of our people, both seniors and children and, of course, those who suffer from serious mental illnesses at the same time.

So this is Mental Health Week. We need to raise awareness of mental health. And the most crucial part of destigmatizing mental health is for people to go online to any of the National Institutes of Health, National Institute on Drug Abuse, National Institute of Mental Health and so forth, National Institute on Alcoholism, and look up the studies, because you will see the biochemical makeup and breakdown of the brain and how it operates differently for those who are at high risk of being alcoholics, or at high risk of having a propensity to have a bipolar disorder or not, or having depression, or those people who may have other diagnosable mental disorders. It's quite striking that what you'll see in these videos that are a result of these MRIs, these new x-rays of the brain, that you cannot dismiss the notion that mental illnesses are physical illnesses. And we know that for a fact, because if you simply give people who were in total depression before certain medications, it's amazing how they blossom in their abilities to now live more functional lives after they've taken the medications.

So why we would ever treat the brain unlike any other organ in the body is beyond me. The brain is an organ in the body just like every other organ of the body. But unfortunately, in this country, in our health care system it's treated as if it's something separate.

What we need to do in health care reform is make sure the brain is treated holistically, as part of the body. And in any health care reform, it's got to be reimbursed holistically in terms of the rest of the health care package.

I thank Representative NAPOLITANO for introducing this resolution in support of the goals and ideals of Mental Health Month. I rise today to speak to those goals, and the need to integrate them into health care reform.

According to the Institute of Medicine, together, mental and substance-use illnesses are the leading cause of combined death and disability for women of all ages and for men aged 15–44, and the second highest for all men. When appropriately treated, individuals with these conditions can recover and lead satisfying and productive lives. Conversely, when treatment is not provided or is of poor quality, these conditions can have serious consequences for individuals, their loved ones, their workplaces, and the nation as a whole. Tragically, individuals with serious mental illness have a life expectancy of 25 years less than the general population.

The World Health Organization defines health as "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity." As we work to reform and reincentivize our health care system, we must ensure that it is a whole-body initiative, recognizing that mental health is integral to overall health, and that optimal overall health cannot be achieved without this.

With this in mind, we must diligently work to ensure that when crafting health care reform, we create a health care system that treats the whole person. Health care reform policy should support and encourage practices that fully integrate mental health into primary care. All providers, and in particular primary care doctors, must be trained and adequately reimbursed, for providing comprehensive and coordinated care—care that approaches health as a whole body initiative. Primary care physicians must be given the resources needed to adequately address the mental health needs of their patients. Innovations, like medical homes, are working to improve quality and contain cost, but the primary care workforce is not sufficient to meet the country's needs.

Over the last two decades, fewer medical students are choosing primary care for a number of reasons, including reimbursement issues. Payment policies do not adequately compensate doctors for the time it takes to coordinate care, provide case management, or address mental health and substance abuse issues in the primary care visit. Specialty providers and other physicians must likewise have training on mental health and substance abuse problems and be trained to provide collaborative care and case management, and be reimbursed accordingly.

For the 45.7 million Americans without health insurance (a number which has grown due to the recent economic downturn), we must create an affordable, quality health care system in which all Americans are covered. Providing coverage alone, as it exists now, is not a solution onto itself however. The coverage we provide for all Americans must include the full spectrum of evidenced-based mental health care, including both treatment and prevention services. Mental health coverage should not be subject to restrictive or prohibitive limits when formulating coverage determinations on the frequency or duration of treatment, cost-sharing requirements, access to providers and specialists, range of covered services, life-time caps, and reimbursement practices.

The expansion of insurance coverage is not the same as ensuring access. Lack of insurance is only one of the many barriers to care for those seeking mental health services. Those with coverage also face financial barriers to care due to prohibitive cost sharing requirements, limited access to providers, and denials of coverage for mental health conditions. Once all Americans have health insurance, coverage must provide for access to affordable, high quality care. Current barriers to care within the health insurance system must be eliminated, and mental health coverage must include access to the full spectrum of evidenced-based care for both prevention and treatment of mental health conditions. This includes, but is not limited to, access to and choice of doctors who approach health as a whole body initiative.

Other reform measures necessary to create a system best posed to treat the health of the whole body include: instituting rules for standardized payments; ensuring that clinical necessity is the determinant of patient care; replacing underwriting with a "community rating" system that would set premiums based on age and location instead of health status of the individual; requiring that any denials of coverage be transparent and subject to a meaningful and independent review process; promoting and incentivizing mental health prevention programs; integrating mental health consumers and providers in emerging health information technology systems; requiring the regular use of standardized, objective and uniformly applied clinical outcome measures; and improving coordination among social service sectors.

Further, in order to truly achieve the above stated principles, we need health care reform that addresses the underlying, systemic issues in our current system. We are the only industrialized country that treats health care like a market commodity instead of a social service. Thus, care is not distributed according to medical need but rather according to ability to pay. Cost savings cannot be discussed without acknowledging that 31 percent of all health care expenditures in the U.S. are administrative costs. The average overhead for private insurance in this country is 26 percent, compared to 3 percent for Medicare. The majority of doctors and Americans support a single-payer health care system, yet this option has been dismissed by many policymakers as unrealistic. As elected Representatives of this democratic system, we are responsible for representing the views of the public. Therefore, it is imperative that we keep this option in the discussion of health care reform.

I hope to work together with my colleagues to institute these critical changes to our nation's health care system. The American people deserve nothing less.

Mr. TIM MURPHY of Pennsylvania. Mr. Speaker, I would just like to add a few more comments here. We have no more speakers, and I'll close with that. But it has to do with this.

As I discuss the issues of our returning soldiers, it is important I add this element too, and that is that we need to reflect to them a tremendous sense of hope. Many times soldiers in theater and after they return home are hesitant to talk with anybody about their symptoms for two fears: one, if they're in theater or combat, they worry that it will prevent them from going back to their unit. If their deployment is ending, they are worried that it will delay them from coming home; and they also are concerned that it will affect their promotion, their advancement, their continuation in the military, and they don't want to let their fellow soldiers down or themselves.

What our military is working on, however, is making sure they understand that our duty as mental health professionals is to make sure they're back to full form, and, in fact, that is something that's a change of how the military has handled this. Whereas, in the past someone would be pulled out

of their unit if they could, now the work is to get them back on their feet as fast as possible, but making sure they're not adding risk to their fellow soldiers.

Along those lines, it's important we send the same message of hope, whether it is someone who is a veteran in battle, or perhaps a veteran, as my friend from Rhode Island just pointed out, someone who has faced the same sort of problems in their neighborhood.

There are also genetic aspects of mental illness that may have very little to do with environment. There are parts that have to do with other neurological problems that occur.

Overall, our advance in the mental health field has grown tremendously. It may be that you cannot necessarily do a CT scan or a x ray or a blood test to diagnose mental illness, but it is diagnosable. It is treatable. And we have to make sure that part of this resolution for Mental Health Month and the goals and ideals is to help our Nation understand that it is diagnosable, it is treatable. We need to come to grips with it and deal with this in a way that understands that the science and the technology and the medicine behind mental health treatment gives a lot of hope for the future.

And with that, Mr. Speaker, I yield back the balance of my time.

Mrs. CAPPS. For all the reasons that have been cited by the many speakers, and in strong support of House Resolution 437, I urge my colleagues to support this resolution.

Mr. PAUL. Mr. Speaker, I certainly support efforts aimed at removing the stigma associated with mental health, increasing public awareness of the need to support those with mental health problems and their families, and the other goals of Mental Health Month. However, I am concerned that certain language in H. Res. 437 appears to endorse all of the recommendations of the New Freedom Commission on Mental Health, even though certain of the commission's recommendations threaten individual liberty and the wellbeing of American children.

In particular, the commission recommended that the federal and state governments work toward the implementation of a comprehensive system of mental-health screening for all Americans. The commission recommends that universal or mandatory mental-health screening first be implemented in public schools as a prelude to expanding it to the general public. However, neither the commission's report nor any related mental-health screening proposal requires parental consent before a child is subjected to mental-health screening. Federally-funded universal or mandatory mental-health screening in schools without parental consent could lead to labeling more children as ''ADD'' or ''hyperactive'' and thus force more children to take psychotropic drugs, such as Ritalin, against their parents' wishes.

Already, too many children are suffering from being prescribed psychotropic drugs for nothing more than children's typical rambunctious behavior. According to Medco Health Solutions, more than 2.2 million children are receiving more than one psychotropic drug at one time. In fact, according to Medico Trends, in 2003, total spending on psychiatric drugs for children exceeded spending on antibiotics or asthma medication.

Many children have suffered harmful side effects from using psychotropic drugs. Some of the possible side effects include mania, violence, dependence, and weight gain. Yet, parents are already being threatened with child abuse charges if they resist efforts to drug their children. Imagine how much easier it will be to drug children against their parents' wishes if a federally-funded mental-health screener makes the recommendation.

Universal or mandatory mental-health screening could also provide a justification for stigmatizing children from families that support traditional values. Even the authors of mental-health diagnosis manuals admit that mental-health diagnoses are subjective and based on social constructions. Therefore, it is all too easy for a psychiatrist to label a person's disagreement with the psychiatrist's political beliefs a mental disorder. For example, a federally-funded school violence prevention program lists ''intolerance'' as a mental problem that may lead to school violence. Because ''intolerance'' is often a code word for believing in traditional values, children who share their parents' values could be labeled as having mental problems and a risk of causing violence. If the mandatory mental-health screening program applies to adults, everyone who believes in traditional values could have his or her beliefs stigmatized as a sign of a mental disorder. Taxpayer dollars should not support programs that may label those who adhere to traditional values as having a ''mental disorder.''

In order to protect America's children from being subject to ''universal mental screening'' I have introduce the Parental Consent Act (H.R. 2218). This bill forbids federal funds from being used for any universal or mandatory mental-health screening of students without the express, written, voluntary, informed consent of their parents or legal guardians. H.R. 2218 protects the fundamental right of parents to direct and control the upbringing and education of their children.

Ms. WATERS. Mr. Speaker, I rise in support of House Resolution 437, providing full support of the goals and ideals of Mental Health Month, which is recognized annually in May. I commend my colleague, and fellow Californian Rep. NAPOLITANO, for acknowledging the importance of this measure and presenting it before the House.

The first Mental Health Act was signed in 1946 after it had been determined that soldiers who fought in World War II had returned with severe mental health issues. Still today a significant portion of individuals who suffer from mental illness are troops who suffer from depression and post-traumatic stress. Shortly after the act was signed the first Mental Health Week was developed. Eventually Mental Health Week evolved into the Mental Health Month program that we are celebrating today.

Legislation regarding mental health has been developed in the past to prevent health care discrimination. Patients experienced grave inequalities because mental health was not considered a legitimate issue, as too often mental health is viewed as a minuscule issue in comparison to physical health. Many people may not know that more than 57,000,000 individuals in the United States suffer from mental illness and H. Res 437 will not only raise awareness of mental health conditions but also aid citizens in their ability to combat stress to promote a healthy lifestyle.

Unfortunately, every year mental health illnesses go unrecognized and untreated, and Mental Health Month was developed in an effort to prevent such circumstances. This May, Mental Health America has promoted a National Children's Mental Health Awareness Day, to educate the general public about the realities of mental health. Mental health illnesses affect all age ranges, and House Resolution 437 lends its full support for communities to promote positive youth development, and help families cope during times of hardship. The United States Department of Health and Human Services utilizes necessary funds and manpower to advocate for the rights and services of mental health patients. It will continue to provide Family and Community Support Programs to aid those adults and children with serious mental illnesses.

Mr. Speaker, this measure is particularly important to the well-being of our citizens and I'm pleased to add my voice in support for this legislation. I will work diligently with my colleagues to ensure that the goals and ideals of Mental Health Month are recognized as notable issues. This is a significant step in raising awareness, and promoting healthy families and communities.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today in support of House Resolution 437 which recognizes the goals and ideals of mental health month.

Mental health issues affect many members of the population, altering their lives and the lives of their families. Over 57 million American citizens suffer from mental illness, and it is one of the leading causes of disability in our nation. In addition, people who suffer from serious mental illnesses die on average 25 years earlier than the general population, many of them from diseases that could be treated if diagnosed early.

Approximately 6.7 percent of the population is affected by Major Depressive Disorder, and more than 90 percent of people who commit suicide suffer from a depressive disorder before they take their lives. Post Traumatic Stress Disorder has become one of the most serious mental health illnesses, with over a quarter of all U.S. troops suffering from the disorder. H. Res. 437 stresses a desire on the part of either those suffering from mental illness, or the families of those suffering, to seek help.

As a registered nurse, I have seen firsthand the affects that mental illness has on individuals and their families, and I understand fully the importance of maintaining and advocating for mental health. This is an issue that affects many of us in some way, and we need to ensure that there is no stigma attached to mental illness so that those suffering can and will get the help they need. I ask my fellow colleagues to join me in recognizing the goals and ideals of Mental Health Month and supporting this Resolution in order to raise awareness for mental health issues.

Mrs. CAPPS. I yield back.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the resolution, H. Res. 437, as amended.

The question was taken; and (two-thirds being in the affirmative) the

rules were suspended and the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

□ 1230

PROVIDING FOR CONSIDERATION OF H.R. 31, LUMBEE RECOGNITION ACT, AND PROVIDING FOR CONSIDERATION OF H.R. 1385, THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2009

Mr. CARDOZA. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 490 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 490

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 31) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions of the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources; and (2) one motion to recommit with or without instructions.

SEC. 2. At any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1385) to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived except those arising under clause 10 of rule XXI. Notwithstanding clause 11 of rule XVIII, no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived except those arising under clause 9 or 10 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from California (Mr. CARDOZA) is recognized for 1 hour.

Mr. CARDOZA. Thank you, Mr. Speaker.

For the purpose of debate only, I yield the customary 30 minutes to the gentleman from California (Mr. DREIER). All time yielded during consideration of the rule today is for debate only.

GENERAL LEAVE

Mr. CARDOZA. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on House Resolution 490.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CARDOZA. I yield myself such time as I may consume.

Mr. Speaker, House Resolution 490 provides for consideration of H.R. 31, the Lumbee Recognition Act, under a closed rule, and also for separate consideration of H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, under a structured rule. Both bills are debatable for 1 hour, each equally divided and controlled by the chairman and ranking member of the Committee on Natural Resources. The rule for H.R. 1385 makes in order two amendments listed in the Rules Committee report. Each amendment is debatable for 10 minutes. The rule also provides for a motion to recommit with or without instructions on both bills.

Mr. Speaker, the two bills before us today will right several wrongs in our country's history and bring closure to the issue of full Federal recognition of the Lumbee Indians of North Carolina and six Indian tribes in Virginia.

Since the late 1800s, the Lumbee Tribe has been seeking Federal recognition despite the fact that congressional hearings and the Department of the Interior's studies have consistently concluded that the Lumbees are a distinct, self-governing Indian community. In fact, the Lumbees were first recognized as a tribe in 1885 by their home State of North Carolina. In that time, however, various bills to recognize the tribe failed due to opposition from the Department of the Interior.

Most importantly, in 1956, Congress formally acknowledged the Lumbee Tribe with passage of the Lumbee Act. However, it was passed during a period of Federal Indian policy known as the Termination Era. As such, while Congress acknowledged the Lumbee, it effectively ended its relationship with the tribe at the same time by denying them access to the benefits and privileges that accompany Federal recognition.

This termination has subsequently prevented the Lumbees from receiving recognition from the Department of the Interior which has maintained that only Congress can restore that relationship.

A similar injustice has occurred in Virginia. Records exist documenting a relationship between the six Indian tribes, local governments, and the Commonwealth of Virginia for centuries. It has long been established that ancestors of these six tribes resided in Virginia when the first white settlers landed in Jamestown, yet their history is fraught with deliberate discrimination and document destruction.

During the Civil War, most local records and tribal documentation were destroyed in fires at government buildings. At that time, many Indians began adopting Anglo-American names, language, and customs to conceal their tribal identity and ensure their survival.

In addition, Virginia's 1924 Racial Integrity Act—pushed by a noted white supremacist—was responsible for the deliberate and systematic destruction of over 46 years of any records that traced and recorded the existence of vast Indian tribes.

The Department of the Interior has generally not questioned the tribes' ancestry or tribal government status. But despite the wealth of documentation that exists for each tribe, it is not clear whether they could obtain proper documentation to be acknowledged by the Bureau of Indian Affairs. I would add that each of these six tribes was recognized by the Commonwealth of Virginia between 1983 and 1989.

Mr. Speaker, the circumstances surrounding all of these tribes are certainly unique and warrant special attention by Congress. Congress has passed bills recognizing all of these tribes several times, including last session. The Lumbee bill passed with strong bipartisan support while the Virginia Tribes bill passed by voice vote.

I ask my colleagues on both sides of the aisle to once again support these long-overdue bills.

I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. First, let me say how great it is to see you in the Chair, Mr.

Speaker. I would like to express my appreciation to my good friend from California, my colleague, Mr. CARDOZA, for yielding me the customary 30 minutes.

Mr. Speaker, this rule actually provides for the consideration of two problematic bills—H.R. 1385, which would extend recognition to six Indian tribes in the Commonwealth of Virginia; and H.R. 31, which would extend recognition to the Lumbee Tribe in the State of North Carolina. Both adopt an arbitrary and inconsistent recognition process that threatens those tribes who are already Federally recognized and upends the process for future applicants. And this rule provides for an even more problematic process.

The issue of tribe recognition—like all matters before Congress—demands clarity, fairness and transparency. The two underlying bills, unfortunately, deliver just the opposite. H.R. 1385 would extend recognition to six Virginia tribes rather than requiring that they go through the normal Federal recognition process at the Bureau of Indian Affairs.

These tribes have sought legislative action because they lack the proper documentation to complete the regular administrative process. This is due to the fact—and it was correctly pointed out by my California colleague—that they've been victims of targeted attacks in the past which resulted in the destruction of many of the very important historical documents that would have been necessary. This is a reminder, Mr. Speaker, of a very, very ugly chapter in our Nation's history, and Congress should work very carefully to address this issue.

While the situation of the Virginia tribes is difficult—and I recognize that—for the reasons I just stated, we need to consider the overall fairness of our actions. For instance, there are currently nine other tribes, nine other tribes that have fully completed their application processes and are awaiting final determinations. They have done their due diligence and deserve to have their cases addressed in the proper order. While the six tribes covered in H.R. 1385 may deserve special dispensation from the normal BIA process, questions have been raised regarding the fairness of penalizing the nine other tribes who fully completed the process and are patiently waiting in line for the determination.

The process serves a purpose: ensuring that tribal determination is fair, consistent and fully vetted. We need to think very, very carefully, Mr. Speaker, before upending that regime.

H.R. 31 is even more controversial, not least because the price tag comes to $786 million—or, Mr. Speaker, I should say ''at least'' $786 million. We know that an enactment of this bill would cost, again, at least three-quarters of a billion dollars. And I say ''billion'' because I know the word ''trillion'' is used more frequently around here tragically these days. But it would be very, very, very costly. It could balloon to an even larger level of funding.

At issue is conflicting membership estimates of the Lumbee Tribe. The Interior Department estimates it at 40,000; the tribe itself estimates it at about 55,000, a difference of nearly 40 percent. But what's more, local North Carolina media have reported that some in the tribe intend to expand its membership once this bill is enacted. They're waiting for Federal recognition and then want to increase their numbers, expanding the cost of this bill even further and pulling resources away from the long-recognized tribes.

Now, Mr. Speaker, the Lumbee Tribe, just like any other Indian tribe, should obtain Federal recognition on its merits. It may indeed deserve recognition. However, the merits are still far from clear. The last several administrations have opposed their application. The Obama administration has reversed course, but it has not offered any explanation as to why. In fact, the administration does not yet have its appointees in place at the Interior Department to even articulate their reasoning.

Mr. Speaker, Congress must fully vet all of these issues and act in a clear, comprehensive way that eliminates the current confusion and restores clarity and certainty. And yet inexplicably, the rule which we're debating right now curtails the ability of Members, Republican and Democratic Members, to offer their amendments so that a comprehensive consensus solution could, in fact, be reached.

Rather than an open process which would have allowed the House to address many of these issues, the rule for the Lumbee Tribe bill is a closed rule, despite submission of the very thoughtful amendment by Mr. SHULER. It is, in fact, a bipartisan amendment. He should be allowed to bring his alternative before the House for an up-or-down vote. It's very sad that I have to stand here as a minority Member fighting for the rights of a majority Member of this institution.

Similarly, Madam Speaker, the ranking member of the Agriculture Committee, our friend from Roanoke, Virginia, (Mr. GOODLATTE) asked for an open amendment process on the Virginia bill. While two of his amendments were made in order, an open process would have allowed him to offer all of his amendments and permitted all Members to participate.

Madam Speaker, these bills have problems but this rule has a bigger problem. As happens all too often in this Democratic majority, this debate will be closed rather than open, and Members will be shut out of the process.

So I urge my colleagues to oppose the rule. We can address these very, very important issues in a more fair and balanced way.

□ 1245

With that, I reserve the balance of my time.

Mr. CARDOZA. Madam Speaker, I'd like to inquire from my friend and colleague from California if he has any further speakers.

Mr. DREIER. Would the gentleman yield?

Mr. CARDOZA. I would yield.

Mr. DREIER. I thank my friend for yielding, and, Madam Speaker, I will inform my friend that there are no other requests for time on our side of the aisle. At this juncture, I will encourage my colleagues to oppose this rule, and I yield back the balance of my time.

Mr. CARDOZA. Madam Speaker, I very much appreciate my colleague from California, and I understand that he has concerns about this process and these measures.

I would just like to remind the entire body that the Lumbee bill has, in fact, been before the Congress before. This Congress has acted on it. Despite the claims to the contrary, Congress has traditionally taken the lead in recognizing Indian tribes. In fact, Congress has recognized 530 of the 561 Federally recognized tribes.

Despite the fact that the Department of the Interior established certain administrative procedures in 1978, Congress has stepped in and recognized tribes nine additional times due to extraordinary circumstances, much like this.

I think that this is an appropriate rule, and I think we will have an opportunity to debate the issues during the debate time that has been allotted.

I would ask my colleagues to support the rule, and I urge Members on both sides of the aisle to once again take an important step forward in correcting hundreds of years of injustice which are long overdue.

Madam Speaker, I urge a ''yes'' vote on the rule and on the previous question.

I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mrs. TAUSCHER). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DREIER. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 231, nays 174, not voting 28, as follows:

[Roll No. 295]

YEAS—231

Abercrombie	Berry	Butterfield
Ackerman	Bishop (GA)	Capps
Aderholt	Bishop (NY)	Capuano
Adler (NJ)	Blumenauer	Cardoza
Andrews	Boccieri	Carnahan
Arcuri	Boren	Carney
Baca	Boswell	Carson (IN)
Baird	Boucher	Castor (FL)
Baldwin	Boyd	Chandler
Barrow	Brady (PA)	Childers
Berkley	Braley (IA)	Clarke
Berman	Bright	Clay

Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Giffords
Gonzalez
Gordon (TN)
Green, Al
Green, Gene
Grijalva
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Luján
Lynch
Maffei
Maloney
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Rush
Ryan (OH)
Salazar
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Sutton
Tauscher
Taylor
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Yarmuth

NAYS—174

Akin
Alexander
Altmire
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Blackburn
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hill
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuler
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stupak
Tanner
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—28

Bean
Becerra
Bishop (UT)
Blunt
Broun (GA)
Brown, Corrine
Davis (IL)
Davis (TN)
Dingell
Engel
Grayson
Gutierrez
Johnson, Sam
Kennedy
Lowey
McMorris Rodgers
Melancon
Pence
Pingree (ME)
Ros-Lehtinen
Ruppersberger
Sánchez, Linda T.
Sanchez, Loretta
Schock
Sullivan
Welch
Westmoreland
Wilson (OH)

□ 1309

Mr. YOUNG of Alaska changed his vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mrs. LOWEY. Madam Speaker, I regrettably missed rollcall vote No. 295 on June 2, 2009. Had I been present, I would have voted ''yea.''

Mr. PENCE. Madam Speaker, I was unavoidably detained and missed rollcall vote No. 295 on passage of H. Res. 490. Had I been present, I would have voted ''nay.''

Mrs. MCMORRIS RODGERS.

Madam Speaker, on rollcall No. 295 I was unavoidably detained. Had I been present, I would have voted ''nay.''

Mr. WESTMORELAND. Madam Speaker, on rollcall No. 295 I was unavoidably detained. Had I been present, I would have voted ''nay.''

GENERAL LEAVE

Mr. RAHALL. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 1385.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 490 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1385.

□ 1311

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1385) to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, with Mr. HOLDEN in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to rule, the bill is considered read the first time.

The gentleman from West Virginia (Mr. RAHALL) and the gentleman from Washington (Mr. HASTINGS) each will control 30 minutes.

The Chair recognizes the gentleman from West Virginia.

Mr. RAHALL. Thank you, Mr. Chairman. I yield myself such time as I may consume.

Mr. Chairman, we are here today, over 400 years after the first English settlers landed in what became Jamestown, Virginia, to finally acknowledge a government-to-government relationship with some of the Indian tribes who met those early settlers.

While the House passed a prior version of this legislation last Congress, the bill was not considered in the Senate, so we are here again.

H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, extends Federal recognition to the Virginia tribes that have lived in Virginia since before the settlers of Jamestown first arrived.

This bill is sponsored by our colleague, Representative JIM MORAN of Virginia, and enjoys bipartisan support, including from other Virginia colleagues, Congressman ROB WITTMAN, BOBBY SCOTT, THOMAS PERRIELLO, and GERRY CONNOLLY. I, too, am a cosponsor of H.R. 1385.

The bill is named for Thomasina ''Red Hawk Woman'' Jordan, whose lifelong pursuit of advancing Native American rights encompassed the promise of education for all Indians and securing Federal recognition of Virginia Indian tribes. Ms. Jordan also served as chairperson of the Virginia Council of Indians.

H.R. 1385 would extend Federal recognition status to six Indian tribes of Virginia. All six tribes have obtained State recognition by the State of Virginia. Former Virginia Governors George Allen and Mark Warner, as well as current Governor Tim Kaine have endorsed the tribes' recognition as sovereign governments.

During his recent trip to England, President Obama presented Queen Elizabeth with an iPod. Included on the iPod was a copy of the 400th anniversary ceremony commemorating the establishment of Jamestown, Virginia, that she attended last year. The highlight of this ceremony included the Queen and the Virginia Indian tribes.

These six Virginia tribes have faced hundreds of years of discrimination, abuse, and outright attempts to extinguish their existence and rob them of their heritage.

From 1912 to 1947, Dr. Walter Plecker, a white supremacist, set out to rid the Commonwealth of Virginia of any documents that recorded the existence of Indians or Indian tribes living therein. He was instrumental in ensuring passage of the Racial Integrity Act in 1924, making it illegal for individuals to classify themselves or their newborn children as Indian.

□ 1315

But he went further than that and spent decades changing the race designation on birth certificates and on other legal documents from ''Indian'' to ''Colored,'' ''Negro'' or ''Free Issue.'' Throughout it all, the Virginia Indians did not break but held firm to their culture and to their identity.

To address claims that tribes are only interested in Federal recognition so they may conduct gaming, all six tribes supported an outright gaming prohibition to be included in this bill. This gaming prohibition precludes the Virginia tribes from engaging in, licensing or regulating gaming pursuant to the Indian Gaming Regulatory Act on their lands.

Congressman MORAN has spent several years tirelessly working to achieve Federal recognition for Virginia's First Americans. It is because of his tireless dedication to this issue that this legislation is before us today. It is time to put this issue to rest and to do the right thing by extending Federal recognition to these tribes. I urge all of my colleagues to join me today in creating a government-to-government relationship with these Virginia tribes.

I reserve the balance of my time.

Mr. HASTINGS of Washington. I yield myself as much time as I may consume.

Mr. Chairman, I rise in opposition to H.R. 1385, but not for the reason for which this legislation is intended to point out or to create but, rather, for reasons that I will outline in my remarks here this morning.

In the last Congress, a nearly identical bill passed the House by voice vote. I do not expect to change anyone's mind, and I believe that the results will probably be the same as the last vote we had in the last Congress, but I must highlight serious shortcomings with this bill that should cause Members to reconsider their positions.

First, the House has not acquired sufficient evidence to justify extending Federal recognition to the six Virginia tribes identified in this bill. In the committee hearing on H.R. 1385, we heard a lot of testimony from witnesses for the six tribes, from the Governor of Virginia, from a historian, and from the Department of the Interior. All provided interesting and often passionate statements.

Although the Department provided no position on the bill, the Department's witnesses did remark that all six groups have petitioned for recognition with the Bureau of Indian Affairs, but none of the six tribes have completed the process within the Bureau of Indian Affairs.

If the Department lacks completely documented petitions, then how can we be sure that we in Congress have enough information about these six tribes?

None of the witnesses explained why the six Virginia tribes should be recognized before all of the other tribes whose recognition petitions are within and are lingering within the Bureau of Indian Affairs. About nine of these groups have completed their petitions. In this respect, Mr. Chairman, they are more prepared for a final determination than the Virginia tribes with which this bill deals.

H.R. 1385 contains ample lists of congressional findings about the history of these six groups, but there is no requirement to verify that members of these tribes can trace descendants to historic Virginia tribes. This is a basic standard that the House must observe if it wants to ensure the integrity of tribal recognition. If the House is not prepared to take additional time to study this, then we should ask the Secretary to study it and to provide us with the answers.

The committee held no field hearings in Virginia to learn more about the tribes on their home turf. It has relatively little information from county officials and from private individuals who might be interested in tribal recognition and what it means to them. This is a State without a history of recognized tribes, unless you reach back to the colonial era, and Virginia presently has no Indian trust lands. We simply do not know if there are any counties or private individuals in affected areas who fully understand that placing land in trust removes property from the tax rolls and from State and municipal jurisdictions.

On this note, the Rules Committee made in order an amendment by the gentleman from Virginia (Mr. GOODLATTE) to remove some counties from the bill. This suggests to me the majority is beginning to understand that counties in Virginia are just now becoming more informed on what this bill means.

So, Mr. Chairman, prudence dictates that we put this bill on hold until these issues are vetted. If the House recognizes new tribes and acquires lands in trust for them without thoroughly examining the views of the jurisdiction where the lands are located, we potentially risk creating local problems. This is going to hamper our efforts to resolve land-in-trust controversies occurring elsewhere in the United States.

Such controversies, Mr. Chairman, do occur. We have a huge one to deal with right now. In February, the Supreme Court, in Carcieri v. Salazar, held the Department of the Interior has no authority to acquire lands in trust for any tribe recognized after 1934 unless there is a specific act of Congress authorizing it. This is a major decision that has, frankly, Mr. Chairman, shaken Indian Country, and it is a case that has caught the attention of Governors, attorneys general, and county leaders around the country. The committee has held one hearing on the subject, and I am hopeful that there will be more.

Virginia's tribes are directly affected by this decision because they were not recognized in 1934. Thus, anything done with H.R. 1385 could set a precedent for resolving the Carcieri issue. Under H.R. 1385, lands placed in trust for the Virginia tribes will be secure. Meanwhile, lands held in trust or proposed for trust status for others may not be secure. This kind of inconsistency in Federal Indian policy helped fuel the controversy that led to the Supreme Court's Carcieri in the first place.

If the solution to Carcieri is to deal with each and every post-1934 tribe's trust land application separately in Congress, then H.R. 1385 might be appropriate. If the solution is to provide the Secretary of the Interior with the appropriate authority to acquire lands in trust, then H.R. 1385 is not appropriate.

So, while the committee has held a hearing on Carcieri, there seems to be no consensus on how to resolve it. We have received no testimony from the Department, and none of the tribes, States or other concerned interests have had an opportunity to testify in the committee as of the time the report for H.R. 1385 was filed. It would be wise then, Mr. Chairman, to postpone floor action on any recognition bills until the committee acquires a better understanding of the impacts of Carcieri and what to do about it.

With that, Mr. Chairman, I reserve the balance of my time.

Mr. RAHALL. Mr. Chairman, I recognize for 3 minutes the gentleman from Virginia, one of the cosponsors of the legislation, Mr. BOBBY SCOTT.

Mr. SCOTT of Virginia. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. I want to thank my colleague from Virginia (Mr. MORAN) for, again, introducing this bill. Similar legislation passed this body by voice vote in the 110th Congress, but it was never acted on in the Senate.

Two years ago, Virginia and the Nation celebrated the 400th anniversary of the founding of Jamestown, Virginia, the first permanent English settlement in North America. Jamestown is the cornerstone of our great Republic, and its success relied heavily on the help of the indigenous people of Virginia. Virginia's Native Americans played a critical role in helping the first settlers of Jamestown survive the harsh conditions of the New World.

After the Jamestown colony weathered its first few years in the New World, the colony expanded, and the English pushed further inland, but the same Native Americans who helped those first settlers were coerced and were pushed from their land without compensation. Treaties, many of which precede our own Constitution, were often made in an effort to compensate the Virginia Native Americans, but as history has shown, these treaties were rarely honored or upheld.

Like many other Native Americans, the Virginia Indian tribes were marginalized from society. They were deprived of their land, prevented from getting an education, and they were denied a role in our society. Virginia's Native Americans were denied their fundamental human rights and were denied the very freedoms and liberties enshrined in our own Constitution.

Mr. Chairman, the bill will finally grant Federal recognition to the Chickahominy, to the Eastern Chickahominy, to the Upper Mattaponi, to the Rappahannock, to the Monacan Indian Nation, and to the Nansemond tribes. H.R. 1385 will ensure the rightful status of Virginia's tribes in our national history. Federal recognition will provide housing and educational opportunities for those who cannot afford it. Federal recognition will also promote the tribal economic development that will allow Virginia's tribes to become self-sufficient. These new opportunities will allow Virginia's tribes to flourish culturally and economically, which will lead to a brighter future for a whole new generation. The Virginia tribes have waited far too long for Federal recognition.

Again, I want to thank my colleague from Virginia (Mr. MORAN) for his excellent leadership on this important issue. I urge my colleagues to support the bill.

Mr. HASTINGS of Washington. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from Virginia (Mr. WOLF).

(Mr. WOLF asked and was given permission to revise and extend his remarks.)

Mr. WOLF. Mr. Chairman, I want to first thank the chairman and thank Mr. MORAN for the language that explicitly prohibits gambling. I appreciate that very much. I think the chairman and Mr. MORAN have to get the credit for doing this because, in previous cases, we have seen major, major expansions. So, as people talk about this, this is Earth-shattering in some respects, and so I want to again thank the chairman and thank Mr. MORAN.

The Virginia tribes have consistently indicated that they oppose gambling, and I believe them. Yet, during the consideration of this measure in the last Congress, we heard rumors about an interest in challenging this gambling limitation in court. We have not heard those rumors today.

The Virginia Indian tribes were the first to greet the settlers at Jamestown when they arrived 400 years ago. Without the Indians' friendship, the Jamestown settlement very likely would not have survived. The Americans owe the Virginia tribes a huge debt of gratitude.

I also want to recognize the gentleman from Virginia for including language that explicitly forbids the establishment of tribal casinos. Current tribal leadership has consistently stated they do not want to pursue gambling. I believe them. However, I remain concerned that future leadership of the tribes will pursue establishing tribal casinos.

Virginia does not have casino gambling, and because we do not, we have avoided the crime, corruption and scandal that sometimes comes with gambling. As the author of the legislation which created the National Gambling Impact Study Commission that released its 2-year study in 1999, we know firsthand of the devastating social and financial costs of gambling: crime, prostitution, corruption, suicide, destroyed families, child and spousal abuse, and bankruptcy.

In moving forward with this, I want to ensure that Congress continues this, and I want to ensure that this language does not change when it goes to the Senate.

Under this bill, Congress intends that no Virginia Indian tribe or tribal member, if granted Federal recognition, would have any greater rights to gamble or to conduct gambling operations under the laws of the Commonwealth of Virginia than would any other citizen of Virginia.

Further, it is Congress' expectation that the provision limiting the tribes' ability to engage in gambling conforms with the Ysleta Del Sur Pueblo v. The State of Texas case. In that case, the U.S. Court of Appeals for the Fifth Circuit upheld a law prohibiting gaming by the tribe. In supporting H.R. 1385, Congress and the Virginia delegation, in particular, expect that the language restricting gambling operations by Indian tribes will be upheld if it is ever challenged.

I would like to enter into the RECORD a letter I received from the Virginia tribal leadership, acknowledging the anti-gambling language in this bill and reaffirming the view of tribal leadership that the language prohibits gambling.

VIRGINIA INDIAN TRIBAL
ALLIANCE FOR LIFE (VITAL),
New Kent, VA, May 18, 2009.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR MEMBER OF CONGRESS: Corn, or in the Virginia Algonquian tongue, hominy, represents the sustenance of the early American cultures. When the English came to Tsenacomoco, now called Virginia, our tribes traded corn, sometimes unwillingly, to the men of the Virginia Company. As historians will tell you, corn saved the colony in these early years. But corn also represents participatory government. Our elders tell us that corn was used when voting on matters of importance in the early years. Each eligible member was given a kernel of corn and a pea. Corn signified a ''yes'' vote and the pea, a ''no'' vote.

Soon you will be given an opportunity to vote on HR 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, which extends federal recognition to the six Virginia Tribes comprising the Virginia Indian Tribal Alliance for Life (VITAL): (1) the Chickahominy Tribe; (2) the Chickahominy Indian Tribe—Eastern Division; (3) the Upper Mattaponi Tribe; (4) the Rappahannock Tribe, Inc.; (5) the Monacan Indian Nation; and (6) the Nansemond Indian Tribe.

On behalf of our Tribes, we ask that you use your kernel of corn to vote YES on HR 1385 when it comes to the floor of the House of Representatives for a vote.

We are sure you have questions about this bill which is of such vital importance to us.

If these Tribes have been in existence since first contact with the Europeans, why haven't they already been recognized by the United States?

Quite simply, because our Tribes never waged war on the United States of America. The hostilities between our Tribes and the Europeans who came here in 1607 effectively ended with the Treaty of Middle Plantation in 1677. This Treaty was signed between England and our Tribes. Predating the creation of the United States of America by just short of 100 years, our Treaty was never recognized by the founding fathers of the United States because it was not negotiated with them. Our Treaty of 1677 is still commemorated annually on the steps of the Governor's Mansion in Virginia but has yet to be recognized by the United States of America.

If these Tribes have been here since first contact with the Europeans, has there ever been any federal recognition of these Tribes?

Not officially by the entity called the United States and that is why we seek this federal acknowledgement now. However, hundreds of our sons and daughters have fought on behalf of the United States of America in many wars over the years. The ''dog tags'' of our military people, who have fought alongside Americans from across the country, have stated our race as ''American Indian.''

If these Tribes deserve recognition, why don't they utilize the administrative route created by Congress instead of seeking legislation?

For five decades the official policy of Virginia, enforced through the Racial Integrity Act of 1924, stated that there were only two races, white and colored. Over the years our Tribes were subjected to paper genocide. Not only were we denied our race in the everyday requests for birth and marriage certificates, but the Commonwealth of Virginia went into its records and changed the race of our documented ancestors. This law was continually upheld by Virginia Courts until the final vestiges of the law were struck down in 1971. In addition, five of the six courthouses that held the vast majority of the records that our Tribes would need to document our history to the degree required by the Bureau of Indian Affairs Office of Federal Acknowledgement were destroyed in the Civil War. As much as our Tribes would like to comply with the administrative rules to gain recognition, the combination of the official laws of the Commonwealth, the bureaucracy implementing those laws and the loss of our records create an insurmountable burden. We believe that since it was an act of government (Virginia) that denied us our heritage, it should be an act of government that restores it.

But still there is a process that has been established; why should Congress be asked to make this decision?

Of the 562 Tribes recognized by the United States of America, 140 were recognized by

Treaties and other negotiations and only 16 were recognized by the administrative process (which has been in effect since 1978). Acts of Congress recognized the remaining 406 Tribes. We are not asking for your vote to do the extraordinary. We ask for your vote to recognize our heritage and our place in history.

What about gaming? Won't this allow gaming by the Indian Tribes?

Our goal is not now, nor has it ever been, to establish or utilize gaming. Our heritage is such that our affiliation with churches has been strong, having embraced collectively (and individually) the faith, beliefs and sacraments of several Christian denominations. Gaming is, however, an issue that concerns many of you. As such, HR 1385 has strong anti-gaming language. In fact, the language prohibits our Tribes from gaming even if it is allowed in the Commonwealth of Virginia for its citizens generally!

With our deepest respect and admiration, we ask you to use this kernel of corn to vote YES on HR 1385.

Sincerely,

WAYNE ADKINS,
President.

Enclosure.

Again, my concern is not with the Federal recognition of Virginia Indian tribes but with the explosive spread of gambling and with the potential for casino gambling to come to the State of Virginia.

I also continue to have concerns about the broader Indian recognition process. Quite frankly, this Congress has not done enough to help Indian tribes. The process is broken. We have seen that in the past; but today, I'm supporting this bill because I believe it ensures that the State of Virginia's interests are safeguarded while still providing full recognition.

Again, I want to thank the chairman, and I want to thank Mr. MORAN. This is really significant. If only we had had this language in previous recognitions; I think a lot of the problems we have in this country with gambling and with corruption and crime would not have taken place.

□ 1330

Mr. RAHALL. Mr. Chairman, I am happy to yield 3 minutes to the distinguished gentleman from Virginia (Mr. MORAN), the main sponsor of this legislation and without whose leadership we would not be considering it today.

Mr. MORAN of Virginia. Thank you very much, Chairman RAHALL. And I thank my colleagues Mr. WOLF and Mr. SCOTT. I understand Mr. WOLF's original reluctance to originally agree with the bill, but we have put in language that I understand is now acceptable to Mr. WOLF. Mr. WOLF genuinely was concerned about the possibility of casino gambling in Virginia. The language in this bill addresses that satisfactorily to Mr. WOLF. So I would hope that others who have previously opposed this legislation would follow Mr. WOLF's leadership and support it. We are having some discussions on a very small piece of land with Mr. GOODLATTE, another colleague from Virginia, and I trust we can work that out.

These six Indian tribes have sacrificed a great deal and have undergone quite an amount of demeaning treatment over generations. This is the right thing to do. We don't do this very often in the Congress of the United States, but this is a unique situation. These are the Indian tribes that enabled the first English settlers to survive in the colonies. We have right here in the Dome of the Capitol John Gadsby Chapman's dramatic painting of Pocahontas' baptism. That commemorates a landmark historic event, but it is connected to what happened 400 years ago when these Indians enabled the English settlers to survive, and eventually it led to Virginia being one of the original 13 colonies. We know the situation today, but what we do not know is the history of the Indian tribes that enabled the English settlers to survive on this continent. They have been very badly treated. And, in fact, even though they have a treaty signed with King Charles II in 1677, in the early part of the 20th century, the Commonwealth of Virginia conducted what was called a paper genocide. They made it illegal to be an American Indian in Virginia. They went into the courthouses and destroyed the birth records and everything they could relating to the legitimacy of these Indian tribes, even though everyone knew that they did actually exist. This was a time of severe racism, a time that we are very shamed by. But these Indian tribes never gave up their pride or their stature.

The CHAIR. The time of the gentleman has expired.

Mr. RAHALL. I yield the gentleman 2 additional minutes.

Mr. MORAN of Virginia. I thank my good friend, Chairman RAHALL from West Virginia, who has been tremendous in supporting this legislation.

To go back to the history behind this bill, this is so much a matter of pride and the restoration of justice. They survived even though they were denied employment and were denied educational opportunities. The only people who provided it were Christian missionaries. They oppose gambling. They don't even take advantage of the opportunity to have bingo games, which other nonprofits do in their vicinity, because they don't think it's the right thing. So I don't think that's any kind of a threat. Every other objection that has been raised I think has been adequately and fully addressed.

These are good people, and they have been subjected to a great deal that was unjust. We should have done this by the 400th anniversary of Jamestown, but today we are about to do so two years later.

Now there was a Supreme Court decision just a few months ago in February, and that Supreme Court decision said that the Secretary of the Interior no longer has unilateral discretion to determine what lands can be put in trust. That's why some additional lands and counties were included in this bill in case there is land that would be given to these Indian tribes in the future. They are willing to compromise on this, to give up virtually all of that potential territory. They're left with very little land and very few rights. The laws of Virginia would apply on this land. They are not allowed to engage in gambling like other Indian tribes. This is a part of a list of compromises they have made. They've made all of these compromises because it is important to them that their children, grandchildren and great grandchildren recognize that these are Native American people deserving of our utmost respect. They are people who deserve to be able to hold their chins up in pride for what they meant to this country.

I strongly urge support of this legislation. It's overdue.

Mr. Chairman, I know it is against the rules of the House to address anyone but the Speaker.

If it were allowed, I would want to address the 2,500 or so members of the six Virginia tribes seeking Federal recognition.

I would say that I know their quest to assert their identity and their rights has been a long struggle.

Despite centuries of racial hostility and coercion by the Commonwealth of Virginia and others, they have refused to yield their most basic human right and have suffered and lost much.

But, throughout the centuries they have retained their dignity and supported their people.

When it appeared that no one else would, when little was available, when even the doors of public school house were closed to their children, they have never yielded to those who said they didn't exist.

Mr. Chairman, I would say to the Virginia tribes; win or lose today, you have already won by refusing to yield and by remaining true and faithful to who you are.

I would also say that it has been an honor for me to have helped carry this legislation.

While it is less than ideal, it moves you closer to the day our national government recognizes your existence.

Mr. Chairman, as Members of this chamber know, the crafting of congressional legislation is far from a perfect process. But, when it speaks, it speaks with the people's voice.

Today, I encourage my colleagues to speak and finally affirm that the Virginia tribes exist and deserve Federal recognition.

Mr. HASTINGS of Washington. I am pleased to yield 3 minutes to the gentleman from Virginia (Mr. WITTMAN).

Mr. WITTMAN. I rise in support of H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009. I would like to start by thanking Ranking Member HASTINGS for yielding time to me. I would like to thank Representative MORAN for his hard work in introducing this bill and for his work on behalf of the tribes. I would like to thank Chairman RAHALL for his leadership in moving this legislation forward. We thank you for your efforts. It is an effort long overdue.

As a cosponsor of H.R. 1385, I am supportive of Federal recognition of Virginia's Indian tribes. This bill would extend Federal recognition to six Virginia tribes; and my district, the First

Congressional District of Virginia, better known as America's First District, includes the historic tribal areas of the Chickahominy, Chickahominy Eastern Division, Upper Mattaponi, Rappahannock and Nansemond tribes. These tribes are important culturally and historically to the Commonwealth of Virginia. Tribal ancestors from these tribes populated coastal Virginia when Captain John Smith settled at Jamestown in 1607. These ''first contact'' tribes have been intertwined with the birth of our Nation for over 400 years and continue to preserve a culture and heritage important to both Virginia and the Nation.

I believe that it's especially important to recognize these tribes because so many tribal members served our country bravely and heroically as members of our armed services. These tribal members who served our country during our Nation's conflicts have not been officially recognized by our government. This legislation, after nearly 400 years, will recognize these tribes.

Mr. Chairman, I'm a cosponsor of this bill, and I definitely and strongly support its passage. However, I do want to bring up one point. I have heard from some in the convenience store and gasoline marketing industry who have faced issues in other States when tribal businesses sell gasoline and tobacco tax-free to nontribal members, negatively impacting off-reservation business and State tax revenue. I don't want to see these types of problems in the Commonwealth of Virginia, and I don't believe that we will. I have assurance from the tribes that that is not their intent, and we've had a great working relationship with the Virginia General Assembly who have said that they will be working to make sure that through State compacts that this is taken care of. I bring this up with the hope that, moving forward, we can address this issue while respecting tribal sovereignty and protecting nontribal businesses. I do believe that that will happen. I believe that folks with the tribes are going to make that happen. I think they have reached out and have done an extraordinary job in doing everything to make sure that they are helpful in getting this issue taken care of.

Mr. Chairman, I am pleased to strongly support this bill, and I ask my colleagues to do the same.

Mr. RAHALL. Mr. Chairman, I am happy to yield 2 minutes to the very valued member of our Committee on Natural Resources, the gentleman from American Samoa (Mr. FALEOMAVAEGA).

(Mr. FALEOMAVAEGA asked and was given permission to revise and extend his remarks.)

Mr. FALEOMAVAEGA. Mr. Chairman, I do want to thank the distinguished chairman of our committee, Mr. RAHALL, and our ranking member, Mr. HASTINGS, even though he may have some reservations concerning this bill but especially also to thank my colleague Mr. MORAN as the chief author of this important bill.

Mr. Chairman, I rise today in strong support of H.R. 1385, legislation to extend Federal recognition of the Thomasina E. Jordan Indian Tribes of Virginia.

Mr. Chairman, under the current Federal recognition process for recognizing Indian tribes, the six Virginia tribes considered under this bill may not be able to meet the strict qualifying requirements under the Federal recognition process. This is despite the wealth of documentation that exists for each of these tribes. While references exist from the 1600s until the present showing the existence of these Indian tribes in the Virginia area, much of the documentation that is needed to meet the criteria in the Federal recognition process has been tampered with or destroyed.

Mr. Chairman, this is another perfect example of a recognition process that has not worked and that any group of people who don't make a paper trail to prove their existence aren't worthy of Federal recognition. Congress has the authority to correct this grave injustice to these tribes. After some 400 years, Mr. Chairman, it is long overdue. I urge my colleagues to support this bill.

Mr. HASTINGS of Washington. Mr. Chairman, I yield myself as much time as I may consume.

The gentleman from Northern Virginia (Mr. MORAN) made an observation about the paper genocide issue, and I have to say that every member at the committee hearing that attended that hearing and heard the testimony on H.R. 1385 were, frankly, shocked and saddened and dismayed that, in fact, this sort of action went on in Virginia, how they treated the Indian people in the 20th century. I think that goes without saying. But I do want to point out, Mr. Chairman, for the record that there was a career employee of the Bureau of Indian Affairs who heads up the Office of Federal Acknowledgement that had a different view, and I just at least want to put that on the record as we debate this issue.

He said, ''Records in Virginia do exist, and they were not destroyed. The vital records of birth, marriage, divorce, death and probate, they are in the record. Not only are they in the hands of the individuals to whom they pertain, but they are available at the local registrar level and State registrar level.'' He went on, continuing to quote, ''In preparation for this hearing, I wanted to reach into what evidence was submitted on behalf of the Virginia groups, and in 2001 this was the material that we received. And one of the group's materials were copies of vital records that were not destroyed.''

So this BIA witness went on to describe how these documents identified the persons and Indians. So it appears that there are records in Virginia, notwithstanding the fact that the State of Virginia went through this process in the last century.

So, Mr. Chairman, I just wanted to point that out that in the committee hearing we did hear testimony that at least in part disputed the issue of paper genocide. I wanted to make that observation in the debate today.

With that, I reserve the balance of my time.

Mr. RAHALL. Mr. Chairman, how much time remains on both sides?

The CHAIR. The gentleman from West Virginia has 17½ minutes remaining, and the gentleman from Washington has 15 minutes remaining.

Mr. RAHALL. Mr. Chairman, I yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, I want to congratulate Mr. RAHALL, Mr. MORAN, Mr. WITTMAN, Mr. CONNOLLY, Mr. GRIJALVA, Mr. SCOTT, Mr. ABERCROMBIE and Mr. KILDEE for introducing legislation that confers Federal recognition on the Indian tribes of Virginia.

Affirming sovereign recognition first conferred by treaties is a matter of both history and conscience for the United States. Today we are correcting the mistakes of the past that relate to tribes that were among the very first to be in contact with white settlers when they came to these shores in 1607. While this is a great day for the tribes of Virginia, we must not forget that our work is not finished. The Duwamish tribe has lived in Seattle, which I represent, and has been there for centuries, long before there was the United States or a State of Washington. Seattle, in fact, was named after the great Duwamish chief, Chief Seattle.

□ 1345

Despite the treaty of Point Elliot, which the Duwamish signed in good faith with the United States in 1855, Federal recognition has not been extended, and in my belief, this is wrong. It went through the process. It was signed by President Clinton. And in one of his first executive orders, President Bush reversed the decision of recognition of the Duwamish. And it is time to correct that injustice with the Duwamish, just as we are doing here in Virginia.

That is why I am introducing legislation today to confer Federal recognition on the Duwamish tribe. So long as one Native tribe is denied justice and rights to which they are entitled, we all suffer.

It is my hope that the new day dawning across America is bright enough to shine enough light for us to see and correct the injustices endured for too long by the First Americans. I hope that we will have a day like this some time soon for the Duwamish tribe.

Mr. RAHALL. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. I thank my good friend and outstanding chairman of the Natural Resources Committee.

I know the House leadership and Chairman RAHALL are undertaking some risk in having scheduled this legislation because this type of legislation is invariably controversial. But Congress' past reluctance to grant Federal recognition and the demeaning and dysfunctional acknowledgement process at the Bureau of Indian Affairs has served to compound a grave injustice that this legislation will redress.

The Virginia tribes identified in this legislation, as I mentioned earlier, are the direct descendants of the tribes that greeted and ensured the survival of the first permanent English colony in the New World.

Almost exactly 2 years ago to this day, we marked the 400th anniversary of the founding of Jamestown. It was an event important enough to bring Queen Elizabeth across the Atlantic to commemorate.

While the 1607 settlement succeeded and laid the English claim and foundation for the original 13 colonies, history has not been very kind to Virginia's Native Americans of the great Powhatan Confederacy who greeted the English and provided food and assistance to ensure their initial survival.

Few are aware today that the direct descendants of the Native Americans who met these settlers are with us today. And in fact, some are in the Chamber watching. And they are still awaiting their due recognition by our Federal Government. This is the opportunity to correct this grave wrong.

This bill, at long last, is named after Thomasina E. Jordan, who fought in such a committed way to get this recognition once she realized the history of discrimination that necessitated it. It grants recognition to the six Indian tribes in Virginia, and I would like to name them: the Chickahominy, the Eastern Chickahominy, the Upper Mattaponi, the Rappahannock, the Monacan and the Nansemond. The Commonwealth of Virginia recognized all six tribes in the 1980s. It is now time for the Federal Government, by this act of the U.S. Congress, to do the same.

Like most Native Americans, the Virginia tribes welcomed Western settlers but quickly became subdued. The settlers had guns, and Indians had bows and arrows. They were pushed off their land, and up through much of the 20th century, denied any rights as U.S. citizens.

Despite their devastating loss of land and population, the Virginia Indians survived centuries of racial hostility and coercive State and State-sanctioned actions that tried to eradicate their heritage and cultural identity.

The history of Virginia tribes is unique in two important ways that are relevant to why this bill is on the House floor today. The first explains why the Virginia tribes were never recognized by the Federal Government. The second explains why congressional action is absolutely needed. The first circumstance is that unlike most tribes that resisted encroachment and obtained Federal recognition when they signed peace treaties with the Federal Government, Virginia's tribes signed their peace treaties with the kings of England.

Most notable among these was the Treaty of 1677 between these tribes and Charles II that is still observed by Virginia every year when the Governor accepts tribute. I was there with Mr. SCOTT just this year. Governor Kaine accepted a deer that was brought by the tribes. And it is a ceremony that has been observed for 331 years. It is the longest celebrated treaty in the United States today.

Now the second unique circumstance for the Virginia tribes is what they experienced in the hands of the State government during the first half of the 20th century that Mr. HASTINGS has alluded to. It is called a ''paper genocide.'' At a time when the Federal Government granted Native Americans the right to vote, Virginia's elected officials adopted racially hostile laws targeted at those classes of people who did not fit into the dominant white society.

These actions culminated with the Racial Integrity Act of 1924 that targeted Native Americans and sought to deny them their identity. The act empowered zealots, like Dr. Walter Plecker. He was in charge of the Bureau of Records at the State and he destroyed all the State and local courthouse records and reclassified, in Orwellian fashion, all nonwhites in the words of the day as ''colored.''

It targeted Native Americans and sought to deny them their identity. Calling yourself a ''Native American'' in Virginia risked a jail sentence of 1 year. For up to 50 years, State officials waged a war to destroy all public and private records that affirmed the existence of Native Americans in Virginia. That law remained in effect until it was struck down in the Federal courts in 1967.

All six tribes have filed petitions with the Bureau of Acknowledgement seeking Federal recognition. But it is a heavy burden. They have been told it won't happen in their lifetime. The acknowledgement process is expensive. It is subject to unreasonable delays. It lacks dignity. We ought to address that separately. But Virginia's history of this paper genocide only further complicates these tribes' quest for Federal recognition, making it difficult to furnish corroborating State and official documents. They can't really prove it because the documents were destroyed.

The CHAIR. The time of the gentleman has expired.

Mr. RAHALL. I yield the gentleman 3 additional minutes.

Mr. MORAN of Virginia. I thank my good friend. So here they are told to prove their existence, and yet the State government destroyed the proof of their existence, again aggravating an injustice that had already been visited upon these people. The only people who cared about them were Christian missionaries who allowed them to get some education. But they were denied employment for much of their history in the 20th century in Virginia.

We are rectifying this wrong today. And in light of the 400th anniversary of Jamestown, we will bring closure to this national injustice. There is no doubt that these tribes have existed on a continuous basis since before the first Western European settlers set foot in America, and they are here with us today.

I know there is great resistance from Congress to grant any American tribe Federal recognition. And I can appreciate how the issue of gambling and its economic and moral dimension influence many Members' perspectives in tribal recognition issues.

The Virginia tribes have agreed to forgo gaming. An amendment offered by Congressman DUNCAN offered last session was approved by the Natural Resources Committee. That is in this bill before us. It prohibits these tribes from gaming under Federal law even if one day the State were to reverse course and set up gambling casinos in the State. The State can have gambling casinos. These Indians cannot. Go figure. But that is the way the legislation reads.

The Virginia tribes, under the bill being considered today, could not engage in gambling on their sovereign lands. The Virginia tribes are also prepared to grant Virginia full civil and criminal jurisdiction over any future reservation lands until such time as the Secretary of the Interior and the U.S. Attorney General agree that they have developed an acceptable alternative judicial framework that the Federal Government can honor.

Mr. Chairman, these tribes recognize that the legislative route to recognition is a very imperfect process and that compromise is a necessary ingredient. That compromise and that balance have now been struck. Now is the time to pass this legislation. Failure to do so would unravel the progress we have made and lose this time in history for these tribes to finally gain Federal recognition. It would be a setback and an injustice. They have suffered enough injustices. Let's not add another one.

Congress has the power to recognize these tribes. It has exercised these powers in the past. It should exercise this power again for these six tribes. More than 300 of the 562 federally recognized tribes have been recognized by an act of Congress.

I urge my colleagues to support this legislation. We will be doing our part to bring closure to some tragic and unjust acts that have transpired since Englishmen established their first permanent settlement more than 400 years ago in this New World. This is the right thing to do. I trust that Congress will do it today.

Mr. HASTINGS of Washington. Mr. Chairman, I reserve my time.

Mr. RAHALL. If I might ask the ranking member, do you have further speakers?

Mr. HASTINGS of Washington. Mr. Chairman, I advised my friend, I have no further speakers. But I just want to take a moment here to close beforehand.

So with that I yield myself the balance of the time.

I think what has been demonstrated on the floor here is the passion surrounding this issue. And I can certainly understand that passion, especially with the history, particularly here in the eastern part of the United States. And I don't expect that my opposition or my arguments are going to change the outcome of the votes, as I mentioned in my opening remarks. But as I mentioned in my opening remarks, because of the Carcieri decision, I think it is important for us to set at least some guidelines as to what process we in Congress, who have the constitutional right, by the way, to recognize tribes, at least to have a set of criteria that we should look at. And one of them ought to be at least some verification at the minimal.

I know that at the Bureau of Indian Affairs, and admittedly this is regulatory, there are seven or eight steps that certainly make sense. A lot of tribes have gone through that process. So I understand the passion. I respect the passion and the work that has been done on this. But for the reasons I outlined, more of a process reason than anything else, I urge my colleagues to vote against this legislation.

And with that, I yield back my time.

Mr. RAHALL. Mr. Chairman, I yield myself the balance of my time.

Just to respond to my dear friend, the gentleman from Washington, the Carcieri decision did not impact Congress' power to place land into trust for an Indian tribe directly or Congress' power to authorize the Secretary to place land in a trust for a specific tribe beyond the general authority found in the Indian Reorganization Act.

There is much precedent for this legislation. Congress has recognized other Indian tribes and placed land into trust and/or authorized the Secretary to place land into trust for those tribes on numerous occasions. So I just conclude by saying that this legislation, again, is not affected by the Carcieri decision, nor does this legislation overturn said decision.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment is as follows:

H.R. 1385

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 ''Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009''.

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

TITLE I—CHICKAHOMINY INDIAN TRIBE

SEC. 101. FINDINGS.

Congress finds that—

(1) in 1607, when the English settlers set shore along the Virginia coastline, the Chickahominy Indian Tribe was 1 of about 30 tribes that received them;

(2) in 1614, the Chickahominy Indian Tribe entered into a treaty with Sir Thomas Dale, Governor of the Jamestown Colony, under which—

(A) the Chickahominy Indian Tribe agreed to provide 2 bushels of corn per man and send warriors to protect the English; and

(B) Sir Thomas Dale agreed in return to allow the Tribe to continue to practice its own tribal governance;

(3) in 1646, a treaty was signed which forced the Chickahominy from their homeland to the area around the York Mattaponi River in present-day King William County, leading to the formation of a reservation;

(4) in 1677, following Bacon's Rebellion, the Queen of Pamunkey signed the Treaty of Middle Plantation on behalf of the Chickahominy;

(5) in 1702, the Chickahominy were forced from their reservation, which caused the loss of a land base;

(6) in 1711, the College of William and Mary in Williamsburg established a grammar school for Indians called Brafferton College;

(7) a Chickahominy child was 1 of the first Indians to attend Brafferton College;

(8) in 1750, the Chickahominy Indian Tribe began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties;

(9) in 1793, a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife;

(10) in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;

(11) in 1901, the Chickahominy Indian Tribe formed Samaria Baptist Church;

(12) from 1901 to 1935, Chickahominy men were assessed a tribal tax so that their children could receive an education;

(13) the Tribe used the proceeds from the tax to build the first Samaria Indian School, buy supplies, and pay a teacher's salary;

(14) in 1919, C. Lee Moore, Auditor of Public Accounts for Virginia, told Chickahominy Chief O.W. Adkins that he had instructed the Commissioner of Revenue for Charles City County to record Chickahominy tribal members on the county tax rolls as Indian, and not as white or colored;

(15) during the period of 1920 through 1930, various Governors of the Commonwealth of Virginia wrote letters of introduction for Chickahominy Chiefs who had official business with Federal agencies in Washington, DC;

(16) in 1934, Chickahominy Chief O.O. Adkins wrote to John Collier, Commissioner of Indian Affairs, requesting money to acquire land for the Chickahominy Indian Tribe's use, to build school, medical, and library facilities and to buy tractors, implements, and seed;

(17) in 1934, John Collier, Commissioner of Indian Affairs, wrote to Chickahominy Chief O.O. Adkins, informing him that Congress had passed the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act'') (25 U.S.C. 461 et seq.), but had not made the appropriation to fund the Act;

(18) in 1942, Chickahominy Chief O.O. Adkins wrote to John Collier, Commissioner of Indian Affairs, asking for help in getting the proper racial designation on Selective Service records for Chickahominy soldiers;

(19) in 1943, John Collier, Commissioner of Indian Affairs, asked Douglas S. Freeman, editor of the Richmond News-Leader newspaper of Richmond, Virginia, to help Virginia Indians obtain proper racial designation on birth records;

(20) Collier stated that his office could not officially intervene because it had no responsibility for the Virginia Indians, ''as a matter largely of historical accident'', but was ''interested in them as descendants of the original inhabitants of the region'';

(21) in 1948, the Veterans' Education Committee of the Virginia State Board of Education approved Samaria Indian School to provide training to veterans;

(22) that school was established and run by the Chickahominy Indian Tribe;

(23) in 1950, the Chickahominy Indian Tribe purchased and donated to the Charles City County School Board land to be used to build a modern school for students of the Chickahominy and other Virginia Indian tribes;

(24) the Samaria Indian School included students in grades 1 through 8;

(25) in 1961, Senator Sam Ervin, Chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the Senate, requested Chickahominy Chief O.O. Adkins to provide assistance in analyzing the status of the constitutional rights of Indians ''in your area'';

(26) in 1967, the Charles City County school board closed Samaria Indian School and converted the school to a countywide primary school as a step toward full school integration of Indian and non-Indian students;

(27) in 1972, the Charles City County school board began receiving funds under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.) on behalf of Chickahominy students, which funding is provided as of the date of enactment of this Act under title V of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aaa et seq.);

(28) in 1974, the Chickahominy Indian Tribe bought land and built a tribal center using monthly pledges from tribal members to finance the transactions;

(29) in 1983, the Chickahominy Indian Tribe was granted recognition as an Indian tribe by the Commonwealth of Virginia, along with 5 other Indian tribes; and

(30) in 1985, Governor Gerald Baliles was the special guest at an intertribal Thanksgiving Day dinner hosted by the Chickahominy Indian Tribe.

SEC. 102. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term ''tribal member'' means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term ''Tribe'' means the Chickahominy Indian Tribe.

SEC. 103. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of New Kent County, James City County, Charles City County, and Henrico County, Virginia.

SEC. 104. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 105. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 106. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 107. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

SEC. 108. JURISDICTION OF COMMONWEALTH OF VIRGINIA.

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

TITLE II—CHICKAHOMINY INDIAN TRIBE—EASTERN DIVISION

SEC. 201. FINDINGS.

Congress finds that—

(1) in 1607, when the English settlers set shore along the Virginia coastline, the Chickahominy Indian Tribe was 1 of about 30 tribes that received them;

(2) in 1614, the Chickahominy Indian Tribe entered into a treaty with Sir Thomas Dale, Governor of the Jamestown Colony, under which—

(A) the Chickahominy Indian Tribe agreed to provide 2 bushels of corn per man and send warriors to protect the English; and

(B) Sir Thomas Dale agreed in return to allow the Tribe to continue to practice its own tribal governance;

(3) in 1646, a treaty was signed which forced the Chickahominy from their homeland to the area around the York River in present-day King William County, leading to the formation of a reservation;

(4) in 1677, following Bacon's Rebellion, the Queen of Pamunkey signed the Treaty of Middle Plantation on behalf of the Chickahominy;

(5) in 1702, the Chickahominy were forced from their reservation, which caused the loss of a land base;

(6) in 1711, the College of William and Mary in Williamsburg established a grammar school for Indians called Brafferton College;

(7) a Chickahominy child was 1 of the first Indians to attend Brafferton College;

(8) in 1750, the Chickahominy Indian Tribe began to migrate from King William County back to the area around the Chickahominy River in New Kent and Charles City Counties;

(9) in 1793, a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife;

(10) in 1831, the names of the ancestors of the modern-day Chickahominy Indian Tribe began to appear in the Charles City County census records;

(11) in 1870, a census revealed an enclave of Indians in New Kent County that is believed to be the beginning of the Chickahominy Indian Tribe—Eastern Division;

(12) other records were destroyed when the New Kent County courthouse was burned, leaving a State census as the only record covering that period;

(13) in 1901, the Chickahominy Indian Tribe formed Samaria Baptist Church;

(14) from 1901 to 1935, Chickahominy men were assessed a tribal tax so that their children could receive an education;

(15) the Tribe used the proceeds from the tax to build the first Samaria Indian School, buy supplies, and pay a teacher's salary;

(16) in 1910, a 1-room school covering grades 1 through 8 was established in New Kent County for the Chickahominy Indian Tribe—Eastern Division;

(17) during the period of 1920 through 1921, the Chickahominy Indian Tribe—Eastern Division began forming a tribal government;

(18) E.P. Bradby, the founder of the Tribe, was elected to be Chief;

(19) in 1922, Tsena Commocko Baptist Church was organized;

(20) in 1925, a certificate of incorporation was issued to the Chickahominy Indian Tribe—Eastern Division;

(21) in 1950, the 1-room Indian school in New Kent County was closed and students were bused to Samaria Indian School in Charles City County;

(22) in 1967, the Chickahominy Indian Tribe and the Chickahominy Indian Tribe—Eastern Division lost their schools as a result of the required integration of students;

(23) during the period of 1982 through 1984, Tsena Commocko Baptist Church built a new sanctuary to accommodate church growth;

(24) in 1983 the Chickahominy Indian Tribe—Eastern Division was granted State recognition along with 5 other Virginia Indian tribes;

(25) in 1985—

(A) the Virginia Council on Indians was organized as a State agency; and

(B) the Chickahominy Indian Tribe—Eastern Division was granted a seat on the Council;

(26) in 1988, a nonprofit organization known as the ''United Indians of Virginia'' was formed; and

(27) Chief Marvin ''Strongoak'' Bradby of the Eastern Band of the Chickahominy presently chairs the organization.

SEC. 202. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term ''tribal member'' means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term ''Tribe'' means the Chickahominy Indian Tribe—Eastern Division.

SEC. 203. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all future services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of New Kent County, James City County, Charles City County, and Henrico County, Virginia.

SEC. 204. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 205. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 206. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of New Kent County, James City County, Charles City County, or Henrico County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 207. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

SEC. 208. JURISDICTION OF COMMONWEALTH OF VIRGINIA.

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

TITLE III—UPPER MATTAPONI TRIBE

SEC. 301. FINDINGS.

Congress finds that—

(1) during the period of 1607 through 1646, the Chickahominy Indian Tribes—

(A) lived approximately 20 miles from Jamestown; and

(B) were significantly involved in English-Indian affairs;

(2) Mattaponi Indians, who later joined the Chickahominy Indians, lived a greater distance from Jamestown;

(3) in 1646, the Chickahominy Indians moved to Mattaponi River basin, away from the English;

(4) in 1661, the Chickahominy Indians sold land at a place known as ''the cliffs'' on the Mattaponi River;

(5) in 1669, the Chickahominy Indians—

(A) appeared in the Virginia Colony's census of Indian bowmen; and

(B) lived in ''New Kent'' County, which included the Mattaponi River basin at that time;

(6) in 1677, the Chickahominy and Mattaponi Indians were subjects of the Queen of Pamunkey, who was a signatory to the Treaty of 1677 with the King of England;

(7) in 1683, after a Mattaponi town was attacked by Seneca Indians, the Mattaponi Indians took refuge with the Chickahominy Indians, and the history of the 2 groups was intertwined for many years thereafter;

(8) in 1695, the Chickahominy and Mattaponi Indians—

(A) were assigned a reservation by the Virginia Colony; and

(B) traded land of the reservation for land at the place known as ''the cliffs'' (which, as of the date of enactment of this Act, is the Mattaponi Indian Reservation), which had been owned by the Mattaponi Indians before 1661;

(9) in 1711, a Chickahominy boy attended the Indian School at the College of William and Mary;

(10) in 1726, the Virginia Colony discontinued funding of interpreters for the Chickahominy and Mattaponi Indian Tribes;

(11) James Adams, who served as an interpreter to the Indian tribes known as of the date of enactment of this Act as the ''Upper Mattaponi Indian Tribe'' and ''Chickahominy Indian Tribe'', elected to stay with the Upper Mattaponi Indians;

(12) today, a majority of the Upper Mattaponi Indians have ''Adams'' as their surname;

(13) in 1787, Thomas Jefferson, in Notes on the Commonwealth of Virginia, mentioned the Mattaponi Indians on a reservation in King William County and said that Chickahominy Indians were ''blended'' with the Mattaponi Indians and nearby Pamunkey Indians;

(14) in 1850, the census of the United States revealed a nucleus of approximately 10 families, all ancestral to modern Upper Mattaponi Indians, living in central King William County, Virginia, approximately 10 miles from the reservation;

(15) during the period of 1853 through 1884, King William County marriage records listed Upper Mattaponis as ''Indians'' in marrying people residing on the reservation;

(16) during the period of 1884 through the present, county marriage records usually refer to Upper Mattaponis as ''Indians'';

(17) in 1901, Smithsonian anthropologist James Mooney heard about the Upper Mattaponi Indians but did not visit them;

(18) in 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians with a section on the Upper Mattaponis;

(19) from 1929 until 1930, the leadership of the Upper Mattaponi Indians opposed the use of a ''colored'' designation in the 1930 United States census and won a compromise in which the Indian ancestry of the Upper Mattaponis was recorded but questioned;

(20) during the period of 1942 through 1945—

(A) the leadership of the Upper Mattaponi Indians, with the help of Frank Speck and others, fought against the induction of young men of the Tribe into ''colored'' units in the Armed Forces of the United States; and

(B) a tribal roll for the Upper Mattaponi Indians was compiled;

(21) from 1945 to 1946, negotiations took place to admit some of the young people of the Upper Mattaponi to high schools for Federal Indians (especially at Cherokee) because no high school coursework was available for Indians in Virginia schools; and

(22) in 1983, the Upper Mattaponi Indians applied for and won State recognition as an Indian tribe.

SEC. 302. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term ''tribal member'' means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term ''Tribe'' means the Upper Mattaponi Tribe.

SEC. 303. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area within 25 miles of the Sharon Indian School at 13383 King William Road, King William County, Virginia.

SEC. 304. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 305. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 306. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of King William County, Caroline County,

Hanover County, King and Queen County, and New Kent County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of King William County, Caroline County, Hanover County, King and Queen County, and New Kent County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 307. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

SEC. 308. JURISDICTION OF COMMONWEALTH OF VIRGINIA.

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

TITLE IV—RAPPAHANNOCK TRIBE, INC.

SEC. 401. FINDINGS.

Congress finds that—

(1) during the initial months after Virginia was settled, the Rappahannock Indians had 3 encounters with Captain John Smith;

(2) the first encounter occurred when the Rappahannock weroance (headman)—

(A) traveled to Quiyocohannock (a principal town across the James River from Jamestown), where he met with Smith to determine whether Smith had been the ''great man'' who had previously sailed into the Rappahannock River, killed a Rappahannock weroance, and kidnapped Rappahannock people; and

(B) determined that Smith was too short to be that ''great man'';

(3) on a second meeting, during John Smith's captivity (December 16, 1607 to January 8, 1608), Smith was taken to the Rappahannock principal village to show the people that Smith was not the ''great man'';

(4) a third meeting took place during Smith's exploration of the Chesapeake Bay (July to September 1608), when, after the Moraughtacund Indians had stolen 3 women from the Rappahannock King, Smith was prevailed upon to facilitate a peaceful truce between the Rappahannock and the Moraughtacund Indians;

(5) in the settlement, Smith had the 2 Indian tribes meet on the spot of their first fight;

(6) when it was established that both groups wanted peace, Smith told the Rappahannock King to select which of the 3 stolen women he wanted;

(7) the Moraughtacund King was given second choice among the 2 remaining women, and Mosco, a Wighcocomoco (on the Potomac River) guide, was given the third woman;

(8) in 1645, Captain William Claiborne tried unsuccessfully to establish treaty relations with the Rappahannocks, as the Rappahannocks had not participated in the Pamunkey-led uprising in 1644, and the English wanted to ''treat with the Rappahannocks or any other Indians not in amity with Opechancanough, concerning serving the county against the Pamunkeys'';

(9) in April 1651, the Rappahannocks conveyed a tract of land to an English settler, Colonel Morre Fauntleroy;

(10) the deed for the conveyance was signed by Accopatough, weroance of the Rappahannock Indians;

(11) in September 1653, Lancaster County signed a treaty with Rappahannock Indians, the terms of which treaty—

(A) gave Rappahannocks the rights of Englishmen in the county court; and

(B) attempted to make the Rappahannocks more accountable under English law;

(12) in September 1653, Lancaster County defined and marked the bounds of its Indian settlements;

(13) according to the Lancaster clerk of court, ''the tribe called the great Rappahannocks lived on the Rappahannock Creek just across the river above Tappahannock'';

(14) in September 1656, (Old) Rappahannock County (which, as of the date of enactment of this Act, is comprised of Richmond and Essex Counties, Virginia) signed a treaty with Rappahannock Indians that—

(A) mirrored the Lancaster County treaty from 1653; and

(B) stated that—

(i) Rappahannocks were to be rewarded, in Roanoke, for returning English fugitives; and

(ii) the English encouraged the Rappahannocks to send their children to live among the English as servants, who the English promised would be well-treated;

(15) in 1658, the Virginia Assembly revised a 1652 Act stating that ''there be no grants of land to any Englishman whatsoever de futuro until the Indians be first served with the proportion of 50 acres of land for each bowman'';

(16) in 1669, the colony conducted a census of Virginia Indians;

(17) as of the date of that census—

(A) the majority of the Rappahannocks were residing at their hunting village on the north side of the Mattaponi River; and

(B) at the time of the visit, census-takers were counting only the Indian tribes along the rivers, which explains why only 30 Rappahannock bowmen were counted on that river;

(18) the Rappahannocks used the hunting village on the north side of the Mattaponi River as their primary residence until the Rappahannocks were removed in 1684;

(19) in May 1677, the Treaty of Middle Plantation was signed with England;

(20) the Pamunkey Queen Cockacoeske signed on behalf of the Rappahannocks, ''who were supposed to be her tributaries'', but before the treaty could be ratified, the Queen of Pamunkey complained to the Virginia Colonial Council ''that she was having trouble with Rappahannocks and Chickahominies, supposedly tributaries of hers'';

(21) in November 1682, the Virginia Colonial Council established a reservation for the Rappahannock Indians of 3,474 acres ''about the town where they dwelt'';

(22) the Rappahannock ''town'' was the hunting village on the north side of the Mattaponi River, where the Rappahannocks had lived throughout the 1670s;

(23) the acreage allotment of the reservation was based on the 1658 Indian land act, which translates into a bowman population of 70, or an approximate total Rappahannock population of 350;

(24) in 1683, following raids by Iroquoian warriors on both Indian and English settlements, the Virginia Colonial Council ordered the Rappahannocks to leave their reservation and unite with the Nanzatico Indians at Nanzatico Indian Town, which was located across and up the Rappahannock River some 30 miles;

(25) between 1687 and 1699, the Rappahannocks migrated out of Nanzatico, returning to the south side of the Rappahannock River at Portobacco Indian Town;

(26) in 1706, by order of Essex County, Lieutenant Richard Covington ''escorted'' the Portobaccos and Rappahannocks out of Portobacco Indian Town, out of Essex County, and into King and Queen County where they settled along the ridgeline between the Rappahannock and Mattaponi Rivers, the site of their ancient hunting village and 1682 reservation;

(27) during the 1760s, 3 Rappahannock girls were raised on Thomas Nelson's Bleak Hill Plantation in King William County;

(28) of those girls—

(A) 1 married a Saunders man;

(B) 1 married a Johnson man; and

(C) 1 had 2 children, Edmund and Carter Nelson, fathered by Thomas Cary Nelson;

(29) in the 19th century, those Saunders, Johnson, and Nelson families are among the core Rappahannock families from which the modern Tribe traces its descent;

(30) in 1819 and 1820, Edward Bird, John Bird (and his wife), Carter Nelson, Edmund Nelson, and Carter Spurlock (all Rappahannock ancestors) were listed on the tax roles of King and Queen County and taxed at the county poor rate;

(31) Edmund Bird was added to the tax roles in 1821;

(32) those tax records are significant documentation because the great majority of pre-1864 records for King and Queen County were destroyed by fire;

(33) beginning in 1819, and continuing through the 1880s, there was a solid Rappahannock presence in the membership at Upper Essex Baptist Church;

(34) that was the first instance of conversion to Christianity by at least some Rappahannock Indians;

(35) while 26 identifiable and traceable Rappahannock surnames appear on the pre-1863 membership list, and 28 were listed on the 1863 membership roster, the number of surnames listed had declined to 12 in 1878 and had risen only slightly to 14 by 1888;

(36) a reason for the decline is that in 1870, a Methodist circuit rider, Joseph Mastin, secured funds to purchase land and construct St. Stephens Baptist Church for the Rappahannocks living nearby in Caroline County;

(37) Mastin referred to the Rappahannocks during the period of 1850 to 1870 as ''Indians, having a great need for moral and Christian guidance'';

(38) St. Stephens was the dominant tribal church until the Rappahannock Indian Baptist Church was established in 1964;

(39) at both churches, the core Rappahannock family names of Bird, Clarke, Fortune, Johnson, Nelson, Parker, and Richardson predominate;

(40) during the early 1900s, James Mooney, noted anthropologist, maintained correspondence with the Rappahannocks, surveying them and instructing them on how to formalize their tribal government;

(41) in November 1920, Speck visited the Rappahannocks and assisted them in organizing the fight for their sovereign rights;

(42) in 1921, the Rappahannocks were granted a charter from the Commonwealth of Virginia formalizing their tribal government;

(43) Speck began a professional relationship with the Tribe that would last more than 30 years and document Rappahannock history and traditions as never before;

(44) in April 1921, Rappahannock Chief George Nelson asked the Governor of Virginia,

Westmoreland Davis, to forward a proclamation to the President of the United States, along with an appended list of tribal members and a handwritten copy of the proclamation itself;

(45) the letter concerned Indian freedom of speech and assembly nationwide;

(46) in 1922, the Rappahannocks established a formal school at Lloyds, Essex County, Virginia;

(47) prior to establishment of the school, Rappahannock children were taught by a tribal member in Central Point, Caroline County, Virginia;

(48) in December 1923, Rappahannock Chief George Nelson testified before Congress appealing for a $50,000 appropriation to establish an Indian school in Virginia;

(49) in 1930, the Rappahannocks were engaged in an ongoing dispute with the Commonwealth of Virginia and the United States Census Bureau about their classification in the 1930 Federal census;

(50) in January 1930, Rappahannock Chief Otho S. Nelson wrote to Leon Truesdell, Chief Statistician of the United States Census Bureau, asking that the 218 enrolled Rappahannocks be listed as Indians;

(51) in February 1930, Truesdell replied to Nelson saying that ''special instructions'' were being given about classifying Indians;

(52) in April 1930, Nelson wrote to William M. Steuart at the Census Bureau asking about the enumerators' failure to classify his people as Indians, saying that enumerators had not asked the question about race when they interviewed his people;

(53) in a followup letter to Truesdell, Nelson reported that the enumerators were ''flatly denying'' his people's request to be listed as Indians and that the race question was completely avoided during interviews;

(54) the Rappahannocks had spoken with Caroline and Essex County enumerators, and with John M.W. Green at that point, without success;

(55) Nelson asked Truesdell to list people as Indians if he sent a list of members;

(56) the matter was settled by William Steuart, who concluded that the Bureau's rule was that people of Indian descent could be classified as ''Indian'' only if Indian ''blood'' predominated and ''Indian'' identity was accepted in the local community;

(57) the Virginia Vital Statistics Bureau classed all nonreservation Indians as ''Negro'', and it failed to see why ''an exception should be made'' for the Rappahannocks;

(58) therefore, in 1925, the Indian Rights Association took on the Rappahannock case to assist the Rappahannocks in fighting for their recognition and rights as an Indian tribe;

(59) during the Second World War, the Pamunkeys, Mattaponis, Chickahominies, and Rappahannocks had to fight the draft boards with respect to their racial identities;

(60) the Virginia Vital Statistics Bureau insisted that certain Indian draftees be inducted into Negro units;

(61) finally, 3 Rappahannocks were convicted of violating the Federal draft laws and, after spending time in a Federal prison, were granted conscientious objector status and served out the remainder of the war working in military hospitals;

(62) in 1943, Frank Speck noted that there were approximately 25 communities of Indians left in the Eastern United States that were entitled to Indian classification, including the Rappahannocks;

(63) in the 1940s, Leon Truesdell, Chief Statistician, of the United States Census Bureau, listed 118 members in the Rappahannock Tribe in the Indian population of Virginia;

(64) on April 25, 1940, the Office of Indian Affairs of the Department of the Interior included the Rappahannocks on a list of Indian tribes classified by State and by agency;

(65) in 1948, the Smithsonian Institution Annual Report included an article by William Harlen Gilbert entitled, ''Surviving Indian Groups of the Eastern United States'', which included and described the Rappahannock Tribe;

(66) in the late 1940s and early 1950s, the Rappahannocks operated a school at Indian Neck;

(67) the State agreed to pay a tribal teacher to teach 10 students bused by King and Queen County to Sharon Indian School in King William County, Virginia;

(68) in 1965, Rappahannock students entered Marriott High School (a white public school) by executive order of the Governor of Virginia;

(69) in 1972, the Rappahannocks worked with the Coalition of Eastern Native Americans to fight for Federal recognition;

(70) in 1979, the Coalition established a pottery and artisans company, operating with other Virginia tribes;

(71) in 1980, the Rappahannocks received funding through the Administration for Native Americans of the Department of Health and Human Services to develop an economic program for the Tribe; and

(72) in 1983, the Rappahannocks received State recognition as an Indian tribe.

SEC. 402. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term ''tribal member'' means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—

(A) IN GENERAL.—The term ''Tribe'' means the organization possessing the legal name Rappahannock Tribe, Inc.

(B) EXCLUSIONS.—The term ''Tribe'' does not include any other Indian tribe, subtribe, band, or splinter group the members of which represent themselves as Rappahannock Indians.

SEC. 403. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of King and Queen County, Caroline County, Essex County, Spotsylvania County, Stafford County, and Richmond County, Virginia.

SEC. 404. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 405. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 406. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of King and Queen County, Stafford County, Spotsylvania County, Richmond County, Essex County, and Caroline County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of King and Queen County, Stafford County, Spotsylvania County, Richmond County, Essex County, and Caroline County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 407. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

SEC. 408. JURISDICTION OF COMMONWEALTH OF VIRGINIA.

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

TITLE V—MONACAN INDIAN NATION

SEC. 501. FINDINGS.

Congress finds that—

(1) in 1677, the Monacan Tribe signed the Treaty of Middle Plantation between Charles II of England and 12 Indian ''Kings and Chief Men'';

(2) in 1722, in the Treaty of Albany, Governor Spotswood negotiated to save the Virginia Indians from extinction at the hands of the Iroquois;

(3) specifically mentioned in the negotiations were the Monacan tribes of the Totero (Tutelo), Saponi, Ocheneeches (Occaneechi), Stengenocks, and Meipontskys;

(4) in 1790, the first national census recorded Benjamin Evans and Robert Johns, both ancestors of the present Monacan community, listed as ''white'' with mulatto children;

(5) in 1782, tax records also began for those families;

(6) in 1850, the United States census recorded 29 families, mostly large, with Monacan surnames, the members of which are genealogically related to the present community;

(7) in 1870, a log structure was built at the Bear Mountain Indian Mission;

(8) in 1908, the structure became an Episcopal Mission and, as of the date of enactment of this

Act, the structure is listed as a landmark on the National Register of Historic Places;

(9) in 1920, 304 Amherst Indians were identified in the United States census;

(10) from 1930 through 1931, numerous letters from Monacans to the Bureau of the Census resulted from the decision of Dr. Walter Plecker, former head of the Bureau of Vital Statistics of the Commonwealth of Virginia, not to allow Indians to register as Indians for the 1930 census;

(11) the Monacans eventually succeeded in being allowed to claim their race, albeit with an asterisk attached to a note from Dr. Plecker stating that there were no Indians in Virginia;

(12) in 1947, D'Arcy McNickle, a Salish Indian, saw some of the children at the Amherst Mission and requested that the Cherokee Agency visit them because they appeared to be Indian;

(13) that letter was forwarded to the Department of the Interior, Office of Indian Affairs, Chicago, Illinois;

(14) Chief Jarrett Blythe of the Eastern Band of Cherokee did visit the Mission and wrote that he ''would be willing to accept these children in the Cherokee school'';

(15) in 1979, a Federal Coalition of Eastern Native Americans established the entity known as ''Monacan Co-operative Pottery'' at the Amherst Mission;

(16) some important pieces were produced at Monacan Co-operative Pottery, including a piece that was sold to the Smithsonian Institution;

(17) the Mattaponi-Pamunkey-Monacan Consortium, established in 1981, has since been organized as a nonprofit corporation that serves as a vehicle to obtain funds for those Indian tribes from the Department of Labor under Native American programs;

(18) in 1989, the Monacan Tribe was recognized by the Commonwealth of Virginia, which enabled the Tribe to apply for grants and participate in other programs; and

(19) in 1993, the Monacan Tribe received tax-exempt status as a nonprofit corporation from the Internal Revenue Service.

SEC. 502. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term ''tribal member'' means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term ''Tribe'' means the Monacan Indian Nation.

SEC. 503. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of all land within 25 miles from the center of Amherst, Virginia.

SEC. 504. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 505. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 506. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of Albemarle County, Alleghany County, Amherst County, Augusta County, Campbell County, Nelson County, and Rockbridge County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of Albemarle County, Alleghany County, Amherst County, Augusta County, Campbell County, Nelson County, and Rockbridge County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 507. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

SEC. 508. JURISDICTION OF COMMONWEALTH OF VIRGINIA.

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

TITLE VI—NANSEMOND INDIAN TRIBE

SEC. 601. FINDINGS.

Congress finds that—

(1) from 1607 until 1646, Nansemond Indians—

(A) lived approximately 30 miles from Jamestown; and

(B) were significantly involved in English-Indian affairs;

(2) after 1646, there were 2 sections of Nansemonds in communication with each other, the Christianized Nansemonds in Norfolk County, who lived as citizens, and the traditionalist Nansemonds, who lived further west;

(3) in 1638, according to an entry in a 17th century sermon book still owned by the Chief's family, a Norfolk County Englishman married a Nansemond woman;

(4) that man and woman are lineal ancestors of all of members of the Nansemond Indian tribe alive as of the date of enactment of this Act, as are some of the traditionalist Nansemonds;

(5) in 1669, the 2 Nansemond sections appeared in Virginia Colony's census of Indian bowmen;

(6) in 1677, Nansemond Indians were signatories to the Treaty of 1677 with the King of England;

(7) in 1700 and 1704, the Nansemonds and other Virginia Indian tribes were prevented by Virginia Colony from making a separate peace with the Iroquois;

(8) Virginia represented those Indian tribes in the final Treaty of Albany, 1722;

(9) in 1711, a Nansemond boy attended the Indian School at the College of William and Mary;

(10) in 1727, Norfolk County granted William Bass and his kinsmen the ''Indian privileges'' of clearing swamp land and bearing arms (which privileges were forbidden to other nonwhites) because of their Nansemond ancestry, which meant that Bass and his kinsmen were original inhabitants of that land;

(11) in 1742, Norfolk County issued a certificate of Nansemond descent to William Bass;

(12) from the 1740s to the 1790s, the traditionalist section of the Nansemond tribe, 40 miles west of the Christianized Nansemonds, was dealing with reservation land;

(13) the last surviving members of that section sold out in 1792 with the permission of the Commonwealth of Virginia;

(14) in 1797, Norfolk County issued a certificate stating that William Bass was of Indian and English descent, and that his Indian line of ancestry ran directly back to the early 18th century elder in a traditionalist section of Nansemonds on the reservation;

(15) in 1833, Virginia enacted a law enabling people of European and Indian descent to obtain a special certificate of ancestry;

(16) the law originated from the county in which Nansemonds lived, and mostly Nansemonds, with a few people from other counties, took advantage of the new law;

(17) a Methodist mission established around 1850 for Nansemonds is currently a standard Methodist congregation with Nansemond members;

(18) in 1901, Smithsonian anthropologist James Mooney—

(A) visited the Nansemonds; and

(B) completed a tribal census that counted 61 households and was later published;

(19) in 1922, Nansemonds were given a special Indian school in the segregated school system of Norfolk County;

(20) the school survived only a few years;

(21) in 1928, University of Pennsylvania anthropologist Frank Speck published a book on modern Virginia Indians that included a section on the Nansemonds; and

(22) the Nansemonds were organized formally, with elected officers, in 1984, and later applied for and received State recognition.

SEC. 602. DEFINITIONS.

In this title:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) TRIBAL MEMBER.—The term ''tribal member'' means—

(A) an individual who is an enrolled member of the Tribe as of the date of enactment of this Act; and

(B) an individual who has been placed on the membership rolls of the Tribe in accordance with this title.

(3) TRIBE.—The term ''Tribe'' means the Nansemond Indian Tribe.

SEC. 603. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—

(1) IN GENERAL.—Federal recognition is extended to the Tribe.

(2) APPLICABILITY OF LAWS.—All laws (including regulations) of the United States of general applicability to Indians or nations, Indian tribes, or bands of Indians (including the Act of June 18, 1934 (25 U.S.C. 461 et seq.)) that are not inconsistent with this title shall be applicable to the Tribe and tribal members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—On and after the date of enactment of this Act, the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes without regard to the existence of a reservation for the Tribe.

(2) SERVICE AREA.—For the purpose of the delivery of Federal services to tribal members, the service area of the Tribe shall be considered to be the area comprised of the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach, Virginia.

SEC. 604. MEMBERSHIP; GOVERNING DOCUMENTS.

The membership roll and governing documents of the Tribe shall be the most recent membership roll and governing documents, respectively, submitted by the Tribe to the Secretary before the date of enactment of this Act.

SEC. 605. GOVERNING BODY.

The governing body of the Tribe shall be—

(1) the governing body of the Tribe in place as of the date of enactment of this Act; or

(2) any subsequent governing body elected in accordance with the election procedures specified in the governing documents of the Tribe.

SEC. 606. RESERVATION OF THE TRIBE.

(a) IN GENERAL.—Upon the request of the Tribe, the Secretary of the Interior—

(1) shall take into trust for the benefit of the Tribe any land held in fee by the Tribe that was acquired by the Tribe on or before January 1, 2007, if such lands are located within the boundaries of the city of Suffolk, the city of Chesapeake, or Isle of Wight County, Virginia; and

(2) may take into trust for the benefit of the Tribe any land held in fee by the Tribe, if such lands are located within the boundaries of the city of Suffolk, the city of Chesapeake, or Isle of Wight County, Virginia.

(b) DEADLINE FOR DETERMINATION.—The Secretary shall make a final written determination not later than three years of the date which the Tribe submits a request for land to be taken into trust under subsection (a)(2) and shall immediately make that determination available to the Tribe.

(c) RESERVATION STATUS.—Any land taken into trust for the benefit of the Tribe pursuant to this paragraph shall, upon request of the Tribe, be considered part of the reservation of the Tribe.

(d) GAMING.—The Tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

SEC. 607. HUNTING, FISHING, TRAPPING, GATHERING, AND WATER RIGHTS.

Nothing in this title expands, reduces, or affects in any manner any hunting, fishing, trapping, gathering, or water rights of the Tribe and members of the Tribe.

SEC. 608. JURISDICTION OF COMMONWEALTH OF VIRGINIA.

(a) IN GENERAL.—The Commonwealth of Virginia shall exercise jurisdiction over—

(1) all criminal offenses that are committed on; and

(2) all civil actions that arise on,

lands located within the Commonwealth of Virginia that are owned by, or held in trust by the United States for, the Tribe.

(b) ACCEPTANCE OF STATE JURISDICTION BY SECRETARY.—The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, all or any portion of the jurisdiction of the Commonwealth of Virginia described in subsection (a) upon verification by the Secretary of a certification by a tribe that it possesses the capacity to reassume such jurisdiction.

The CHAIR. No amendment to the committee amendment is in order except those printed in House Report 111–131. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment, and shall not be subject to demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. GOODLATTE

The CHAIR. It is now in order to consider amendment No. 1 printed in House Report 111–131.

Mr. GOODLATTE. I offer an amendment.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. GOODLATTE:

At the end of the bill, add the following new title:

TITLE VII—EMINENT DOMAIN

SEC. 701. LIMITATION.

Eminent domain may not be used to acquire lands in fee or in trust for an Indian tribe recognized under this Act.

The CHAIR. Pursuant to House Resolution 490, the gentleman from Virginia (Mr. GOODLATTE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I rise today to offer an amendment to H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. Given that this bill could dramatically change localities in Virginia, I am offering an amendment to provide an additional protection for private property. This amendment would ensure that no use of eminent domain could be used to acquire private property to transfer it to the tribes. This would ensure that lands are not taken out of current private use for the sole purpose of expanding tribal lands and ensure some protection for private residents and localities. The bill greatly expands the congressionally recommended areas in which tribes can acquire lands for their trust. Given that this is a great expansion in comparison to versions of this bill introduced in previous Congresses, I believe that it is necessary and appropriate to provide this level of protection. I hope my colleagues will join me in supporting this amendment.

Mr. RAHALL. Would the gentleman yield?

Mr. GOODLATTE. I will be happy to yield.

Mr. RAHALL. I appreciate the gentleman yielding.

Under existing law, as the gentleman knows, and under this legislation, the Interior Secretary may place land owned by an Indian tribe into trust as part of a tribe's reservation. Eminent domain does not enter the picture.

Indeed, the pending legislation states for each of the six tribes involved that the Secretary may take into trust ''any land held in fee by the tribe that was acquired by the tribe.'' Considering that neither the Interior Secretary or, for that matter, these tribes, made eminent domain authority, the gentleman's amendment is chasing a problem that does not exist. But having said that, if it makes the gentleman from Virginia feel better, and if it makes him more comfortable with this bill, and since it does pose no harm, I will accept the amendment.

□ 1400

Mr. GOODLATTE. Reclaiming my time, the chairman makes me feel a lot better, and I'm pleased that he will accept my amendment.

I yield back the balance of my time.

The Acting CHAIR (Ms. BALDWIN). The question is on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. GOODLATTE

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 111–131.

Mr. GOODLATTE. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. GOODLATTE:

Page 51, beginning on line 1, strike ''Albemarle'' and all that follows through ''Virginia'' on line 4 and insert ''Amherst County, Virginia''.

Page 51, line 7, strike ''Albermarle'' and all that follows through ''Virginia'' on line 10 and insert ''Amherst County, Virginia''.

The Acting CHAIR. Pursuant to House Resolution 490, the gentleman from Virginia (Mr. GOODLATTE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Madam Chairman, I have always supported granting these six Virginia tribes Federal recognition, and I am extremely happy that that bill has included language that seeks to prevent casino-style gaming in the Commonwealth of Virginia. However, I was troubled to learn of a change that was made to the bill without notification to any of the local communities that would be affected.

In the section dealing with the Monacan Indian Tribe, the area that the tribe could have placed in trust for their reservation grew from one county to seven. Originally, it was an area of approximately 479 square miles, and now it's an area of approximately 3,728 square miles.

What is even more disturbing to me is that none of these new localities knew that they would be part of an area in which the tribes could acquire lands. My office only discovered it once the bill was scheduled for floor consideration.

This bill could dramatically affect these counties. If tribal lands were established in these counties, it could mean the localities would lose all control of the lands that were placed in trust in them. We would no longer be in control of zoning, environmental reviews, and these localities could no longer collect tax revenues from these lands. These are serious concerns and could greatly impact operations of the counties.

The fact that the bill would establish tribal land in these counties is a total surprise to these jurisdictions. They have not had a sufficient opportunity to discuss and study how such a change would affect them.

The addition of these new counties is also a total surprise to me and the counties involved, and they should be removed from this bill. I've also spoken to my colleagues, TOM PERRIELLO and RICK BOUCHER of the Fifth and Ninth Congressional Districts, who also represent these newly added counties, and they also support this amendment.

These communities should have the right to know how these changes will affect them as far as this legislation is concerned and the far-reaching consequences that could permanently change central Virginia.

I reserve the balance of my time.

Mr. MORAN of Virginia. I rise to claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. MORAN of Virginia. Madam Chairman, first of all, this land was the Indians' land. The Monacan tribe owned much of this land. It was taken from them.

Now, in terms of the counties that my friend, Mr. GOODLATTE, has included, there is no land currently that would be placed in trust. All they want is the ability to place land in trust because of the recent Supreme Court decision that said that the Secretary of the Interior does not have discretion to do this.

Now, this Supreme Court decision just occurred in February, so it's a brand new context in which these things are dealt with. If it had not been for the Supreme Court decision, these additional counties would not have been added. But they're added in case people in those counties who are understanding of the plight of the Monacan Indians chose to provide land to them. We don't know that that's even going to occur. There is only one very small parcel of land that the Monacan tribe is aware of that it would receive from a current landowner in Rockbridge County.

Now, the Indian tribes have compromised so much for so long, I think that they would compromise again if necessary. But to deny them this one small plot of land that's relatively isolated, it's certainly a long ways from Interstate 81 or any main highway, it doesn't seem to me fair.

So if the gentleman was willing to accommodate that land in Rockbridge County, maybe, once again, the Indian tribes would agree to compromise and preclude the other counties included in Mr. GOODLATTE's amendment.

I will reserve the balance of my time.

Mr. GOODLATTE. Madam Chairman, I yield myself such time as I may consume to say the gentleman's points are well taken. We certainly understand the concerns of the tribe and the interests of the individual who owns the land in Rockbridge County that would like to have it taken into trust.

My concern, of course, is that this has happened at a late hour and, as you know, we've been scrambling to figure out exactly what that land is. We now think we have a reasonably good definition of it, and subject to the approval of the local government, I think that we could agree on language. And if the chairman and the ranking member, or other Members for that matter, do not object, I would be prepared to make a unanimous consent request.

The Acting CHAIR. The Chair would inquire whether the gentleman is submitting a modification.

Mr. GOODLATTE. I am. I am asking unanimous consent to submit a modification.

The Acting CHAIR. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment No. 2 offered by Mr. GOODLATTE:

In lieu of the matter proposed to be inserted, insert the following:

Page 51, beginning on line 1, strike ''Albermarle'' and all that follows through ''Virginia'' on line 4 and insert ''Amherst County, Virginia''

Page 51, beginning on line 7, strike ''Albermarle'' and all that follows through ''Virginia'' on line 10 and insert ''Amherst County, Virginia, and those parcels in Rockbridge County, Virginia (subject to the consent of the local unit of government), owned by Mr. J. Poole, described as East 731 Sandbridge (encompassing approximately 4.74 acres) and East 731 (encompassing approximately 5.12 acres)) .''.

The Acting CHAIR. Is there objection to the modification?

Mr. MORAN of Virginia. Reserving the right to object, my concern with this modification is only one; not the specificity of the modifying amendment, but it's subject to the approval of Rockbridge County. What does that mean? Does there have to be some formal legislation passed by Rockbridge County? Is it the County Board? Do they have to pass formal legislation and by when?

I would be fine with it up to the approval part, but I don't know what the approval part constitutes.

Mr. GOODLATTE. If the gentleman would yield, the consent of the local unit of government, to me, would mean the approval of the Rockbridge County Board of Supervisors by way of an ordinance or some other measure that they would pass, a resolution, approving the action taken. If the gentleman has some perfecting language, I'm certainly willing to consider it.

Mr. MORAN of Virginia. Would the gentleman accept language that said, ''unless disapproved by the Rockbridge County government''?

In other words, I hate to have it so that the Rockbridge County government can just decide to sit on this indefinitely. But if they specifically, through their County Board, disapproved it, then I guess that would be acceptable. But I don't want to give the kind of leverage where inaction might preclude this from occurring.

Mr. GOODLATTE. Well, if the gentleman would yield further, I take the gentleman's point. However, by the same token, we would have to have some kind of a date by which they would have to act in disapproval, because otherwise they could disapprove some time well into the future. So I think that the appropriate step here would be to adopt this amendment with the unanimous consent modification, if no one objects to that, and then the tribe would then proceed to go to the Rockbridge County Board of Supervisors and ask them to approve this. If they refuse to approve it, they would still have the opportunity to come back in the future and ask them for approval at a later date. Whereas, the gentleman's language might be more confusing.

Mr. MORAN of Virginia. By the same token, unless disapproved within 180 days of passage, because your argument applies just as well.

Mr. GOODLATTE. If the gentleman would yield, I don't think the gentleman is going down the right track because the gentleman who owns this land is still living, and it's my understanding that he's going to convey the land in a testamentary document, and therefore, to try to set a date for the action by the board seems to me to be trying to put the cart before the horse. I believe that I must insist, myself, on my own unanimous consent request.

Mr. MORAN of Virginia. The gentleman makes a legitimate point, and I will withdraw my reservation.

The Acting CHAIR. Without objection, the amendment is modified.

There was no objection.

The Acting CHAIR. The Chair recognizes the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Madam Chairman, with that modification, I would urge my colleagues to support the amendment. And I do believe that this is a good and effective way to address the concerns that I raise and were raised by Congressman PERRIELLO and Congressman BOUCHER in my conversations with them and my staffs conversations with their staffs about the impact that this could have on these particular localities. And, therefore, I would ask my colleagues to support the amendment, as modified.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE), as modified.

The amendment, as modified, was agreed to.

The Acting CHAIR. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The Acting CHAIR. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DOYLE) having assumed the chair, Ms. BALDWIN, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1385) to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, pursuant to House Resolution 490, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER pro tempore (Ms. BALDWIN). Without objection, the title of H.R. 1385 is amended to read as follows:

To extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

□ 1415

GENERAL LEAVE

Mr. RAHALL. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 31.

The SPEAKER pro tempore (Ms. BALDWIN). Is there objection to the request of the gentleman from West Virginia?

There was no objection.

H.R. 31, LUMBEE RECOGNITION ACT

Mr. RAHALL. Madam Speaker, pursuant to House Resolution 490, I call up the bill (H.R. 31) to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 490, the amendment in the nature of a substitute printed in the bill is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 31

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 ''Lumbee Recognition Act''.

SEC. 2. PREAMBLE.

The preamble to the Act of June 7, 1956 (70 Stat. 254), is amended as follows:

(1) By striking ''and'' at the end of each clause.

(2) By striking '': Now, therefore,'' at the end of the last clause and inserting a semicolon.

(3) By adding at the end the following new clauses:

''Whereas the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw, and have remained a distinct Indian community since the time of contact with white settlers;

''Whereas since 1885 the State of North Carolina has recognized the Lumbee Indians as an Indian tribe;

''Whereas in 1956 the Congress of the United States acknowledged the Lumbee Indians as an Indian tribe, but withheld from the Lumbee Tribe the benefits, privileges and immunities to which the Tribe and its members otherwise would have been entitled by virtue of the Tribe's status as a federally recognized tribe; and

''Whereas the Congress finds that the Lumbee Indians should now be entitled to full Federal recognition of their status as an Indian tribe and that the benefits, privileges and immunities that accompany such status should be accorded to the Lumbee Tribe: Now, therefore,''.

SEC. 3. FEDERAL RECOGNITION.

The Act of June 7, 1956 (70 Stat. 254), is amended as follows:

(1) By striking the last sentence of the first section.

(2) By striking section 2 and inserting the following new sections:

''SEC. 2. (a) Federal recognition is hereby extended to the Lumbee Tribe of North Carolina, as designated as petitioner number 65 by the Office of Federal Acknowledgement. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Tribe of North Carolina and its members.

''(b) Notwithstanding the first section, any group of Indians in Robeson and adjoining counties, North Carolina, whose members are not enrolled in the Lumbee Tribe of North Carolina as determined under section 3(c), may petition under part 83 of title 25 of the Code of Federal Regulations for acknowledgement of tribal existence.

''SEC. 3. (a) The Lumbee Tribe of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as members of a federally recognized tribe. For the purposes of the delivery of such services, those members of the Tribe residing in Robeson, Cumberland, Hoke, and Scotland counties in North Carolina shall be deemed to be residing on or near an Indian reservation.

''(b) Upon verification by the Secretary of the Interior of a tribal roll under subsection (c), the Secretary of the Interior and the Secretary of Health and Human Services shall develop, in consultation with the Lumbee Tribe of North Carolina, a determination of needs to provide the services to which members of the Tribe are eligible. The Secretary of the Interior and the Secretary of Health and Human Services shall each submit a written statement of such needs to Congress after the tribal roll is verified.

''(c) For purposes of the delivery of Federal services, the tribal roll in effect on the date of the enactment of this section shall, subject to verification by the Secretary of the Interior, define the service population of the Tribe. The Secretary's verification shall be limited to confirming compliance with the membership criteria set out in the Tribe's constitution adopted on November 16, 2001, which verification shall be completed within 2 years after the date of the enactment of this section.

''SEC. 4. (a) The Secretary may take land into trust for the Lumbee Tribe pursuant to this Act. An application to take land located within Robeson County, North Carolina, into trust under this section shall be treated by the Secretary as an 'on reservation' trust acquisition under part 151 of title 25, Code of Federal Regulation (or a successor regulation).

''(b) The tribe may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

''SEC. 5. (a) The State of North Carolina shall exercise jurisdiction over—

''(1) all criminal offenses that are committed on; and

''(2) all civil actions that arise on, lands located within the State of North Carolina that are owned by, or held in trust by the United States for, the Lumbee Tribe of North Carolina, or any dependent Indian community of the Lumbee Tribe of North Carolina.

''(b) The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in subsection (a) pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer of jurisdiction may not take effect until 2 years after the effective date of the agreement.

''(c) The provisions of this section shall not affect the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

''SEC. 6. There are authorized to be appropriated such sums as are necessary to carry out this Act.''.

The SPEAKER pro tempore. The gentleman from West Virginia (Mr. RAHALL) and the gentleman from Washington (Mr. HASTINGS) each will control 30 minutes.

The Chair recognizes the gentleman from West Virginia.

Mr. RAHALL. To my colleagues on both sides of the aisle, let me begin by saying that this measure, which would extend Federal recognition to the Lumbee Tribe of North Carolina, is more than a century overdue. When 240 of us voted for Federal recognition during the 102nd Congress, that should have resolved the question of Lumbee status. When we voted again in favor of similar legislation in the 103rd Congress, that certainly should have meant that the United States had finally taken a stand and done the right

thing by acknowledging a trust relationship with the Lumbee Tribe, but it was not to be. Last Congress, the Lumbee Tribe Recognition Act passed the House of Representatives with 256 votes but, unfortunately, this legislation stalled in the Senate.

So here we are again today, over 115 years after the Lumbee first sought Federal recognition, still attempting to clarify their status.

The history and struggle of the Lumbee Tribe to obtain Federal acknowledgment has been well documented. When Congress passed the Lumbee Act of 1956, it simultaneously recognized and terminated the Lumbee Tribe by acknowledging their status as an Indian tribe by denying them Federal service. That act was passed during the era of Federal Indian policy known as the Termination Era. If you examine the results of the Termination Acts of the 1950s, you would see how detrimental that misguided policy was to the terminated tribes. Through it all, the Lumbee Tribe has managed to maintain their sense of community and provide some services to their citizens.

This is a testament to the fact that the Lumbees have a functioning government worthy of Federal acknowledgment. Yet the Lumbee people still do not have the government-to-government relationship they deserve. At no time has the Department of the Interior ever opposed Federal recognition for this tribe based on the belief that the Lumbees are not entitled to such status. Indeed, the Department has repeatedly concluded that the Lumbee Tribe descends from similar speaking tribes.

Several studies undertaken by the Department have consistently concluded that the Lumbees are a distinct, self-governing Indian community which has been historically located on the Lumbee River in North Carolina.

During President Obama's campaign, he pledged his full support for recognition of the Lumbee people. At the Natural Resources hearing this year, the administration testified in support of H.R. 31 stating: ''There are rare circumstances when Congress should intervene and recognize a tribal group. And the case of Lumbee Indians is one such case.''

During this debate, we may hear a number of canards against Lumbee recognition but not one will be a legitimate reason to deny recognition. One such relates to the different names given the Lumbee Tribe. Although the State of North Carolina has recognized the tribe for over 100 years, it has done so under various names. Other than the Lumbee Tribe, North Carolina is responsible for the various names that it imposed upon the tribe. It was not until the tribe pressured the State that the tribe was authorized to conduct a referendum to choose their own name. When it did so in 1951, it chose the name Lumbee Indians of North Carolina. This is the only name ever selected by the tribe, and it is this name by which Congress, in 1956, recognized the Lumbees.

Some have expressed concern about the cost of this bill, and I want to note that the cost of this bill is for discretionary programs only. There is no mandatory spending. Any actual costs to this bill are subject to appropriations.

To address claims that the tribe was only interested in Federal recognition so that they may conduct gaming, the tribe supported an outright gaming prohibition which has been included in this bill. The gaming prohibition precludes the Lumbee Tribe from engaging in, licensing, or regulating gaming pursuant to the Indian Gaming Regulatory Act or any other Federal law.

Finally, some may argue that the Lumbees should not be allowed to bypass administrative process established by the Bureau of Indian Affairs and should be allowed to go through the administrative process. I can assure you extending Federal recognition to a tribe at this time is not something new, nor does it bypass administrative process. If a tribe has been terminated by the Federal Government, they are ineligible for the administrative process.

Because we, the Congress, terminated the Lumbees in 1956, it is solely our responsibility to restore their status.

In closing, I would like to commend the gentleman from North Carolina, Mr. MIKE MCINTYRE, for his dedication to this issue. Over the years, he has acted in a professional and respectful manner in his tireless efforts, his superb leadership. This bill has garnered 185 cosponsors. Mr. MCINTYRE's dedication to the Lumbee people is most admirable, and I'm sure they recognize and salute him for that dedication.

I would also like to commend the Lumbee Tribe for being extremely patient with Congress as we have failed to clarify their status for far too long.

In the face of adversity, their determination and sheer stamina has served as testament to their belief in who they are as a people. They have endured rejection by Congress, hostility by the Bureau of Indian Affairs, and have even been snubbed in their quest by neighboring Indian tribes unwilling to have the Lumbee recognized the Congress as they were.

All the Lumbee want is the respect of being acknowledged for who they are—an American Indian tribe.

Let us join this effort to grant the Lumbee the recognition they have so long deserved. It is up to us to do the right thing by extending Federal recognition to the Lumbee Tribe, and I urge all of my colleagues to support H.R. 31.

I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Speaker, I rise in opposition to H.R. 31, and I do so because I believe this bill sets a bad precedent. It extends Federal recognition to what I understand would become the third largest tribe in the country. Though the size of the Lumbee Tribe does not disqualify it from consideration for recognition, it does demand, nonetheless, that Congress exercise great caution. And I will point that out later on in my remarks.

Madam Speaker, a fundamental principle of Indian law is that a recognized tribe should be a tribe that can trace continuous existence from the earliest days of our Republic to the present. In fact, this is enshrined in one of the seven mandatory criteria that the Bureau of Indian Affairs, or BIA, uses to evaluate petitions from groups seeking recognition. The BIA process might have its problems, but at least it has a clear set of standards that a petitioner must meet.

We in Congress do not seem to have a clear standard for determining that the Lumbee Tribe warrants recognition. Legislative proposals to recognize the Lumbee has surfaced numerous times over the last century, yet none were enacted. No new information has come to light to justify passing that legislation today. Moreover, the committee applied no visible standard for determining why the Lumbees warrant recognition while other groups do not. Unless the House develops a clear, rational, fixed policy on recognition, then our act of recognizing a tribe would deem to be arbitrary. This could undermine the standing of recognized tribes everywhere.

The lack of transparent standards in H.R. 31 leads to a major issue: the tribe size and the cost of providing services to it. Two years ago when we considered the same legislation, the Congressional Budget Office, or CBO, estimated that recognizing the Lumbees would cost taxpayers $480 million over 5 years based on an enrollment of about 40,000 members. Today, CBO advises that the bill is going to cost $786 million over 5 years based on a tribal enrollment of 54,000.

$786 million, Madam Speaker, is an enormous sum and it could force the BIA and the Indian Health Service to alter formulas for the provisions of service to all other tribes, possibly reducing their allocation.

A recent news article in the North Carolina paper indicates the tribal rolls are closed because of the concerns over the size of the tribe. The implication is that the tribal rolls will be reopened again after Congress passes this bill. As I said earlier, the size of the tribe is not an issue here. What is at issue is the kind of enrollment standards the tribe applies because taxpayers and other tribes want to know what the cost implications will be down the road.

Let me restate a few points that I made when the Committee on Natural Resources marked up this measure, because the objections and the concerns that I raised then have not been resolved today.

First, the Obama administration testified in support of H.R. 31, reversing the stance of the previous administration. In the committee hearing on the

bill, the Department's witness did not explain how the administration came to the conclusion that the Lumbees warrant Federal recognition. When I asked the witness who was at the Department who made the decision, his reply was, The political leadership.

The Secretary of the Interior, Ken Salazar, is the top political leader there. I would note since the day he took office, Secretary Salazar has repeatedly stressed that his decisions will be based on the law and sound science. For example, an Interior news release quotes him as saying: ''My first priority at Interior is to lead the Department with openness in decision making, high ethical standards, and respect to scientific integrity.'' Again, this is from a news release that was sent out by the Department.

We are debating a bill about tribal recognition and the Department of the Interior is supposed to base its recognition decisions based on the research of the professional historians, anthropologists, and genealogists employed in the Bureau of Indian Affairs.

So in this new leadership at Interior, how did this new leadership at Interior and the administration arrive at support of H.R. 31? Was it because of the professional opinion of those career social scientists? Was there openness in this decisionmaking? I think the answer is no. The Department has not provided the committee with any data supporting its conclusion that the Lumbee met the same basic criteria as other tribes the Secretary has recognized.

While there are a number of other concerns with H.R. 31, let me highlight one more which is extremely important. While the Constitution grants Congress plenary authority to recognize a tribe, the Congress must respect some reasonable limits on the exercise of this authority. To do otherwise undermines the whole notion of tribal recognition and thereby dishonors all validly recognized tribes. With this in mind, the House today should, at a minimum, ensure that a tribe being formally recognized descends from a known historic tribe.

□ 1430

H.R. 31 fails this test. The legislation limits the Secretary to ''confirming compliance with the membership criteria set out in the Tribe's constitution.''

The tribe has testified that its members are descendants of coastal North Carolina tribes. At a minimum, the Secretary should verify that every member of the tribe descends from such historic tribes. Such verification has not been done, and it is not required under H.R. 31. It could have been done if the amendment filed by the gentleman from North Carolina (Mr. SHULER) were made in order by the Rules Committee, but the Rules Committee chose not to make his amendment in order.

His amendment would have required the Secretary to evaluate the Lumbee recognition petition using the Bureau of Indian Affairs' seven mandatory criteria. One of the criteria requires a petitioner to show that its membership consists of individuals who descend from a historic Indian tribe.

H.R. 31, again, Madam Speaker, does not impose a reasonable standard that justifies the recognition of the Lumbee Tribe.

So with that, Madam Speaker, I reserve the balance of my time.

Mr. RAHALL. Madam Speaker, I'm most delighted to yield 10 minutes to the distinguished gentleman from North Carolina (Mr. MCINTYRE), lead sponsor of this legislation, and, again, commend him for his tremendous leadership.

(Mr. MCINTYRE asked and was given permission to revise and extend his remarks.)

Mr. MCINTYRE. Madam Speaker, the members of the Lumbee Tribe, many of whom are here from the tribal council today, and I appreciate Chairman RAHALL's strong support of the Lumbee Tribe in the past and your willingness to cosponsor this bill for Federal recognition to bring long overdue justice to the recognition of this tribe.

Madam Speaker, I place into the RECORD four letters from all of North Carolina's Governors, both Democratic and Republican, from the last 32 years in recognition and desire that this tribe be federally recognized.

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh. NC, May 1, 2009.

Hon. NICK J. RAHALL II,
Chair, Natural Resources Committee, House of Representatives, Longworth House Office Building, Washington, DC.

Hon. DOC HASTINGS,
Ranking Member, Natural Resources Committee, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN RAHALL AND CONGRESSMAN HASTINGS: Thank you for the opportunity to submit written comments about pending legislation for federal recognition of the Lumbee Tribe of North Carolina by the Congress of the United States of America.

I am writing to express my support for the century-long effort of the Lumbee Tribe of North Carolina to attain a favorable decision on federal recognition. Both Republican and Democratic administrations have supported Lumbee efforts, and the State of North Carolina has recognized the Lumbees as a Tribe. The Lumbee people have waited too long on a decision on federal recognition, and the US Congress should give them this opportunity.

As you know, the Lumbee Tribe has sought federal recognition since 1888. after being recognized by the State of North Carolina as the ''Croatan'' Tribe in 1885. In 1956, the Congress acknowledged that Lumbees were Indians. but at the request of the Department of the Interior, included language in this legislation that precluded access to federal funds. This left the Lumbees without a federal relationship as an Indian tribe. This provision also halted the efforts of the Lumbees to gain federal acknowledgement through the federal acknowledgement process at the Department of the Interior. I understand that Congress has enacted special legislation to address special circumstances such as these.

I thank the House and the Natural Resources Committee for holding this hearing and for allowing me to offer written comments about the Lumbee Tribe recognition bill.

Thank you for your consideration.

Sincerely,

BEVERLY PERDUE,
Governor.

STATE OF NORTH CAROLINA,
Raleigh, NC, April 18, 2007.

Hon. NICK J. RAHALL II,
Chair, Natural Resources Committee, House of Representatives, Longworth House Office Building, Washington, DC.

Hon. DON YOUNG,
Ranking Member, Natural Resources Committee, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN RAHALL AND CONGRESSMAN YOUNG: Thank you for the opportunity to submit written comments about pending legislation for federal recognition of the Lumbee Tribe of North Carolina by the Congress of the United States of America. I believe full federal recognition of the Lumbee Tribe by Congress is long overdue.

Recognition of and interaction with the Lumbee people as a unique, distinct Indian tribe began when settlers from Virginia, South Carolina and Europe first arrived in the Cape Fear and Pee Dee River Basins after the Tuscarora War (1711–1715). There, the settlers encountered a well-populated, cohesive American Indian tribal group situated mostly along and to the west of what is now known as the Lumber River in Robeson County. As early as 1890, the U.S. Department of Interior acknowledged this fact among others as evidence that the Lumbee people are American Indians.

A proclamation by colonial Governor Matthew Rowan on May 10, 1753 stated that Drowning Creek (Lumber River in Robeson County) was ''the Indian Frontier.'' Other historical records of the eighteenth and early nineteenth centuries, including Revolutionary War pensions for Lumbees who fought for American independence, attest to the Lumbees as American Indians.

In 1885, North Carolina's General Assembly passed a bill recognizing and naming the Lumbee tribe ''Croatan.'' In 1911 the General Assembly changed their name to the ''Indians of Robeson County'' and in 1913 to ''Cherokee Indians of Robeson County.'' None of these names was chosen by the tribe. In 1953, the State officially changed the tribe's name to ''Lumbee Tribe of North Carolina'' following a 1952 tribal referendum requested by the Lumbees and paid for by the State in which this name was overwhelmingly chosen. These names all apply to the same American Indian tribe.

For more than a century, North Carolina's Governors, various state legislators and Members of the North Carolina Congressional delegation have supported the effort by the Lumbee Tribe to obtain federal recognition, beginning with a petition to Congress in 1888. Enclosed are copies of letters by former Governors James G. Martin (R) and James B. Hunt, Jr., (D)—my immediate predecessors—attesting to the strong bipartisan support for federal recognition that the Lumbee Tribe has enjoyed during the last generation.

In the past, federal recognition has been denied because of opposition by the Bureau of Indian Affairs and Department of the Interior on budgetary grounds. Each of several federal investigations into the Lumbees' history, genealogy and ethnicity has concluded that the Lumbees are in fact American Indians. It follows that federal recognition should be authorized for this long-standing American Indian Tribe.

Personally and on behalf of North Carolina, I offer to our fellow Lumbee citizens

and to the Congress our full, unqualified support for Congressional recognition of the Lumbee Tribe. I encourage your support for the Lumbee Tribe and for the adoption of this bill.

I thank the House and the Natural Resources Committee for holding this hearing and for allowing me to offer written comments about the Lumbee Tribe recognition bill.

With warm personal regards, I remain

Very truly yours,

MICHAEL F. EASLEY,
Governor.

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh, March 11, 1993.

Hon. BRUCE BABBITT,
Secretary, U.S. Department of Interior, Washington, DC.

DEAR BRUCE: I am pleased that you were able to be in our state recently and I appreciated the opportunity to meet with you.

There are approximately 40,000 Lumbee Indians living in North Carolina and they have been officially recognized by the State of North Carolina since 1885. The Lumbees have been seeking federal recognition since 1888. Seven studies have shown them to be an independent Indian community.

I would like to reiterate my strong support for the Congressional process for federal recognition of the Lumbee Indian tribe in North Carolina. As you know H. R. 334, introduced by Congressman Charlie Rose of North Carolina, would provide such recognition. We support that legislation as stated in my letter of January 28, 1993.

Federal recognition of the tribe has been endorsed by the N.C. Commission of Indian Affairs, the Governors' Interstate Indian Council, and the National Congress of American Indians which is the oldest and largest Indian organization in the country.

In 1956 a bill was passed by the Congress to recognize the Lumbee tribe, but it denied the tribe the benefits or protections afforded to Indians by the U.S. of America.

For over 100 years the Lumbees have tried to obtain federal recognition, but to no avail. It is my opinion that the administrative recognition process that was proposed by the previous administration simply is too cumbersome, time-consuming, costly and has not worked effectively. Therefore, I would urge you to support the Congressional recognition process as proposed by Congressman Rose.

I want to work with you and the President in any way possible to help the Lumbee Tribe receive Congressional recognition. I am confident that this recognition is not only in our state's and the tribe's best interest, but in the interest of the United States as well.

Sincerely,

JAMES B. HUNT, Jr.,
Governor.

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh, January 28, 1993.

Re Federal Recognition of the Lumbee Indians.

Hon. BRUCE BABBITT,
Secretary, U.S. Department of Interior, Washington, DC.

DEAR BRUCE: This letter is to ask for your assistance in obtaining federal recognition for the Lumbee Indian tribe, which has many members in North Carolina. Congressman Charlie Rose (D–N.C.) has introduced a bill (H.R. 334) that would provide such recognition.

Before the House Subcommittee on Indian Affairs considers H.R. 334, I understand that the Clinton Administration will release its position on the bill. I ask that you and the President support the bill.

The Lumbee have 40,000 enrolled members in the United States and should be recognized. In fact, seven studies in this century have shown them to be an independent Indian community.

I appreciate your consideration of this letter. Please contact Congressman Rose or me if we can assist you in any way with this matter.

My warmest personal regards.

Sincerely,

JAMES B. HUNT, Jr.,
Governor.

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh, July 30, 1991.

Hon. DANIEL K. INOUYE,
Chairman, Senate Select Committee on Indian Affairs, Hart Senate Office Building, Washington, DC.

DEAR SENATOR INOUYE: I have asked James S. Lofton, Secretary of the North Carolina Department of Administration to represent me at the Joint Hearing regarding S. 1036, the Lumbee Recognition Bill, which will be held on August 1. Secretary Lofton will be accompanied by Henry McKoy, Deputy Secretary of the Department of Administration, Patrick O. Clark, Chairman of the North Carolina Commission of Indian Affairs; and A. Bruce Jones, the commission's executive director.

I fully support the passage of S. 1036 and am requesting the support of the Senate Select Committee on Indian Affairs. The State of North Carolina has recognized the Lumbee Tribe as a separate and viable Indian entity since 1885. The passage of S. 1036 will entitle the Lumbee to enjoy'the same rights, privileges and services enjoyed by other federally recognized tribes in the nation and will, further, be a major step toward rectifying the inequities suffered by the Lumbee people for centuries.

I thank you for your attention.to this matter and will appreciate your favorable consideration of my request.

Sincerely,

JAMES G. MARTIN,
Governor.

Madam Speaker, I was born and reared in Robeson County, North Carolina, the primary home of the Lumbee people. I go home there virtually every weekend and have the high honor of representing about 40,000 of the 55,000 Lumbees who live in my home county. In fact, there are more Lumbees in Robeson County than any other racial or ethnic group. The Lumbee Indians are my friends, many of whom I've known all my life. They're important to the success of everyday life, not only in Robeson County, but throughout southeastern North Carolina, our entire State, as evidenced by these letters from our Governors, and their contributions, indeed, to our Nation.

From medicine and law, to business and banking, from the farms and factories, to the schools and the churches—we had a Lumbee Indian come and open the National Day of Prayer right here as our guest chaplain the first Thursday in May—from government, military, our veterans, community service, to entertainment and athletic accomplishments, the Lumbees have made tremendous contributions to our country, our State and, indeed, our Nation.

In fact, in my home county, the former sheriff, the current clerk of court, the register of deeds, the school superintendent, several county commissioners, including the chairman, school board members, and the person who represents me and my family in the State legislature are all Lumbee Indians. Also, judges on both the District Court and Superior Court bench are Lumbee Indians.

In other words, the Lumbee Indians have achieved great accomplishments. Their contributions have been recognized from the city councils and county commissioners, to the chamber of commerce, to our regional medical center, and the list goes on. They all have endorsed recognition of this tribe.

But let me say this in a broader sense. I personally visited with over 300 of my colleagues, many of you listening back in your offices right now, and your legislative directors and chiefs of staff, and we've talked about this. In one aspect or another, the United States Congress has been dealing with this issue since 1888. During that time, Congress has directed the Department of the Interior to examine the tribe's history.

Eleven times, 11 times this tribe has been examined by the Department of the Interior. This is not about going around the process. It's not about skipping over the BIA. It's not about setting a precedent that some other tribe is going to say, oh, we will just skip the process. This tribe has gone through it. They have been examined. Over and over and over and over and over and over and over, and we can go on and say that 11 times.

So why are we still debating this? Well, in 1956, in fact the year I was born—it's been that long now—53 years later, 1956, this Congress recognized the Lumbees in Maine in name only but did not complete the recognition process. You know, there were two other tribes in America that had this dilemma: the Tiwas of Texas and also our friends from Arizona, the Yaqui Pascua. These two tribes, Congress went back and completed the recognition, 1987 and also back in 1978.

So, now, there's one tribe in America left in this situation, one tribe. This is not setting a precedent for other tribes. In fact, the solicitor from the Department of the Interior said the only way to resolve this issue is to go back to Congress. Yeah, you've been through the BIA 11 times. BIA can't do it. Go back to Congress because what Congress started Congress should finish, and that's why we're back here today.

We had it in the 103rd and 104th and just, yes, in our last session of Congress, the 110th, we passed this legislation. In fact, we had a two-thirds majority, Republicans and Democrats, liberals, conservatives and moderates, because this isn't about philosophy or partisan politics. This is about doing the right thing.

And to think I go home on weekends, and every weekend, the folks from the

Lumbee Tribe wonder why doesn't our government still recognize we exist? We have tribal members here today. Do we not recognize as a Nation that 55,000 people, who have died for this country as veterans and served our country in the military and law enforcement and the hospitals and banks and farms and factories, and all the other places I mentioned earlier, are people that deserve the dignity of recognition?

This is not about gaming. Please hear me friends and colleagues listening in the offices. They have agreed to prohibit gaming in the enacting legislation. So that this is not about going around the process, and it's not about gaming, and it's not about a reservation of land. Why? Because they are fully integrated in society, as I have already mentioned. They are our judges. They're our law enforcement. They're our doctors and our bankers back home in North Carolina.

What is it about then? It's about getting the politics out of the way that have delayed this bill the last 53 years, and let's get on with it and complete the recognition that the solicitor has said only we can complete.

It is a unique situation. They are the only tribe in America in this situation. It is not an antecedent for any other argument about any other tribe.

Today, our North Carolina Senators on a bipartisan basis support this bill. Today, 185 of my colleagues have cosponsored, on a bipartisan basis, this bill. Today, the White House recognizes that this is an injustice that, yes, must finally be resolved.

The political leadership has stopped it since 1956. Political leadership ought to help correct it, and thank God that they're willing to do that now.

And today, we can take that step toward rectifying this wrong of 53 years ago. When we passed it those other times that I mentioned, three other times, it got to the Senate only to face inaction. Last year, they ran out of time before the general election. We don't want that to happen. That's why we're getting this done today so that they will have the rest of this year and all of next year hopefully to finally give this tribe its long overdue recognition. What Congress started Congress should finish.

Madam Speaker, in conclusion, let me urge this House not to delay anymore. Justice delayed is justice denied. The evidence is clear, cogent, convincing. The examinations have occurred. We have heard the advisory opinion from the solicitor. We know that only Congress can resolve this. It is time to say ''yes.'' ''Yes'' to dignity and respect. ''Yes'' to fundamental fairness. ''Yes'' to decency. ''Yes'' to honor. ''Yes'' to Federal recognition.

Let's do what is right. People in America are tired of bickering in Washington. They are tired of people pointing fingers and dreaming up excuses not to get things done. You know, let's send a message today that we're willing to do the right thing to correct inequities that have occurred in our history. We have conservatives and liberal and moderates and Republicans and Democrats on this bill. So it is not a philosophical or political argument anymore. It's only about doing the right thing.

I challenge all of my colleagues in our United States Congress to do the right thing. It's time for discrimination to end and recognition to begin.

Mr. HASTINGS of Washington. Madam Speaker, I'm pleased to yield 3 minutes to the gentleman from North Carolina (Mr. MCHENRY).

Mr. MCHENRY. Madam Speaker, I thank my colleague and ranking member for yielding.

I thank my colleague from North Carolina as well for his honest efforts on behalf of his constituents. I respectfully disagree with the conclusions the gentleman's made, but I certainly respect him and his abilities in representing his constituents and the hard work he's offered on this legislation.

But I rise today in opposition of H.R. 31, the Lumbee Recognition Act. I believe all groups seeking Federal recognition as an Indian tribe should go through the administrative process at the Department of the Interior. It's clear that this process does need reforming, but Congress should do the hard work of reforming that process.

In this case, the Department of Indian Affairs has stated that the 1956 Lumbee Act prevents the Lumbee from going through the proper course of action to attain this status. I believe Congress should act to lift that restriction, and that is why I joined with my other North Carolina Democratic colleague, Congressman Heath Shuler, in submitting an amendment to the Rules Committee to remove the barriers set forth in the 1956 Lumbee Act and provide the Lumbee with the same opportunity to attain Federal recognition as other tribes have. I think that's the proper path. Unfortunately, the Rules Committee disallowed us that opportunity to vote on that legislation here on the House floor, and I think that's unfortunate.

To the extent that the process needs to be reformed, we should let Congress or the agency focus on those specific areas, instead of passing individual recognition bills.

I cannot support the underlying legislation, which would allow the Lumbee to circumvent this proper recognition process and their hard work in diligently working toward recognition through the Office of Federal Acknowledgment. This would be unfair to those tribes who have gone through the proper requirements to attain their official status.

Also, it's unfair to existing federally recognized tribes who do not want to see their cultural identity undermined by legislation such as this.

I urge my colleagues to vote against this bill and allow the Office of Federal Acknowledgment to carry out its appropriate responsibilities. That's why we instituted, as a Congress, the Office of Federal Acknowledgment, and we should make sure it does its proper work.

Mr. RAHALL. Madam Speaker, I yield 5 minutes to the gentleman from American Samoa (Mr. FALEOMAVAEGA).

(Mr. FALEOMAVAEGA asked and was given permission to revise and extend his remarks.)

Mr. FALEOMAVAEGA. Madam Speaker, I rise today in strong support of H.R. 31, the proposed bill to provide for the recognition of the Lumbee Tribe of North Carolina.

First, I want to commend the gentleman and my dear friend, the gentleman from North Carolina (Mr. MCINTYRE) for his leadership and tremendous work that he has done to move this bill through committee that is now before us.

I also want to commend Chairman RAHALL and our ranking member, Mr. HASTINGS, and my colleagues on the Natural Resources Committee for their agreement to bringing this bill to the floor.

Madam Speaker, it has been more than 120 years since the Lumbees first attempted Federal recognition since 1888. More than a century has passed since they first started this labyrinth known as Federal recognition process. Since then, the Lumbee themselves have been subjected to such demeaning vetting process, including having the size of their teeth measured and their blood tested to see how much Indian they were.

Since 1888, the Lumbees have submitted all documentation they have to prove their existence. After more than 100 years' worth of documentation and witness testimony, the Lumbees have fully exhausted the Federal recognition process but to no avail.

Madam Speaker, it is also important to note that the policy of the United States has been terribly inconsistent with regard to the original inhabitants of this land, the first Americans. Our first policy was to do battle with them, kill them. The prevailing opinion at the time was epitomized by General Philip Sheridan in 1869 when he said: ''The only good Indians I ever saw were dead.''

Our next policy was that of assimilation. During this period, the United States tried to make Indians part of American mainstream. And then in the 1950s and the early 1960s, this country's policy was termination, termination meaning Indian tribes were no longer in existence.

□ 1445

Then there was the policy of reinstatement. Since 1978, the tribes now have to seek recognition from the Federal Government, and doing so by a series of administrative regulations that have caused tremendous hardship for the tribes seeking to be recognized by the Federal Government.

Throughout this entire period, the Lumbees were seeking recognition.

While Congress recognized the Lumbee Indians in the 1956 Act, the Lumbees were still deprived of critical services and benefits that were available to other Indian tribes. Since then, the Lumbees have felt like they were second-class citizens. And I agree.

Madam Speaker, it is public record that the Interior Department has found the Lumbee petition for recognition wanting. Apparently, the Lumbees didn't keep sufficient written records of their existence for the period supposedly encompassing roughly from 1760 to 1850 to convince the Department of the Interior. I guess the Department thinks that any group of people who don't have a paper trail to prove their existence aren't worthy of Federal recognition.

While I know it's true that the Bureau of Indian Affairs exists only to create a paper trail, I cannot help but think the Lumbee case is a perfect example of a bureaucratic process run amok.

Madam Speaker, there comes a time when the process for process' sake loses its value. While it might be procedurally nice for the Bureau of Indian Affairs and the Department of the Interior to provide a timely review of each group that seeks recognition, sometimes justice requires otherwise. The cost of continuing the acknowledgment process in the case of the Lumbees, for me at least, is just simply too high. And I believe that this is one of the principal roles that Congress has to play.

The time has come for this institution to take action. By our own inaction, Congress will continue to defer to a Federal recognition process that, in the case of the Lumbees, has failed miserably, a Federal recognition process that is also in greater need of reform. And I have introduced legislation to have Congress change the process.

Today, we are considering H.R. 31, a bill to grant Lumbees Federal recognition. After reviewing this bill, there's nothing in here that threatens the economic stream of other federally recognized tribes. Indeed, H.R. 31 contains prohibition of gaming activities.

Madam Speaker, further inaction would lead to more time lost for the Lumbees. For over 100 years, the Lumbees are still seeking recognition. And just prior to the introduction of this bill, we have had to recognize six tribes from Virginia after they waited for 400 years. Does this suggest that the poor Lumbees are to wait for another 300 years, Madam Speaker? I say not.

The time has come to give the Lumbees Federal recognition. I urge my colleagues and Members of this House, do pass H.R. 31 and give the Lumbee Indians at last the recognition they so dearly deserve.

Mr. HASTINGS of Washington. I yield back the balance of my time.

Mr. RAHALL. I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate having expired, pursuant to House Resolution 490, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. HASTINGS of Washington. Madam Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. HASTINGS of Washington. I am, in its current form, Madam Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Hastings of Washington moves to recommit the bill H.R. 31 to the Committee on Natural Resources with instructions to report the same back to the House forthwith with the following amendment:

Page 5, lines 17 and 18, strike ''The Secretary'' and all that follows through the period on line 22, and insert the following: ''For purposes of the delivery of Federal services, the Secretary of the Interior shall verify that the persons on the Lumbee base rolls are descendants of Cheraw or other coastal North Carolina Indian tribes.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Washington (Mr. HASTINGS) is recognized for 5 minutes in support of his motion.

Mr. HASTINGS of Washington. Thank you very much, Madam Speaker.

Madam Speaker, the motion to recommit amends the bill to require the Secretary of the Interior to verify that members of the Lumbee Tribe are descendants of the Cheraw and coastal North Carolina tribes. I don't believe this is unreasonable, and I say that because the preamble contained in H.R. 31 states that, ''the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw.''

At the same time, section 3 of the legislation limits the Secretary's role in verifying the Lumbee tribal rolls only to ''confirming compliance with the membership criteria set out in the tribe's constitution.''

Thus, Madam Speaker, nothing in H.R. 31 requires the Secretary or any third party to verify that individuals enrolled in the Lumbee Tribe are descendants of the historic Cheraw and coastal North Carolina Indians.

Under the Bureau of Indian Affairs regulations, as has been mentioned several times today, one of the seven mandatory requirements that must be met to be recognized by the Secretary as a tribe is that: ''The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.'' These regulations list a wide variety of evidence that can be used to meet this requirement.

The Rules Committee, as I have mentioned and as Mr. MCHENRY mentioned, would not make Mr. SHULER of North Carolina's amendment in order that would have required the Lumbees to meet all seven of the BIA criteria, including the one quoted above, to obtain Federal recognition.

This motion requires the Secretary to verify that members of the Lumbee Tribe meet the equivalent of just one of the seven criteria that are applied to the other petitioners seeking recognition through the BIA process.

I believe, Madam Speaker, this is reasonable because there have been some concerns about the tribe's enrollment.

Today, the tribe claims 54,000 members, and the CBO says the cost would be $786 million over 5 years. This is an increase from just 2 years ago when they were told that there were 40,000 tribal members. Moreover, it appears the tribe is keeping its rolls closed until Congress passes this bill.

It is fair to have the Secretary verify the base rolls the tribe uses to establish membership. This verification requirement does not cancel the tribe's recognition; it merely provides a means of verifying the base rolls, something the BIA should do if the Lumbees had gone through the regulatory process.

Thus, a motion to recommit merely ensures the House has taken extra care to ensure the decision to extend recognition to the Lumbee is appropriate, because a wrong decision, a wrong decision, Madam Speaker, could have an adverse impact on all tribes.

With that, I yield back the balance of my time.

Mr. RAHALL. I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from West Virginia is recognized for 5 minutes.

Mr. RAHALL. Wow. Madam Speaker, it certainly has been a torturous and long path for the Lumbee Indian Tribe. This is but yet another stake that is attempted to be driven in their heart.

It is long established policy in this country for Indian tribes to determine their own membership, their own roll. This motion to recommit would single out the Lumbee Tribe as the only tribe in America that would be subject to this new requirement. It's discriminatory. It's ugly. It deserves to be defeated.

I want to make something very clear before yielding to the gentleman from North Carolina. This is not something new that we're doing today, granting Federal recognition to an Indian tribe. There are 561 federally recognized Indian tribes according to the GAO. Of those, 530 were recognized by the Congress of the United States. That would be this body. That's 530 of 561. And none were recognized under the criteria that's being offered in this motion to recommit.

I yield the balance of my time in opposition to the gentleman from North Carolina (Mr. MCINTYRE).

Mr. MCINTYRE. Thank you, Mr. Chairman. Let's just put this straightforward. This is yet another subterfuge. It's another attempt to push the Lumbees back yet again through political action. It's another attempt to send them back to the bureaucracy. And the last thing our American citizens deserve and that our Lumbee American citizens deserve is to be put back through a simple saying of, Go back to the bureaucracy. Let's once again let Congress skip its duty.

Our United States Constitution itself says that the Congress—right there where it says, ''to regulate commerce with foreign nations and among the several States and with the Indian tribes.'' It is a congressional duty and responsibility.

Now, they've gone through this process, we already explained, 11 times. This is a 12th time being offered. That's what this is. And our Members should recognize this and also recognize that no other tribe that has received Federal recognition through an act of the United States Congress has had to go back through a verification process that is now proposed in this motion to recommit.

Let's treat the Lumbees fairly. This would put them in a situation that would single them out to further treat them unfairly when they now have already been singled out, and we have been told by the Solicitor that we must resolve this problem.

Mr. RAHALL. Madam Speaker, if I have time left, I yield to the gentleman from American Samoa.

The SPEAKER pro tempore. The gentleman from West Virginia controls 1½ minutes.

Mr. RAHALL. I yield 1½ minutes to the gentleman from American Samoa.

Mr. FALEOMAVAEGA. I just want to note for the record, as much as I respect my dear friend, the gentleman from Washington, I remember distinctly we had a hearing on this very issue, and the gentleman who wrote the regulations, the seven criteria that were outlined in terms of what these poor tribes had to go through, admitted before this committee, our committee, even he would not have been able to seek recognition if this is the way the bureaucratic maze had to be conducted on how to recognize an Indian tribe.

So I say this to my good friend from the State of Washington, we are setting precedent here to the effect that we have already recognized all other tribes, the six that we just recognized 30 minutes ago. There was no requirement they had to go back to one of the separate criteria in order to be recognized.

This is the prerogative of the Congress. The Congress can pass this legislation to give recognition to this tribe. And I say this with all due respect to my good friend from Washington.

Mr. RAHALL. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The SPEAKER pro tempore. The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. HASTINGS of Washington. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of the bill, if ordered, and motions to suspend the rules on House Concurrent Resolution 109, and House Resolution 471.

The vote was taken by electronic device, and there were—yeas 197, nays 224, not voting 12, as follows:

[Roll No. 296]

YEAS—197

Adler (NJ)
Akin
Alexander
Altmire
Arcuri
Austria
Bachmann
Bachus
Baird
Barrett (SC)
Bartlett
Barton (TX)
Bilbray
Bilirakis
Blackburn
Blunt
Boehner
Bono Mack
Boozman
Boren
Boustany
Boyd
Brady (TX)
Bright
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carney
Carter
Cassidy
Castle
Chaffetz
Chandler
Childers
Coble
Coffman (CO)
Conaway
Courtney
Crenshaw
Culberson
Davis (AL)
Davis (KY)
Davis (TN)
Deal (GA)
DeLauro
Dent
Donnelly (IN)
Dreier
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (NY)
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hill
Himes
Hoekstra
Hunter
Inglis
Jenkins
Johnson (IL)
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kissell
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Mack
Maffei
Manzullo
Marchant
Marshall
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller, Gary
Minnick
Moran (KS)
Murphy (CT)
Murphy (NY)
Murphy, Tim
Myrick
Neugebauer
Nunes
Nye
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Quigley
Radanovich
Rangel
Rehberg
Reichert
Roe (TN)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shea-Porter
Shimkus
Shuler
Shuster
Simpson
Sires
Smith (NE)
Smith (NJ)
Souder
Space
Stearns
Stupak
Tanner
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NAYS—224

Abercrombie
Ackerman
Aderholt
Andrews
Baca
Baldwin
Barrow
Bean
Berkley
Berman
Berry
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bonner
Boswell
Boucher
Brady (PA)
Braley (IA)
Brown (SC)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carson (IN)
Castor (FL)
Clarke
Clay
Cleaver
Clyburn
Cohen
Cole
Connolly (VA)
Conyers
Cooper
Costa
Costello
Crowley
Cuellar
Cummings
Dahlkemper
Davis (CA)
DeFazio
DeGette
Delahunt
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lungren, Daniel E.
Lynch
Maloney
Markey (CO)
Markey (MA)
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (MI)
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Rahall
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Rush
Ryan (OH)
Salazar
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Sherman
Skelton
Slaughter
Smith (TX)
Smith (WA)
Snyder
Speier
Spratt
Stark
Sutton
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Woolsey
Wu
Yarmuth
Young (AK)

NOT VOTING—12

Becerra
Bishop (UT)
Broun (GA)
Davis (IL)
Johnson, Sam
Rogers (AL)
Ros-Lehtinen
Ruppersberger
Sánchez, Linda T.
Sanchez, Loretta
Sullivan
Wilson (OH)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have 2 minutes remaining in this vote.

□ 1532

Messrs. BLUMENAUER, HOYER, ISSA, COLE, HODES, PASTOR of Arizona, PERLMUTTER, BERRY, ELLISON, STARK, WU, GUTIERREZ, LARSON of Connecticut, SALAZAR, MARKEY of Massachusetts, Mrs.

MCCARTHY of New York, Ms. JACKSON-LEE of Texas, Ms. BERKLEY, Mrs. MILLER of Michigan, Ms. FUDGE, Messrs. MELANCON, GRIFFITH, SHERMAN, KIND, TOWNS, Ms. KOSMAS, Messrs. BOUCHER, CLEAVER, Mrs. BIGGERT, Messrs. COSTA, ISRAEL, JOHNSON of Georgia, Ms. TITUS, Mrs. DAHLKEMPER, Messrs. SMITH of Texas and GORDON of Tennessee changed their vote from ''yea'' to ''nay.''

Mr. HERGER, Mrs. BACHMANN, Messrs. BOYD, FRANKS of Arizona, FORBES, ADLER of New Jersey, Ms. DELAURO, Ms. SHEA-PORTER and Mr. MARSHALL changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Washington. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 240, nays 179, not voting 14, as follows:

[Roll No. 297]

YEAS—240

Ackerman
Aderholt
Andrews
Baird
Baldwin
Barrow
Bean
Berkley
Berman
Berry
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bonner
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Brown (SC)
Brown, Corrine
Butterfield
Capito
Capps
Capuano
Cardoza
Carnahan
Carson (IN)
Castor (FL)
Chandler
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (KY)
DeFazio
DeGette
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Giffords
Gohmert
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hare
Harman
Hastings (FL)
Heinrich
Heller
Higgins
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (NY)
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
LaTourette
Lee (CA)
Levin
Lewis (GA)
Linder
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntyre
McKeon
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nunes
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Peters
Peterson
Pingree (ME)
Platts
Polis (CO)
Price (NC)
Rahall
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Rush
Ryan (OH)
Salazar
Sarbanes
Schakowsky
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shimkus
Simpson
Skelton
Slaughter
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stark
Sutton
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walden
Walz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Woolsey
Wu
Yarmuth
Young (AK)

NAYS—179

Adler (NJ)
Akin
Alexander
Altmire
Arcuri
Austria
Baca
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Bilbray
Bilirakis
Blackburn
Blunt
Boehner
Bono Mack
Boozman
Boren
Boustany
Bright
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Carney
Carter
Cassidy
Castle
Chaffetz
Childers
Coffman (CO)
Cole
Conaway
Courtney
Crenshaw
Culberson
Davis (TN)
Deal (GA)
Delahunt
DeLauro
Dent
Dreier
Duncan
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (NY)
Hall (TX)
Halvorson
Harper
Hastings (WA)
Hensarling
Herger
Herseth Sandlin
Hill
Himes
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Jones
Jordan (OH)
King (IA)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
Latta
Lee (NY)
Lewis (CA)
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Maffei
Manzullo
Marchant
McCaul
McClintock
McCotter
McHenry
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Myrick
Neugebauer
Nye
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Poe (TX)
Pomeroy
Posey
Price (GA)
Putnam
Quigley
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schauer
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shuler
Shuster
Sires
Smith (NE)
Smith (NJ)
Stearns
Stupak
Tanner
Taylor
Teague
Thompson (PA)
Tiahrt
Tiberi
Turner
Upton
Wamp
Wasserman Schultz
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOT VOTING—14

Abercrombie
Becerra
Bishop (UT)
Broun (GA)
Davis (IL)
Johnson, Sam
Rangel
Rogers (AL)
Ros-Lehtinen
Ruppersberger
Sánchez, Linda T.
Sanchez, Loretta
Sullivan
Wilson (OH)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have 2 minutes remaining in this vote.

□ 1541

Mr. POMEROY changed his vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. MCCARTHY of California. Mr. Speaker, during final consideration of H.R. 31, I inadvertently voted "yea" on rollcall 297. I intended to vote "nay."

HONORING ANNUAL SUSAN G. KOMEN RACE FOR THE CURE

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and agree to the concurrent resolution, H. Con. Res. 109, on which the yeas and nays were ordered.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from California (Mrs. CAPPS) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 109.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 417, nays 0, not voting 16, as follows:

[Roll No. 298]

YEAS—417

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Bean
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (KY)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge

Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones
Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paul
Paulsen
Payne
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stark
Stearns
Stupak
Sutton
Tanner
Tauscher
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wamp
Wasserman Schultz
Waters
Watson
Waxman
Weiner
Welch
Westmoreland
Wexler
Whitfield
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—16

Becerra
Bishop (UT)
Broun (GA)
Davis (IL)
Johnson, Sam
Myrick
Pence
Pitts
Ros-Lehtinen
Ruppersberger
Sánchez, Linda T.
Sanchez, Loretta
Schmidt
Sullivan
Watt
Wilson (OH)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have less than 2 minutes remaining in this vote.

□ 1550

So (two-thirds being in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

EXPRESSING SYMPATHY FOR VICTIMS OF CAMP LIBERTY SHOOTINGS

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 471, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. KRATOVIL) that the House suspend the rules and agree to the resolution, H. Res. 471, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. MCGOVERN. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 416, nays 0, not voting 17, as follows:

[Roll No. 299]

YEAS—416

Abercrombie
Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Bean
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (KY)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones
Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paul
Paulsen
Payne
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stark
Stearns
Stupak
Sutton
Tanner
Tauscher
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney

Titus	Wamp	Whitfield
Tonko	Wasserman Schultz	Wilson (SC)
Towns	Waters	Wittman
Tsongas	Watson	Wolf
Turner	Watt	Woolsey
Upton	Waxman	Wu
Van Hollen	Weiner	Yarmuth
Velázquez	Welch	Young (AK)
Visclosky	Westmoreland	Young (FL)
Walden	Wexler	
Walz		

NOT VOTING—17

Becerra	Gordon (TN)	Ruppersberger
Berman	Johnson, Sam	Sánchez, Linda T.
Bilbray	Kirk	Sanchez, Loretta
Bishop (UT)	Mollohan	Sullivan
Broun (GA)	Myrick	Wilson (OH)
Davis (IL)	Ros-Lehtinen	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have 2 minutes remaining in this vote.

□ 1559

So (two-thirds being in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

DIRECTING THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO REPORT TO THE HOUSE OF REPRESENTATIVES ON THE ACTIONS THE COMMITTEE HAS TAKEN CONCERNING ANY MISCONDUCT OF MEMBERS AND EMPLOYEES OF THE HOUSE IN CONNECTION WITH ACTIVITIES OF THE PMA GROUP

Mr. HOYER. Madam Speaker, I rise to a question of the privileges of the House.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 500

Whereas there have been allegations in the media concerning the improper involvement of Members of the House of Representatives in certain activities of the PMA Group; and

Whereas according to these media accounts and the statements of those involved, the Department of Justice is conducting an investigation into such activities of the PMA Group: Now, therefore, be it

Resolved, That not later than 45 days after the adoption of this resolution, the Committee on Standards of Official Conduct shall report to the House of Representatives on the actions the Committee has taken, if any, concerning any misconduct of Members and employees of the House in connection with such activities of the PMA Group.

The SPEAKER pro tempore. The resolution qualifies.

MOTION OFFERED BY MR. MCGOVERN

Mr. MCGOVERN. Madam Speaker, I have a motion at the desk.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. MCGOVERN moves that the resolution be referred to the Committee on Standards of Official Conduct.

The SPEAKER pro tempore. The gentleman from Massachusetts is recognized on his motion.

Mr. MCGOVERN. Madam Speaker, this measure merits review in the Committee on Standards of Official Conduct.

I yield back the balance of my time, and I move the previous question on the motion.

PARLIAMENTARY INQUIRIES

Mr. FLAKE. Madam Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. FLAKE. I just saw the resolution. I don't know if it actually just punts the ball until the appropriations cycle is done or if it actually requires that the committee investigate.

Can the committee wait for 45 days and then announce that it is not investigating the PMA scandal, and then we're at the same place we are now?

The SPEAKER pro tempore. The Chair cannot interpret the pending resolution. It is available at the desk for review.

Mr. FLAKE. Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his further parliamentary inquiry.

Mr. FLAKE. This resolution, as I understand it, does not require the Committee on Standards of Official Conduct to do anything but report whether or not an investigation is occurring.

Does this motion require any action on the part of the Committee on Standards of Official Conduct?

The SPEAKER pro tempore. The pending motion is to refer the resolution to committee.

Mr. FLAKE. So no action is required.

Mr. BOEHNER. Madam Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BOEHNER. Madam Speaker, does this motion do anything other than refer this worthless piece of paper to the Ethics Committee?

The SPEAKER pro tempore. The proposal is to refer the resolution to committee.

Mr. BOEHNER. Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his further parliamentary inquiry.

Mr. BOEHNER. Does it require the Committee on Standards of Official Conduct to do anything?

The SPEAKER pro tempore. The proposal before the body is to refer the resolution to committee.

Mr. BOEHNER. Parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his further parliamentary inquiry.

Mr. BOEHNER. If the House were to adopt this motion, this resolution, would it require the committee to do anything?

The SPEAKER pro tempore. The measure would be referred to committee for its consideration.

Mr. BOEHNER. Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his further parliamentary inquiry.

Mr. BOEHNER. If the House were to adopt this motion to refer this to the Committee on Standards of Official Conduct, under the previous announcement from the Chair, the Committee on Standards of Official Conduct would be required to do nothing.

The SPEAKER pro tempore. The committee would have referral of the resolution.

Mr. BOEHNER. And nothing else?

The SPEAKER pro tempore. The committee would have referral of the resolution.

Mr. FLAKE. Madam Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. FLAKE. Does the resolution require that the committee report back in 45 days or 45 legislative days?

The SPEAKER pro tempore. The Chair cannot interpret the resolution. It is available for inspection.

Mr. FLAKE. Madam Speaker, the reason I ask is because within 45 days, the appropriations cycle will likely be completed.

The SPEAKER pro tempore. The gentleman is not stating a parliamentary inquiry.

Without objection, the previous question is ordered.

Mr. PRICE of Georgia. I object.

The SPEAKER pro tempore. Objection is heard.

The question is on ordering the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BOEHNER. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 270, nays 134, answered ''present'' 17, not voting 12, as follows:

[Roll No. 300]

YEAS—270

Abercrombie	Braley (IA)	Cummings
Ackerman	Brown, Corrine	Dahlkemper
Adler (NJ)	Buyer	Davis (AL)
Altmire	Capps	Davis (CA)
Andrews	Capuano	Davis (TN)
Arcuri	Cardoza	DeFazio
Baca	Carnahan	DeGette
Baird	Carney	Delahunt
Baldwin	Carson (IN)	DeLauro
Barrow	Cassidy	Dicks
Bean	Castle	Dingell
Berkley	Childers	Doggett
Berman	Clarke	Donnelly (IN)
Berry	Clay	Doyle
Biggert	Cleaver	Driehaus
Bishop (GA)	Clyburn	Edwards (MD)
Bishop (NY)	Cohen	Edwards (TX)
Blumenauer	Connolly (VA)	Ehlers
Blunt	Conyers	Ellison
Boccieri	Cooper	Ellsworth
Boren	Costa	Emerson
Boswell	Costello	Engel
Boucher	Courtney	Eshoo
Boyd	Crowley	Etheridge
Brady (PA)	Cuellar	Farr

Fattah
Filner
Forbes
Foster
Frank (MA)
Fudge
Gerlach
Giffords
Gohmert
Gonzalez
Goodlatte
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
LaTourette
Lee (CA)
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (FL)
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reichert
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Rush
Ryan (OH)
Salazar
Sarbanes
Schakowsky
Schauer
Schiff
Schmidt
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Shuster
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NAYS—134

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Barton (TX)
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Boehner
Bono Mack
Boozman
Boustany
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Chaffetz
Coble
Coffman (CO)
Cole
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Diaz-Balart, M.
Dreier
Duncan
Fallin
Flake
Fleming
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gingrey (GA)
Granger
Graves
Guthrie
Harper
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Lamborn
Lance
Latta
Lee (NY)
Lewis (CA)
Linder
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (MI)
Miller, Gary
Moran (KS)
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Pitts
Platts
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Wamp
Westmoreland
Whitfield
Wilson (SC)

ANSWERED ''PRESENT''—17

Barrett (SC)
Bonner
Bright
Butterfield
Castor (FL)
Chandler
Conaway
Dent
Diaz-Balart, L.
Hastings (WA)
Kline (MN)
Latham
Lofgren, Zoe
Myrick
Poe (TX)
Walden
Welch

NOT VOTING—12

Becerra
Broun (GA)
Davis (IL)
Gordon (TN)
Johnson, Sam
Ros-Lehtinen
Ruppersberger
Sánchez, Linda T.
Sanchez, Loretta
Sullivan
Terry
Wilson (OH)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members have 2 minutes remaining in this vote.

□ 1628

Mr. BACHUS changed his vote from ''yea'' to ''nay.''

Messrs. LoBIONDO, JOHNSON of Georgia, HALL of Texas, GOHMERT, MINNICK, GERLACH, WOLF, Mrs. BIGGERT and Mrs. SCHMIDT changed their vote from ''nay'' to ''yea.''

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BROUN of Georgia. Madam Speaker, today, I missed the following votes: Rollcall Nos. 295, 296, 297, 298, 299, and 300. If I had been able to make these votes, I would have voted "aye" on rollcall votes 296, 298, and 299, I would have voted "nay" on rollcall votes 295, 297, and 300.

RESIGNATION AS MEMBER OF COMMITTEE ON ARMED SERVICES

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Armed Services:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, June 3, 2009.

Hon. NANCY PELOSI,
Speaker of the House, House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI: Given my nomination by the President as Secretary of the Army, this letter serves as my intent to resign from the Committee on Armed Services, effective today.

Sincerely,

JOHN M. MCHUGH,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

MAKE HEALTH INSURANCE MORE AFFORDABLE FOR SMALL BUSINESSES

(Mr. ADLER of New Jersey asked and was given permission to address the House for 1 minute.)

Mr. ADLER of New Jersey. I rise today to bring attention to the many small business owners and employees in New Jersey and across this country who cannot afford health insurance. Small businesses are the backbone of our local communities and economies. The small business owners are struggling to make ends meet under the weight of their health insurance costs, and the price just keeps rising.

I know the struggle personally. My father owned and operated a small business, a dry cleaning business. My dad lost his business after suffering multiple heart attacks without health insurance. He worked hard, supported his family, but the price of insurance was just too high. Over 30 years later, more and more families in New Jersey are still feeling the same pinch.

From the year 2000 to 2007, health insurance premiums in New Jersey increased by 71 percent, while median yearly wages increased only 15 percent. And more than 28 percent of individuals working for small businesses are living without health insurance.

I hear from small business owners in Burlington County and Ocean County almost every day. They want to provide health insurance for themselves, their families, and their employees. They just can't afford it.

That's why I'm proud to join a bipartisan group of legislators supporting the Small Business Health Options Program, or SHOP Act. The SHOP Act will allow small businesses to pool their resources and find the best options to meet the needs of their employees.

Let's support small business and their hard work and entrepreneurial spirit.

AMERICAN ENERGY INNOVATION ACT

(Ms. JENKINS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JENKINS. Summer travel season is here and prices at the pump are climbing. Rather than pursuing policies that will help Americans who are already struggling, as well as reduce our dependence on foreign energy, some in this body are leading us down a very different path.

This Congress' decision to embark on a journey toward a future where cap-and-trade taxes every man, woman, and child who dares to flip on a light switch or drive to the grocery store is the wrong approach. There's no doubt we can take better care of our environment, and I'm convinced that with an

all-of-the-above approach taken in the American Energy Innovation Act, we can produce clean alternative energy without breaking the bank of American families.

Why do I think that? Because to address our energy demand we need look no further than Kansas.

From the nuclear plant in Burlington, wind farms in Pottawatomie County, biodiesel produced from crops grown in Kansas, we do it all there. All we ask is to be allowed to do it.

POLAND AND THE VISA WAIVER PROGRAM

(Mr. QUIGLEY asked and was given permission to address the House for 1 minute.)

Mr. QUIGLEY. Mr. Speaker, Poland has proven to be an indispensable ally in the global campaign against terrorism. Poland demonstrated its commitment to global security by becoming a member of the North Atlantic Treaty Organization and has been a staunch ally to the United States during Operation Iraqi Freedom.

Poland has been a valuable member state of the European Union, joining several other member states like France and Germany that take advantage of the visa waiver program. Poland unilaterally repealed a visa requirement for United States citizens traveling to Poland.

I strongly believe that the United States should extend the visa waiver program, with its enhanced program security requirement, and extend visa-free privileges to Poland, a country that has proven its steadfast dedication to the cause of freedom and friendship with the United States.

Poland has done much for the United States. Now it is our time to repay this great country.

HAZY POLITICAL CLIMATE

(Mr. POE of Texas asked and was given permission to address the House for 1 minute.)

Mr. POE of Texas. Mr. Speaker, the State of Texas is caught in the crosshairs of a green movement hostile and detrimental to our energy industries. Texas produces 1 million barrels of oil every day, or 20 percent of the U.S. production. We're also home to refineries that produce one-quarter of the country's gasoline and also produce oil byproducts for plastics.

The new cap-and-trade tax will destroy thousands of Texas jobs, and the Congressional Budget Office says that the tax on energy won't even help the climate. No matter, the taxacrats in Washington want to punish red energy State voters by nailing them with the new disastrous tax on energy consumption.

In the name of saving planet Earth, the government barons are trying to push us to so-called ''green'' energy sources that don't even exist yet. Green energy that will support this country's needs is at least 10 years away.

The immediate solution right in front of us is expanding our own oil and gas production while we develop these new technologies. That will create jobs, keep money in America, and make us less dependent on foreign oil. But that logic is lost in the hazy political climate of Washington.

And that's just the way it is.

THINK ABOUT THIS

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. America's manufacturing base is being decimated, but it's not only happening because of economic trends in our country.

Yes, our gross domestic product has fallen off. Yes, we have a massive trade deficit. But this week when GM filed for bankruptcy—GM was pushed into bankruptcy, and when they were pushed into bankruptcy, we also lost 14 manufacturing plants, 21,000 jobs, and 2,400 dealerships are going to be closed.

Think about this. If we take away this manufacturing infrastructure of manufacturing and dealerships and suppliers, what happens when our economy comes back? We will have permanently altered our ability to produce cars in this country.

I want the Members of Congress to consider this when you think about this administration's auto task force. It hasn't gone the right way for the American worker, it's not going the right way for American manufacturing, and it's not going the right way for the American economy.

ENERGY SHELL GAME

(Mr. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHIMKUS. The national energy tax has moved its way out of the Energy and Commerce Committee. It's called the cap-and-trade, and what it means is everyone pays more for the use of fossil fuels.

This is what happened in Illinois when we passed the last Clean Air Act amendments; 14,000 miners lost their jobs. In the State of Ohio, 35,000 miners lost their jobs.

What is the solution? An all-of-the-above energy policy that talks about the Outer Continental Shelf, brings on energy from coal, does renewable coal, does renewable wind and solar and renewable fuels like ethanol and biodiesel. We can produce the energy needs for this country right here in this country.

The national energy tax, this cap-and-trade shell game, will not do it. It will only destroy this country.

GUNS IN NATIONAL PARKS

(Mr. MORAN of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORAN of Virginia. Mr. Speaker, just before we went into the last recess, we passed much-needed, overdue legislation relating to credit card abuse. That was a good, responsible thing to do. But in the process of doing that, this Congress did something that was grossly irresponsible. We passed legislation enabling anyone who wants to to bring a loaded, concealed firearm onto national parks, so that the hundreds of thousands of American families who would like to enjoy our parks safe in the knowledge that their families are secure from the threat of wanton violence can no longer have that sense of security.

A particularly egregious case in point is the Wolf Trap Center for the Performing Arts, a national treasure. Any number of performing artists are now informing Wolf Trap that they do not want to go to Wolf Trap because their lives are endangered by this legislation.

It's time to fix this legislation, provide for the security of the American people, and not the profit of the National Rifle Association.

IN RECOGNITION OF JOHN McHUGH

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, I rise today to recognize our friend and colleague, JOHN MCHUGH, who was nominated by President Obama to be the next Secretary of the Army.

I have had the pleasure to work with JOHN on a number of different issues pertaining to our military and their families. I have always been grateful for his leadership on the House Armed Services Committee and, in particular, his role as the ranking member on the committee promoting military personnel.

JOHN brings a lifetime of military knowledge and experience which will serve him, our soldiers, and our Nation well. He is committed fully to our servicemembers, and he understands how particularly vital the families of our military are to ensuring a strong national defense.

I know JOHN will be passionate as an advocate for our military families as Secretary of the Army, as he has been in Congress for the last 16 years. I saw firsthand his appreciation of our troops when he toured Fort Jackson, South Carolina, last year.

In conclusion, God bless our troops, and we will never forget September 11th.

MEDIA IGNORE NEGATIVE STORIES ABOUT SOTOMAYOR

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, the national media have conspicuously ignored two recent stories about Judge Sotomayor. The Washington Times reported last week that three out of five majority decisions written by Judge Sotomayor and reviewed by the United States Supreme Court have been overturned. That's a 60 percent overturn rate.

In another story, the Washington Times reported on findings of the Almanac of the Federal Judiciary. It revealed that out of 21 judges reviewed, Judge Sotomayor was the only one who received decidedly negative comments about her demeanor on the bench.

Not surprisingly, there's been no mention of the questions raised about the judge's qualifications in any major newspaper or on any network TV news program.

Supreme Court nominees should face scrutiny from the national media if they're doing their job. Americans need the national media to set aside their bias and report the facts about Judge Sotomayor.

CONFIDENTIAL DOCUMENT MADE PUBLIC

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, it was reported today in the New York Times that the Federal Government mistakenly made public a 266-page report marked ''highly confidential,'' and it gives detailed information about hundreds of the Nation's civilian nuclear sites and programs, including maps that show the precise locations of stockpiles of fuel for nuclear weapons.

Can you believe that? A confidential document that is supposed to be kept secret was publicized, and every terrorist in the world now knows exactly where our nuclear supplies are stored and maps showing where, in detail, these nuclear supplies are stored.

Now, hopefully, they're very secure and there's a lot of guards around there to protect us. But I think it's tragic that top secret information, highly classified information, is being made public at a time when we're fighting a war against terrorism.

It makes absolutely no sense. And those who are responsible for making this public should be held accountable.

□ 1645

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. DRIEHAUS). Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

LOSING SIGHT OF OLD GLORY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE of Texas. Mr. Speaker, recently, in Texas, we actually had a woman ordered to remove her American flag from her work space. Debbie McLucas works at Kindred Hospital in Mansfield, Texas. She comes from a very patriotic family. Her husband and both of her sons served in the United States military. Her daughter is a combat medic and is currently deployed on her second tour of duty in Iraq.

When Debbie arrived at work the Friday before Memorial Day, her American flag was gone from her hospital work space. She had displayed it in honor of Memorial Day and in honor of our troops. Debbie was met by her supervisor and was told that there had been complaints about the American flag. An immigrant coworker had complained that the American flag was offensive, so the flag was taken down by management. Debbie found her flag wrapped around the pole and laying on the floor in the corner of her supervisor's office.

Debbie McLucas said in an interview that one of her colleagues who had migrated to the United States from Africa 14 years ago had complained to the supervisor. Debbie was then told by management that it only took one complaint, and the so-called ''offensive'' flag had to come down immediately. Debbie told her supervisor that she was offended that somebody removed the flag. She said she could not fathom that anyone in America would find the American flag objectionable.

As soon as this episode hit the news wires, there was outrage from sea to shining sea and rightfully so. After all, Debbie's freedom of speech to display the flag was stolen by the hospital elites because one person whined and griped. Let me tell you about how some Americans appreciate the flag as Debbie McLucas does.

Several years ago during the Vietnam War, a university student in Houston, Texas, had desecrated the American flag. He was charged under Texas law with the felony of flag desecration. That was before the Supreme Court gave peaceniks the right to burn the flag, saying it was free speech. Anyway, two young prosecutors—Vic Pecorino and Andy Horn, a recent returning Vietnam veteran—had to prove to the jury that the flag was, in legal terms, a venerated object, or one that deserves special treatment.

After proving the case, except for this one requirement, the State called Chris Cole, a judge, to prove that the flag had to be treated in a respectful manner. He came in to testify, accompanied by his seeing eye dog. Judge Cole was a marine in World War II. He was involved in the bloody island hopping of the South Pacific. During the flag trial, he was asked by the prosecutors when the last time was he saw the U.S. flag.

He paused, and with a tearful response, he said, The last time I saw the flag it was raised on Mt. Suribachi on Iwo Jima Island in 1945. You see, several days later, Judge Chris Cole had a Japanese hand grenade explode near him, and he permanently lost the sight in both eyes. He never saw Old Glory again.

In the flag trial, the defendant was convicted by the jury because they thought, as Judge Cole testified, that the flag holds special significance to Americans; but the law was declared unconstitutional by the Supreme Court.

There are a lot of Americans, especially those who serve in the military, who hold the view that the flag represents everything that is good and right about our Nation and that it is their right to display the flag.

Mr. Speaker, the flag is displayed here on the wall behind me. Each morning, Members of Congress pledge allegiance to the flag as do schoolchildren across the vast plains of America. Obviously, Debbie McLucas is another one of those Americans who respects the values that the flag represents, and she wishes to proudly display it. Debbie McLucas should be praised for exercising her constitutional right of freedom of speech by displaying America's flag.

So, in her honor and to honor her military family, I have requested that an American flag be flown over the United States Capitol on Saturday, June 6, on the 65th anniversary of the D-day landing of Normandy during World War II. The flag will be sent to this American lady in appreciation of her patriotic spirit, of her loyalty to American warriors and to the American flag. May she display it proudly.

And that's just the way it is.

IT IS TIME FOR SMART POWER

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, everyone here in the House of Representatives knows that I've been a critic of our Nation's long occupation of Iraq. Our strategy there has relied almost exclusively on military power, which is what got us into this quagmire that we still can't escape. Now I fear we're making the very same mistake in Afghanistan and Pakistan because over 90 percent of the supplemental budget for Afghanistan and Pakistan, which the House passed just a few weeks ago and which I opposed, goes strictly toward military purposes, and less than 10 percent goes toward the building of our smart power in that region.

''Smart power'' means investing in humanitarian assistance, in economic development, in reconciliation, and in reconstruction. It means helping the Afghan people to improve their transportation, their health care, their education, and their agricultural systems. It means investing in their judiciary and law enforcement systems to expand the rule of law. It means creating

jobs, building up local capacity and improving the lives of women and girls, and it means strengthening our diplomatic operations in the region.

All of these efforts are desperately needed to shore up the fragile governments in Afghanistan and Pakistan. They're desperately needed because we must offer the people a better life. We must give the people of Afghanistan real hope for a better future because that is the best way to defeat the Taliban, and it is the best way to bring peace and stability to the region. We will never be able to do that if we nickel and dime smart power.

Even our own counterinsurgency strategy recognizes this. It calls for an 80–20 ratio. That means 80 percent of our funds being spent on the smart investment that I just mentioned with 20 percent going to purely military spending. Currently, we've got a 90–10 split going the opposite way. We're actually ignoring our own best strategy.

On this subject, I would like to call the House's attention to remarks that were recently made by Ambassador Akbar Ahmed, the former High Commissioner of Pakistan to Great Britain. He spoke about Pakistan's Federally Administered Tribal Areas, the very explosive area on the border between Pakistan and Afghanistan.

Referring to the tribes there, he said, ''A successful strategy to deal with them is not to take them head on—sending in troops, throwing grenades and missiles or sending in tanks.''

Instead, he said that we should be working to win the hearts and minds of the tribal members, of those who have a great sense of pride and dignity. He said, if America did that, there would be ''resistance to the Taliban, not from 30,000 feet in the sky but right here on the ground.''

He also said, ''The one thing every Pakistani wants for his kids is education.'' If America helped to improve education in that country, he said that we could turn things around in a few years and that America's greatest enemies will become America's allies.

Mr. Speaker, the American people want a strategy for Afghanistan and Pakistan, a strategy that will protect the lives of our troops, that will strengthen our national security and that will help the people of that region to lead better lives. I've recommended a plan to accomplish this. It's House Resolution 363, the SMART Security Platform for the 21st Century. I'm hoping every Member of the House reads it and remembers that smart power is not soft power. It's the real power, the power we need to keep America safe and to make our world peaceful.

CONGRATULATING THE 2009 MILITARY SPOUSE OF THE YEAR: TANYA QUEIRO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES. Mr. Speaker, I rise today to congratulate Tanya Queiro, who was named the 2009 Military Spouse of the Year.

The honor is presented by USAA to an individual who embodies the best qualities of today's military spouse. USAA is a diversified financial services group of companies that serves the members of the United States military and their families. The award honors the sacrifices and selfless service of the more than 1 million military spouses who provide unwavering support to our Armed Services today and to those who have served in previous generations.

Tanya Queiro was chosen from more than 650 nominations submitted to ''Military Spouse'' magazine. The criteria used to select the winner include one's impact on community change, one's volunteerism, personal sacrifice, education, career pursuits, and other spouse-related efforts. During an awards ceremony in Washington, D.C., Mrs. Queiro was honored for her commitment to the troops, for the ongoing support of her active duty husband, Gunnery Sergeant Jose Queiro, for her volunteer work, and for the many contributions to her community.

Mrs. Queiro, herself, served as an active duty marine for more than 12 years. It was during this time that she met and married her husband, that she began raising her three children and that she began earning her bachelor's degree and also her master's degree. Now, in addition to raising her children—Jose, Marcus and Adrianna—and managing the house while her husband deploys, she works full time as a human resources specialist and is pursuing a doctorate degree in organization and management.

Mrs. Queiro has also managed to find the time to be extremely active in her community. She is a USDA New Leader Program graduate, an active Civilian Career Leadership Development participant and mentor, an American Military University Career mentor, and an Operation Noble Heart volunteer. She has volunteered as a Life Style, Insight, Networking, Knowledge, and Skills mentor, Onslow County Women's Shelter Victim Advocate, and Key Volunteer. As a lifetime member of the Women's Marine Association, Mrs. Queiro is dedicated to cementing the bond and comradery shared by those who have gone through the training to become United States Marines.

Mr. Speaker, I had the pleasure of meeting Mrs. Queiro last week in my district office in Greenville, North Carolina. She is a resident of Jacksonville, North Carolina, which is part of my congressional district. Her outstanding record of achievement and of continued commitment to her husband, to her children, to the United States Marine Corps family, and to her community are truly inspiring. Once again, I extend my sincere congratulations to Mrs. Queiro for a well-deserved honor.

Mr. Speaker, before closing, as I do frequently on the floor of the House, I ask God to please bless our men and women in uniform. I ask God to please bless the families of our men and women in uniform, and I ask God, in his loving arms, to hold the families who have given a child dying for freedom in Afghanistan and Iraq, and I ask God three times: Please God, please God, please God, continue to bless America.

□ 1700

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

FREEDOMS AND QUALITY OF LIFE ARE BEING THREATENED RIGHT HERE AT HOME

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, the freedoms and the quality of life of Americans is being threatened right here at home not necessarily just by those outside the country but here at home. And I want to tell you why tonight. We're talking about a socialized approach to medicine called national health care that's going to cost billions and billions and probably trillions of dollars. It will take away from people their right to pick their own doctor in many cases; and it will cause the rationing of health care, which will put people, particularly seniors, at the back of the line when it comes to very important things that have to be done to them to keep them alive and healthy. It's going to cost trillions of dollars; and in the budget that we passed earlier, this last month, they put $635 billion in there as a down payment, the first tranche, on socialized medicine which will take away a lot of the freedoms that people have in choosing their own doctor and getting qualified health care.

The second thing that is being threatened is the control of our financial institutions. We passed a TARP bill that bailed out a lot of Wall Street companies and banks. And because of that, a lot of those financial institutions are now directly or indirectly controlled by the Federal Government. I don't think the American people want that. They don't want socialism in this country. They don't want a government-controlled economy or financial institutions.

So we have national health care that is going to be controlled by the government. They don't do a very good job of controlling other things in this country, as many of us know, but national health care and now financial institutions. And then next we have the automobile industry. The government just acquired 61 percent of the control of

General Motors, which we should be calling I guess now Government Motors or Obama Motors because it is, in effect, controlled by the government even though the President said that he really didn't want to control the auto industry. In fact, that's what's being done.

Finally, we're talking about the energy section of our economy. We have a bill that's come out of committee that's going to be on the floor before too long called cap-and-trade. It's going to cost every single family in America between $3,000 to $4,000 in additional expenditures for electricity, additional taxes on gasoline that's passed on to them and other forms of energy because of CO_2 emissions. Now we have a terribly difficult economy right now. Can you imagine the average family, having to load on their backs an additional $3,000 to $4,000 in expenses for energy every time you turn on a light switch or anything else? But that's a fact. It's going to happen if that bill becomes law.

In addition to that, we're going to lose millions of jobs because China has already said they would not comply with the same environmental standards we're talking about and neither would India or many other countries in the world that are competitors of ours. So they won't have to pay for those costs that the American people are going to have to pay for, that American industry is going to have to pay for. So those jobs will be going overseas, millions of them, because we're loading on the backs of individuals and American industry additional taxes and expenses that our competitors around the world will not have to pay. So when they make a car, a truck or a refrigerator, they'll be able to do it with less expense because they don't have to live up to the same environmental standards that we do.

This is a very difficult time for America. We're losing jobs. We see people suffering all across this country. But I'm concerned not only about today, but I'm concerned about tomorrow. We don't want to see this governmental structure that we hold so dear and the freedoms we hold so dear go right out the window, and that's what's happening today right before our very eyes. We see the government taking over the health care industry, the financial institutions, the automobile industry; and now they're going to try to take over the energy industry as well.

I hope my friends across this country and my colleagues are paying attention because this government is turning very rapidly toward a controlled economy which is called socialism, and that's anathema to this country and should be anathema to every single American.

REVISIONS TO ALLOCATION FOR HOUSE COMMITTEE ON APPROPRIATIONS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina (Mr. SPRATT) is recognized for 5 minutes.

Mr. SPRATT. Madam Speaker, under section 422(c) of S. Con. Res. 13, the concurrent resolution on the budget for fiscal year 2010, I hereby submit a revision to the budget aggregates and allocations for the Committee on Appropriations for fiscal year 2010. A table is attached.

This revision represents an adjustment for the purposes of sections 311 and 302 of the Congressional Budget Act of 1974, as amended. For the purposes of the Congressional Budget Act of 1974, as amended, this revised allocation is to be considered as an allocation included in the budget resolution, pursuant to section 427(b) of S. Con. Res. 13.

BUDGET AGGREGATES

[(On-budget amounts, in millions of dollars]

	Fiscal year—2009	Fiscal year—2010	Fiscal years—2010–2014
Current Aggregates: [1] [2]			
Budget Authority	3,668,777	2,878,341	[3]
Outlays	3,354,482	2,995,863	[3]
Revenues	1,532,571	1,653,682	10,499,809
Change for CBO repricing of President's request (Section 422(c) of S. Con. Res. 13):			
Budget Authority	0	3,766	[3]
Outlays	0	2,355	[3]
Revenues	0	0	0
Revised Aggregates:			
Budget Authority	3,668,777	2,882,107	[3]
Outlays	3,354,482	2,998,218	[3]
Revenues	1,532,571	1,653,682	10,499,809

[1] Current aggregates do not include the disaster allowance assumed in the budget resolution, which if needed will be excluded from current level with an emergency designation (section 423(b)).
[2] Current aggregates exclude the allocation adjustment made for the House-passed Supplemental Appropriations bill. Final action on the supplemental may change the adjustment.
[3] Not applicable because annual appropriations Acts for fiscal years 2011 through 2014 will not be considered until future sessions of Congress.

DISCRETIONARY APPROPRIATIONS—APPROPRIATIONS COMMITTEE 302(a) ALLOCATION

[In millions of dollars]

	BA	OT
Current allocation: [1]		
Fiscal Year 2009	1,391,471	1,220,843
Fiscal year 2010	1,082,540	1,269,745
Change for CBO repricing of President's request (Section 422(c) of S. Con. Res. 13):		
Fiscal Year 2009	0	0
Fiscal Year 2010	3,766	2,355
Revised allocation:		
Fiscal Year 2009	1,391,471	1,220,843
Fiscal Year 2010	1,086,306	1,272,100

[1] Excludes the allocation adjustment made for the House-passed Supplemental Appropriations bill. An adjustment will be made at the next stage of action.

MISTAKES: JUST A FEW!

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. PAUL) is recognized for 5 minutes.

Mr. PAUL. Mr. Speaker, in the last few years in interviews on the economy, I've been asked what I would do if I were in charge. In answering the question, I usually started with explaining the errors we made that gave us the crisis. The interviewer frequently responded by saying that he wasn't interested in the cause of the problems, only what we should do now to correct it. This is a typical attitude in Washington, but we cannot expect correct policies to be implemented if we don't understand the cause of the crisis. Instead, we have pursued all the wrong policies. Let me list a few mistakes we have made.

We have failed to recognize the true cause of the crisis. Instead, free markets and not enough regulations and central economic planning have been blamed.

We continue to listen to and give too much credibility to the very people who caused the crisis and failed to predict the onset.

A massive single-year debt increase of $2 trillion and a $9 trillion stimulus by Congress and the Federal Reserve verges on madness.

This has entailed taxpayers being forced to buy worthless assets, propping up malinvestments, not allowing the liquidation of bad debt, bailing out privileged banking, Wall Street and corporate elites. We promote artificially low interest rates which eliminates information that only the market can provide. Steadily sacrificing economic and personal liberty is accepted as good policy. Socializing American industry offers little hope that prosperity will soon return.

Inflating the money supply over 100 percent in less than a year is no way to restore confidence to a failing financial system. Expect huge price increases in the future.

We have set the stage for further expanding the money supply many folds over through fractional reserve banking.

We deliberately liquidate debt, especially government debt, by debasing the currency. We refuse to accept the fact that the debt cannot be paid, and future obligations are incomprehensible with revenues crashing and unpredictable while expenditures are put on auto pilot with no new request being denied.

There's an attitude that the deficit and inflation can be dealt with later

on, yet tomorrow will be here sooner than later.

Plans are being laid for a super regulator, even if it takes a worldwide government organization like the IMF to impose it.

Promising the IMF $100 billion when we can't even take care of our own people's medical needs is obviously absurd.

Plans are laid to massively increase taxes, especially with the carbon tax, that when tried in other countries didn't work and had many unintended consequences.

A national sales tax, now being planned, sends bad signals to investors, consumers and workers.

The deeply flawed neoconservative foreign policy of expanding our militarism in the Middle East and Central Asia continues.

There's no end in sight for secret prisons, special courts, ignoring the right of habeas corpus, no penalties for carrying out illegal torture and a new system of preventive detention. We continue to protect the concepts of state secrets and Presidential signing statements. We are enlarging Bagram prison in Afghanistan, and there's no cessation of the senseless war on drugs.

Indeed, as former Vice President Dick Cheney has said, we're in greater danger today than under the Bush administration; but it's not because we're not following the Cheney-Bush foreign policy of preventive war, but rather because we are. The Bush doctrine on war is still in place, and the economic failures of the previous administration are being continued and expanded.

The policies required to provide a solution to this catastrophic crisis we face are available. We must apply a precise philosophy of liberty along with respect for private property ownership, free markets, voluntary contracts enforced by law and free minds.

Also required is the adoption of a commonsense foreign policy that requires us to stay out of the internal affairs of other nations.

Pretending that politicians, central bankers and regulators have the knowledge to centrally plan the economy and police the world only makes things worse. Realizing this provides the necessary first step to salvage our economy and liberty.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Michigan (Mrs. MILLER) is recognized for 5 minutes.

(Mrs. MILLER of Michigan addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

THE RELEASE OF UYGHUR DETAINEES FROM GUANTANAMO BAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. WOLF) is recognized for 5 minutes.

Mr. WOLF. Mr. Speaker, on Thursday, May 21, the President delivered a speech at the National Archives on the closing of the detention center at Guantanamo Bay and other national security matters, yet today we have no more additional information about his plans to close Guantanamo Bay than we did before. We still don't have any answers on which detainees he's planning to transfer to the United States, where they will be tried or how the administration intends to protect the American people. We still don't have any information on his plans to release into our communities trained Uyghur terrorists, and that is unacceptable.

As I have said on numerous occasions, this issue isn't about closing Guantanamo Bay. My concern is that the order was given before a comprehensive plan was in place which sufficiently addressed national security concerns. I have sent three letters to Eric Holder since March asking specific questions about the disposition of the detainees. I still have not received a response.

Last week, Military Families United, an organization representing America's Gold and Blue Star families, announced its opposition to the release of the Uyghurs. Rather than work with Congress, Eric Holder is preventing career officials with the FBI, CIA, the Department of Homeland Security and other agencies from briefing Members of Congress on plans to relocate detainees once Guantanamo Bay is closed.

The Germans, who had tentatively agreed to accept the Uyghur detainees, have complained that the administration won't share enough information with them for an independent assessment of the detainees' security risk. According to The Washington Post, ''More trouble emerged when Washington stipulated that the Uyghurs would be barred from traveling to the United States.''

What is Eric Holder hiding from the American people and our allies? The administration has a moral obligation to provide information to the American people on any detainee they plan to try or to release in the U.S.

Last week, Newsweek magazine reported that the Attorney General planned to secretly fly the Uyghur detainees from Guantanamo Bay and release them in Northern Virginia—without telling the American people or telling the Congress. Those Uyghur detainees are part of the Eastern Turkistan Islamic Movement, led by Abdul Haq who sits on the governing council of al Qaeda. The Obama Treasury Department designated Haq as an al Qaeda leader last month; and yet Eric Holder says, Well, we're still going to release them. Regardless of whether or not they have vowed to attack Americans, a trained terrorist is a terrorist.

Their release is particularly troubling given the recent New York Times article, indicating that one out of every seven low-security prisoners released from Guantanamo Bay were recaptured on foreign battlefields fighting American forces.

□ 1715

What does this say about the threat from the medium and high-security risk detainees still being held? What does it say when FBI Director Mueller tells Congress that he shares our concerns about transferring detainees to U.S. prisons? During a recent hearing, Director Mueller stated that detainees could support terrorism, even radicalize other inmates in high-security prisons, if sent to the United States.

Other press reports indicate that officials within the Department of Homeland Security also opposed releasing detainees in the U.S.

Aside from the Uyghur detainees, many other detainees at Guantanamo Bay who may be moved to the U.S. for trial are self-admitted members of terrorist groups that actively try to break out of prisons.

Eric Holder would have you believe that detainees would be sent directly from Guantanamo Bay to a super maximum prison. In fact, detainees transferred for trial in civilian courts would have to be held in a facility near that venue and would only possibly be transferred to a super maximum prison if convicted. These are local jails similar to the lower-security Alexandria jail that held Zacharias Moussaoui during the 4 years he was on trial.

Such a move could mean Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks and the man who brutally beheaded Wall Street Journal reporter Daniel Pearl, could be held in Alexandria for 6 or 7 years. Above all, I'm concerned that the presence of these high-profile detainees could possibly cause major problems for the communities.

In closing, Mr. Speaker, I believe that any trials or military commissions should be held on military bases far away from the civilian population centers. I would hope that Eric Holder is taking these concerns into account, but he has continued to deny Members of Congress access to this information.

ON SEAN GOLDMAN: JUSTICE DELAYED AGAIN

The SPEAKER pro tempore (Mr. PETERS). Under a previous order of the House, the gentleman from New Jersey (Mr. SMITH) is recognized for 5 minutes.

Mr. SMITH of New Jersey. Mr. Speaker, child abduction is a serious crime that no legitimate government or self-respecting judicial body anywhere on Earth should ever countenance, support or enable by either direct complicity or incompetence. But the denial of fundamental justice in the kidnapping of an American child is exactly what has happened, and is happening, in Brazil today.

The tragic kidnapping case of Sean Goldman, pictured here with his dad, David, now in its almost fifth year,

raises serious and troubling questions concerning the Lula administration's commitment to honoring its clearly defined international obligations.

Mr. Speaker, why has Brazilian President Lula's government so comprehensively failed to honor and respect international law, namely the Hague Convention on the Civil Aspects of International Child Abduction, which it freely, and without reservation, signed and ratified, to expeditiously return a kidnapped child to the left-behind parent in the country of habitual residence?

David Goldman's 9-year-old son, Sean, was abducted by his now-deceased mother almost 5 years ago. For 5 long years, David, his dad, has sought relief in the Brazilian courts. And with the aid of an extraordinarily talented legal team and a group of dedicated loved ones at home, friends and neighbors, David Goldman has left no stone unturned in trying to get his son back. Because of the Lula Government's complicity and/or incompetence, however, David Goldman has been frustrated at every turn.

Justice was delayed again, thus denied again, earlier today when a clear, unambiguous order to return Sean to his dad and to the United States was frustrated by yet another legal filing.

At its core, Mr. Speaker, it is utterly outrageous that Lins e Silva, a well-connected lawyer, who is not Sean's father, continues to hold Sean. By abducting a boy that is not his son, Lins e Silva commits what is among the most cruel, unethical and brazen acts of continuing illegality imaginable. Even Brazilian court-appointed psychiatrists have said that with each passing day, Sean is being harmed by his continued abduction.

This week, Mr. Speaker, all of us involved in the case were cautiously optimistic about a positive ruling by a Brazilian federal court judge ordering the abductor to turn Sean over at the U.S. Consulate in Rio De Janeiro at 2 p.m. today so that David could immediately bring his son back to the United States.

Sadly, it didn't happen. A new appeal, filed by individuals associated with the abducting party, has resulted in the Brazilian Supreme Court suspending the federal court's order to return Sean. This filing apparently seeks to nullify Brazil's obligations under the Hague Convention treaty on child abduction, a delaying and obstructionist tactic that will further harm Sean and continue the extreme agony of his father. We have been told that perhaps the supreme court will decide the case by next week. Yeah, we'll see.

I would note parenthetically that if a political party in Brazil, and they are the ones who brought the case, wants to challenge Brazil's accession to the Hague Convention, or any part of it, it should do so without taking Sean Goldman hostage.

Enough is enough, Mr. Speaker. It is long past time to bring Sean Goldman home. The Brazilian Government must more fully understand that these reckless legal maneuverings which have no finality or compassion or justice and bring dishonor on the Brazilian Government. How long will President Lula allow this disgraceful charade to continue?

Let me be clear on this, Mr. Speaker. Our argument isn't with the Brazilian people, for whom I have deep affection and admiration, as do my colleagues in this Chamber. Many Brazilians have supported David Goldman's quest for justice against two wealthy and politically powerful families that brazenly abuse their connections and exercise grossly undue influence over certain parts of the Brazilian judiciary.

The Lula Government has failed to honor its commitments under international law. And because of that, a son has been deprived of his father, and a father has been deprived of his son.

That is unconscionable.

THE 65TH ANNIVERSARY OF OPERATION OVERLORD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Mr. Speaker, this Saturday, June 6, 2009 marks the 65th anniversary of D-day.

Sixty-five years ago, 150,000 Allied soldiers, many of them just teenagers, braved tumbling seas, inclement weather, waves of machinegun fire and millions of land mines to take a stretch of beach at a place called Normandy. The bravery and sacrifice of these young men began the Allied effort to liberate Europe from Nazi occupation during World War II. D-day signaled the beginning of the end for the brutal fascist regime bent on global domination, and the return of hope to millions across the world.

With the enormity and significance of D-day, it is often difficult for our minds to comprehend that such a historic undertaking was carried out by individual everyday Americans. However these individuals were not ordinary people. Rather, they possessed profound determination, courage and commitment to purpose and were led by extraordinary leaders with unrivaled character and unmatched vision.

No star shined brighter at this dangerous hour than one of our greatest Kansas sons, General Dwight D. Eisenhower. Dwight D. Eisenhower, a boy from Abilene, Kansas, grew up to serve America as Supreme Commander of the Allied forces during World War II and later as our 34th President. During the most difficult days of World War II, General Eisenhower made the crucial and controversial decisions necessary for victory.

With the responsibility of Operation Overlord, the largest amphibious invasion in the history of the world, General Eisenhower was fully aware that weather would play a critical factor in the success of D-day and the safety of hundreds of thousands of troops. Under the full weight of these consequences, he elected to delay the massive undertaking by one day due to weather concerns. Faced with only marginally better weather forecast the next day, June 6, 1944, he ordered the commencement of the operation and took sole responsibility for this critical decision, a choice that ultimately determined the outcome of the war.

General Eisenhower's words to his troops on D-day are inscribed at the national World War II Memorial. He is quoted, ''You are about to embark on the Great Crusade, toward which we have striven for many months. The eyes of the world are upon you. I have full faith in your confidence, in your courage, devotion to duty and skill in battle. We will accept nothing less than full victory.''

No one understood the historical enormity of D-day more than General Eisenhower. His sense of responsibility was profound. Following the successful landing at Normandy, one of Eisenhower's aides discovered a note that Eisenhower had scribbled before the invasion. It read, ''Our landings in the area have failed to gain a satisfactory foothold, and I have withdrawn the troops. My decision to attack at this time and place was based upon the best information available. The troops, the air, and the Navy did all that bravery and devotion could do. If any blame or fault attaches to the attempt it is mine alone.''

In these current times of great national challenges, we need leaders who possess the same sense of responsibility.

I'm honored to serve as a Commissioner on the Dwight D. Eisenhower Memorial Commission. The Commission was established by Congress in 1999, and it is charged with creating a permanent national memorial to our World War II hero and 34th President. Following a rigorous selection process, the commission has selected a world-renowned architect, Frank Gehry, as the lead designer for the memorial. The National Eisenhower Memorial will reflect Ike's great legacy and his optimism for America's future. It will illustrate his love of democracy and country, and his faith in international cooperation and understanding. In fact, his memorial will be the first to reach out to international visitors in their own languages.

President Eisenhower represents the best of Kansas and the best of America. This weekend, as we pause to remember those veterans who selflessly gave their lives for the cause of freedom on a foreign French beach 65 years ago, my hope is that we will reflect upon the principled leadership, conviction and commitment shown by General Eisenhower, a man who never forgot that his first responsibility was to lead a coalition to the best of his ability to victory. Indeed, we currently face tough

and uncertain times ourselves, but in these difficult times, it is important to remember President Eisenhower's words: ''America is exactly as strong as the initiative, courage, understanding and loyalty of our individual citizen.''

THIS IS NOT THE TIME TO CUT THE MISSILE DEFENSE BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana (Mr. FLEMING) is recognized for 5 minutes.

Mr. FLEMING. Mr. Speaker, on April 5 of this year, North Korea launched a missile capable of hitting nations friendly to us and even parts of the United States. The rocket broke apart during its second phase, but it was able to track halfway across the Pacific Ocean.

What was our response to the growing threat? We announced the missile defense budget would be cut by $1.4 billion.

On May 25, 2009, North Korea successfully detonated a nuclear bomb at an underground test facility and launched at least six separate short-range ballistic missiles. And I understand that the bomb was about a 3- to 5-kiloton magnitude bomb.

Now there is news that North Korea may be preparing another long-range missile test. North Korea's nuclear weapons testing and production have been a major concern for years as they continue to make technological advances that could one day allow them to deliver a nuclear warhead anywhere in the U.S. This is not the time to cut our missile defense budget.

Mr. Speaker, we must continue to invest in the ground-based sensors to track, intercept and destroy missiles during the mid-course of flight and ensure America is protected against attacks from those who pose the biggest threat to our safety and freedom.

History remains clear on this. Being unprepared or passive always invites aggression.

CONTROL CARBON AND CONTROL LIFE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Utah (Mr. BISHOP) is recognized for 60 minutes as the designee of the minority leader.

Mr. BISHOP of Utah. Mr. Speaker, I appreciate that opportunity and the opportunity of being here. As somebody who is old, I remember the good old days when we still had vinyl albums. If I wanted to buy a song, I had to buy the entire stupid record. Today, my kids tell me they have these neat things called ''iPods'' in which, if they want a song, all they have to do is download a song. They get to pick exactly what they want to.

I'm in one of those situations where I go in a supermarket and I realize I can stand in that aisle and I have literally hundreds of cereals from which to choose. Or if I want to watch a movie, Netflix has thousands of options for me to choose from. There are millions of songs I could download. There are even 34 types of Eggo waffles. Our entire life is run with options and choices by American people.

In fact, the only segment of our life in which the concept of options seems to have dissipated is with the government, because the government is still here to pick winners and losers and decide how I will or will not live my lifestyle. The government is still here to try to go back to those halcyon days of the Carter administration where the government told you where to put your thermostat, how fast to drive and on which days you could or could not get gasoline for your car. It is a lifestyle that happens to be there.

We are dealing with a situation which may be, in essence, one of the biggest lifestyle changers we have ever had in this world with cap-and-trade, because we are talking about carbon policy. As was written in 2007, controlling carbon is a bureaucrat's dream. If you can control carbon, you can control life.

One of the fears I have right now is that we are moving into an area in which, instead of giving Americans options on how to live and how to produce and how to go forward with their lives, we are starting to tell them how to live their lives, because the government is the one that is going to be picking winners and losers.

We are going to be talking about energy. We are going to be talking about cap-and-trade tonight, the implications of cap-and-trade and the tax policies of cap-and-trade, with the idea that what we should be trying to do, as a government, is giving people choices and options to let them choose how they live rather than having the government be the one to pick out who is going to win, who is going to lose and how we will proceed.

□ 1730

I've been joined by several of my friends here tonight. I appreciate their service to this Nation as a Member of Congress. I'd like to turn some time over to the gentleman from Georgia (Mr. BROUN) who is on the floor right now, even though his committee is still meeting in a markup. But I'd like him to have the opportunity of taking as much time as he wishes to consume so he can get back to his other work, which is trying to keep the Science Committee on the right track in their particular markup.

Mr. BROUN.

Mr. BROUN of Georgia. I thank my good friend, Mr. BISHOP from Utah, for yielding.

Mr. Speaker, I rise today in very strong opposition to the Waxman-Markey cap-and-tax boondoggle. That's what it is. It's a boondoggle. This energy tax is the largest tax increase in American history, an estimate of almost $2 trillion tax increase. It will probably cost every family, it's estimated to cost every single family, rich, poor and in between, over $3,100 for every family in additional energy costs and will drive millions of good-paying American jobs overseas.

In fact, I have several plants in my district in northeast Georgia that have told me that, if this onerous bill passes, they'll have to lock the door. And those manufacturing jobs will go overseas because they cannot afford to pay this high energy tax. It will devastate their business, and we'll lose jobs.

This is an outrageous tax on every family that drives a car, who buys American products, or even flips on their light switch when they come home. So that means you, it means every single family in this country is going to pay over $3,100 per family for this increased energy tax.

Senior citizens, the poor, the unemployed will be hit hardest by this tax increase, as experts agree that they spend a greater proportion of what money that they have, their income, on energy consumption and on products that have high energy consumption and, thus, will have higher costs for those goods and services. In fact, it's going to raise the cost of every single product, every single service in this country, because of this outrageous energy tax.

This is a time when we should be promoting policies that stimulate our economy and not tear it down. Various studies suggest that as many as 7 million jobs will be lost. In fact, our President has held forth as a paradigm the country of Spain that put in an energy tax similar to this one and about the green jobs that were created there.

We just talked to a man who serves in their legislature in Spain, and for every single green job produced in Spain, they lost 2.2 additional jobs. So they had a net loss of 1.2 jobs for every job that was created.

It's not right. It's not in the best interest of our Nation. Make no mistake that the Democrats' airtight tax-and-cap will suffocate America's small business, and it will strangle America's respiratory system, the free enterprise system.

My colleagues on the other side of the aisle will claim that that tax-and-cap will help clean up the environment. However, this doesn't seem like it's even about the environment or about global warming anymore. This has turned into a revenue generator, a revenue generator for NANCY PELOSI and HARRY REID, for their radical agenda that includes socialized medicine. And, in fact, the President said, if we don't pass this, that he's not going to have the funds to force this socialized medicine system that he's proposing down the throats of the American people. It's a socialized medicine system that's going to take your health decisions from you and your doctor and put it in the hands of Washington bureaucrats.

That's why they want this tax-and-cap, as I call it, bill passed, so that they can afford, have the money to grow this huge socialized health care system that's going to destroy the quality of health care.

Fortunately, Republicans have offered an alternative, an alternative to this unaffordable energy tax. We believe you can clean up the environment. We can clean up the environment. We must be good stewards of the environment. We can clean up the environment. We can keep jobs and keep money in peoples' pockets all at the same time.

Our solutions include American energy, American energy produced by American workers to create American jobs. Our all-of-the-above energy plan brings us closer to energy independence, which is critical for our own national security. It encourages greater efficiency. It encourages conservation. It promotes the use of alternative fuels, and it will lower gasoline prices. Lower gasoline prices.

This cap-and-tax bill isn't the only disguise we've seen here lately. In the last hundred-plus days we've seen the following: We've seen a nonstimulus stimulus package. We've seen secretive bills in what was supposed to be an open and transparent Congress, and we've seen bigger government creating trillion dollar commitments versus fiscal responsibility. In fact, what we have seen is downright fiscal irresponsibility.

So far this year, Washington Democrats have forced taxpayers to pay for the following: A $1 trillion stimulus spending bill; a nonstimulus bill that, in spite of the administration's repeated attempts to spin it in a positive light, is riddled with waste and inefficiency on projects such as a skateboard park in Rhode Island, a new auxiliary runway at Representative John Murtha's airport for no one. It's even worse than the bridge to nowhere, an airport for no one in Pennsylvania. And even checks have been sent to deceased people who've been deceased for many years in Maryland, and who knows wherever else in this country those checks have been sent.

We've seen a 400-plus billion dollar omnibus bill, a spending bill loaded with more than 9,000 unscrutinized earmarks. We've seen a budget that adds a staggering $13 trillion to the debt. It doubles our national debt over the next 5 years and triples it over the next 10. Triples our debt. Who's going to pay for that? It's stealing our grandchildren's future because they're going to have to pick up the bill.

We've seen a $50 billion check written in financial aid to General Motors, which seems to have only brought a bankruptcy filing. And it's only June the 3rd.

The sad fact is that this administration has added more debt than every single President combined, from George Washington all the way through George W. Bush. We hear it here on the floor all the time that our financial problems were caused by George Bush, but we've created, we're creating, more debt in the next 5 years, listen, people, more debt in the next 5 years than every single President from George Washington through George W. Bush all combined created. This eclipsed, in less than 5 months, what it's taken more than 230 years to establish. And now they're calling for the largest tax increase in American history.

Enough is enough. I urge the American people to stand up and say ''no.'' No more of these policies that will create more and more debt and will actually bring down our economy even worse than it is today. And it will steal our children's and grandchildren's future.

We must say ''no'' to our Representatives and Senators in this Congress to oppose the Waxman-Markey cap-and-tax or, as I call it, tax-and-cap legislation, and we need to begin to return to some fiscal responsibility here in Washington, D.C.

Republicans have offered, over and over again, multiple alternatives, multiple alternatives, but the Speaker has been an obstructionist. She's obstructed every effort to get to this floor the proposals that the Republicans have brought. She's blocked every effort that we have had for all of these proposals to stimulate our economy, to solve our energy crisis, to put America back on the right track economically, to solve the housing crisis in America.

We've proposed solutions, commonsense, market-based solutions that would not have cost American jobs, would not increase taxes, would not have stolen our grandchildren's future. And the American people need to stand up and say ''yes'' to all these other proposals, and say ''no'' to Waxman-Markey, ''no'' to the course that this administration and the leadership in this House and over in the Senate are taking us, because it's going to bring financial ruin to America if we don't.

So it's up to the American people to say ''no'' to your Congressman, say ''no'' to your two U.S. Senators to this tax-and-trade or cap-and-tax or tax-and-cap legislation that's going to ruin America, cost American jobs, and it's going to be a tremendous financial burden on you and your family. So say ''no'' and resist this as we are here on the Republican side in the U.S. House of Representatives.

I thank my colleague for yielding, and I applaud all your efforts to bring forth our proposals to the American public, the proposals that make sense economically. And I thank you, Mr. BISHOP. You're doing a great job, and I applaud that.

Mr. BISHOP of Utah. Well, I appreciate the gentleman from Georgia being able to join us in the middle of his committee markup, and I appreciate him being here and talking about simply some of the major problems that would take place with this overall system that may be here. It's one of the reality checks that we have to deal with is why, indeed, are we going to do this kind of an approach.

I happen to think that one of the reasons why we're marching down this path right now, so rapidly marching down this path, is simply because the government promised to do something, and the something that they decided to do is a cap-and-trade or cap-and-tax policy, which simply means to put government pressure on the business community to try and lower their amount of CO_2 emissions by putting, insisting they put economic pressure on them so that right now, to try and get those caps exceeded, they have to buy some kind of credit, and then put the economic pressure on them to change over to a new way of doing business.

Both of those costs, both the cost of buying the cap-and-trade process right now as well as the change, will be passed on to the consumer. So the consumer basically gets hit both ways, two times, once going and once coming in this process at the same time; because the consumer basically has, all of our life is surrounded in some way by a fossil fuel economy, and the consumer, therefore, has to have a life change at the same time the business is having a life change.

Now, I don't care how you want to try and spin this, as a new way of living or whatever it is, this is going to be the opportunity to change lifestyles based on bureaucratic decisions. And it will be, as the gentleman from Georgia just said, a concept of a tax on people. For the rich amongst us, this new tax is going to be an annoyance. For poor people, where 50 percent of their income has to go to energy choices, this tax is going to be the difference between being able to have a luxury like Hamburger Helper that night. This is not going to be fairly distributed throughout society.

In fact, you'll notice, I think the gentleman from Ohio is here to talk to us in just a moment, and his area is going to be even more severely hit than some of the other parts of this country.

And what it will be, though, is a windfall profit tax for the government. As the gentleman from Georgia said, this 400-plus billion dollars we're talking about does not go into improving our lifestyle or does not go into coming up with alternative energy sources. It goes to the government, pure and simple.

Mr. BROUN of Georgia. Will the gentleman yield?

Mr. BISHOP of Utah. Sure, be happy to.

Mr. BROUN of Georgia. I just want to bring out a point that you were talking about what it's going to do. Let me tell you something that it won't do, and you may want to talk about this, too. It's not going to solve the global warming problem. In fact, they don't talk about global warming here in America anymore in the government. They talk

about climate change. And why? The reason they don't talk about global warming anymore is because we've had global cooling for almost a decade now, global cooling.

□ 1745

And the experts say that if we marginally reduce the carbon emissions like this bill proposes, it's going to be less than one degree of improvement in the global temperatures. In fact, it's only a smidgen of the total carbon put out throughout history that we're going to be affecting. So it's not going to accomplish the thing that they're trying to sell it on, and that's affecting climate change. It's all about getting more money, more money for a socialistic government that's going to control people's lives. And that's what it's all about. The socialized medicine and care for this steamroller of socialism that they're trying to shove down the throats of the American people, and we've got to stop it.

Mr. BISHOP of Utah. I appreciate the comments of the gentleman from Georgia as well. I want to concur in the last part of what he did say very clearly that this is going to be a tax, it's going to be a windfall for money for the government, not necessarily to go back into this issue but for the government.

The Washington Post simply said that the proposals will require a wholesale transformation in the Nation's economy and society. One of our former colleagues who is now in the Senate, he said, cap-and-trade is the most significant proposal of our time. Friends of the Earth published way back in 2007, The concept of a climate change response must have at its heart a redistribution of wealth and resources. Alan Greenspan said cap-and-trade systems, or carbon taxes, are likely to be popular only until real people lose real jobs as their consequence.

There is no effective way to meaningfully reduce emissions without negatively impacting a large part of our economy.

Now, there's a couple of reality checks that I want to deal with today. And I'm joined by two of my good colleagues, one, the gentleman from Ohio, and also the gentleman from Louisiana, who are going to talk about some of the problems that we presently have; and especially the gentleman from Ohio because his area is going to be hit perhaps as hard as anyone in this unfair distribution of income. It's going to be a byproduct of this approach.

With that, Mr. Speaker, I will be glad to yield as much time as he may consume to the gentleman from Ohio who can tell us what's going to be happening in his backyard.

Mr. LATTA. I appreciate the gentleman for yielding.

Ohio and Indiana are going to be especially hard hit under the cap-and-tax, cap-and-trade system. I think it's important to start off with what the President said last year, Under my plan of cap-and-trade system, electricity rates would necessarily skyrocket. That will cost money. They will pass that money on to the consumers.

And I tell you, my friend, that's what scares me. As the gentleman from Utah was just saying, pointing out the amount of money that's going to be collected under the system is absolutely scary.

Ohio, Indiana. I would like to point a few of these out.

I represent in Ohio the 5th Congressional District, the largest manufacturing district in the State, also the largest agricultural district in the State of Ohio. And when we're talking about cap-and-trade, cap-and-tax back home, it has businesses and farmers scared. Why is that?

The Heritage Foundation, not too long ago, put together what they call this manufacturing vulnerability index. It takes how many manufacturing jobs that you have in your district and also with the type of energy mostly that your State uses—in our case, and also if you look at Indiana, Ohio is at 87.2 percent coal while Indiana is at 94.2 percent coal.

The problem with it, as you see, we have a very high vulnerability. When you take these numbers and go across—a lot of times when you were in school you wanted to be at the top, when you were playing sports you wanted to be at the top. This is one chart you don't want to be at the top of. The Ohio 5th Congressional District ranks number three in the most vulnerable districts in the State of Ohio when it comes under the cap-and-tax, cap-and-trade notion.

What's happening right now? We've been in a tough recession. Again, being the largest manufacturing district in the State of Ohio, we're suffering. And fortunately when the announcements were made from General Motors yesterday, we did not lose our General Motors plant, but just nearby in the 4th Congressional District, they are going to be closing. But a lot of my people work in those plants.

So what does this mean? One of my counties right now, which is right in the corner of Indiana, Michigan and Ohio, it's the highest unemployment rate in the State of Ohio. Williams County. Over 16 percent. You have hardworking men and women up there that want to go to a job every day; but because of this recession that we're in, they're not getting to a job.

What we gotta do is we've got to get these people back to work. But the thing is—that's already been mentioned by my friend in Georgia—it's going to be very difficult to retain, expand and create new jobs if we're in a situation where we're not going be able to compete around the world. How is that?

If you look at these numbers right here with Indiana and Ohio, if you tip this down to the 20th Congressional District that's going to be hit by cap-and-tax, 16 of those districts are from Ohio and Indiana. It's not very enviable when Indiana and Ohio split eight each in the vulnerability of our jobs into the future under cap-and-tax. And it's going to be very difficult for businesses to survive.

Every week when I get home, I try to be in my district at a plant or in a business. And not too long ago, I was in another factory—and these factories are all pretty much holding on to what they got. It might be that they're not able to go out there and keep people employed. So a lot of them are doing, you know, if we cut back and cut back the number of hours people are working, if management takes a cut, if they try to do anything in-house and not do any contracting out, what happens is they're trying to hold on to the jobs they got.

However, there are a lot of factories in my district that are working 5, 6 days a week. Now they've got people working four 10-hour-shift days. The problem with that is people aren't working overtime. They're not getting money to put in the bank. They're not getting more money out there because—in my district I have the largest washing machine plant in the world. In a good year, they're producing over 6 million washing machines. We can produce anything in northwest, north central Ohio when it comes on the automotive side. But, again, these companies are hurting.

You have got companies out there that supply the auto plants and if you're in tier 2 or tier 3, you're in trouble. They say, Well, it's going to be rationalized—I think the term was down the street—that we're going to have to rationalize what's going to happen to these. A good term for that is ''you're out of business.'' Where are these people going to go? We've got a domino effect that's going to be happening. But this domino effect is going to be happening more rapidly if these companies cannot afford power.

Again, in Ohio, 87.2 percent of our power is coal generated. Indiana, again, is 94.2. So we can't have that going on because when we're talking about these numbers, we're talking about a catastrophe in the making.

I just wanted to show this chart. Again, this is the top eight districts in the State of Ohio. They're going to be affected by cap-and-tax. I would like to show you the bottom eight.

Well, as we start down the list, that being as least affected with a manufacturing vulnerability index ranking of only 3.2 percent is Mr. WAXMAN's district. When you go down to Speaker PELOSI's district it only gets down to a 2.2. And, again, we're talking about Ohio and Indiana, districts in the 100 percent, the 98 percent range.

Out in California they're using a lot of nuclear; they're using a lot of natural gas. So these areas in the country aren't going to be hit.

People say, back home, BOB, who's asking for this? We're in a catastrophe

here in the Midwest. Who's asking for this?

If you look at a map, go from California to Oregon to Washington, you know these are very low vulnerability with these States. You go from the east coast, very low vulnerability. Not a lot of manufacturing, not a lot of coal.

So when you look at this, who's getting hit the hardest? The Midwest. Those States that are the industrial heartland of America, those men and women who get up every day, pack that lunch box and get to work are the ones that are going to be affected.

And as the gentleman mentioned from Georgia, what's going to happen?

Well, if we can't manufacture cheaply in the United States and compete against the rest of the world—and the rest of the world today is China, India and that area—what are they going to be doing about it? There is some talk around here and at the White House, We're going to go over and talk to the Chinese and say we would like you to cap your emissions. That's what all of this is about, capping carbon emissions. There is not one person in this Chamber that would say that they want to have pollution. But we have to manufacture in a way that can be done that we can compete. When you're looking at these numbers, it's going to hurt the Midwest.

But what happened when the Chinese were questioned about the whole notion of what are we going to do about cap-and-tax, especially when it comes to China? China's philosophy is this—and it was a quote that was in the Washington Times not too long ago. Their minister said this: You don't understand the problem. We only produce it. You consume it. If you hadn't consumed it, we wouldn't have produced it. So you pay any of the tax that might come from this.

They don't want to get involved in it. They are not going to get involved in it. So what we're putting around the legs of the manufacturing in the United States is a ball and chain. We're saying, Okay, we're going to throw you in a hundred feet of water and you better start swimming somehow. That's what this Congress is advocating, and it can't be done because America cannot compete under those standards.

We have got to be on an equal playing field with the rest of the world. If we don't have that, we're going to be in a situation where American jobs are going to be lost to overseas.

I said about my district, I have some of the highest unemployment in the State of Ohio. Again, high manufacturing, and we cannot afford to be in a situation where we have this type of situation where we're going to be hurting the heartland of America under this policy. And as I mentioned, we've got businesses out there hanging on by their fingertips and all we've got to do is put this chain around them and they're not going to be able to survive into the future.

A lot of things are being advocated when you're talking about carbon capture and sequestration. That technology, in a lot of cases, is not even available and it's untested. And we're telling businesses we're going to have to be doing some of this into the future. Impossible.

Businesses out there, they're going to say, How are we going to do this? Some of the businesses out there that are owned by multinationals across Ohio and the Midwest—you know, I've had some companies tell me, We don't have to be in Ohio. We don't have to be in the United States. We can go over to our Pacific Rim countries and produce the product and bring it back to the United States probably at a cheaper rate than you can do it right here in the United States. And they're saying that, but they want to stay here; but if we do this, if this cap-and-tax gets passed, America is going to suffer, America is going to lose jobs.

And when you look at some of these numbers that the Heritage Foundation has brought forward, they're looking at by the year 2035, it's reducing the aggregate gross domestic product by $9.6 trillion. Destroy 1.1 million jobs per year on average with the peak years seeing unemployment rise by over 2.479 million jobs.

Again, as has been mentioned by my friend in Georgia, increasing the average American cost of living by 2035, $4,300. Where are Americans going to come up with this money?

If you are getting cut back on your hours right now at your plant, you're not going to have additional dollars, and then we're going to have the Federal Government mandating these things. There are not going to be any Federal dollars.

Raising electricity rates by 90 percent. Again, when you look at this vulnerability, you look at the Midwest. You look at the companies that are out there that have to have that base load capacity every day to turn those machines on to keep America running. They are not going to be able to do it. Pass this bill and that's what you're going to get.

We're going to see gasoline prices rise by 74 percent. Right now, you're looking at gas increasing. It was really nice for a while there this past year when we were looking at about $1.63 gasoline in northwest Ohio. Well, the other day when I got gas before I came back to Washington, it was $2.52. And people were saying to me at those gas pumps, When is it going to stop?

I say, if you pass this bill, you're going to watch gasoline prices skyrocket. Eighty percent of everything that is brought into Ohio in goods is brought in by truck. So, again, those prices are going to go up.

Agricultural prices are going to go up because the fuel that's needed to make the fertilizer, the fuel for the tractors to make sure that you can harvest, all of these things are going to go up. The drying of the grain. All prices are going up. Again, when these numbers that they're talking about how can you come up with $4,300, when you look at your electricity, your gasoline—you go right down the line—the food you put on the table, these prices are going to go up.

Raise residential national gas prices by 55 percent. And then increase the inflation-adjusted Federal debt by 26 percent or $29,150 additional Federal debt per person again after adjusting for inflation.

□ 1800

We can't afford this. We cannot afford this, and we can't have this happen.

But my friends let me tell you, there's not one person that's not for clean energy, and here the Americans want something, and the Republican Party has come up in this House with a strategy.

And last week during the break, several of us were in Pittsburgh and Indiana and California stressing the need to make sure that we have this nuclear being stressed. There's a nuclear power plant in California that supplies 10 percent of that State's needs, and the last time we've even been able to site a new plant in this country was 1977.

So we can do it in this country by just having what we've got, by making sure we use our clean coal technology, to use nuclear. Get out there, get the oil, the natural gas, we use the hydro, the geothermal, and then of course on all the others. We have the wind, the solar, the ethanol, the biodiesel. We can do it, but we've got to have an all-of-the-above policy, but we cannot go with this cap-and-tax because, again, it's a jobs killer for America, and I thank the gentleman for yielding.

Mr. BISHOP of Utah. I appreciate the gentleman from Ohio for talking about some of the realities that happen to be there. I hate to say this, but sometimes we need to make a reality check on this entire issue of what the goal is. When we are told the goal is to have an 80 percent reduction in CO_2 by the year 2050, what does that really mean for us?

In my own State of Utah, we have a yearly output of approximately 66 million tons of CO_2 per year and a population of 2.6 million. Now, if you simply do the math, to reach that goal that everyone says we have to reach, we would have to go down to 2.2-tons of CO_2 emitted every year in the State of Utah. The last time that happened, I hate to admit this, but Brigham Young hadn't even arrived. If you want to do the kind of math that it takes to reach that goal in the United States, the Pilgrims weren't here yet on Plymouth Rock.

One of the things that we have to reconcile is that, look, there are 6.2 billion people in the world. Two billion of those people have never flipped on a switch because they have never had electricity. To reach the kind of goals that we're talking about here, we have to insist that those 2 billion people

never have to experience things like lights and flat screen TVs and computers that we all take for granted and live with; that they don't have to have adequate food free of bugs because, I'm sorry, the fertilizer is fossil fuels; and they don't have to have clothes which are made of fossil fuels. My pen is a fossil fuel. Everything in the emergency room except for the steel is a fossil fuel. We make composites for aircraft to make them lighter and more efficient right now. You get on plane; you are riding on gas. All those things are there, and we have this schizophrenic idea that we want to get rid of fossil fuels, at the same time it is our lifestyle, without recognizing what it is.

Back in the 1970s, we had a specific term in there and that's when we came up with the idea that these are alternative fuels. What we really should be saying is they are supplemental fuels, because I hate to say this, but one-sixth of one percent of the energy we use today comes from wind and solar. If you try to do a PowerPoint presentation of a pie chart, all you get is a little thin line because it can't get smaller than that little thin line.

And after 30 years and $20 billion of the United States Government trying to expand wind and solar, we are still at one-sixth of one percent. The President wants to double that, which I applaud him for. Actually, the last 3 years of the Bush administration, we doubled the amount of wind and solar power we were using, but all that does is take us from one-sixth of 1 percent down to one-third of 1 percent. So that line is only a little bit wider.

Now, if you have a coal or a gas-fired power plant that puts out 1,000 megawatts of power, it takes about 40 acres of ground to do that, 40 acres. To accomplish that same power output with wind, you would take 500 windmills that would require 30,000 acres to accomplish that. The Denver Post had this wonderful article about this great solar plant in an area in Denver that was putting out 8.2 million megawatts. To accomplish what that one coal-fired plant would put out, you would have to have 250 of those miracle plants covering 20,000 acres.

In my home State we have a new geotherm plant, which is great, puts out 14 million megawatts of power. We take 10- to 20,000 every year just to keep up with the grid.

So what we have to do as we're talking about all these issues is come up with some kind of realism that the bottom line is the wind does not always blow and the sun doesn't always shine, and we have yet to come up with a way of capturing wind and solar power, let alone the capacity for moving those. We have a reality check before we go marching down this path of where we're going.

I want the gentleman from Louisiana who is here, who has been involved in these issues, has signed one of the early bills that deals with one of the potential solutions to this, especially to talk about some other options out there because what we, once again, need to do is we have to be able to give the American people choices and options, not have the Federal Government telling them what to do.

So I yield to the gentleman from Louisiana.

Mr. FLEMING. I thank the gentleman from Utah, and I, too, feel very privileged, Mr. Speaker, to have been a cosponsor on the no-cost stimulus energy plan that my friend from Utah was also a sponsor of, and it would have provided tremendous utilization of the potential energy we have, but of course, it never made it to the floor.

As a good segue into really what I want to talk about is my local district, I just want to reiterate what we discussed this evening, and we also talked about it last night, that this cap-and-tax program has been tried before. We've been 10 years down this pathway with Spain. Representatives from Spain came and spoke with us about this, and they said that the net of all that has been is they've lost companies, they've lost jobs, their unemployment rate is now 17.5 percent, and their energy costs are skyrocketing, which of course prophetically even our own President, President Obama, made the comment in January 2008 that utility costs, electrical costs, home costs of energy will skyrocket if this bill is passed.

What I want to talk about for a moment, Mr. Speaker, is the Haynesville shale. I'm from the fourth district of Louisiana. This is the northwestern corner of Louisiana, and 3 years ago no one had ever heard of the Haynesville shale. In fact, the whole idea of shale formation, that is, a rock formation that holds like a porous sponge deposits of natural gas, something that was barely heard of even 4 years ago, and today, we're finding that in the case of the Haynesville shale, it is perhaps the largest natural gas find in this hemisphere.

And hopefully, the camera will pick this map up, but you see the area, and it borders, of course, several parishes in Louisiana and then also counties in Texas. As you can see, it covers a wide swath of area, and so this represents a tremendous opportunity for the State of Louisiana and also parts of the State of Texas.

So I just want to tell you something about the impact. We're talking about 234 trillion cubic feet of natural gas production potential. This could be a source of energy for many years to come for this country, and remember that natural gas is a very clean form of fossil fuel. It produces significantly less carbon dioxide than say coal, and yet there's forces out there that would like to stop the drilling for natural gas in the Haynesville shale. We're even going to have hearings tomorrow talking about the manufacturing process and potentially issues having to do with the environment with that. But let me tell you about what we also can lose if we lose the ability to extract natural gas just in my district.

A 2008 study was done, and it showed that $4.5 billion was pumped into the Louisiana economy in that year. It created $3.9 billion in household earnings. The greatest impact on indirect household earnings was experienced by workers in the mining sector, with new household earnings of $193 million in 2008. It created over $30 million in new earnings in separate sectors; $56.7 million in health care; management, $46 million. On and on and on, many millions of dollars. It's creating cash into the local economy in my district. And as a result of this, our unemployment rate is much lower than that of the east of the country, and our economy's doing very well. Real estate is doing very well. On that, we've created many jobs. Large impacts were felt with 5,229 jobs in the utility sector; health care, 3,496 jobs.

Conservative estimates report that State and local tax revenues increased by $153.3 million in 2008. Some parishes reported a 300 percent increase in sales tax.

So as you can see, Mr. Speaker, the Haynesville shale is just starting, and yet it is creating a tremendous impact on the economy of my district. So, if we continue down this cap-and-tax road, not only are we going to lose what we have but potentially lose what we're going to have.

In the 2010 budget of President Obama on this same subject, we're looking at a potential loss of $80 billion in tax incentives for oil and natural gas businesses, and this impacts small companies. The majority of oil and gas companies in my district are small companies. They're mom-and-pop businesses, and that is the backbone of our economy. We're not talking about Shell Oil. We're not talking about Exxon. We're talking about local, Joe Smith kinds of businesses.

Independent oilmen and women in northeast Louisiana rely on these incentives to reinvest their capital in these companies. This is caused by the loss of depletion allowance and the writeoff of intangible drilling costs. It will also broaden our dependence foreign oil; of course, the thing that we used to talk about when gas was $4 a gallon and soon we're going to be talking about that again.

Well, in closing, I just want to say, Mr. Speaker, that we cannot tax and spend our way out of growing our economy. In a time of recession, the best way to encourage an economic turnaround is to preserve jobs. The State, instead of flowing money into the economy, as we've tried with this stimulus plan, which, estimates are, only 6 percent of the money is even in the economy, we may actually be pulling out of this recession as we speak.

Without the development of natural gas plays like the Haynesville shale, without increased exploration in ANWR, the Outer Continental Shelf,

without the tax incentives that I just mentioned, without these things we're going to see our economy, even if it put pulls out of this, level off.

We can have our cake and eat it, too, Mr. Speaker. We don't have to destroy our economy and clean up our environment at the same time. We can be good, responsible tenders of our environment. We can be good stewards of our environment without destroying our economy in the process.

Someday perhaps we will be able to use some of these technologies. Perhaps we can use solar, maybe wind, but at this point, my friend from Utah says it's 1.6 percent of production, and we're going to have a lot of breakthroughs to make it go much higher than that. But until that time, there's a lot we can do with the technologies we have, technologies that are coming online, and that's not even mentioning nuclear power which many countries, particularly in Europe, are way ahead of us on.

But we can do a lot to solve our problems without throwing our economy into the dumpster, as Spain has.

So with that I want to thank my friend from Utah for his time, his many great efforts with this. I appreciate his leadership on this subject.

Mr. BISHOP of Utah. I appreciate very much the gentleman from Louisiana joining us and talking about other kinds of options that are out there for the American people. The reality has always been that reliable and affordable energy has been the great liberator of mankind. It has improved our lifestyle. It has allowed those who are poor to escape that kind of poverty.

One of the things we cannot do is allow us to restrain ourselves so that that does not happen. As we said before, if you're rich, all this stuff could be an annoyance. If you're poor, it's a life-and-death decision, and as one wag simply said, never underestimate the ability of Congress to offer nonsolutions to problems that may or may not exist. We may be looking at that right now, but I appreciate especially the fact that there are other options out there that need to be explored because this is not the only answer and the only solution.

With that, I'd like to yield to our good friend from Indiana who has spoken often on these particular topics and these issues, in fact, is organizing an effort to explore other options that America needs and recently took those conversations on the road to actually hear from Americans. I yield to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the gentleman for yielding.

Mr. Speaker, I come before this Chamber today at a time when millions of American families are hurting. I just spent time home in Indiana, heard from small business owners and family farmers that are struggling to make it through these difficult times. And they know, and I heard not only in Indiana but in Pennsylvania and in California as House Republicans traveled this Nation to take our case against the Democrats cap-and-trade proposal.

□ 1815

I heard from those Americans one simple message, and that is: The last thing we should do during a difficult recession is pass a national energy tax on every working family, small business owner, and family farm in this country. But, Mr. Speaker, that's precisely what the House Democrats are preparing to do.

Just before the break, virtually along party lines, House Democrats reported out of their committee the so-called cap-and-trade legislation, which is better understood as a cap-and-tax legislation. My colleague, FRED UPTON from Michigan, says it will cap growth and trade jobs. And the truth is it will have just that effect.

According to a study done by MIT, divided by the number of households in this country, if the Democrats' cap-and-trade legislation becomes law, the energy costs of the average American household would rise by more than $3,000 per year. According to some independent estimates as well, if their legislation became law, various studies suggest 1.8 million to 7 million jobs could be lost in this country.

Why on Earth, at a time when this Congress ought to be coming together with bipartisan solutions to bring relief to small business owners, to American manufacturing, a time when we see the government reaching deeper and deeper into our financial sector, offering one bailout after another to one business after another, why on Earth would we heap more weight on the backs of Americans and on the back of this American economy in the form of a national energy tax?

But I rise today, Mr. Speaker, to say with authority that's precisely what Democrats are planning to do.

I pull out a device that helps me keep up with the news here. And I will quote, for the sake of attribution, a story published this afternoon at about 5 o'clock in Roll Call, because as we returned to Washington, D.C., there was a great deal of talk, Mr. Speaker, that we were moving on to health care reform for the summer. The majority in Congress wasn't talking any more about a national energy tax. They weren't talking any more about cap-and-trade. The focus was health care. The President of the United States gave a speech saying that it's a time for health care reform, and that should be the focus.

But I have got to tell you, I used to play a little bit of basketball back in Indiana. There was something called a head fake. You know, when you got the ball and you want to go this way, you put your head that way and you make the guy follow, and then you go this way.

I had this feeling it was a bit of a head fake, that in fact liberals here in Washington, D.C., were not going to relent in their drive to pass a national energy tax and the cap-and-trade legislation. And it turns out, according to Roll Call, I might just be right.

An article filed by Steven Dennis of the Roll Call staff reports that, ''Speaker Nancy Pelosi is kick-starting the movement on the controversial climate change bill, setting a deadline of June 19 for committee action in the Ways and Means Committee.''

The Speaker of the United States House of Representatives has told the chairman of the House Ways and Means Committee that they have until 2 weeks from this Friday, according to Roll Call, to have that bill out of committee. And it could very well be on the floor of this Congress before we break for the 4th of July.

So I think the American people have a right to know what's in this bill. They have a right to understand how this national energy tax, under the guise of climate change legislation, is going to result in an increase in their home utility costs, an increase in the costs of gasoline at the pump, an increase in the cost of virtually every good we buy, because of course energy is an input cost on virtually all the goods and services that we use in our daily lives. It's going to increase the cost of businesses. And I rise, of course, with a particular interest in this.

As we heard from the Governor of the State of Indiana, Mitch Daniels, last week, that because the cap-and-trade legislation essentially puts the heaviest burden on those States that draw the majority of their electricity from coal-burning power plants, the truth is that, rightly understood, this cap-and-trade legislation amounts to an economic declaration of war on the Midwest by liberals here in Washington, D.C., and it must be opposed.

I mean, in the State of Indiana, our households, when we flip the light switch, we draw about more than 90 percent of our electrical energy from coal-burning power plants. Very similar in Michigan, very similar in Ohio. That may well be why the Heritage Foundation recently estimated that States like Indiana and Ohio and Michigan will be the hardest hit States.

We had testimony last week from representatives of Richmond Power and Light in Richmond, Indiana. They testified at a public hearing that we held in my home State capital of Indianapolis, and they said that their utility rates in Richmond, Indiana, a city that I represent, their home utility rates would go up by 25 to 40 percent if cap-and-trade legislation became law.

We have got to come clean with the American people about the reality of this national energy tax. The American people have a right to know that this Democratic majority is preparing to pass legislation that will increase the cost of doing business, increase the

cost of their household budget, and they're preparing to do that in name of environmental priority and climate change legislation at precisely the time that American working families, small business owners, and family farmers can least afford it.

So I commend the gentleman from Utah. I commend him for his extraordinary and visionary leadership on issues involving energy. But I pledge this: That as chairman of the House Republican Conference, as one of those tasked with the American Energy Solutions Group on which my colleagues have the privilege of serving, we are going to make the fight in the weeks ahead against this national energy tax and, to the gentleman's point, we're going to offer a Republican alternative in the American Energy Act that will lessen our dependence on foreign oil, make a commitment to wind and solar and nuclear energy, make a commitment to new, cleaner technologies, more fuel efficiency. But it will not include a national energy tax that will drive this economy further down during these difficult days.

I yield back.

Mr. BISHOP of Utah. I appreciate the gentleman from Indiana giving us what I think is not necessarily bright news, but good news to realize that the cap-and-tax approach or the cap-and-trade policy is not the only one that's out there. There are other options.

The gentleman from Louisiana and I have joined with Senator VITTER on what is called the No Cost Stimulus Bill that solves this problem in a different approach. The Republican Study Committee and the Western Caucus have joined with H.R. 2300, which solves this problem with an alternative approach that provides American energy and American jobs without the harmful side effects.

I just went this afternoon to the National Center for Policy Analysis. They presented 10—they call it 10 cool global warming policies—but 10 specific ideas or concepts, many of them that we have incorporated in some of those other bills that would help our situation without having to impose a tax that hurts the poorest of our people.

Now I am pleased to yield to my good friend from Texas, someone who is, I think, the most fascinating speaker I have a chance to listen to, the last few minutes that we have on this particular issue at this time tonight to try and summarize once again that where we're going, hopefully we can avoid the pitfalls, and there are other options than what we have simply seen placed before us so far.

I yield as much time as he may consume to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. I appreciate your yielding. I don't think there's anybody who brings more clarity to the issues of energy than my friend from Utah, Mr. BISHOP. I sure do appreciate the clarity he brings.

But when we talk about this cap-and-tax-away-jobs bill that's apparently going to be coming rather quickly upon us, you need to look at the reasons being given as to why we have to have this cap-and-tax-away-jobs bill, why we have got to get rid of more jobs, cost more Americans more money when they don't have it. And we're told it's because of the carbon dioxide out there and that it's creating global warming.

Well, have you noticed we're not calling it global warming anymore? Now we're calling it climate change. And you wonder why have they started calling it climate change. Well, you start looking at some of the scientific data that's coming out and they're realizing, you know what, this planet may be cooling instead of warming. It may be starting on a cooling cycle instead of warming.

So, since we have millions and millions and millions of dollars being made by scaring people about global warming, in case it is cooling, maybe we better change the name to climate change. That way we're going to keep the money coming in either way, because we're scaring people.

It's climate change, no matter which way it's going—warming, cooling. In fact, I saw an article that indicated, you know what, we have been saying that carbon dioxide is trapping the heat and warming the planet, but we may be wrong about that. It may be that the carbon dioxide is creating a shield and causing the Sun's rays to bounce off and, therefore, cooling the planet.

That way, they can have it either way. If it's warming the planet, then it's catastrophe and we need to pass all kinds of laws to tax people, put business out of the U.S., and go to other countries. And if it's cooling, we will have it that way, too. Keep the money flowing in.

In our Natural Resources Committee, we have talked about the polar bears. I have seen that deeply touching commercial where this mama bear with the cub, it looks like they're dying out there. Maybe they are. But what we have heard in our committee is that 20 years ago we know for sure there were less than 12,000 polar bears. And we know today, for sure, there are at least 25,000 polar bears in the world. They have more than doubled in 20 years.

But somebody is making a lot of money by telling people the polar bears are all dying, so give us money, take away American jobs, send them around the planet, and we will be better for it. Well, they will because they're going to have bigger houses. And I don't begrudge Al Gore having that wonderful house and using all that energy, but he just shouldn't make the middle class of America pay more for their energy and cause the loss of their jobs in the name of helping the planet. It doesn't help anybody but him and people like him that are out there scaring folks.

We have talked about the jobs that would be created in ANWR. You open ANWR, a million new jobs across America. You open the Outer Continental Shelf to drilling, another 1.1 million or 2 million jobs in America. The President can finally keep his promise; instead of losing more jobs, we'd have more jobs coming into America instead of going out.

That's why we don't need a cap-and-tax-away-jobs in America. We need to produce more of our own. And I mean everything. We're talking about wind. We're talking solar.

I have a bill for a prize for somebody that comes up with a way to store electrical energy in megawatt form for more than 30 days. Solar could be our answer to the future. But for right now, it's carbon-based energy. And it will keep jobs in America, bring them back.

But, for goodness sake, let's don't hurt the middle class in America any more than they're already being hurt.

I appreciate so much my friend from Utah. And with that, I will yield back to him.

Mr. BISHOP of Utah. I appreciate the gentleman from Texas. It is one of those things that we live in a new iPod generation in which in all our lives we are given options and choices. In this particular area, it is not the time for the government to now establish who wins, who loses, what is our only path.

We still have to provide our people with options so that they can live and expand their lives the way they deem best. That's the important part here.

I want to emphasize there are options out there on the table that the Republican Party is presenting. Those options need to be heard and explored because they lead us to a proper goal and an easier pattern.

With that, we yield back the balance of whatever time is left.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 626, FEDERAL EMPLOYEES PAID PARENTAL LEAVE ACT OF 2009

Mr. ARCURI (during the Special Order of Mr. BISHOP of Utah), from the Committee on Rules, submitted a privileged report (Rept. No. 111–133) on the resolution (H. Res. 501) providing for consideration of the bill (H.R. 626) to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave, and for other purposes, which was referred to the House Calendar and ordered to be printed.

HEALTH CARE IN AMERICA

The SPEAKER pro tempore (Mr. KISSELL). Under the Speaker's announced policy of January 6, 2009, the gentleman from Connecticut (Mr. MURPHY) is recognized for 60 minutes as the designee of the majority leader.

Mr. MURPHY of Connecticut. We are going to take the next 45 minutes to an hour, myself, Mr. KAGEN, Mr. LANGEVIN, and a few others that will likely join us over the course of the

hour, to talk about a subject that's on the minds of more and more Americans every day, and that is the issue of getting health care for all Americans.

President Obama was swept into office with a mandate to fix what has become an unjustifiably broken health care system here in this country. It costs way too much, outpacing all of our industrialized neighbors by almost twofold. It gets care that, compared to those same nations, ranks pitifully in the middle of the pack. And it has changed the very practice of medicine for far too many physicians who went into their profession for the love of treating people and making them better and now find themselves dedicating more and more of their time filling out paperwork, dealing with red tape, and arguing with insurance companies over whether or not they should get paid for their services.

□ 1830

We can make this health care system better for our society as a whole, for our government as a payer, for the patients who interact with it, and for the providers—the doctors and the nurses and practitioners—who perform miracles every day within that system despite the system.

There are a lot of people who enter this debate from various sides, and we're, frankly, not going to have over the course of this next hour unanimity of opinion on the exact solution to this crisis going forward. What you will hear over the next hour is a group of individuals on the Democratic side of the aisle who are committed not just to reform for reform's sake, not just to a—pardon the pun—Band-Aid fix, but to comprehensive health care reform. We're beyond making little incremental fixes here or there. We've got to strip this thing down and build it back up again. We've got to learn from our mistakes.

On the Democratic side of the aisle, we've heard the American people loud and clear whether it was at the ballot box last November when they voted for a President, a President who made it clear that health care reform and getting coverage to every American was going to be at the top of his priority list, or whether it's every weekend when we go home, when we talk to individuals who are facing the reality of an economy that leaves them one paycheck away, one pink slip away, from losing their health care forever. That number is going up. More and more Americans are afraid that their breadwinners may lose their jobs over the next 6 months to a year. They realize that what comes along with that is the risk of having their entire lives turned over. Half of the bankruptcies in this country are not due to irresponsible spending decisions or due to houses that they bought that cost too much or due to a couple too many plasma TVs in the basement.

No, it's medical costs. It's an unforeseen illness visited upon a family who didn't have the resources to pay for it. Half of the bankruptcies in this country are due to people who got sick but who didn't have the means to pay for it. Half of the bankruptcies are due to the people who played by all of the rules and who did everything we asked them to do but who just got sick.

Now, in the richest country in the world, there is no justification for the fact that somebody who has the misfortune to be diagnosed with cancer or with an expensive illness has to lose everything—his house and his car—just because his fortune was a little bit different than someone else's fortune. There is no justification for the fact that millions of little kids in this country are going to bed, sick at night, just because their parents can't afford to get them to doctors. In this country, that can't be all right. People have come to the conclusion that this is the time—this year, right now, this summer, this fall—when we finally will wake up and will fix this thing for good.

You're going to hear from a lot of us as to our ideas on how we should address this crisis. We're going to talk today about the role of consumers in this debate, whereby we can make our health care customers better purchasers of health care if we give them the right information and so that we can empower them in a new, reformed health care market.

You're going to hear about the role of the Federal Government in this reform and, as part of that new purchasing power that we can give to individuals, that we can give them the option to buy the same health care that I have and that Mr. LANGEVIN may have and that others in this Chamber may have. I know Mr. KAGEN doesn't take the Federal employees' health care plan, but it doesn't seem like it's so revolutionary that we should not allow regular, everyday Americans to have the same kind of health care that Members of Congress have.

We're going to talk about the role of people to have choices between public insurance and private insurance. We're going to talk about reforming the way that medicine is practiced so that physicians can get back to spending their time with patients rather than with filling out paperwork and with hiring more and more people to argue over whether they will get paid or not.

We're going to talk about how we make this reform centered around improving quality. It still doesn't make sense that we spend 70 percent of our gross domestic product on health care, and yet we have infection rates, life expectancy numbers and infant mortality rates that should leave us pretty embarrassed given the amount of money that we're spending. So I'm excited to be here on the floor for the next hour or so to talk about these things.

I know Mr. LANGEVIN has joined us here on the floor. I would be thrilled to turn it over in just a second to Mr. KAGEN to give a couple of introductory remarks, and then I will turn it over to Mr. LANGEVIN.

So I'm glad to have you join us here, Mr. KAGEN.

Mr. KAGEN. Thank you, Mr. MURPHY.

If you could raise up that sign one more time, it does say ''Health Care for America.'' It doesn't say ''health insurance.'' It says ''health care,'' which is our focus. We care about the people we're listening to—the people we have the honor of representing. It is about making certain that people can get to see their doctors when they need to at prices they can afford to pay. I'll share with you some of the stories that, perhaps, President Obama is going to hear when he comes to Green Bay, Wisconsin, on the 11th of June, just a few days from now.

Here is someone from Green Bay who wrote to me. Her name is Stephanie: ''Insurance is number one on my list. My current employer can't afford to give us health insurance, and I can't get individual coverage. Help, please.''

President Obama might hear from Jim, who is also from Green Bay: ''Every human should have health care. Don't have insurance. 60 years old.'' He is between the cracks. He is not old enough for Medicare, and he is not poor enough for welfare or for Medicaid.

In Sturgeon Bay, just outside of Green Bay, I got a card from Rhonda: ''Our middle class income cannot support the increase in medical premiums, copays and deductibles. What will be done for the middle class?'' She is Rhonda in Sturgeon Bay.

People are writing to their legislators, not just in the Federal House here in Washington but across the State houses. Every government at every level understands the pressure and that the cost for health care has risen astronomically. It is 17 percent of our GDP. It is that investment that we make in ourselves to guarantee that we have health. If you don't have your health, you may not have anything.

Now, recently, I received a mailing from an insurance company that is in my district. It's a great company. I just want to read this into the RECORD because, if you have certain preexisting conditions, all the marketing in the world won't allow you to purchase their product, because they don't insure people with preexisting conditions:

''Important information about preexisting conditions: Although we make every effort to extend coverage to all applicants, not everyone will qualify. If you have had treatment for any of the following conditions, you may not qualify for the coverage being offered.'' It reads: ''HIV/AIDS, alcohol, drug dependence, cancer, chronic obstructive pulmonary disease, connective tissue disease, Crohn's disease, diabetes, emphysema, heart attack, stroke, hepatitis, inpatient emotional and mental health care, organ or tissue transplant, ulcerative colitis.''

It goes on to conclude: ''You should also be aware that we may not be able

to provide coverage to individuals who are severely obese, who are severely underweight or who are undergoing or who are awaiting results of diagnostic tests. We cannot offer coverage to expectant parents or to children less than 2 months old.'' Finally, it reads: ''This list is not all-inclusive. Other conditions may apply.''

I don't think it was a doctor who wrote this policy. I think it was someone who had his economic interests in mind and not the care of the people who are looking for the coverage they need in order to guarantee they get the care that they're going to require.

We are prepared in this Congress, I believe on both sides of the aisle, to step up and to face and to confront this essential economic fiscal problem. It's not just about your money. It's about your life. This, after all, is the House of Representatives. Some people back home in Wisconsin think that we're trying to talk them out of their money and out of their lives.

Tonight we're going to have a conversation with one another and with the American people about what is most important to you, and that is your health care. I'm hoping that, someday soon, we're going to come to a time when we'll have all prices openly disclosed everywhere in these United States for all of the products.

Mr. MURPHY, last week when I was home, I had a ''Congress on your Corner'' at a grocery store in Waupaca, Wisconsin. While there, I didn't get a headache, but if I had had a headache and had wanted to buy some aspirin—I took a picture of this. Now, some of my staff here in Washington think this is pretty cheap. You know, you can get Bayer's cherry- or orange-flavored aspirin for $2.55. Right there in the middle, you can buy a generic brand for $2.05, which is 20 percent less. What do you want to pay: more or less? It's the same medication. This price is openly disclosed.

I think we have to have this type of health care available, not just at the grocery store for aspirin products but at the hospitals and at the doctors' offices and everywhere in health care across the country, most particularly for health insurance policies. If at the end of the day we're going to continue to allow companies to be in the marketplace, like the offering I just read to you, I believe very strongly they should be compelled to sell the same product to any willing customer with no discrimination due to preexisting medical conditions.

If, after all, we have Federal standards in this country for almost everything, why don't we have the standard of a comprehensive health insurance coverage plan that each and every insurance company must offer to any citizen or legal resident anywhere in these United States?

There is nothing wrong with having standards so long as we can meet those standards. So I think these are some of the issues that are important, one of which is transparency in health care purchases. We have to have no discrimination anywhere in health care. I think the President has accepted this as one of his most essential elements, as one of his eight principles for health care.

One should not suffer in this country due to discrimination based on the color of one's skin. Well, what about the chemistry of one's skin? If we're not allowed to discriminate against anyone because of what they're thinking, what about how they're thinking? What about the chemistry of their minds?

So I think it's time that we apply our civil rights that guarantee no discrimination to health care. When we do, we'll begin to guarantee access to affordable care for every single citizen and legal resident.

I yield back.

Mr. MURPHY of Connecticut. Thank you, Dr. KAGEN.

Dr. KAGEN has been such a great voice on this. He highlights a growing issue that, I think, we can get bipartisan agreement on, which is that transparency of price, whether it be insurance products or physicians, is going to be so important, and empowering consumers to make these decisions can be part and parcel of what gets those costs down.

With that, I am very happy to have my good friend from Rhode Island join us today. I would yield to him.

Mr. LANGEVIN. I want to thank the gentleman for yielding, and I applaud his efforts, along with Mr. KAGEN's and along with those of many of my other colleagues. I applaud them for their interest and for their concern about the health care crisis that is facing America and that has been facing this country for decades. I am proud to join in the effort to speak out and to demand that this Congress finally, once and for all, addresses the health care crisis in America and establishes universal health care.

I particularly want to commend President Obama for making this such a strong priority for his young administration.

I thank the gentleman for yielding and, again, for his efforts in organizing this Special Order.

Mr. Speaker, our country has seen a significant rise in health care costs over the past several years. Again, this is a national crisis, and it is probably one of the most pressing domestic public policy concerns of our time. We have witnessed a growing population with longer life spans, with higher incidence of chronic disease, with greater income disparities, and with increased levels of the uninsured, all of which put a tremendous strain on our health care system. Each of these elements has conspired to create an untenable situation that is being felt in hospitals, in doctors' offices, by individuals and families, and by businesses. It poses a threat to our long-term economic competitiveness and fiscal well-being.

According to a recently released report by Families USA, 254,000 individuals in my home State of Rhode Island were uninsured during some point during the last 2 years. Well, these numbers are unconscionable, but I have to say they come as no surprise. I have continuously heard from individuals and families who are struggling with rising premiums and copays and who are overwhelmed by medical debt.

In fact, as my colleague mentioned, Mr. MURPHY from Connecticut, the rising cost of care for unexpected illness is one of the leading causes for personal bankruptcy. It is outrageous in a country like America that being sick could put a family into bankruptcy. I think this is unconscionable.

I have also heard from Rhode Island businesses that want to provide health coverage for their employees, but they simply can't afford the time or, most importantly, the expense of providing that coverage. Of course, workers who are fortunate enough to have access to health insurance face increasingly daunting costs while many people are afraid that they'll lose their benefits all together. This simply cannot continue. The time for comprehensive health care reform has come. This has to be the year that we fix health care in America, that we afford everyone universal health care coverage.

I am pleased that, within the last few months, this Congress and President Obama have already taken significant steps to expand health coverage for children, to increase funding for community health centers and to invest in innovative technologies that will ensure better treatments and outcomes for our future.

□ 1845

It is only with comprehensive health care reform that we will achieve substantive change that improves both our Nation's health care system and the health of our Nation's citizens. Fixing our health care system is also critical to ensuring that the U.S. remains competitive globally in this international market, making sure that our businesses can be competitive in the global economy and will improve our vital long-term economic growth.

In the spirit of furthering this important dialogue on health care reform, I have reintroduced my own universal health care proposal. I'm calling it the American Health Benefits Program Act which is designed to guarantee every American access to the same health care coverage as Members of Congress. I think that this is the right thing to do for the American people. In introducing this legislation, I'm not trying to reinvent the wheel. I want to look to a template, something that is already working. This proposal is modeled after the Federal Employees Health Benefits Program, or FEHB. It uses basically a health insurance exchange template

while leveraging the power of the Federal Government to negotiate with private insurance carriers so that competition for enrollees is based on quality, efficiency, service and price. Basically there is still a role for private health insurers, but it uses the bulk purchasing power of the Federal Government on behalf of the American people to get the best quality and the best price for health insurance.

Under this program, no one will be denied coverage or discriminated against based on their health status or pre-existing condition. The goal is to offer portable continuous coverage that drives investment and disease prevention and long-term preventative care which decrease the cost of health care over time. But most especially, it ensures that when someone is sick, they can go to a doctor and not worry about whether or not they can pay for it.

This proposal represents my own vision for health reform, one that contains cost, improves quality, increases efficiency, promotes wellness, guarantees universal coverage, and encourages the investment in treatments and cures for the 21st century. Each of these principles comprises a key element, an important goal within the national dialogue on health reform. Particularly it contains the key elements that President Obama has laid out as his requirements for fixing health care in America.

It is clear that we are about to set the scene for the next chapter of health care in America. And it is my strong belief that by working together, we can create a truly inclusive and sustainable model for health care that meets the needs of our children, adults and seniors regardless of their income level, employment status, age or disability. We are all stakeholders in this important debate, and we will all have a role to play in health care reform. I look forward to working with my colleagues to offer fresh solutions and create a new vision for health care in America. The time has come. This is the year. We're going to get it done.

I want to thank my colleague Mr. MURPHY and all of my colleagues who have joined in this Special Order tonight in this effort to fix health care in America.

Mr. MURPHY of Connecticut. I thank the gentleman from Rhode Island. You have been such a leader in this Congress for years on the issue of health care reform, especially, as the world knows, on the issue of stem cell investment. We know that one of the ways that we're going to get savings ultimately is by stimulating the next round of breakthrough treatments and cures that are going to save lives but also save money.

With that, we'll turn to my very good friend and classmate from Florida (Mr. KLEIN) for some wise sage words.

Mr. KLEIN of Florida. Thank you very much. I appreciate the gentleman from Connecticut and his characterization of ''wise sage words.'' I will try not to disappoint you.

It is a pleasure to be here tonight with Members of the House to talk about health care. This is something that obviously touches every one of us, as 300 million Americans face health care issues every day. Some of us don't have to think about them from year to year other than maybe just a minor incident or you have to go to see a doctor from time to time. Others face literally chronic and life-threatening health situations every day, and it hangs over you. It hangs over you as just an emotional and physical thing as it relates to your body or your family, one of the members of your family. It relates to and hangs over you because of the costs and the threat of that overwhelming cost and impact on your family's wherewithal and to be able to do it. Certainly from the business community side, we hear from our small businesses. I know in South Florida, where I come from, we're a small business State, and so many small businesses with five employees, people who are self-employed, 10 employees, 50 employees, they go through the same experience year after year, double-digit increases with no experiences, nothing that went on during the year that was a major cost factor that set off these double-digit increases. And what happens is, they then have to make a decision: What can I cut back? We are in difficult times right now. Do I increase the copayments? Do I increase the deductible? Do I cut back on the scope of care? Businesses want to provide health care. It creates loyalty from the employees to the business. It creates a healthy employee and someone who is able to come to work every day, someone who you've invested a lot in to train that employee. You also have large businesses that can compete internationally. They know that the costs of producing something with that added double-digit increase of health care cost impacts the cost of the product that they are selling worldwide and competing with other countries which somehow integrate the cost of their health care into their government operations or just in a lower cost way.

We now have a dynamic in place here that's been around, but I think it has finally hit the point where there is a coalition of people all across America that are saying, we need change. And we don't want nipping around the edges. We don't want some small little thing that isn't going to make a difference. We have fundamental problems. We have cost problems. We have coverage problems in some cases, pre-existing conditions. I know anybody this in this room I can speak to and people listening tonight, everyone could talk about a family member, a neighbor, a friend who has breast cancer or some other chronic condition that when you need that insurance the most is when it will be unavailable to you because if you change jobs or you are getting a new policy, they will be excluding coverage from that pre-existing condition when you need it the most. So the notion of insurance and spreading the risk among our whole population, which it's supposed to do, is what has somehow gotten away from the insurance system as we know it, and that's wrong.

So where are we? We're at a place where I think Americans say and want and know that they want to have something that's stable, something that will be there for them. They're willing to pay a fair price for it. They want to be able to compete in their businesses. And the good news is our President, many Members of the United States House of Representatives and the Senate want to do something about it, and we're getting great support from across the country. We have got to get it right, but I think there's a tremendous amount of opportunity here.

Let's talk just very briefly about what some of those notions are, those principles that we're going to create this plan. There are a lot of ideas out there right now. We can certainly invite Americans to talk to their Representatives and give us some input on what you think.

Number one, I think one of the most important things is this notion of restoring the doctor-patient relationship. We have a lot of doctors. Dr. KAGEN is a doctor. I see our friend from Pennsylvania who is going to speak in a few minutes. She has a doctor, I believe, as a husband and a son. There are a lot of doctors in the Schwartz family. And I think as patients we know the best thing we can do is have a long-term relationship with a doctor who knows my family history, knows my history. Not that I have to change jobs and change doctors, or my plan knocks this doctor off the panel, I have to find somebody else. So let's go back to the notion of having a doctor-patient relationship whose decisions are not dictated by people who are outside of the medical field, insurance companies, managed care, et cetera. Let's put that in place.

Number two, let's make sure that as we go forward that people who like what they have in the insurance world can keep it. I mean, there are a lot of people who like what they have. I wasn't out here criticizing everybody. Some people are very comfortable with the plan that they have. They should be able to keep it. Nobody is saying you shouldn't be able to have it. Keep it. It's good. Let's stick with it. We want to provide tax credits to small businesses and individuals to make coverage affordable. In other words, again, it's not mandatory as we know it right now. So encourage businesses by doing it with tax credits to make it affordable. We want to certainly end this practice of eliminating pre-existing conditions from coverage. Spreading the risk is a very simple principle that could be done with a pen, and we're all set. So that's a principle that has to go in there.

We want to make sure that whatever we put forward invests in preventive and well care medical coverage. I take

Lipitor or I take something for cholesterol. It's a family history thing. A lot of people take it. It's just something that keeps me healthy. If I didn't take it, I would have cholesterol. Dr. KAGEN could probably tell me how I should change my diet. I do run. I try to keep in shape. But the bottom line is, I take it as a preventive tool. There are lots of other tools and things that we can take, plus exercise programs and other things. But we should incentivize behavior through our health insurance scenario. Just the last couple of items before I turn it back to my colleagues, we want to ensure that we're using science-based information, that when decisions are made, it's based on science and not some of these non-science-based concepts. I mean, science really relates to the best individualized treatment and care.

Then, of course, we have to crack down on the waste, fraud and abuse. There's a lot of money in this current system here that is a lot of waste. We have to fix all that, you know, wring it tight so we can make sure that that money is being spent directly on health care. These are principles—and there are others that we're working on—that I think most Americans approve of and support. I think this is the construct by which the various ideas are being discussed here in Washington and are part of that discussion. There may be details which we may not all agree 100 percent on, but this is something that the time has come. The time has come for peace of mind for every American, for every business to know that we'll have a stable health care system that will support Medicaid, support Medicare, and on the private side, very important, most of us will get our care from the private side. We'll have that opportunity to know that it's cost-effective, and it will give us that necessary coverage.

I thank the gentleman from Connecticut who brought us together tonight. I know being from South Florida and having a tremendous amount of senior citizens who depend on a good quality health care system and a whole lot of families that are very interested in making sure their families are covered as well, we're working to make sure that we take care of them the right way here.

Mr. MURPHY of Connecticut. Listening to the gentleman from Florida, I'm reminded—you were down here with us the last time we were doing this. I got an e-mail not long after from a family member who comes from the other side, both the partisan and ideological side of the aisle. And he said, you know, be careful. You keep on talking about this. You know, it makes a lot more sense to me. I am struck by the principles that you have laid out because I think that a lot of our friends on the Republican side of the aisle, either here or out in the world, aren't going to find a lot of disagreement with a lot of things that we're talking about this system doing. I just think it's important for our constituents and for the American people out there to really do a little investigation when they hear the pundits on TV or the leaders of the Republican Party talking about President Obama and socialized medicine or the Democrats' plan for a government takeover because all you've got to do is scratch the surface there, and you will find out that really what we're talking about is some pretty important and I think broadly agreed upon reform and that the bogeyman and the straw man that gets thrown out there in terms of terminology that doesn't have any place in this debate can easily distract you from what is really a pretty unifying debate that's starting to happen here. I appreciate your words.

One of the things you mentioned was the importance of getting at this issue of pre-existing conditions. Representative COURTNEY has been a great leader, offering his own legislation on that issue. I am glad to yield to the gentleman from Connecticut

Mr. COURTNEY. I thank the gentleman for yielding.

Again, like the others, I think this is an incredibly important moment right now not only this evening but this summer. The summer of 2009 I think will go down in history really as one of the great movements forward by our country really at the level of when we passed Social Security, Medicare, Medicaid. And I, like you and the other speakers here, understand that; and getting this debate started and getting the facts out I think is the best way to make sure that we move forward and get this done.

I wanted to just share briefly an experience I had at the Congress on the Corner that I think is important because there clearly will be, as we go further into the summer, forces out there that are going to use misinformation and fear as a way of trying to stop the change that Mr. KLEIN described a few moments ago. At my Congress on the Corner, which was actually at a somewhat sort of off the beaten track or place, it was actually at a military PX, at the Navy base in Groton, Connecticut, where we set up our tables as active duty sailors, their families and retirees were going in to do their shopping. I had an experience which I just wanted to share with you, which was that many people, because of some urban myth that's out there, and whether it's talk radio or the Internet that is sort of propagating it, is spreading the claim that the Obama health care plan is going to take away TRICARE from our military and from retirees who are eligible for it. I just think it's important on this floor as clearly and as loudly to make the point that that is absolutely flatly untrue, that the veterans' health care system, the active duty health care system is going to be completely unaffected, as Mr. KLEIN said. It is an example of where the basic principles of this effort, which says that if you like the health care that you have right now, you can keep it. And that is clearly true for the people who wear the uniform of this country or who did and who now are eligible for VA benefits.

□ 1900

In fact, between the stimulus package and the budget that has been presented by the administration, what we are seeing is an unprecedented new investment in military health care and in veterans' health care. We have great new leadership at the VA in General Shinseki and Tammy Duckworth, who are totally committed to making sure that this system is improved and, in fact, expanded to keep the promise for people who served in our military. And the efforts that we are going to be talking about over the next 2 months completely leave that system intact in toto.

What is ironic, though, is that enemies of reform are using the argument that we are taking away a government-run system at the same time that they are attacking the reform effort as being too much government. Make up your mind. Either one doesn't work and we should get rid of it, or if it does work, well, maybe we should take some good ideas that exist in the military health care system and in the VA and apply them towards the populace at large. We know in terms of electronic medical records that probably the most highly developed and advanced system in American health care is military health care as far as electronic medical records. Doctors in Landstuhl hospital in Germany can track the charts of our soldiers who are recuperating at Walter Reed hospital or other military hospitals around the country. They can just pull it up in ways that in the civilian system don't exist today. Again, I would just argue that rather than using government as sort of an example of inefficiencies, the fact is that the military has shown that they can actually organize a sound, comprehensive system that provides high-quality care.

Lastly, I just wanted to, because, again, some of you have already spoken very powerfully and eloquently about the fact that we have an insurance system that has run amok. We come from the insurance capital of the world, Connecticut. Your family and my family have people who worked in the insurance industry. In the good old days, insurance was about pooling risk and sharing risk and using it as a mechanism to help cover people in terms of dealing with accident, disease and chronic illness. Obviously, it has gone off in a different direction. It is about avoiding risk in terms of the way insurance markets are set up. We are not about dismantling the system in toto. But what we are trying to do is reestablish it and go back to its roots in terms of creating health care systems that pool risk and share it and do it in a way that actually gets back to the basic principles of when the insurance was first started. The whaling industry

in Connecticut created a situation where the whale ship owners realized they had to do something about losing ships. And that was the birth of insurance in Connecticut.

I will spare that history lesson and yield back. Again, my compliments for organizing this debate. And again, I do think this is a summer that historians will write about. And the discussion here is going to be an important part of it. So I yield back to Mr. MURPHY.

Mr. MURPHY of Connecticut. I thank you, Mr. COURTNEY.

There is, and you can feel it, I hope, from the folks that are on the floor today, an enthusiasm and an optimism that we have that I don't think we have felt in this House for a long time. The forces are aligned in a way that they have not been in a long time to get this effort done. And I think your point about people wanting to stand up the public health care system as an example of what needs to remain and then also tear it down I think is a really good comment. I'm reminded of a point made by a political columnist who talked about one of the statistics that is very often used by the side backing up the status quo, which is that in the Canadian health care system, you have to wait weeks, if not months, for a hip replacement surgery, and here in the United States you can get it pretty immediately. What they fail to point out is that 70 percent of hip replacement surgeries in the United States are paid for by Medicare, are paid for by a government-run health care system. And so we, through our public payment system, already do a pretty good job of getting people the care that they need. The fact is they spend a lot less money on health care in Canada than we do here. And we are not even talking about cutting back the amount of money we are spending. We are simply talking about trying to restrain the rate of growth. By reordering the money that we already have in the most expensive health care system in the world, we are going to be able to get good care. We will have short waiting times and access to all the people that don't have it.

So with that, I'm so glad that Representative SCHWARTZ has joined us on the floor. Whether it is standing up for primary care physicians or being a leader in this Congress on the issue of health care IT, I'm so glad to have you joining us here.

Ms. SCHWARTZ. Thank you very much. I'm very pleased to join you. I want to acknowledge the really good work, Mr. MURPHY, you have done in having these kind of dialogues on the floor and talking about health care and how important and how possible it is for us to actually find a uniquely American solution to the problems that are facing us, and to just reiterate a little bit, which is why we are here, why we are talking about this. It isn't only because it is a moral imperative; I know many of us have worked particularly on making sure Medicare works very well or extending health care coverage for children, the CHIP program which we all really worked so hard on, I know some of us in our States, certainly I did, back in Pennsylvania in 1992, but even here on the floor, making sure that children of working families had access in most cases to private health insurance, to affordable private health insurance.

But the fact is that we are here because it is also an economic imperative. And we know that from hearing it from our businesses, small businesses and large businesses, saying that they cannot be economically competitive because of double-digit inflation and inflationary costs of health premiums for their employees. A business owner just told me the other day that their rates went up 40 percent from one year to the next. That is just not sustainable.

So we need to address that because if they are going to be economically competitive and continue private health benefits where the cost-sharing is reasonable with employees, we have to do something about the escalation in costs in health care.

And third, of course, is as a government we are spending money that is growing again in unsustainable rates under Medicare, and we need to contain the growth of those costs. And again I think I would reiterate what was said before is that we believe that Americans should have access to quality health care. They should have access to doctors, to be able to continue to have relationships with their doctors, ongoing relationships. But we also think that we can do three things. We have to be able to contain costs. And we can be smarter and more efficient and more effective in the way we provide health care in this country. And I will talk about that in a minute.

But secondly, we have to improve the quality of health care. We actually provide a lot of health care. And not all of it is exactly what you need and maybe more than you need, sometimes less than you need. We have to get that right. And we can.

And then we have to extend coverage to all Americans because Americans do put off health care that they ought to get. They go to emergency rooms because there isn't a doctor for them to see. And they often don't fill a prescription because they simply can't afford to. They don't follow the recommendations of health care providers.

I agree with Mr. COURTNEY. We are here in a moment when we can find a way, where we can, in fact, contain the growth of costs, extend coverage and improve quality for all Americans. And that is what we want to do. We are going to do it in a uniquely American way, which means it will be very much a public-private partnership. And we will build on what works in the system, which is that most Americans get their health coverage through their employers, 55 percent of the insured get it through their employers. They will be able to keep that. Hopefully it will be less expensive for the employers. And for the group in particular that is so hard to access health coverage, these small businesses, individuals, they are going to be able to find a way to find affordable, meaningful coverage. Mr. COURTNEY didn't even talk about his preexisting condition bill, which is really very important in making sure that when you buy insurance to find out maybe years later that you don't have coverage for a condition because, in fact, they found some reason that this was a preexisting condition, is really just not acceptable anymore in this country. We should make sure that coverage is meaningful.

I do want to just say on the delivery system, we have already taken a very major step forward in putting some real dollars into the system and under Medicare to incentivize our hospitals and our doctors to use electronic medical records. Interoperable—that means different doctors and hospitals can see what is going on, patients can see what is going on to them, go and check their own records potentially, which is a very exciting way to empower patients. Under Medicare, we are going to say that physicians and doctors in this country are going to use electronic medical records. And this way they won't duplicate unnecessarily tests. They will actually be able to find out if a patient filled the prescription and if they are taking the medication, and if not, give them a call and say, you haven't been back in 2 months, you're early diabetes and you really need to be taking this medication. You really need to be monitoring what you eat. And if you don't, you're going to get a lot sicker. Why don't you come in and we will talk about that? Wouldn't that be something if a doctor gave you a call and said that?

One of the ways we can do that is making sure that we have adequate primary care in this country. And we don't. We don't have enough primary care providers. I just had a conversation with another Member representing a rural area. And he said, I represent a small town. There are not enough primary care doctors. I You know what, I represent a suburban/urban district and we don't have enough primary care doctors. This is a problem across this country.

In 1998, half of the medical students were choosing primary care. Well, just now, we are actually looking at 20 percent choosing primary care, and they expect that number is going down. And so there is a reason why we can't find a primary care physician. They aren't out there. And while we all want to have our specialists when we need them, having the access to primary care is extremely important to making sure you get the kind of care that you need and that you get it in a timely fashion and that you have somebody help you figure out what specialist to go to and figure out what kind of care you need and hopefully help you stay

healthy and help those, particularly with serious chronic diseases, have ongoing care.

I see you all nodding. You're probably ready for me to conclude. But this is something I think people do as part of health care reform. As we move forward, there are a lot of different pieces. It is complicated. It is not going to be easy to do. We have to believe in each other that we can do this right and that we can get it right. And that is what we are trying to do. The next 8 weeks will be very important to the American people, to American businesses, to the sustainability of providing quality health care to Americans.

I look forward to working with all of you to get it done.

Mr. KAGEN. You have got me all excited now. It has taken so long to get to this point. It is very frustrating. Back when we first got here, the class of '06, we got to initiate bills in '07 in the first few months. And as they say here, I dropped a bill called ''no discrimination'' to apply our constitutional rights to prevent us from being discriminated against, to prevent the insurance companies from cherry-picking people out.

I don't know how it is in Pennsylvania, but in Wisconsin, in my neighborhood, I grew up in a neighborhood. But that neighborhood has been chopped apart by the insurance industry. The insurance industry was allowed to separate Mrs. Koss or Mr. Romer out of the risk pool because they had some condition they didn't want to touch or insure. And it has gotten to the point now where even some mothers may be split from their family because they have a condition, and their children can be insured but they can't. So I like the idea that we are going to get primary care and access to primary care. But as you know, we don't have enough doctors and nurses right now. So we have to invest in a possibility to make sure that our students can go to school and perhaps have their funding paid for through medical school and in return give us those years back in terms of service in primary care where that need most exists. My district is a rural district. I would point you to the rural district of northern Wisconsin.

As Mr. COURTNEY has brought out so elegantly about the VA system, I would ask this question not only to him but to everybody in the country: Is there any reason why a soldier served only for himself or herself to get that benefit at the VA at the pharmacy? If a soldier has a VA benefit and has a discount, a medication available at a lower price, is there any reason not to provide his or her entire family with that same medication at that price? And what about his neighborhood? What about his community? In fact, what about the whole United States?

No soldier today is serving in Iraq and Afghanistan for him or herself. They are there for our Nation. And if the VA was successful in negotiating a steep discount for a given medication, I think that price ought to be available to anyone who is willing and in need of that medication. And Mr. KLEIN from Florida mentioned that he might be taking a medication. Is there any reason that it continues to exist today that if I go into a pharmacy anywhere in the country, if all four of us are in line to get the same exact prescription, the same number of pills, we are going to pay four'' different prices for the same thing? I think not. I think we have to have complete transparency, and the price that one should pay for medication is the lowest price available within that community, and that price should be openly disclosed.

And no one put it better than one of my constituents. Kaukauna is another city that Barack Obama has visited in my district. I tell you, this guy, Obama, is everywhere. Sally from Kaukauna said, ''Our prescriptions cost $1,000 a month. This is a very big issue for us.'' Well, heck, yeah. If you don't have the money, you're not going to get the medication you require just to survive. So I would submit to you that it is time to end discrimination in health care. And when we do, that form of discrimination that takes place at the pharmacy where Mr. KLEIN might get charged three times what the person in line next to him is charged for the same medication, to me that is a form of discrimination. I think it is time that that form of discrimination came to an end. We have to have openness and transparency for prescription drugs and be allowed to negotiate for a lower price.

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Mr. MURPHY of Connecticut. You know, Mr. KAGEN, the discrimination finds itself in a lot of different corners. It's not just you, as an individual, who may not be able to get that insurance. But it prevents you from going out and getting employed or reemployed, because that discrimination is against you individually, but also against your employer, that if you have a small employer who's looking to go out and get health care for his five or six employees, that insurance could potentially be double for your pool of five or six employees if one of them happens to have a preexisting condition.

So, you know, it's really a triple whammy for somebody that gets sick and has expensive care: one, you have to deal with the limitations on yourself through that disease; two, you may not be able to get insurance to cover it. You may have to pay for it out of your pocket; and three, you may not even be able to be employed because employers today are going to say, Forget it. Even though that guy might be the perfect person for this job, I might need that person to fill that slot. It's going to break my bank if I have to put that person on the insurance rolls. And that's another reason why we have to make sure that the elimination of preexisting discrimination is part of this bill.

Ms. SCHWARTZ. I just want to mention a couple of answers. I was also going to say it prevents people sometimes from leaving a job. Sometimes they say, you know, I don't know if my next job's going to have the same health benefits. Can I risk taking another job? And you have sort of a job lock in that situation. And, of course, as we know, because of the high cost, a lot of employers are passing it along, there's more cost sharing.

But there are several answers to this. There's a bill that's been introduced, we hope to get done, that requires transparency in the language that's used in insurance policies. All of us are supposed to read that fine print. Well, I don't know how many of us really read the fine print. And the fact is that even if you do, you may not really know what it means until you're faced with the situation.

So there's a bill I worked on with Congresswoman ROSA DELAURO, and it says about language, if it says, I'm going to cover hospitalization, well, it means the same thing whichever insurance company is selling it. So if you're going to look at that, you will know what's covered and what isn't and then be able to decide whether that's the kind of policy you want or not.

The others we also—there's legislation that I also actively support that says that small businesses should be able to band together to use their purchasing power to buy insurance in the private marketplace.

And third, something that we can do to help individuals as well as small businesses is to do something called community rating. So you say it's not this small business that has five employees, somebody gets cancer, well, they're rated on that experience. Their rates can go skyrocket the next year.

What you can do instead is say we're going to tell the insurance companies sell insurance, but the records have to be set not on the experience of that small group but on the experience of the broader community. We're going to really spread that risk. That's how insurance is supposed to work. Share the risk more broadly, come up with a community rating system that's fair, that the businesses or individuals would pay but isn't, one by one, based on your conditions, your gender, your age, and to be able to go forward on that.

We can do those things. Those are just changing the rules of the marketplace, and that will make it more affordable, more accessible for more Americans to be able to buy health insurance.

Mr. KLEIN of Florida. Will the gentlewoman yield?

Ms. SCHWARTZ. Please.

Mr. KLEIN of Florida. I think that's an excellent point. And again, if we think about what insurance is supposed to do, it is supposed to spread the risk. Yet the experiences that small businesses have with 8 employees or 1 self-

employed or 10 is they get a different pricing than somebody who's negotiating for 10,000 people. A major corporation that negotiates for 10,000 or 100,000 lives has a much—we call it the economy of scale, but it is also the insurance company saying, All right, we have a large group. We can spread the risk.

Well, why should that be any different than you take your small business and your small business, and in Fort Lauderdale where I'm from or Delray Beach or wherever, you've got all these small businesses, 8 and 20 and 110, and let them combine together and purchase policies. And that is just a basic right of free enterprise to be able to do that.

I'm going to toss out another idea because, again, a lot of this thinking that we're talking about is common sense. It's not out-of-the-box thinking; it's just common sense.

When I was in the Florida legislature a number of years ago, we were looking at various ways to fix the health system, because, unfortunately, despite your good efforts and others for the last number of years, nothing was really happening of any major consequence. And we said, Well, what if we allow people to purchase into the State of Florida health insurance plan?

Or let's use the Federal system. We have hundreds and hundreds of thousands of people in our Federal system. Okay? Members of Congress and everybody else gets to buy this, and it's a typical plan. The government pays a piece of the premium and we pay a piece of the premium. Okay? What if we allow people to buy into the Federal plan? Okay. Not on the Federal Government's dime. No subsidy whatsoever. Whatever the cost is, the administration and the policy and everything else, purchase into that.

Well, we did some research on this to the State of Florida plan, which is not that much different than the Federal plan, and we found that if you take a small business that was trying to buy a policy, the same policy, apples and apples, the price was almost twice what it would cost if they paid the full out-of-pocket cost in the State of Florida plan.

Now, of course, our friends in the insurance industry were not interested in supporting that because they like the idea of the small groups buying individually. And they said, Well, it's going to change the risk assessment.

You know, where there's a will, there's a way. That's my attitude about this whole thing. So again, I think as we're going through this discussion, maybe we can talk. I know some of the Members of the Senate and some House Members. I think that just may be another way of offering alternatives, options to people. Let them purchase into a large plan like the Federal Government plan.

Again, the U.S. taxpayer is not subsidizing it. Whatever the cost is, it is. But you get the benefit of a large plan that lots of people are in and you can spread the risk.

So, again, to me the excitement right now is lots of good ideas are coming forward, and I think we're going to be able to get there, and let's just engage the American people in the right answers.

Mr. MURPHY of Connecticut. And, Mr. KLEIN, when you talk about it like that, it is common sense. When you talk to a small business out there and you tell them, Listen, what do you think about having the option, up to you, to purchase into a plan that is run or administered by the State of Florida? The State of Connecticut, we're looking at doing the same thing, or the Federal Government. If it costs you less, you know, people are going to raise their hands by the droves because you're giving them more choice. Right now they may be, you know, if you're in some States in this Nation and you are looking to purchase an individual policy or a group policy, you don't have a lot of choice out there. It's Blue Cross/Blue Shield or—

Mr. KLEIN of Florida. Would the gentleman yield for 1 second?

Mr. MURPHY of Connecticut. Of course.

Mr. KLEIN of Florida. I want to make it perfectly clear, if I didn't make this, when I say State of Florida or Federal Government, the State of Florida doesn't own an insurance company. It could be Blue Cross or United, any combination of private companies. So it's the Federal Government through our Blue Cross or whatever it may be. It's private companies offering the insurance. But the beauty, of course, is the spreading of the risk.

Mr. MURPHY of Connecticut. And giving people choice. I mean, I think that this really gets back to the fact that if consumers—and Mr. KAGEN was talking about this at the beginning. If consumers know what they're buying, if they can really compare the cost of A to B, and as Ms. SCHWARTZ said, they know the terms of what they're buying, they're going to make smart choices.

And many of us here in Congress who would like for individuals to simply have the option to buy into even the plan that as Federal employees and Members of Congress we have the benefit of getting, we want them to have the option of doing that. If it costs less in their particular region of the country, great, they'll buy it. If it costs more somewhere else then maybe they won't. But no subsidy from taxpayers, no check from the general treasury, just the cost of providing that plan.

And the fact is that the plan that is run or sponsored by the Federal Government, it might be cheaper for people because maybe it doesn't have the same profit motive that the private insurers have. Maybe it's found a way to get administrative or marketing costs down. Maybe it doesn't have to return money to shareholders like private plans do.

But all we think is that individuals and businesses out there should have that choice, like I have the choice to buy private health care in the market or join the Federal employees health care plan.

Ms. SCHWARTZ. Just to reiterate, I think what we want to really be very clear with our constituents and with all Americans is that we are looking for creative ways to increase the choices and increase access. And again, it should be affordable. It has to be meaningful coverage. We have to make sure we have the delivery system that works.

We also think that this is a shared responsibility. I certainly do. This is something that we're asking individuals to take some responsibility, employers to take some responsibility, we're asking insurance companies, and many of them are stepping up to the plate saying, We can do this. Many big companies are also saying, We're doing some really innovative work on prevention and health care for our own employees. We're encouraging them to walk and to eat right. And, obviously, I think we should do that for school kids and all of that as well.

So there's not really a single answer here. The issue is how can we improve the delivery system, the health care system you encounter so you get the best kind of care you might, that we make sure we have the right kind of providers working at their scope of practice, as we call it, and really providing you with the right kind of care. But all of this has to work together.

One of the reasons we're looking at all of these issues at once is because we know it makes a difference if we can contain costs, if we can get everyone coverage, if we can actually improve the delivery system, then all of us will be better off. But it takes—it's not really the government doing this alone by any means. We're hoping to be a trigger for some of this, and we have asked all of the stakeholders to participate.

Yes, the insurance industry, the pharmaceutical industry, the hospitals, the physicians, and they've really been at the table, a lot of advocates for the different groups as well, and so have we. We all bring our personal experiences, some of them good, some of them not so good in the health care arena, but we all recognize that we could be without health care coverage. We could be without access to the health care providers that we need, and we never, none of us, want to be in that situation. And, unfortunately, it's true for too many of our neighbors, too many of our constituents. And it's about time for us to step up and say we again are going to find a uniquely American way to address these issues for our constituents and for our country, and we're all going to be better off for it.

Mr. KAGEN. Thank you for yielding. I'm just reassured, I'm more reassured tonight, I'm more optimistic tonight

than ever before that by working together, not just as Democrats and Republicans or Libertarians or Independents, but as Americans we're going to come up with the solutions we need, as you say, to find this uniquely American solution to our health care crisis. It's going to happen. And, as we said tonight, in part it's going to be by leveraging the marketplace, using the marketplace to leverage down prices for everyone.

After all, for those of you who are listening tonight, do you want to pay the higher price or the lowest price for the medical care that you need? Today the price is whatever they can get.

So I look forward to working with all my colleagues on the floor in the House and working with the Senate to bring about the solutions that we need.

Mr. MURPHY of Connecticut. Mr. KAGEN, as a closing comment I will just say that, as much agreement as we've had over the last hour, there's going to be disagreement. There are going to be people that try to stand in the way of this change happening. And there's a memo circulated by a Newt Gingrich pollster going around Washington now and around the circles that want to stop reform from happening, and it sort of lays out the case for how you can stop health care reform. But it's interesting because one of the underlying points of that memo, based on the polling that this pollster had done around the country, was that this year you can't be for nothing. This year you have to be for something.

Now, he undergoes a very cynical analysis of how, in the end, you stop reform from happening. But the message, even through this conservative Republican pollster, is clear: People want change. And I think they're going to get it this year.

I thank the Speaker for giving us this time, and we yield back our balance.

THE STIMULUS PLAN

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Ohio (Mr. LATOURETTE) is recognized for 60 minutes.

Mr. LATOURETTE. Mr. Speaker, I thank you for the recognition, and I thank the minority leader for giving me the opportunity to take some of the Republican time this evening. And we're going to talk about a couple of things that, one, we've talked about before, and two, we're going to talk about this mess.

Never in my lifetime did I think that the United States of America would not only own a lot of banks in this country, but also two of the big three automakers are soon to be owned by the American taxpayers.

The first issue of business, just to do some cleanup, you will recall, Mr. Speaker, that earlier in the year, in President Obama's stimulus bill there was a provision, originally it was inserted by the Senate, and the Senate indicated that AIG executives should not receive exorbitant bonuses unless there were some conditions put on it.

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That legislation, that section of the stimulus bill was authored by a Democrat and Republican: Senator SNOWE, the Republican of Maine, and Senator WYDEN, the Democrat of Oregon. And the House version was silent. And then it went into this conference committee and, Mr. Speaker, you know well that when we pass something and the Senate passes something and they're not exactly the same, we have to have a conference and we have to work out the details and resolve things.

So there was a conference committee. Sadly, there weren't any Republicans on the conference committee. The conference committee was comprised of all—completely of Members of the Democratic Party. And in that conference room, somebody took out the Snowe-Wyden language that put restrictions on the AIG bonuses and instead put in this paragraph, about 50 words over there to my far left, that not only removed the Snowe-Wyden language but it put in that paragraph—and that paragraph, if you read it closely, indicates that not only were we not going to put restrictions on the AIG bonuses but that specifically protects them because it says any bonus that was entered into before February 11 of this year—which happens to be the date that the stimulus bill passed, the conference report passed—is protected and you're not going to mess with it.

Well, a lot of people were embarrassed, and I would dare say—and I don't cast aspersions on my Democratic friends. I suspect a lot of them didn't know about it. But every Democrat in the House of Representatives voted for the stimulus bill with the AIG bonuses protection language included in it except for 11, and every Republican voted against it. And we had made kind of a simple argument. If you remember, the stimulus bill was a thousand—it was over a thousand pages long and it spent upwards of $790 billion of taxpayers' money. And we had sort of this novel idea, and that was maybe Members of Congress should have the opportunity to read the bill before we are asked to vote on it.

So the Tuesday of that week we had a motion on the floor and everybody, every Republican, every Democrat voted that we would have 48 hours to read the bill. And as a matter of fact, it further stipulated that it would be put on the Internet just in case some of our constituents were wondering how the government was going to spend $792 billion of their money.

A funny thing happened between Tuesday and Thursday at midnight, and that is apparently the President had promised he would have the stimulus bill on his desk for signature for the President's Day weekend, and that weekend was the President's Day weekend. So the bill was filed at about midnight on Thursday night and it was brought to the floor. And rather than having 48 hours, we had 90 minutes—90 minutes—to read a thousand pages of how the hundreds of billions of dollars were being spent. And son of a gun, it got missed that this paragraph was in there protecting the AIG bonuses.

The next day, if you remember the news, Mr. Speaker, everybody was shocked. The President was shocked, Members of Congress were shocked. We can't believe it. We couldn't believe that $173 million was going to be given out to AIG executives in the form of bonuses. How can this happen? You have to do something about it. You have to lock them up.

They came up with a goofy idea to put a bill on the floor—and I said it wasn't a fig leaf, it was a fig tree—that we should tax these bonuses at 90 percent. And oh my gosh. First of all, the thought that we would use the United States Tax Code to punish people that we're mad at to the tune of 90 percent is nuts; but then secondly, if you look at the top bonus receiver at AIG, he was getting $6.4 million. And so if we're really, really mad at them, why are we only taking 90 percent away from them in taxes? Why don't we take the whole thing? That guy or gal—I don't remember if it was man or woman—still got $640,000.

Somebody in my district making 40,000 a year has to work 16 years to get $640,000. So clearly stupid, clearly people were embarrassed.

So we have been on the floor the last little bit, and most people who grew up in my generation are familiar with the very fine Hasbro game Clue, and we have been trying to determine how that paragraph got into the bill 'cause nobody wants to claim it. It just all of a sudden showed up, but we know that can't be right. Somebody had to physically take out the Snowe-Wyden language and put in this language.

So we do have a game of Clue that we're working our way through. And I think, hopefully, we're going to be close to solving it.

And just around the board, Mr. Geithner, who is the Treasury Secretary, Rahm Emanuel—who happens to be the President's chief of staff—CHARLIE RANGEL, who is the Ways and Means chairman, Senator DODD from Connecticut, who was the chairman of the Senate Banking Committee, the Speaker of the House, Mrs. PELOSI, and the leader of the Senate, Mr. REID of Nevada.

If you remember, in the game of Clue you have to identify where the thing happened, what was the weapon used and who did it. And over the last couple months we've made amazing progress. We know that the weapon used was a pen—might have been a computer but we're going to go with a pen. We also know from the President's reports that it either happened in the Speaker's office where there was shuttle diplomacy going back and forth, or

the conference room. And now we just have to get down and figure out who did it because nobody is willing to stand up and say who did it.

Mr. Geithner, the Treasury Secretary, has testified that he got instructions from Senator DODD's staff. Senator DODD says, Okay. Maybe we put it in but we did it at the request of the Treasury. We ruled out Mr. RANGEL because we don't think he had anything to do with it. But Mr. Emanuel, the Speaker, and the majority leader were in the room when the deals were being cut. And so we're just trying to figure out who did it.

And it would be nice so we could move on to other things if the person that did it would come forward and say, You know what? I wrote those 50 words to protect $173 million in bonuses at AIG and here's why I did it. But sadly, we haven't had anybody step up to the plate and be willing to talk about that.

So we filed what's known as a resolution of inquiry, and if there is a very cooperative bipartisan person in the story, it's BARNEY FRANK, who is the chairman of the House Financial Services Committee, a Democrat from Massachusetts, and he moved that legislation out of his committee—I think the vote was 63, 64–0. Everybody said let's get to the bottom of it. But now sadly—and somebody who's not pictured here is the distinguished majority leader of the House of Representatives, Mr. HOYER of Maryland. He has the power to schedule things and not schedule things, and sadly, we're now entering our third month and Mr. HOYER has not seen fit to schedule this legislation on the floor for consideration.

But Chairman FRANK did organize a meeting with folks at the Treasury, and they had promised to send us a letter. And they have indicated in this letter that we might finally be able to say that it was, for instance, Senator DODD in the conference room with the pen. So we hope to get there from here.

But, sadly, this isn't where it stops.

The automotive world has been shaken by the bankruptcies, forced bankruptcies of Chrysler and General Motors. And the auto world has been shaken with the forced bankruptcy of Chrysler and now General Motors this week. And a couple of things happened that have again spawned our curiosity and we can't quite get to the bottom of it.

Chrysler. We'll start with Chrysler. Chrysler filed a viability plan with the Treasury on February 17, and that was rejected. They then filed another one and it was accepted. And they sent on the Wednesday of the week that the President made his announcement on April 30, anybody that was a UAW member, United Auto Worker, who worked for the Chrysler facilities went to the ballot box, if you will, to determine whether or not to authorize a new contract that gave pretty serious concessions in terms of wages, health care benefits, retirement benefits to Chrysler.

And one plant in my district—I'm from northeastern Ohio, Twinsburg, Ohio, stamping plant there, 1,200 people employed—they went and they said, Look, we want to keep our jobs and so even though these are pretty significant reductions in pay and benefits, we're going to vote for it. And they did. Eighty-eight percent of the autoworkers in Twinsburg voted for the contract. They were further emboldened and happy because this paragraph that's on this chart was specifically bargained for by the Twinsburg workers with Chrysler—and you can read it for yourself, Mr. Speaker—but it basically indicates that Chrysler has agreed to bring more work to Twinsburg. So 88 percent of the people voted for it. And as a matter of fact, all across the country the contract passed pretty handedly.

Then you fast forward to Thursday.

Thursday, if you were interested and you are a Member of Congress, you could get on a conference call with the President's automotive task force and they indicated to us that it's a great day for Chrysler and we're saving a lot of jobs. There will be no disruptions. There will be no displacements. People aren't going to lose their jobs and communities aren't going to be affected. So I was pretty happy. I sent out a press release saying ''thank you'' to the President, ''thank you'' to his task force, ''thank you'' to Chrysler, ''thank you'' to the UAW, that this looked like pretty good news.

Then at noon that day, that's what President Obama had to say on noon on April 30. He indicated, Lest no one should be confused about what a bankruptcy process means, it will not disrupt the lives of the people that work at Chrysler or live in communities that depend on Chrysler.

So that's pretty good news.

So the President says no people's lives are going to be disrupted who work at Chrysler and no communities will be disrupted. Which, again, just from my parochial view was pretty exciting because 13 percent of the tax base where this stamping plant is located is based upon the stamping plant and the people that work there.

So the mayor was relieved. She sent out a press release. Everything was good.

So then at 1 o'clock on April 30, we had a conference call with Robert Nardelli. He was former chief executive officer at Chrysler. And it was a question-and-answer session. And the first question was asked by the Democratic Governor of the State of Michigan, Jennifer Granholm. And she said, Congratulations, guys. This is great news. I just heard the President, but I want to make sure that the President wasn't speaking in code because I heard him say that this deal saves 30,000 jobs and we, especially in Michigan, know that more than 30,000 people work for Chrysler. It's about 39,000. So I'm just asking it to make sure that he wasn't saying we saved 30,000, but we couldn't save the other 9,000. And the answer was, Absolutely not. The President was just giving us a round number and there would be no disruptions to people's lives and no disruptions to the communities.

Well, son of a gun, that afternoon there was a pretty famous picture in most of the newspapers of this young guy with a truck taking these bankers boxes into the bankruptcy court up in New York. And buried in that set of documents is an affidavit by a guy named Robert Manzo. Mr. Manzo happens to be one of the consultants who was guiding Chrysler through this process. And in there it identifies eight plants and 9,000 people that are going to be shut down, including the Twinsburg plant. And, clearly, that came as kind of a shock to people. And I have an article that talks about—they interviewed the President of Local 122 in Twinsburg, and he said, Well, what do you think? And his response—Doug Rice is his name—he said, I don't know if I was told the whole truth on everything. I don't feel like I was. It would be a shame if this was something that was known for some time. If they kept this back from people, that's wrong. That's wrong.

He was later on a radio program, and the host of the radio program asked him, Would that vote have been the same had you had the information you have now? And he says no. Needless to say, people ain't gonna vote to eliminate their jobs. And I think Mr. Rice is right. What autoworker would go to approve a contract on the belief that their jobs are going to be saved if they really think their jobs are going to be gone?

So we have developed, Mr. Speaker, Clue, the travel edition now, to supplement our work on AIG. And in this case clearly—I mean, the documents that were wheeled into the bankruptcy courts on the afternoon of April 30 with Mr. Manzo's affidavit, clearly somebody knew. Somebody knew that when the President got up and delivered this happy news, this good news that five plants—eight plants were going to be closed and 9,000 people across the country were going to be out of work.

And here's how silly it got. One of the next questions was by a Democratic Representative from Wisconsin, GWEN MOORE, who represents the Milwaukee area, and she said, Hey, Mr. Nardelli, how about our plant in Kenosha, Wisconsin? Eight hundred people and we are really proud of it. It has a long history of manufacturing automobile parts. And so are we going to be okay? And Mr. Nardelli says, We're proud of Kenosha, Wisconsin. Kenosha is part of the new Chrysler, and we very much look forward to continuing that partnership.

Sadly, like my stamping plant in Twinsburg, the Kenosha plant was one of the eight scheduled to be shut. Obviously, Representative MOORE had some

questions and said, Well, I asked you. It's not like I didn't ask you. I asked you about Kenosha, Wisconsin. And Mr. Nardelli's response was he got confused. He confused Kenosha, Wisconsin, with Trenton, Michigan. They don't sound alike to my ear, but when he was saying that Kenosha, Wisconsin, was safe, he really meant Trenton, Michigan.

□ 1945

In addition, the mayor of my town, Katherine Procop, wrote Mr. Bloom on the President's task force and said I heard the President say no communities were going to be affected. We're just taking a pretty big whack here; what's going on? And she got a nice letter back, and the letter said, well, what the President meant to say was that no communities were going to be disrupted other than the eight with the plant closures and the 9,000 people out of their jobs

The problem with that is that was known by no one. Nobody knew, at least the auto workers, the elected officials, the mayor and others, that this was going to happen. And when you ask them, they said, well, we couldn't tell anybody, it was a secret. Somebody knew, because it was in the documents.

So we have created Clue, the travel edition, and this time instead of a pen, we know that the weapon is an ax, because they axed 9,000 people who work in this country and had good, paying jobs. And again, we have the same rooms where these negotiations took place, and our suspects this time are the President of the United States. President Obama is up there; Larry Summers, who is the President's economic adviser; down here Mr. Nardelli, who I referred to, the former CEO of Chrysler, the ax of course; Ron Bloom, whom I referenced and communicated with my mayor; again, Mr. Geithner, the Treasury Secretary; and up here is President George W. Bush.

Now, somebody in this Clue edition knew that eight plants were going to be closed and how easy would it have been for the President's speech writers to give him the information that, great news, we saved 30,000 jobs, we saved all these plants, but we can't save them all. It's like four words. But rather than diluting the happy message, somebody didn't tell eight cities, eight plants, 9,000 workers, that their jobs were to be lost, and I think it's a shame.

And again, I should just tell you, nobody is stepping up yet. The call that I referenced with Governor Granholm and Representative MOORE was tape-recorded, and I called up the Chrysler guys. And I said, hey, the thing was tape-recorded; why don't you let us have the tape. And first response was, it wasn't tape-recorded. And I said, well, you know, my hearing isn't what it used to be when I was in my 20s, but I do remember people saying it was recorded. And then they called back and said, yes, it was recorded, we have a transcript. And I said, well, send it over, and they said, sure. And I said, how about that courier? They said sure. And so that was in the morning.

About 5 o'clock in the afternoon. You know, I'm looking around, I don't see any package from Chrysler. And so I called back and was told that the lawyers have it. And listen, anytime the lawyers get a hold of something, you know you've got a big problem. And so I was beginning to think that I wasn't going to get this transcript. And then a couple days later, they called and said, I'm sending you a letter. And I said, I think that means I'm not getting my transcript. And they said absolutely not, we're not sending you the transcript.

And again, if the facts were not as I just laid them out, the transcript speaks volumes. I mean, it is what it is. And again, in the game of Clue, I mean, who knew? Who knew? And I yield to my friend, Mr. TIBERI.

Mr. TIBERI. Well, I thank the gentleman and my friend from northeastern Ohio. Your explanation and your comments have been very, very enlightening. I'm pleased to be here to participate in the travel edition, as well as the original edition.

I'm a bit confused, though. You haven't explained why the pictures, the six pictures—I understand five of the six. But the top, as I'm looking at it or as I guess the viewers are looking at it, the top left, right there, why the former President's picture is on it when he's been out of town since mid-January of this year.

Mr. LATOURETTE. That's a great question, and the reason that President George W. Bush is up here is that there's some people that blame him for everything bad. And so as a result, I thought to be fair, just in case, even though he was back in Crawford, Texas, when all this was going on, just in case, we should have President Bush up there to satisfy those that blame him for just about everything that has happened.

I want to move on for just a second before I yield to my friend again, and the news has gotten worse. And the news has indicated that in addition to the 9,000 people who worked for Chrysler that aren't going to be able to work for Chrysler anymore, for some reason, through the bankruptcy, first Chrysler indicated and sent notices to 789 auto dealers across the country that they needed to shutter their doors. And according to the National Association of Automobile Dealers, about 60 people work on average at each auto dealership. And then this week's news, with General Motors news, 2,600 General Motors dealerships, and again, 60 employees.

So the first job loss is projected to be 47,000 roughly, second job loss 156,000. So another 200,000 people are going to be out of work. And you know, some people don't understand how an auto dealer costs the car company any money. And some people further think it's a strange business model to have less stores. You want to sell more stuff, and in particular in rural areas and in particular when it comes to their service department.

On top of that, The Detroit News reported on May 11 that this task force that Mr. Geithner's on and Mr. Bloom's on indicated that during the bankruptcy proceedings not only were we going to have to approve these closures of these 789 Chrysler dealerships, they also said they didn't want Chrysler spending any money on advertising during the course of the bankruptcy. And finally, when it was indicated to them how stupid that was, they let Chrysler spend half of what they intended.

So, again, you have a business model where the thinking is that Chrysler's going to be more successful with less stores, and Chrysler's going to be more successful with no advertising, especially when it's in the news and people have concerns about buying a car from a company that's in bankruptcy.

So some strange decisions have been made, and it's caused some people to ask Harley Shaiken, who is a labor expert at the University of California, Berkeley, certainly not a hotbed of conservative thought; he said the auto task force tends to be a little tone deaf. A large part of their approach tends to be at cross-purposes with the stimulus package. The Obama administration is trying to spend money to create jobs at the same time that they're cutting jobs.

I know my friend from Ohio knows that another colleague of ours from Ohio, Mr. JORDAN from the western part of Ohio, participated in a hearing in front of the Judiciary Committee. And the question came up, These people on the task force, do any of them have experience in manufacturing, manufacturing cars, selling cars, making parts? And the answer was none, nobody has. They had plenty of Wall Street experience, but they don't have any experience when it comes to the automotive industry.

And the witness went on to say—and this was really startling—that most of them don't own cars, and not only don't they own cars, those that do own cars drive foreign cars. But again, this is a group of people that are making—and they're not elected, they're appointed—this is a group of people that are making these decisions that is going to cost, if you add in the Chrysler stuff, we're getting north of—and you have to put in the GM workers, another 21,000 workers this week, you're north of 250,000 jobs. I yield to my friend.

Mr. TIBERI. Well, and just to kind of emphasize a point that you had made earlier about your mayor and the response that she got, that the President's quote of it will not disrupt the lives of the people who work at Chrysler or live in communities that depend on it, his quote, and then the reply back to her meaning, well, those communities outside those targeted for

closing. Well, that doesn't include, to the point of your chart right there, the thousands, the tens of thousands, the hundreds of thousands of jobs that are going to be lost by dealers throughout America and many communities, and those who are subcontractors within the industry or others in the supply chain, suppliers of different parts.

And we have in Ohio, as you know, one of the larger presence of auto suppliers throughout our State. And if you look at the dealers, as your chart demonstrates, 789 Chrysler dealers throughout many small communities and larger communities, 2,600 GM dealers, many of whom by the way made money last year. These are not dealers that were struggling or going to be put of business. They were making money. They were employing people. They were participating in their communities, in their Rotaries, sponsoring Little League baseball teams. This is a huge jolt to many communities throughout our State, throughout our country, let alone the plants that you had spoke about earlier.

But there is a missing link here as to who is calling these shots, how are they determining which dealers close, who is actually making the call, the decision, that Chrysler cut their budget in half, what kind of decisions are being made with respect to General Motors that we don't know about. I know I'm asking more questions rather than providing answers. Maybe one day we will get to some of these answers, but I see the gentleman has a new chart.

Mr. LATOURETTE. I thank you very much, and I want to go back to Mr. Manville because we know already that the President's task force determined that Chrysler shouldn't have an advertising budget that they wanted to have, and now with the GM news, it's sort of been like Pontius Pilate; they're washing their hands. These are all decisions that have been made by the car companies, we don't have anything to do with it.

But here's an e-mail that was exchanged the day before the bankruptcy filing between Robert Manzo and Matthew Feldman, who is an attorney on the President's automobile task force. And just to indicate the depths and the breadth to which these unelected folks who have plenty of bankruptcy experience and Wall Street experience but don't have any automobile experience will go to, Mr. Manzo is saying, well, do you think it's worth giving us one more shot. And the one more shot that he's referring to, he testified in court, was maybe we don't have to go to this bankruptcy route, maybe we can come to some agreement with our bondholders, and do we have to do this?

Well, the rather professional response from Mr. Feldman is that I'm now not talking to you, you went where you shouldn't. And Mr. Manzo backs up and he apologizes, and Feldman writes him another e-mail, it's over, the President doesn't negotiate second rounds. We've given and lent billions of dollars so that your team could manage this properly, and now you're telling me to bend over to a terrorist like Lauria.

And Lauria is another bankruptcy lawyer who represents some of the bondholders in the GM suit, and I think he might—I may be wrong about that—but I think he represents the Indiana Teachers Pension Fund. And he was basically saying, it's all well and good that you want to do this, but I invested teacher pension fund money in Chrysler and you're now telling me that I have to go back to my clients and say that I agreed to take five or ten cents on the dollar. He could be sued. He might be able to be put in jail. So I don't think that's the definition of a terrorist. And of course, Mr. Feldman signs off with an affectionate ''that's BS.''

So the day before you still have Chrysler trying to work it out and the President's task force telling him to take a hike. And the same thing happened this week. And if you look at how this thing is being manipulated, the same thing happened when—as you know, the GM bankruptcy is in New York as well, and people think that, well, that's kind of strange because we thought General Motors was either organized under the laws of Delaware or the laws of Michigan certainly. And as a matter of fact they are, and you don't get into Federal court in New York without some kind of nexus.

Well, lo and behold, the brainiacs at General Motors and on the President's task force found one General Motors dealership in Harlem, New York, and they are the lead pleader in the bankruptcy so that they could get a New York bankruptcy judge rather than having it decided where the company actually does business and people who work there, you know, live.

Mr. TIBERI. Being a lawyer and former prosecutor, can you explain the advantages of a bankruptcy in New York City rather than Detroit?

Mr. LATOURETTE. Well, I'm going to tell you, first of all, you don't have the affected parties, and so all of the people that worked for General Motors, all of the dealers that depend on it, they're not in New York. They could only find one dealer in Harlem, and so you avoid that problem.

In addition, you are able to judge shop. I mean, it's called forum shopping, and every lawyer would love, I mean love—lawyers like to win—every lawyer would love to be able to go out and pick his judge or her judge, because who wouldn't? I mean, this judge is tough, this judge is not so tough; this judge is smart, this judge is not so smart. So I mean if you could pick where your case goes, you could do pretty well. And it appears exactly what our friends at the task force did and our friends at General Motors did.

And then on top of it, I go back to the job losses at the auto dealer. It's worse than that chart because every dealer who sells GM products has gotten a letter, and it's either a you're gone letter or you're safe letter. But the guys that are safe, they are going to be required, the dealers that are going to be part of the new GM, to sign participation agreements. And if they don't sign the participation agreement, they're out and they will lose their franchise, their livelihood—their 60 people are out of work. And we have both State and Federal legislation that says, look, the car companies are pretty powerful. They have bargaining power that the small dealer doesn't. They've got lawyers, they've got millions of dollars.

□ 2000

And so we're not going to let this sort of unfair stuff happen. But, again, the beauty of picking a New York bankruptcy judge is that they are arguing that we should preempt all of those laws, and the car dealers no longer have protection.

So they're telling them things like, Well, you have to buy so many cars from us, even if it's a horrible business decision. And they used to have these noncompete clauses that the car company agreed not to put another GM dealership within 2 miles or 5 miles, or whatever the case may be. If we decide to put a new GM dealership right next to you, tough. That's just the way it goes.

It's unconscionable. The Sopranos would be proud of this letter by General Motors. It's clearly not—I never thought I'd see the day that this was happening in the United States.

Mr. TIBERI. Would the gentleman yield?

Mr. LATOURETTE. I'd be happy to yield.

Mr. TIBERI. They could essentially say to a dealer, If you don't sign this agreement which we could ultimately say you're going to rebuild your store, you're going to make it so many more square feet, you're going to move your location, if they don't sign that, if that business owner doesn't sign that, they're out. They have absolutely no leverage. All contract law has been violated.

Mr. LATOURETTE. General Motors has made clear that there's going to be a new Chrysler and an old Chrysler—the bad assets going to old Chrysler; the new Chrysler, the good assets. The same thing with General Motors. The letter to the dealer is clear that if you don't sign these participation agreements and agree to whatever terms we can think of, you're out. And you're going to go under the old General Motors. Not much of a choice.

We were talking about you, my friend; our friend from the western part of Ohio, Mr. JORDAN. We were talking a little bit about your experience in the Judiciary Committee. Maybe you can share, since you were there. I tried to relate it as best I could, but maybe you could chat about what happened.

Mr. JORDAN of Ohio. Well, thank you. I appreciate the gentleman for

yielding and for this Special Order on just a critical issue highlighting why you should never start down this road where government is making decisions in private enterprise.

But the gentleman related 2 weeks ago in Judiciary Committee we had auto dealers, we had experts, and two experts on the auto industry, unlike the auto task force, which has no manufacturing experience, no auto dealer business experience. We had real experts in there talking about the fact that these handful of people who are making decisions that impact so many communities and so many families across this country really have just that, no experience whatsoever in manufacturing, and particularly auto manufacturing.

I just appreciate my colleagues from the Buckeye State pointing out—here's what is so frustrating. Government caused this problem, and now government is going to fix it? I mean, the CAFE standards artificially plucked out of the air, which are the reason, frankly, one of the reasons that the stamping facility in the Fourth Congressional District was closed down, announced foreclosure this Monday. The lack of what I call a coherent, commonsense energy policy.

Let's remember where we were last summer that really started to lead to this situation. It was $4 gasoline. And the fact that we don't use the natural resources we have in this country to help this situation and specifically to help this industry. Again, a failure of government to do the right thing, which helped bring us to this day.

Frankly, we're only going to make it worse, as my colleagues know, if we pass this crazy cap-and-trade concept, which will make it even tougher for manufacturing and auto manufacturing. So that's the frustrating part.

One last point before I yield back to my colleague. I was on a conference call Sunday night with some of the members of the auto task force briefing Members of Congress about what was going to happen with the restructuring at General Motors and, frankly, the announcements that were going to occur the next day, June 1, 2009, when 11 GM facilities, an announcement was made they were going to close. Again, one of which was in Ontario, Ohio, in Richland County in the Fourth Congressional District.

Mr. Sperling, a member of the auto task force, stated in his comments that the government, the auto task force, wasn't going to be involved in day-to-day decisions about General Motors. They would only get involved if it was a ''major event.''

And so when his comments were done and Members of Congress began to ask questions, I finally got around to my turn and I said, Mr. Sperling, you indicated in your opening comments that the auto task force, the government would only get involved if it was a major event. I said, It's going to be pretty major tomorrow when they shut down 11 facilities in 11 congressional districts. What is your definition of ''major''?

And here's the scary thing. He didn't have one. He said it could be a merger, it could be a major change in corporate philosophy. He didn't have a definition, which just tells you they can do whatever they want, whenever they want, and that's why it's so appropriate what Mr. LATOURETTE and Mr. TIBERI are doing here tonight on the floor of the House of Representatives, showing the chaos that they have caused in all kinds of congressional districts, in all kinds of families and communities around this country.

So I want to applaud, again, the Member from Ohio and his hard work in trying to get to the bottom of this and letting the American people know what is really going on out there in this important industry in our country.

With that, I would yield back.

Mr. LATOURETTE. I thank you, Mr. JORDAN, for saying that. Listening to your story, I couldn't make that conference call. I made one the next day with Fritz Henderson, who's the CEO after the President fired the old CEO of General Motors.

Hearing your description, it sounds like the Supreme Court used to wrestle with the definition of pornography. They don't know what the definition is, but they'll know it when they see it. So perhaps a major event will be known by the President's task force when they see.

Mr. JORDAN of Ohio. If the gentleman would yield.

Mr. LATOURETTE. Sure.

Mr. JORDAN of Ohio. I think this is important to understand. If President Obama can fire the CEO of General Motors, then he can keep a facility open. Frankly, his task force and members of his Cabinet, who are traveling across the Midwest right now, who are in our State, in Ohio as we speak—they were there yesterday and today—they owe it to those communities like Twinsburg, like Ontario. They owe it the those workers, those families to go to those facilities, look those workers in the eye and explain to them why they chose to shut down their facility and keep another one open. They owe that to them.

This is coming from someone whose father worked 30 years at a General Motors facility in Dayton, Ohio. I know what it's like for those families. I remember when I was a kid and there was talk of a possible layoff, talk of a possible strike. The emotion that that causes in a family and the concern that caused within a family is real.

So we know what these families are going through in Twinsburg, Ohio, and Ontario, Ohio, and Michigan and other States. We know what they're going through. Frankly, the auto task force owes it to those families to come to those communities and explain to them why they're closing their facility.

I yield back.

Mr. LATOURETTE. I'm glad my friend brought that up, because one of the people that has been sent out as a member of the auto task force, Mr. Montgomery, and he was in Twinsburg, and rather than explaining how Twinsburg got picked and these 1,200 people are out of jobs, they were there to announce a great new initiative, a nationwide initiative, $50 million, to take now 30,000 unemployed autoworkers, $5 million for 30,000 unemployed autoworkers, and transition them to green jobs.

Now, I made the observation, and the Labor Secretary didn't like it very much, but I made the observation at the rate these guys are going, the only green jobs that are going to be left are cutting the grass of the Wall Street guys that got the $700 billion bailout. So some of this defies logic.

I just want to close the loop on these auto dealers, not only the workers, but the dealers. Because if you look who's being negatively impacted, it's the bondholders who had $27 billion in General Motors and they are being forced to settle for peanuts or they're called not patriotic.

You have 30,000 autoworkers whose livelihood and their family's livelihood depends upon getting up and going to work for this company. You have the communities that are impacted, and you have over 200,000 people that work at auto dealers.

Mr. Nardelli was on the witness stand in New York and he was being questioned by Amy Brown, who's an attorney for the Chrysler dealers who doesn't seem real happy about this decision. And the question was, Well, what is it that these dealers are costing the company? Mr. Nardelli's response was, Well, there's a host of expenses relating to such things as tooling, service training, advertising, and sales incentives.

But when Ms. BROWN asked him to quantify how much those things cost the automaker, Mr. Nardelli said he could not, and he wasn't sure if the automaker had ever determined those exact costs.

So I don't think that that's what's going on here. I think that you have people taking advantage of a bankruptcy situation, a crisis, to engage in an agenda that they perhaps have been wanting to engage in for a very long time. And I think that it's disingenuous. And that's why we have unveiled Clue, the Travel Edition. We would like to know.

I want to yield to my friend now, one of the great champions of the auto industry from the State of Michigan that's been more impacted. I think at lunch today I heard his State may crest 25 percent unemployment as a result of some of these decisions.

My friend, Mr. MCCOTTER from Michigan.

Mr. MCCOTTER. I thank the gentleman from Ohio and I thank him for what he is doing today. As you mentioned, I come from the suburbs northwest of Detroit. Obviously, what we have seen with both Chrysler and with

GM is very painful because of the human cost involved: the workers at these plants who will lose their jobs, the manufacturing supply chain, those employees and owners that will lose their jobs, lose their small businesses, and the dealers who will lose their jobs and their small businesses.

But it will not simply be a Michigan problem. It will not simply be a Midwest problem. As we found out from the Chrysler dealerships that were closed, it went across the country, all the way from the Atlantic to the Pacific.

Many of our colleagues all of a sudden remember that if auto manufacturers have a problem, auto dealers have a problem. This was not news to many of us, but it portends what is going to happen over the course of this year and next year as these plants are closed.

The gentleman from Ohio, Mr. LATOURETTE, the gentleman from Ohio, Mr. KUCINICH, put forward a bipartisan letter, which I was very grateful to be able to sign, that talked about how Congress should reexercise its power in this area, how the task force should have become advisory and brought the stakeholders together in a process similar to what was done with Chrysler in the 1970s to allow all stakeholders to come together, as opposed to being pitted against each other, workers or investors, in the process that we saw, which in the end turned out to be nothing but a prepackaged bankruptcy that could not be avoided.

At this point in time, obviously all of us who have plants closed—I had my Livonia power train assembly plant notified it was going to close; 164 workers going to lose their jobs. And I know that next door to me we saw the Willow Run assembly plant closed that had produced the B–24 Liberator bombers that helped this Nation in World War II.

Our thoughts are with those workers and with all the workers who are going to be displaced. But to those who think again that this is simply an economic problem for Michigan, for the Midwest, I ask them a simple question. General Motors was a symbol to the world of the United States' prosperity and security. When this icon of the United States went into bankruptcy, in the nations that bode ill toward us, they were gleeful. Because with General Motors going into bankruptcy, it sends a clear signal to the world that the United States is in decline, and into that perceived vacuum these nations will inject themselves to advance their interests, with very detrimental results to the United States of America.

It is so often that we forget because we live in a land of prosperity and security what these corporations, especially General Motors, have meant throughout the world. It has not been lost on the rest of the world. And you ask yourself: If General Motors goes into bankruptcy, what do they think?

We have already seen what the Russians think. We will soon find out what the Communist Chinese think. And ask yourself this question as well: What do you think is going to happen when cars are made in Communist China, imported into the United States for sale? What does that tell us about the future of the United States, both in terms of its ability to defend itself by manufacturing the armaments necessary to undergird a peace through strength policy or the ability to provide prosperity for its people.

It's been a very painful week for Michigan and for America. The manufacturing base will be far smaller. We will get through this. We will help our fellow citizens who are going through a very difficult time, and we will emerge stronger, if not larger.

I yield back to the gentleman from Ohio.

Mr. LATOURETTE. I thank my friend from Michigan. I just want to bring to a conclusion this evening, we hear a lot that we can't deal with some of the problems in the country because we're really busy here in the United States Congress, and so we don't have floor time.

I talked a little earlier about the AIG thing and the majority leader can't schedule it on the floor because we're really busy doing other stuff. As a matter of fact, when we broke for the Memorial Day district work period, the Speaker and the majority leader and the Democratic leadership had a big press conference hailing all of the great things that we did. But I can tell you we didn't do anything about Chrysler, we didn't do anything about General Motors.

And so I went back, and in the last Congress, Mr. Speaker, you may remember that gasoline was going through the roof. In Ohio, it topped $4 for the first time in my lifetime. And you would think that we would be doing something about a national energy policy here in the United States Congress, the greatest deliberative body in the world.

When the majority changed—and, again, as Republicans, we did such a swell job that the voters threw us out and they installed the Democrats as the majority. They took over and began their legislative responsibilities on January 29, 2007.

□ 2015

Gas was about $2.22. On that day, the most important thing that the majority leader could schedule was congratulating the University of California at Santa Barbara's soccer team. Gas goes up a little bit to $2.24, and that's getting people's attention. The most important thing we could do in the United States Congress is pass a resolution honoring National Passport Month. Gas goes over $3, which has people alarmed. My phones are ringing off the hook, and my colleagues' phones are ringing off the hook. On that day, the most important thing we could do is commend the Houston Dynamo soccer team.

You see a pattern here, Mr. Speaker. We are told, in order to be successful in elective office, we have to get the soccer moms. So, as gas is going through the roof, we are congratulating a soccer team in California and one down in Texas. Just to make sure nobody is confused, we like soccer and we like soccer moms.

Gas goes up to $3.77, and the most important thing that the majority can put on the floor is a resolution honoring National Train Day. Most of us like trains, but gas is $3.77. Gas goes up to $3.84. We passed—and I had to look this up because I didn't know what a ''canid'' was. When gas hit $3.84, we passed the Great Cats and Rare Canids Act. Again, if you have trouble with canids, Mr. Speaker, that's a dog. So gas is $3.84. Our constituents are suffering as they fill up their tanks, and we're talking about cats and dogs here in the United States Congress. It gets up to $4.09. It crosses $4 for the first time. Do you know what? A lot of people in my district don't know this, but 2008 was the International Year of Sanitation. So that was the most important thing we could do. Then out here, when we get to $4.14, which is about where it crested in Ohio—it might have been higher or a little bit lower in other States—the most important thing that the majority can put on the floor is the Monkey Safety Act.

So, again, when talking about tone deaf, that made some of us think that perhaps the new majority was tone deaf, and we talked to them about it. We said, Hey, you know, maybe we could do other stuff. So this year, when hundreds of thousands of people in this country who work in the automotive industry are losing their jobs, we're thinking, oh, they get it; they understand you can't do goofy things and commemorative things when people are losing their jobs.

Earlier this year, 4,000 people were axed at Chrysler. On that day, we honored former Senator Claiborne Pell. He had a long, storied career, but we've got 4,000 people out of work, and maybe we could be doing something else; 9,500 Chrysler people are out. On that day, the most important thing that the majority can put on the floor is a resolution supporting the goals and ideals of national team dating. All of us think team dating is important unless you happen to be the father of one of the team members; but we passed that resolution. You get up here just south of 10,000 Chrysler workers who are losing their jobs; and son of a gun, we pass the Monkey Safety Act again.

So we had time not to deal with gasoline prices, not to deal with an energy policy, not to deal with the automotive industry, but we did have time to take up floor time, 2 years in a row, on the Monkey Safety Act.

Then we got out here where 13,000 people are losing their jobs, and son of a gun, I guess the Senate didn't pass the bill about cats and dogs, and so we take more floor time talking about

cats and dogs even though 13,000 people have lost their jobs.

Then you get out here. This is another guy who, I think, we all like, but now 16,000 people are out of jobs, and the most important thing the majority can put on the floor is awarding a gold medal to Arnold Palmer. I think most of us like Arnold Palmer, and we think he has had a nice career, but 16,000 of our friends and neighbors are without jobs. Then when it hits the top at 18,365, son of a gun, it's National Train Day Again.

So there clearly are difficulties with priorities here in the House, and I don't want to disparage the Democratic leadership too much. I would be happy to yield to my friend in just a second because it's not fair just to talk about the Monkey Safety Act and National Train Day and the International Year of Sanitation.

I want my colleagues to know that, since the beginning of this Congress, the majority has also taken up floor time at 40 minutes a pop to name all of these post offices in the United States of America. So, if you live in one of these towns, Mr. Speaker, you can rest assured that the United States Congress is on the job and that we have named your post office. So, when you go in and get that 44-cent stamp, it has got a name on it. The folks know that each one of these takes about an hour of floor time and a vote. I think there are 14 of them. There may be a few more. So that's about 14 hours of precious time when the United States Congress could have been talking about jobs at Chrysler, about jobs at GM and about gasoline prices last year when we couldn't quite get there.

Just to close the loop on that thought, as we know, 11 plants have closed this week, GM plants, and another 21,000 people are out of work. So you would think, okay, because Chrysler is smaller than GM, maybe we didn't think it was that huge; but Flagship GM, as my friend from Michigan has talked about, is a national icon. So we came back from our district work period yesterday, and just to make sure that people don't think that I'm somehow bad-mouthing the Democratic majority, they really did stuff yesterday to take care of the GM situation other than naming post offices.

Yesterday, we debated legislation on the direct fish stocking of certain lakes in Washington State, and we commemorated the 75th anniversary of the Great Smoky Mountains. Apparently, the soccer moms have been replaced with basketball moms, and we honored the University of Tennessee's women's basketball team.

Mr. Speaker, I yield to my friend from Michigan.

Mr. MCCOTTER. I thank the gentleman for yielding.

In fairness, I must point out that one of the first things that this Democratic-controlled Congress did, in conjunction with the administration, was pass a $1 trillion stimulus bill, because I include the interest, and we're all going to have to pay it. The $1 trillion stimulus bill had one provision that would have particularly helped the auto industry that was virtually eliminated in the dead of night by a hidden hand that also did something interesting. The $1 trillion stimulus bill had protected the AIG bonuses, and yet it did nothing to prevent Chrysler and GM autoworkers from going into bankruptcy. At the time, I referred to it as a post-American manufacturing bill. I would just like to point out that, sadly, events have proven that assessment correct.

I yield back to the gentleman.

Mr. LATOURETTE. I thank the gentleman.

Mr. TIBERI, I would yield to you for an observation.

Mr. TIBERI. Well, thank you for yielding.

The gentleman from Michigan brings up the stimulus bill, and I just had a thought cross my mind.

Not to add more questions rather than answers, but maybe the next edition of Clue is to figure out how—as the gentleman from the Cleveland area knows and as the gentleman from western Ohio knows, just today, we find out that 1,200 jobs in the Miami Valley at NCR were lost from Ohio to Georgia, in part because, at least according to the employer, in the stimulus bill, there were provisions to allow for a potential office building/manufacturing facility to be used to build and to lure jobs from Ohio to Georgia, which is absolutely outrageous. These aren't the types of jobs that we thought were going to be created. These are pitting States against States and localities against localities.

So I would ask the gentleman from Ohio if, maybe the next time we get together, we could add that to the auto industry and to the AIG bonuses. These are things that are done here, not on this House floor, not in the people's House, but in one of those rooms behind closed doors.

I yield back.

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

My question is: If these 1,200 jobs in Ohio were in Ohio and they have moved to Georgia, does the administration consider them created or saved or is it going to have to come up with a third category—or shifted?

Mr. LATOURETTE. To answer the gentleman's question, I think it's both. I think we'll see the administration taking credit for saving 2,000 jobs and for creating 2,000 jobs. It will be too bad for the folks in the Miami Valley, and that's just the way it goes.

I would close with: we sent the President of the United States, President Obama, a letter that was signed by 36 of our colleagues. I believe all of the Members on the floor signed it. It basically asked the President to take a deep breath. As Mr. JORDAN has indicated, this unappointed task force, in my opinion, is not serving the President of the United States well. So take a deep breath.

Go back to 1979. There was Jimmy Carter, Lee Iacocca and the problem with Chrysler back in 1979. Have thoughtful hearings. Have thoughtful discussions. Have people who are experienced in the automotive industry or who, at a minimum, own a car, and let's have this conversation. In that case, my colleagues will remember, the United States not only got paid back, but we made money. We made $35 million on the first Chrysler bailout. The problem that the government had is nobody ever expected us to make money on it, so there was no provision on how to spend it; but people at home need not worry—that Congress at the time figured out how to spend it rather quickly. It goes to show that, when done thoughtfully, it can be done okay.

So we come to Clue, the travel edition—and oh, by the way, we haven't heard back from the President yet. I know he is overseas and that he is a busy person being the leader of the Free World, so he hasn't had a chance to get back to us. I hope that he does. I hope he takes our suggestion. It is a bipartisan letter—I want to say that—from Republicans and Democrats who are concerned about the autoworkers, the plants, the auto dealers, and the people who invest money.

Mr. Speaker, in closing, I think it's a shame. You know, if our constituents want safe monkeys, they can rest easy tonight because we've passed that bill twice. If you like cats and dogs, they're okay. You can rest easy. If you like trains, it's not a problem. If your post office hasn't been named this year, call your Member of Congress, and I'll bet we can slap a name on it sometime rather than dealing with the problems that ail the country.

If you're a union member who works for the United Autoworkers, too bad. We don't have time for any legislation for you. We will train you for a green job—cutting somebody's grass. If you, God forbid, were a stockholder in one of these companies or invested money in one of these companies, you're now being told your investment is worthless, so things like secured debt don't mean ''secured debt.'' It's a little bit like the mortgage crisis. If you're tired of paying your mortgage, don't worry about it. We'll pay it for you.

There is the supply chain that Mr. TIBERI talked about, and there are the dealers that, I think, we've all talked about. We're talking about 200,000 people. Again, it doesn't make sense.

I think Mr. JORDAN's observation was right on the money. First of all, we have got to solve Clue, the travel edition, to figure out who did this. Secondly, I think they owe people an explanation. Why did my plant get closed and not somebody else's? Why did this dealership get closed and not somebody else's? Why are 1,200 people out of work in my district and not someplace else? Why are we picking on the dealers when, according to Mr. Nardelli, he

doesn't know if they cost him any money? It is, indeed, a strange business model to think that you're going to sell more Chryslers with less stores and with no advertising, but maybe that's just me.

Mr. Speaker, I thank you. I thank my colleagues—two from Ohio and one from Michigan—for joining us for this hour.

I yield back our time.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BECERRA (at the request of Mr. HOYER) for today.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Ms. WOOLSEY, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. SPRATT, for 5 minutes, today.

(The following Members (at the request of Mr. POE of Texas) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, June 10.

Mr. JONES, for 5 minutes, June 10.

Mrs. MILLER of Michigan, for 5 minutes, today.

Mr. WOLF, for 5 minutes, today.

Mr. PAULSEN, for 5 minutes, June 5.

Mr. SMITH of New Jersey, for 5 minutes, today.

Mr. MORAN of Kansas, for 5 minutes, today and June 4.

(The following Member (at his request) to revise and extend his remarks and include extraneous material:)

Mr. FLEMING, for 5 minutes, today.

ADJOURNMENT

Mr. LATOURETTE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 26 minutes p.m.), the House adjourned until tomorrow, Thursday, June 4, 2009, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1993. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Acibenzolar-S-methyl; Pesticide Tolerances [EPA-HQ-OPP-2008-0270; FRL-8413-7] received May 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1994. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Bacillus thuringiensis Cry1A.105 protein; Time Limited Exemption from the Requirement of a Tolerance [EPA-HQ-OPP-2009-0101; FRL-8417-3] received May 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1995. A letter from the Chairman of the Board, Farm Credit System Insurance Corporation, transmitting the Corporation's final rule — Premiums (RIN: 3055-AA10) received April 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

1996. A letter from the Chief Counsel, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations [Docket ID: FEMA-2008-0020] received May 4, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

1997. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; California; Determination of Attainment of the 1-Hour Ozone Standard for the Ventura County Area [EPA-R09-OAR-2009-0133; FRL-8909-6] received May 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1998. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Volatile Organic Compounds: Correction [EPA-R03-OAR-2009-005 ; FRL-8909-5] received May 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

1999. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Sikorsky Aircraft Corporation Model S-92A Helicopters [Docket No.: FAA-2009-0351; Directorate Identifier 2009-SW-08-AD; Amendment 39-15886; AD 2009-07-53] (RIN: 2120-AA64) received May 22, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2000. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Morehead, KY. [Docket No.: FAA-2008-0809; Airspace Docket No. 08-ASO-13] received May 22, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2001. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnell Douglas Model DC-8-50 Series Airplanes; Model DC-8F-54 and DC-8F-55 Airplanes; Model DC-8-60 Series Airplanes; Model DC-8-60F Series Airplanes; Model DC-8-70 Series Airplanes; and Model DC-8-70F Series Airplanes [Docket No.: FAA-2008-1324; Directorate Identifier 2008-NM-101-AD; Amendment 39-15875; AD 2009-08-02] (RIN: 2120-AA64) received May 22, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2002. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model DHC-8-102, DHC-8-103, DHC-8-106, DHC-8-201, DHC-8-202, DHC-8-301, DHC-8-311, and DHC-8-315 Airplanes Equipped with a Cockpit Door Electronic Strike System Installed in Accordance with Supplemental Type Certificate (STC) ST02014NY [Docket No.: FAA-2009-0313; Directorate Identifier 2008-NM-144-AD; Amendment 39-15769; AD 2008-26-03] (RIN: 2120-AA64) received May 22, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2003. A letter from the Federal Register Liaison Officer, Department of Treasury, transmitting the Department's final rule — Increase in Tax Rates on Tobacco Products and Cigarette Papers and Tubes; Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes; and Changes to Basis for Denial, Suspension, or Revocation of Permits (2009R-118P) [Docket No.: TTB-2009-0001; T.D. TTB-75; Re: Notice No. 93] (RIN: 1513-AB70) received May 22, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2004. A letter from the Federal Register Liaison Officer, Department of the Treasury, transmitting the Department's final rule — Establishment of the Lake Chelan Viticultural Area (2007R-103P) [TTB Docket No.: 2008-0006; T.D. TTB-76; Re: Notice No. 87] (RIN: 1513-AB42) received May 5, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2005. A letter from the Branch Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Health Savings Accounts Inflation Adjustments for 2010 (Rev. Proc. 2009-29) received May 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2006. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Industry Directors' Directive #2 on Enhanced Oil Recovery Credit [LMSB Control No.: LMSB-04-0409-014 Impacted IRM: 4.51.2] received May 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2007. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Formless Conversion of Partnership to S Corporation (Rev. Rul. 2009-15) received May 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2008. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates [Notice 2009-45] received May 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2009. A letter from the Branch Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Allocation and Reporting of Mortgage Insurance Premiums [TD 9449] (RIN: 1545-BH84) received May 13, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2010. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Self-determination of Deficiency Dividend under Section 860(e)(4)(Rev. Proc. 2009-28) received May 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2011. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Use of Actuarial Tables in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests [TD 9448] (RIN: 1545-BH96; RIN: 1545-BI56) received May 6, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2012. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Sub-Issue Letter Rulings Under Section 355 (Rev. Proc. 2009-25) received May 6, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2013. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Modification of Net Operating Loss Carryback Election under Section 1211 of American Recovery and Reinvestment Tax Act of 2009 (Rev. Proc. 2009-26) received May 6, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BRADY of Pennsylvania: Committee on House Administration. H.R. 415. A bill to provide Capitol-flown flags to the immediate family of fire fighters, law enforcement officers, emergency medial technicians, and other rescue workers who are killed in the line of duty (Rept. 111–132). Referred to the Committee of the Whole House on the State of the Union.

Mr. CARDOZA: Committee on Rules. House Resolution 501. Resolution providing for consideration of the bill (H.R. 626) to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave, and for other purposes (Rept. 111–133) Referred to the House Calendar.

DISCHARGE OF COMMITTEE

[Omitted from the Record of June 2, 2009]

Pursuant to clause 2 of rule XII, the Committee on Armed Services dischared from further consideration. H.R. 1886 referred to the Committee of the Whole House on the State of the Union, and ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. SCHOCK (for himself and Mr. BOSWELL):

H.R. 2672. A bill to amend the Internal Revenue Code of 1986 to allow credits for the establishment of franchises with veterans; to the Committee on Ways and Means.

By Mr. DEFAZIO (for himself and Mr. BERRY):

H.R. 2673. A bill to amend title 38, United States Code, to match the pension amount paid to surviving spouses of veterans who served during a period of war to the pension amount paid to such veterans; to the Committee on Veterans' Affairs.

By Mr. POE of Texas (for himself, Mr. GALLEGLY, and Mr. CARTER):

H.R. 2674. A bill to protect children from sex offenders; to the Committee on the Judiciary.

By Mr. JOHNSON of Georgia (for himself, Mr. COBLE, Mr. CONYERS, and Mr. SMITH of Texas):

H.R. 2675. A bill to amend title II of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such title for a 1-year period ending June 22, 2010; to the Committee on the Judiciary.

By Mr. CARDOZA:

H.R. 2676. A bill to amend chapter 3 of title 31, United States Code, to provide for an Assistant Secretary of the Treasury for Community Financial Institutions and an Office of Ombudsman for Community Financial Institutions, and for other purposes; to the Committee on Financial Services.

By Mr. FLEMING (for himself, Mr. BILBRAY, Mr. BURTON of Indiana, Ms. FALLIN, Mrs. BLACKBURN, and Mr. GINGREY of Georgia):

H.R. 2677. A bill to amend title 18, United States Code, to provide penalties for hate crimes against members of the Armed Forces, and for other purposes; to the Committee on the Judiciary.

By Mr. MCDERMOTT:

H.R. 2678. A bill to extend Federal recognition to the Duwamish Tribe, and for other purposes; to the Committee on Natural Resources.

By Ms. GIFFORDS:

H.R. 2679. A bill to extend certain immigration programs, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. BORDALLO (for herself, Mr. SERRANO, Mr. FALEOMAVAEGA, Mrs. CHRISTENSEN, Mr. PIERLUISI, and Mr. SABLAN):

H.R. 2680. A bill to amend the Social Security Act to provide for payment parity for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under the Medicaid Program, and for other purposes; to the Committee on Energy and Commerce.

By Mr. BACA:

H.R. 2681. A bill to amend the Immigration and Nationality Act to provide for naturalization for certain high school graduates; to the Committee on the Judiciary.

By Mr. DUNCAN (for himself, Mr. MCHENRY, Mr. WESTMORELAND, Mr. SESSIONS, Mrs. BLACKBURN, and Mr. POE of Texas):

H.R. 2682. A bill to require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes; to the Committee on Oversight and Government Reform.

By Mr. HOLT (for himself and Mr. PIERLUISI):

H.R. 2683. A bill to establish the American Veterans Congressional Internship Program; to the Committee on House Administration.

By Mr. ISRAEL (for himself, Ms. VELÁZQUEZ, and Mr. SERRANO):

H.R. 2684. A bill to establish grant programs to provide for the establishment of a national hate crime hotline and a hate crime information and assistance website, to provide training and education to local law enforcement to prevent hate crimes, and to provide assistance to victims of hate crimes; to the Committee on the Judiciary.

By Ms. BORDALLO (for herself, Mr. FALEOMAVAEGA, Mr. ABERCROMBIE, Mr. FARR, Mrs. CHRISTENSEN, Mr. GRIJALVA, Ms. HIRONO, Ms. SHEA-PORTER, Mr. HEINRICH, and Mr. PIERLUISI):

H.R. 2685. A bill to establish a National Oceanic and Atmospheric Administration and a National Climate Enterprise, and for other purposes; to the Committee on Science and Technology, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ISRAEL (for himself and Mr. BISHOP of New York):

H.R. 2686. A bill to amend title XVIII of the Social Security Act to provide for a Medicare Advantage benchmark adjustment for certain local areas with VA medical centers and for certain contiguous areas; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MACK (for himself, Mr. SIRES, Ms. ROS-LEHTINEN, Mr. BROUN of Georgia, Mr. BURTON of Indiana, Mr. MARIO DIAZ-BALART of Florida, and Mr. LINCOLN DIAZ-BALART of Florida):

H.R. 2687. A bill to withhold United States assessed and voluntary contributions to the Organization of American States (OAS) if Cuba is allowed full membership or participation in the OAS unless the President certifies that Cuba has satisfied certain conditions, and for other purposes; to the Committee on Foreign Affairs.

By Mr. PALLONE (for himself and Ms. DEGETTE):

H.R. 2688. A bill to amend title XIX of the Social Security Act to improve the State plan amendment option for providing home and community-based services under the Medicaid Program, and for other purposes; to the Committee on Energy and Commerce.

By Mr. PERRIELLO (for himself, Mr. SCOTT of Virginia, Mr. NYE, Mr. MORAN of Virginia, and Mr. BOUCHER):

H.R. 2689. A bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating the National D-Day Memorial in Bedford, Virginia, as a unit of the National Park System; to the Committee on Natural Resources.

By Mr. SESTAK (for himself and Mr. BRALEY of Iowa):

H.R. 2690. A bill to create a universal, paperless school meal program that is nationally available; to the Committee on Education and Labor.

By Mr. STARK (for himself, Mr. CAMP, and Mrs. BONO MACK):

H.R. 2691. A bill to provide assistance to adolescents and young adults with serious mental health disorders as they transition to adulthood; to the Committee on Energy and Commerce.

By Mr. THORNBERRY (for himself, Mr. ROSS, Mr. BROUN of Georgia, Mr. SKELTON, Mr. THOMPSON of Pennsylvania, Mr. HELLER, and Mr. GRIJALVA):

H.R. 2692. A bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program; to the Committee on Ways and Means.

By Ms. WOOLSEY (for herself and Mr. BAIRD):

H.R. 2693. A bill to amend title VII of the Oil Pollution Act of 1990, and for other purposes; to the Committee on Science and Technology.

By Ms. JACKSON-LEE of Texas:

H. Con. Res. 138. Concurrent resolution recognizing the 40th anniversary of the George Bush Intercontinental Airport in Houston, Texas; to the Committee on Transportation and Infrastructure.

By Mr. LAMBORN (for himself, Ms. BORDALLO, Mr. COFFMAN of Colorado, Mr. KLINE of Minnesota, Mr. MCCAUL, Mr. MASSA, Mrs. MCMORRIS RODGERS, Mr. SESTAK, Mr. SPRATT, Mr. ROONEY, Ms. TSONGAS, Mr. WAMP, and Mr. WILSON of South Carolina):

H. Con. Res. 139. Concurrent resolution congratulating the first graduating class of the United States Air Force Academy on their 50th graduation anniversary and recognizing their contributions to the Nation; to the Committee on Armed Services.

By Mr. CLAY:

H. Con. Res. 140. Concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued to honor Wilton ''Wilt'' Chamberlain; to the Committee on Oversight and Government Reform.

By Mr. CLAY:

H. Con. Res. 141. Concurrent resolution expressing the sense of Congress that the United States Postal Service should issue a postage stamp in commemoration of Carl B. Stokes; to the Committee on Oversight and Government Reform.

By Mr. CUMMINGS (for himself, Ms. LEE of California, Mr. MORAN of Virginia, Mr. THOMPSON of Mississippi, Mr. FATTAH, Mr. TANNER, Mrs. CHRISTENSEN, Mr. MEEKS of New York, Mr. SESTAK, Mr. LOBIONDO, Mr. ELLISON, Mr. KILDEE, Mr. GRIFFITH, Mrs. MALONEY, Mr. NEAL of Massachusetts, Mr. BRADY of Pennsylvania, Mr. DAVIS of Illinois, Mr. TOWNS, Mr. HINOJOSA, Ms. BERKLEY, Mr. GINGREY of Georgia, Mr. HONDA, Mr. FLEMING, Mr. COHEN, Mr. SERRANO, Mr. HOLT, Ms. BORDALLO, Mr. GORDON of Tennessee, Mr. RUSH, Mr. ROE of Tennessee, Mr. SMITH of New Jersey, Mr. LYNCH, Ms. NORTON, Mr. GUTIERREZ, Mrs. DAVIS of California, Ms. CORRINE BROWN of Florida, Ms. WATERS, Mr. BURTON of Indiana, and Mr. BROUN of Georgia):

H. Con. Res. 142. Concurrent resolution supporting National Men's Health Week; to the Committee on Oversight and Government Reform.

By Mr. HOLT (for himself, Mr. BROWN of South Carolina, and Mr. HALL of New York):

H. Con. Res. 143. Concurrent resolution expressing support for the designation and goals of ''Hire a Veteran Week'' and encouraging the President to issue a proclamation supporting those goals; to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. MCCOLLUM:

H. Res. 499. A resolution congratulating the University of St. Thomas Tommies baseball team for winning the 2009 National Collegiate Athletic Association Division III Men's Baseball National Championship; to the Committee on Education and Labor.

By Mr. HOYER:

H. Res. 500. A resolution raising a question of the privileges of the House; to the Committee on Standards of Official Conduct.

By Mr. GARY G. MILLER of California (for himself, Mrs. MCCARTHY of New York, Mrs. BIGGERT, Mr. HINOJOSA, Mr. CALVERT, Ms. BORDALLO, Mr. DAVIS of Kentucky, Mr. MILLER of North Carolina, Mr. CHILDERS, Mr. CASTLE, Mr. BACHUS, Mr. NEUGEBAUER, and Mr. GERLACH):

H. Res. 502. A resolution recognizing National Homeownership Month and the importance of homeownership in the United States; to the Committee on Financial Services.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII,

Mr. INSLEE introduced a bill (H.R. 2694) to authorize the Secretary of the department in which the Coast Guard is operating to issue a certificate of documentation with a coastwise endorsement for the vessel GULF DIVER IV; which was referred to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 22: Ms. BEAN and Mr. POE of Texas.

H.R. 147: Mr. LYNCH, Mr. QUIGLEY, Mr. LOBIONDO, Mr. MURTHA, Mr. CULBERSON, Mr. FLEMING, Mr. LIPINSKI, and Ms. KAPTUR.

H.R. 197: Mr. HUNTER, Ms. FALLIN, and Mr. OLSON.

H.R. 213: Mr. LOBIONDO, Mr. MCCOTTER, and Mr. LEE of New York.

H.R. 220: Mr. MCCOTTER.

H.R. 233: Mr. KAGEN.

H.R. 235: Mr. BLUMENAUER, Mr. GRAVES, Mr. BUCHANAN, Mr. GUTIERREZ, and Mr. LUETKEMEYER.

H.R. 275: Mr. MACK, Mr. GARRETT of New Jersey, Mr. ROSKAM, Mr. BAIRD, Mr. WU, Mr. HIMES, and Mr. MURPHY of Connecticut.

H.R. 303: Ms. FOXX.

H.R. 406: Mr. COBLE and Mr. MARSHALL.

H.R. 422: Mr. BOSWELL, Mr. CONNOLLY of Virginia, Mr. ETHERIDGE, Ms. ZOE LOFGREN of California, and Ms. TSONGAS.

H.R. 442: Mrs. MILLER of Michigan, Mr. MACK, Mr. CARTER, Mr. LAMBORN, Mr. OLSON, Ms. FALLIN, and Mr. HUNTER.

H.R. 450: Mr. SMITH of Texas.

H.R. 669: Mr. BAIRD.

H.R. 690: Mr. SCHIFF.

H.R. 716: Mr. PAYNE.

H.R. 816: Mr. PERLMUTTER and Ms. KILPATRICK of Michigan.

H.R. 840: Mr. WEINER, Ms. CORRINE BROWN of Florida, Mr. COURTNEY, Mr. TONKO, Mr. VAN HOLLEN, Mr. YARMUTH, and Ms. ROYBAL-ALLARD.

H.R. 868: Mr. GERLACH and Mr. GUTIERREZ.

H.R. 879: Mr. GERLACH.

H.R. 890: Mr. CAPUANO.

H.R. 904: Mr. RUSH and Mr. YARMUTH.

H.R. 948: Mr. HEINRICH.

H.R. 977: Mr. MICHAUD.

H.R. 980: Mr. HODES.

H.R. 997: Mr. BLUNT.

H.R. 1032: Mr. PETRI and Mr. KISSELL.

H.R. 1051: Mr. BOUCHER and Mr. MCINTYRE.

H.R. 1053: Mr. KRATOVIL.

H.R. 1064: Mr. DEFAZIO, Mr. LOEBSACK, Mrs. MYRICK, and Mr. PIERLUISI.

H.R. 1066: Mr. MARKEY of Massachusetts, Ms. HERSETH SANDLIN, Mr. ROTHMAN of New Jersey, and Mr. COHEN.

H.R. 1074: Mr. HUNTER, Mr. HASTINGS of Washington, and Ms. FALLIN.

H.R. 1080: Mr. KILDEE, Mr. PALLONE, and Mr. HINCHEY.

H.R. 1118: Mrs. MCMORRIS RODGERS.

H.R. 1129: Mr. QUIGLEY and Ms. KAPTUR.

H.R. 1157: Mr. KLEIN of Florida.

H.R. 1179: Ms. ESHOO.

H.R. 1189: Mr. HINCHEY.

H.R. 1193: Mr. MCCOTTER and Mr. GORDON of Tennessee.

H.R. 1203: Mr. RODRIGUEZ, Mr. SPRATT, Mr. ROGERS of Alabama, and Mr. SMITH of Texas.

H.R. 1207: Mr. YOUNG of Florida, Mr. GRIJALVA, Mr. FRELINGHUYSEN, and Mrs. HALVORSON.

H.R. 1211: Mr. RODRIGUEZ, Mr. MARSHALL, Mr. GONZALEZ, Mrs. DAVIS of California, Mr. COURTNEY, Mr. BROWN of South Carolina, and Ms. BERKLEY.

H.R. 1214: Mr. REYES, Mr. PAYNE, and Mr. SERRANO.

H.R. 1378: Mr. UPTON.

H.R. 1402: Ms. BORDALLO, Mr. KUCINICH, Mr. RYAN of Ohio, Mr. KLEIN of Florida, Mr. RODRIGUEZ, Mr. WALZ, Mr. WILSON of Ohio, Ms. LINDA T. SÁNCHEZ of California, and Mr. BOCCIERI.

H.R. 1430: Mr. GRAVES.

H.R. 1441: Mr. HALL of Texas.

H.R. 1452: Mr. LATHAM.

H.R. 1454: Mr. HONDA.

H.R. 1470: Ms. SHEA-PORTER.

H.R. 1509: Mr. CARNEY and Mrs. HALVORSON.

H.R. 1526: Mr. CARNAHAN.

H.R. 1547: Ms. HERSETH SANDLIN, Mr. COOPER, and Mrs. CAPITO.

H.R. 1552: Mr. HIMES.

H.R. 1558: Mr. CLAY, Mr. KLEIN of Florida, Ms. MCCOLLUM, Mr. HINCHEY, and Mr. TONKO.

H.R. 1570: Ms. BORDALLO and Mr. MCCOTTER.

H.R. 1584: Mr. WITTMAN.

H.R. 1620: Mr. MCHENRY.

H.R. 1670: Ms. PINGREE of Maine.

H.R. 1677: Mr. KILDEE.

H.R. 1688: Mr. DAVIS of Kentucky and Mr. GUTHRIE.

H.R. 1691: Mr. BOUCHER and Mr. HALL of New York.

H.R. 1702: Mr. BISHOP of Georgia, Mr. MOORE of Kansas, Mr. WALZ, Mr. SNYDER, and Mr. CLAY.

H.R. 1705: Ms. SLAUGHTER and Mr. GUTIERREZ.

H.R. 1796: Mr. NYE and Ms. SCHAKOWSKY.

H.R. 1799: Mr. HALL of Texas.

H.R. 1826: Ms. WOOLSEY and Mr. ISRAEL.

H.R. 1844: Mr. MCDERMOTT, Mr. CAO, Ms. ZOE LOFGREN of California, Mr. ETHERIDGE, and Mr. BOUCHER.

H.R. 1881: Mr. OBERSTAR, Mr. CLEAVER, Mr. SCOTT of Georgia, Mr. DOYLE, and Mr. LANGEVIN.

H.R. 1894: Mr. ARCURI, Ms. RICHARDSON, Mr. CLAY, Mr. PAULSEN, and Mr. MCCOTTER.

H.R. 1932: Ms. SCHAKOWSKY.

H.R. 1970: Mr. THOMPSON of California, Mrs. MCMORRIS RODGERS, Mr. LOEBSACK, and Mr. BOUCHER.

H.R. 2000: Ms. BORDALLO.

H.R. 2001: Mrs. CAPITO.

H.R. 2014: Ms. VELÁZQUEZ, Mr. POLIS of Colorado, Mr. SMITH of Washington, Mr. MCMAHON, Ms. MCCOLLUM, Mr. LEWIS of California, Mr. ROYCE, Mr. BILBRAY, Mr. DAVIS of Alabama, Mr. WAMP, Ms. MARKEY of Colorado, Mr. QUIGLEY, Mr. ROSKAM, Ms. SLAUGHTER, Ms. ROYBAL-ALLARD, Mr. MITCHELL, Mr. DICKS, Mr. MCNERNEY, and Mr. SKELTON.

H.R. 2017: Mr. STEARNS.

H.R. 2021: Mr. CANTOR.

H.R. 2049: Mr. MURTHA and Mr. BOUSTANY.

H.R. 2058: Mr. GORDON of Tennessee.

H.R. 2060: Mr. SIRES.

H.R. 2062: Mr. HARE.

H.R. 2063: Mr. HERGER.

H.R. 2119: Mr. BUCHANAN.

H.R. 2123: Mr. DOYLE.

H.R. 2129: Mr. COHEN, Mr. WEXLER, and Mr. ACKERMAN.

H.R. 2132: Mr. SHERMAN and Mr. SESTAK.

H.R. 2139: Mr. PAULSEN and Mr. THORNBERRY.

H.R. 2149: Mr. WILSON of South Carolina.

H.R. 2181: Ms. LINDA T. SÁNCHEZ of California and Mr. FILNER.

H.R. 2204: Ms. JENKINS, Ms. ESHOO, Mr. GONZALEZ, and Mr. CULBERSON.

H.R. 2214: Ms. SHEA-PORTER.

H.R. 2243: Mr. GUTHRIE, Mr. BARRETT of South Carolina, and Mr. MARSHALL.

H.R. 2299: Mr. MEEKS of New York, Ms. SCHAKOWSKY, and Mr. DRIEHAUS.

H.R. 2305: Mr. FORBES, Mr. KLINE of Minnesota, and Mr. MCCOTTER.

H.R. 2309: Mr. WAXMAN and Ms. SUTTON.

H.R. 2310: Mr. BOUSTANY, Mr. BAIRD, Mr. CONNOLLY of Virginia, Mr. DICKS, Mr. HONDA, Mr. CROWLEY, and Mr. PAULSEN.

H.R. 2322: Mr. SESTAK.

H.R. 2324: Mrs. LOWEY.

H.R. 2329: Mr. GUTHRIE, Mr. BOUCHER, and Ms. CORRINE BROWN of Florida.

H.R. 2360: Mr. COSTELLO, Mr. GALLEGLY, and Mr. KAGEN.

H.R. 2368: Ms. LEE of California.
H.R. 2373: Mr. COBLE, Mr. KISSELL, Mr. TIBERI, Mr. LEE of New York, and Mr. BARRETT of South Carolina.
H.R. 2389: Mr. SCHIFF.
H.R. 2405: Mr. LOBIONDO.
H.R. 2409: Mr. MCHUGH and Mr. WESTMORELAND.
H.R. 2414: Mr. RODRIGUEZ, Mr. WU, and Mr. ARCURI.
H.R. 2427: Mr. DOYLE.
H.R. 2452: Mr. LATOURETTE, Mr. LEE of New York, Ms. BERKLEY, Mr. LARSON of Connecticut, Mr. HALL of Texas, Mr. JONES, and Mr. ROE of Tennessee.
H.R. 2480: Mr. JONES, Ms. LEE of California, Mr. SMITH of New Jersey, Mr. SERRANO, Mr. VAN HOLLEN, Mr. PASCRELL, Mr. WEXLER, Mr. KENNEDY, Mr. LYNCH, Mr. BERMAN, Mrs. CAPPS, Mr. WOLF, Mr. PAYNE, Mr. DOYLE, Mrs. DAVIS of California, and Mr. MCNERNEY.
H.R. 2483: Ms. MATSUI and Mr. NADLER of New York.
H.R. 2490: Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 2495: Mr. BURTON of Indiana.
H.R. 2499: Mr. PAUL, Mr. POSEY, Mr. AKIN, Mr. FRANKS of Arizona, Mr. DICKS, Mr. KIND, Ms. SHEA-PORTER, and Mr. LANGEVIN.
H.R. 2503: Mrs. BACHMANN and Mr. SMITH of Texas.
H.R. 2517: Mr. ABERCROMBIE and Mr. PALLONE.
H.R. 2519: Mr. VAN HOLLEN, Mr. CROWLEY, and Ms. SCHWARTZ.
H.R. 2527: Mr. MASSA and Mr. HONDA.
H.R. 2531: Mr. REYES, Mr. HOLT, Mr. ELLISON, Mr. NADLER of New York, and Ms. LEE of California.
H.R. 2537: Mr. SOUDER, Mr. FRANKS of Arizona, and Mr. PITTS.
H.R. 2539: Mr. BURTON of Indiana.
H.R. 2553: Mr. SMITH of Washington.
H.R. 2554: Mr. MURPHY of Connecticut.
H.R. 2562: Mr. PIERLUISI, Mr. CARNEY, and Ms. BORDALLO.
H.R. 2570: Ms. FUDGE and Ms. LINDA T. SÁNCHEZ of California.
H.R. 2577: Mr. VISCLOSKY.
H.R. 2578: Mr. MEEKS of New York and Mr. LOBIONDO.
H.R. 2597: Ms. BORDALLO and Mr. STARK.
H.R. 2648: Ms. CLARKE, Mr. UPTON, and Mr. ISSA.
H.R. 2655: Mr. MANZULLO and Mr. TIBERI.
H.R. 2669: Mr. PALLONE.
H.R. 2670: Mr. PETERSON and Mr. KILDEE.
H. Con. Res. 20: Ms. LEE of California, Mr. ELLISON, and Mr. INGLIS.
H. Con. Res. 79: Mr. FATTAH and Mr. HASTINGS of Florida.
H. Con. Res. 94: Mr. TAYLOR.
H. Con. Res. 110: Ms. SHEA-PORTER, Mr. GORDON of Tennessee, and Mr. HARE.
H. Con. Res. 112: Mr. WALZ and Ms. MCCOLLUM.
H. Con. Res. 128: Ms. JACKSON-LEE of Texas and Ms. LEE of California.
H. Con. Res. 131: Mr. LATTA, Mr. BILBRAY, Mr. KING of Iowa, Mr. JONES, Ms. FALLIN, Mr. BURTON of Indiana, Mr. WESTMORELAND, and Mr. POSEY.
H. Con. Res. 132: Mr. WOLF, and Mr. GARRETT of New Jersey.
H.Res. 175: Mr. DENT.
H.Res. 185: Mr. LEWIS of Georgia.
H.Res. 236: Mr. LAMBORN.
H.Res. 241: Mr. WU and Mr. ROYCE.
H.Res. 260: Mr. CLEAVER, Mr. ISRAEL, Mr. HASTINGS of Florida, Mr. HODES, Ms. LINDA T. SÁNCHEZ of California, Mr. GEORGE MILLER of California, Mrs. MCCARTHY of New York, Mr. PERLMUTTER, Mr. LYNCH, Mr. TIERNEY, Mr. NEAL of Massachusetts, Mr. MCDERMOTT, Ms. Fudge, Mr. COOPER, Mr. DONNELLY of Indiana, Mr. PETRI, Mr. KUCINICH, Mrs. DAVIS of California, Mr. LEVIN, Mrs. TAUSCHER, Mrs. MALONEY, Ms. WOOLSEY, Ms. SLAUGHTER, Mr. KLEIN of Florida, Mr. DOGGETT, Mr. KANJORSKI, Mr. WALZ, Ms. SHEA-PORTER, Mr. HALL of New York, Mr. KAGEN, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. LOEBSACK, Mr. HILL, Mr. ELLISON, Mr. BRALEY of Iowa, and Mr. TANNER.
H. Res. 293: Mr. LOBIONDO and Mr. HOLT.
H. Res. 330: Mr. HILL, Mr. MOORE of Kansas, Mr. NYE, Ms. HARMAN, and Mr. BOSWELL.
H. Res. 366: Mr. TIBERI, Mr. KIRK, Mr. MICHAUD, and Mr. GONZALEZ.
H. Res. 373: Mr. WOLF and Mr. MCHUGH.
H. Res. 410: Ms. WASSERMAN SCHULTZ, Mr. ARCURI, Ms. BORDALLO, Mr. JONES, Mr. SHUSTER, Mr. PUTNAM, Mr. COBLE, Ms. BERKLEY, Ms. ROS-LEHTINEN, Mr. MCINTYRE, Mr. MACK, and Mr. OBERSTAR.
H. Res. 419: Ms. SCHAKOWSKY.
H. Res. 437: Mr. HOLT, Ms. ZOE LOFGREN of California, Mr. CALVERT, and Ms. ESHOO.
H. Res. 439: Mr. SERRANO.
H. Res. 443: Ms. SCHAKOWSKY, Mr. WATT, Mr. PIERLUISI, and Ms. BORDALLO.
H. Res. 469: Mr. CARNAHAN, Mr. REHBERG, Mr. WALDEN, Mr. BURGESS, Mr. GERLACH, Mr. BONNER, Mr. KLINE of Minnesota, Mr. OLSON, Mr. DAVIS of Kentucky, Mr. BOUSTANY, Mr. DEAL of Georgia, Mr. GUTHRIE, Mr. GALLEGLY, Ms. MOORE of Wisconsin, Mr. TIBERI, Mr. COFFMAN of Colorado, Mr. HUNTER, Mr. YOUNG of Florida, Mr. MCCOTTER, Mr. CALVERT, Mr. CASTLE, Mr. ADERHOLT, Mr. BURTON of Indiana, Mr. RADANOVICH, Mr. ISSA, Mr. MCCLINTOCK, Mr. SHUSTER, Mr. MILLER of Florida, Mr. CONAWAY, Mr. DENT, Mr. BLUNT, Mr. MCKEON, Mr. MARCHANT, Mr. SESSIONS, Mr. ALEXANDER, Mr. HASTINGS of Washington, Mr. HELLER, Mr. MACK, Mrs. BONO MACK, Mr. TIAHRT, Mr. TERRY, Mr. SCHOCK, Mr. MCHENRY, Mrs. CAPITO, Mr. AUSTRIA, Mrs. SCHMIDT, Mr. MCCARTHY of California, Mr. MARIO DIAZ-BALART of Florida, Mr. SOUDER, Mr. MORAN of Kansas, Mr. ROGERS of Alabama, Mr. TURNER, and Mr. PENCE.
H. Res. 473: Mr. WESTMORELAND, Mr. GARRETT of New Jersey, Mr. BROUN of Georgia, Mr. CONAWAY, and Mr. BILBRAY.
H. Res. 476: Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KENNEDY, Mr. HONDA, Mr. TANNER, and Mr. NADLER of New York.
H. Res. 480: Ms. CLARKE.
H. Res. 484: Mr. PALLONE.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, OR LIMITED TARIFF BENEFITS

Under clause 9 of rule XXI, lists or statements on congressional earmarks, limited tax benefits, or limited tariff benefits were submitted as follows:

The amendment to be offered by Representative ISSA of California, or a designee, to H.R. 626, the Federal Employees Paid Parental Leave Act of 2009, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

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PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, WEDNESDAY, JUNE 3, 2009 *No. 82*

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord, who shall abide in Your tabernacle? Who shall dwell in Your holy hill? You have given us the answers. Those who walk upright and work righteousness, who speak the truth in their hearts, will abide in Your presence.

Today, prepare the men and women of this body to dwell with You. Give them the integrity to be true to their duties, always striving to please You. Lord, fix their hearts on You, that everything they say and do will be under Your Lordship. Send out Your light and Your truth that they may shine in this Chamber, and guide our Senators in these challenging times. Join our lawmakers to You with an inseparable bond of love for You. You alone, O God, can guard their hearts with peace.

We pray in the Redeemer's Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 3, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business for 1 hour. Senators will be permitted to speak for up to 10 minutes each. The majority will control the first 30 minutes and the Republicans will control the next 30 minutes.

Following morning business, the Senate will resume consideration of the tobacco legislation, H.R. 1256. This is postcloture on the motion to proceed. Upon the use or yielding back of the 30 hours of postcloture debate time, the Senate will turn its consideration to that legislation. We hope that some time can be yielded back. We will wait and see what the will of the Republicans is at this time. We would like to begin the amendment process. We had a number of very good speeches yesterday from Senators who intend to offer amendments to this legislation. I will be speaking with the Republican leader throughout the day.

Mr. President, I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, at some point we will be back on the postcloture time. When that occurs, I ask unanimous consent that my hour postcloture be given to the Senator from North Carolina, Mr. BURR.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TOBACCO REGULATION

Mr. MCCONNELL. Mr. President, I wish to say a few words about the FDA legislation we have been debating on the floor this week. First, I thank Senator ENZI for his hard work in managing this bill. He always does a great job. I also wish to acknowledge Senator BURR's thoughtful leadership on this legislation. This is a complicated set of issues. No one—I repeat, no one—knows the intricacies better than the Senator from North Carolina, Mr. BURR. He has been a good friend and ally of producers and growers dating back to his days in the House, and he has offered a thoughtful alternative to this very flawed legislation which we have before us.

A few years ago, I led the effort in Congress to enact a tobacco buyout which ended the Federal Government's support of tobacco production. Although the number of tobacco farms in

Kentucky has decreased as a result of that legislation, thousands of Kentucky farm families and communities still depend on the income from tobacco production. I have concerns about the effect this legislation might have on them.

Still, no one in this Chamber would deny that tobacco is hazardous to the health of those who use it. Everyone knows that. If the purpose of this bill is to reduce the harm it could cause the people who consume it, then forcing the Food and Drug Administration to do the regulating would be the wrong route to take.

Former FDA Administrator Dr. Andrew von Eschenbach has predicted that forcing the FDA to regulate tobacco would undermine the agency's core mission of protecting the public health and ensuring that foods, medicines, and other products don't pose a risk to American consumers. When the FDA approves a product, Americans expect the product to be safe, but as we all know, there is no such thing as a safe cigarette. It doesn't exist. Forcing the FDA to regulate cigarettes will not make them safer for the American people.

This legislation is flawed for other reasons as well. As Senators BURR, ENZI, and others have repeatedly pointed out, the FDA is already overworked in carrying out its core mission of protecting the public health. When it comes to contaminated peanut butter, tainted toothpaste, or unsafe drugs coming into the United States, Americans expect that all of FDA's resources are being used to protect them. Yet instead of freeing additional resources for the FDA to perform this important function, this legislation could divert the agency's limited resources toward an impossible task: Vouching for the safety of a product that cannot be made safe. The American people don't want the FDA's resources diverted on a fool's errand.

It is hard to understand what the supporters of this bill are trying to accomplish. If the goal is to reduce smoking, then why isn't there a single dime—not one dime—in this bill directed at smoking cessation programs? If there is no such thing as a safe cigarette, the best way to help smokers is to help them kick the habit. This bill doesn't do that. If the goal of this legislation is to launch a public campaign to reduce smoking and promote better health, then why is there no focus on Federal programs that are already in place to achieve this goal?

This legislation is the wrong way to regulate tobacco, and that is why Senator BURR will offer a thoughtful way to accomplish the goal. Senator BURR's proposal would create a new agency whose sole responsibility is to regulate tobacco. This would address the problem without undermining FDA's mission or straining its resources.

Forcing the FDA to regulate and approve the use of tobacco would be a distortion of the agency's mission and a tremendous misuse of its overstretched resources. We should be focused on giving FDA the resources it needs to protect the public health, not burdening it with an impossible assignment.

HEALTH CARE REFORM

Mr. MCCONNELL. Mr. President, as we consider the best way to reform health care, some have argued that a so-called government option would not lead to a government takeover of health care. They promise safeguards to ensure a level playing field between private plans and a government-run plan. But no safeguard could ever create a truly level playing field. The reason is simple: Unlike private insurance plans, a government-run plan would have unlimited access to taxpayer money and could borrow as much money as it wants to subsidize the cost of services. The Federal Government is already planning to borrow $1.8 trillion this year alone. If a company were allowed to borrow that much money, it could easily wipe out its competition, set prices, and create a monopoly. That is just what a so-called government ''option'' for health care will, in all likelihood, lead to.

A government-run plan would set artificially low prices that private insurers would have no way of competing with. Rates for private health plans would either skyrocket, leaving companies and individuals unable to afford them, or private health plans would simply be forced out of business. Either way, the government-run plan would take over the health care system, radically changing the way Americans choose and receive their care, from routine checkups to lifesaving surgeries. No safeguard could prevent this crowdout from happening, and no safeguard could, therefore, keep the millions of Americans who currently like the health care they have from being forced off of their plans and onto a government-run plan instead.

This isn't some fantasy scenario. We are already seeing in the government takeover of the auto industry how government interference in business forces firms out of the way by leveraging taxpayer dollars against their private competitors. Now that the government runs General Motors and has provided billions to its financing arm, GMAC, the company is offering interest rates that Ford, which hasn't taken any government money, and other companies which haven't taken any government money just can't compete with. What this means is that one American auto company that actually made the tough decisions so that it wouldn't need a government bailout is now at a competitive disadvantage to a company that is being propped up by billions of dollars of borrowed tax money. This is how the government subsidizes failure at taxpayers' expense and can unfairly undercut good companies, and this is precisely why so many Americans are worried about the trend of increased government involvement in the economy. The government is running banks now. It is running insurance companies. As of this week, it is running a significant portion of the American automobile industry. Now it is thinking seriously about running the entire health care industry, and chances are Americans won't like the result any more than they like the government takeover of the banks or the auto industry.

Americans who now take for granted the ability to choose their care may suddenly find themselves being told by government bureaucrats that they are too old to qualify for a certain kind of surgery or that they have to go to the back of the line for a procedure they can now get right away. As I have said, Americans want health care reform, but this isn't what they have in mind. Americans don't want their health care denied and they don't want it delayed. But once government health care is the only option, bureaucratic hassles, endless hours stuck on hold waiting for government service representatives, restrictions on care, and, yes, rationing, are sure to follow. Americans don't want some remote bureaucrat in Washington deciding whether their mothers and fathers or spouses have access to a lifesaving drug. They don't want to share the fate of Bruce Hardy.

Bruce was a British citizen who was suffering from cancer. According to press reports, his doctor wanted to prescribe a new drug that was proven to delay the spread of his disease. But the government agency that runs Britain's health care system denied the treatment. They said it was too expensive—that Bruce Hardy's life wasn't worth prolonging, based on the cost to the government of the drug he needed to live. In a story discussing Bruce's plight, the New York Times noted that if Bruce had lived in the United States, he likely would have been able to get this treatment.

But that could change. What happened to Bruce Hardy could happen here. Americans who now have the freedom to find the care they need and to make their own health care decisions could be stripped of that right by a new government agency. This happens every single day in countries such as Britain. It happens to people like Bruce Hardy, against their will and against the will of their loved ones. As Bruce's wife put it:

> Everybody should be allowed to have as much life as they can.

In America, we are free to make those decisions ourselves. If Congress approves a government takeover of health care, that freedom could soon be a memory.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for up to 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders, or their designees, with the majority controlling the first half and the Republicans controlling the second half.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DETAINEE PHOTOGRAPHIC RECORDS PROTECTION ACT

Mr. LIEBERMAN. Mr. President, I rise to speak in morning business about supporting President Obama in his efforts to protect the safety and security of the American people, the American military, and the civilian personnel serving us all abroad. This goes to the question of the pending lawsuit by the American Civil Liberties Union that would require the publication of various photographs of treatment by Americans of detainees.

On May 13, President Obama announced that he would not release nearly 2,100 photographs depicting the alleged mistreatment of detainees in U.S. custody. Detainees are what we normally call ''prisoners of war,'' except they have a lower status than that under the Geneva Conventions. Many of these photographs were the subject of a Freedom of Information Act lawsuit filed by the ACLU, while others were discovered during internal Department of Defense investigations into detainee abuse.

Last fall, as part of that lawsuit, the Second Circuit Court of Appeals in New York ordered the release of many of those photographs. Instead of appealing that decision to the Supreme Court at that time, government lawyers agreed to release the images, as well as others that were part of the internal Department of Defense investigation.

Senator LINDSEY GRAHAM and I strongly objected to that decision and wrote a letter to the President explaining our position. We know that photographs such as the ones at issue in the ACLU lawsuit are, in fact, used by Islamist terrorists around the world to recruit followers and inspire attacks against American service men and women. In particular, there is compelling evidence that the images depicting detainee abuse at Abu Ghraib was a great spur to the insurgency in Iraq and made it harder for our troops to succeed safely in their mission there.

After consulting with his commanders on the ground, including General Petraeus and General Odierno, President Obama decided to reverse the decision of the government lawyers and fight the release of these photographs. Of course, I feel very strongly that he made not only a gutsy decision but the entirely right decision.

The President said, in making that decision:

> The publication of these photos would not add any additional benefit to our understanding of what was carried out in the past by a small number of individuals. In fact, the most direct consequence of releasing them, I believe, would be to further inflame anti-American opinion and to put our troops in great danger.

I strongly believe this decision was the right one by the President, acting as Commander in Chief. It will protect our troops in Iraq, Afghanistan, and elsewhere, and it will make it easier and safer for them to carry out the missions we have asked them to do. In fact—and this has become public in recent days, and I heard it earlier around the time the President made the decision—after learning that the release of these photographs was either possible or likely, before President Obama's decision to appeal, Iraq's Prime Minister Maliki said, according to these press reports, that ''Baghdad will burn'' if the photos are released, jeopardizing many of the remarkable security gains our military and civilian personnel have achieved in Iraq in recent years, putting our troops and personnel in danger.

To support the President's decision and establish a procedure to protect the release of similar photos in the future, for the exact same reason, Senator GRAHAM—my colleague and friend, who is now on the floor—and I introduced the Detainee Photographic Records Protection Act. That legislation would authorize the Secretary of Defense, after consultation with the Chairman of the Joint Chiefs, to certify to the President that the disclosure of photographs such as the ones at issue in the ACLU lawsuit would endanger the lives of U.S. citizens and members of the armed services deployed abroad. Essentially, our bill would codify the exact process that President Obama went through in arriving at his decision to fight the release of these photos.

Also, the language in the bill Senator GRAHAM and I introduced is clear, we believe, in that it would apply to the current ACLU lawsuit and block the release of these photographs, preventing the damage to American lives that would occur from that release.

The Senate unanimously supported the inclusion of a slightly modified version of the Detainee Photographic Records Protection Act in the supplemental appropriations bill for the wars in Iraq and Afghanistan. The Senate then approved the supplemental bill by a vote of 86 to 3 before we broke for the Memorial Day recess.

I rise today, along with my friend and colleague from South Carolina, to strongly encourage our colleagues in the Senate and in the House on the conference committee to include the modified version of the Detainee Photographic Records Protection Act in the conference report that is currently being negotiated.

We know there are those who are urging the conferees to delete this provision, or to water it down. That would be a terrible mistake. As President Obama well understands, nothing less than the safety and security and lives of our military service men and women is at stake—not to mention our nonmilitary personnel deployed abroad, not to mention Americans here at home and throughout the world, who may be at risk of terrorist attack by an individual recruited to Islamist extremism and terrorism, as a result of the anger spurred by the release of these photographs.

Bottom line: American lives are at stake. Senator GRAHAM and I feel so strongly about this. I will speak for myself here and then allow him, in a moment, to speak for himself. Any decision to eliminate this provision from the Supplemental Appropriations Act, or to water it down so it has no meaning, would lead me, certainly, much as I support what is in the Supplemental Appropriations Act, to oppose that act, because I think a failure to back up President Obama in this matter would, as I have said, compromise safety and, ultimately, the lives of a lot of Americans, particularly those in uniform.

Let me be clear. By including the Detainee Photographic Records Protection Act in the conference report for the supplemental appropriations bill, Congress will not be condoning the behavior depicted in the photographs. In fact, the exact opposite is true. Such behavior has already been prohibited by Congress in the Detainee Treatment Act and the Military Commissions Act as well as by executive orders issued by President Obama.

We expect that those responsible for the mistreatment of detainees will be held accountable. And that is exactly what the Department of Defense has done with the internal investigations that are finished or are underway.

But the bottom line is that the release of these photographs, and potentially others that may be discovered, will endanger the lives of our military personnel and every U.S. citizen. Every American, whether in a military uniform or not, will always be a target for al-Qaida or supporters of al-Qaida around the world.

The public release of these pictures, which we know will be spread on violent jihadist Web sites around the world immediately after they are published, will only energize the efforts of our enemies.

With the inclusion of the Detainee Photographic Records Protection Act in the supplemental appropriations bill conference report, Congress has the opportunity to support the President in

his primary mission as Commander in Chief—and, frankly, our number one mission as well—to protect the safety and security of the United States.

I strongly urge my colleagues to include our amendment—which had unanimous support in this Chamber—in the final conference report.

I yield the floor for my friend from South Carolina.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, I ask that my time be taken from the minority side when it comes to the 30-minute allocation.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I stand up in support of my friend and colleague from Connecticut, Senator LIEBERMAN. We were able to get passed a piece of legislation, through an amendment on the supplemental bill, that is directly on point regarding the pending court case, the subject matter of which is releasing additional detainee photos of past abuse.

The President has looked at these photos, and we all understand that it is more of the same—that the photos in question came from American troops' cameras, who were engaged in inappropriate activity. Disciplinary action has been taken where appropriate, and nothing new is to be learned. There is no new evidence of crimes by people who have yet to be dealt with.

It would, as my friend from Connecticut said, be voyeurism for the sake of voyeurism. The photos are offensive but no different than what we have already seen.

The reason we are here supporting this legislation and supporting the President is because, as Senator LIEBERMAN said, the consequences of releasing the photos are not a mystery. Americans are going to die.

I just got back from a trip to North Africa, Morocco, and Algeria, and I went to Greece. Every embassy very much was worried about what would happen to Americans if these photos were released. They were preparing to be, quite frankly, under siege.

As Senator LIEBERMAN indicated in the Miami Herald article, when Prime Minister Maliki in Iraq was informed these additional photos may be released, another tranche of photos coming out about detainee abuse, according to American military officials involved, he went pale in the face and uttered the phrase: ''Baghdad will burn.''

To those who are arguing for the release of the photos, I do not question their patriotism, I do not question their motives. I question their judgment. To our House and Senate colleagues who are in conference, please understand that Senator LIEBERMAN, myself, and I think the vast majority of our Senate colleagues—we did not take a recorded vote—believe this is a life-and-death matter. I believe that to release the photos would result in certain death and attack against American interests abroad, particularly against the diplomatic corps and our men and women serving abroad, and no higher purpose would be achieved here at home.

We made compromises in the legislation, but we did not destroy the intent of the legislation. And for the courts that may listen to try to discern the legislative intent, the intent by both authors was to make sure that the photos subject to the pending litigation were never released and Congress weighed in and agreed with the President's decision not to release those photos. We have changed the law, directly on point, to give legislative backing to the idea that these particular photographs, and those like these photographs, should not be released for a period of 3 years, and that is in our national security interests to do so.

I hope the courts will understand what we were trying to do and what we actually did.

To our House and Senate colleagues trying to find compromises on the supplemental legislation, please understand the purpose of this amendment, how important it is to the war effort, why the President is in support of the amendment. He is making a very responsible decision as Commander in Chief. I applaud him for doing that. This language needs to stay as is, intact. Again, it is a matter of life and death. And if for some reason it came out, it would be a disaster—because the court case is pending now—if it came out, please understand that there will be nothing done in the Senate for as long as I am here and Senator LIEBERMAN is here that would not have this amendment attached. You could not name a post office without this amendment. It is not going away.

I thank my colleague from Arkansas for her courtesies.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I thank my colleagues, Senator LIEBERMAN and Senator GRAHAM, for their thoughtful dedication to this issue and certainly looking for the right compromise and, more importantly, for their support of our troops, the men and women in uniform and those who serve this country all across the globe.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mrs. LINCOLN. Mr. President, I rise today to urge my colleagues to support and pass the legislation that is currently before the Senate, and that is the Family Smoking Prevention and Tobacco Control Act. The Family Smoking Prevention and Tobacco Control Act would implement important marketing restrictions on tobacco products and especially on the marketing practices that have been shown to increase tobacco use among our Nation's young people.

I, like so many of my colleagues, some of whom are experiencing at the same time I am, and some who have already been through it—I am just beginning the teen years with my children. My twin boys will be turning 13 in a couple of weeks. Let me tell you, the pressure on our young people across this country is very real and very tough.

What we are talking about in this bill—the authority—is absolutely critical. The tobacco industry has a long and disturbing history of marketing its products to appeal to young people. Last year, the National Cancer Institute published a comprehensive report on tobacco marketing that documented the powerful influence that tobacco marketing has on our children.

The report found that ''the evidence base indicates a casual relationship between tobacco advertising and increased levels of tobacco initiation and continued consumption'' and that even brief exposure to tobacco advertising influences kids' attitudes and perceptions about smoking, as well as their intentions to smoke.

The tobacco industry spends more than $13 billion per year to promote their products. Many of these marketing efforts directly reach our children. I want to share with folks an ad. Here is an ad that appeared in a convenience store in Delaware. Yes, it says what you think it says. It is a back-to-school special for Camel cigarettes—a back-to-school special.

I have to say, I so enjoyed when my kids were in elementary school and taking them to the store to get their crayons and their pencils and their notebooks. I think about now even in their teen years, we go and maybe we get a couple of new outfits, we talk about graph paper and what they are going to learn and all the exciting things. We prepare them for school, getting back to school. We are ending up school right now, but we will go through it in the fall again. It is unbelievable to me that we would run ads: back to school, get your bargain, here it is, a pack of cigarettes.

The industry also reaches our kids by saturating convenience stores, drugstores, and gas stations with tobacco advertisements, often placing ads and products near the candy and gum displays, or using other visual tricks such as bright colors and also through sponsorship of sports and entertainment events which are obviously what kids are interested in so often in the sports arena and other things with which they are involved.

Tobacco companies know that almost all new smokers begin as kids. They carefully design their products to make them more attractive to kids. For example, in this ad, flavors are used to make the smoke less harsh, more flavorful, and easier for kids to smoke.

We see in this ad, R. J. Reynolds has heavily marketed products with fruit

flavors such as Twista Lime, Warm Winter Toffee, and Winter Mocha Mint. Bright colorful ads for these cigarettes have appeared in magazines that are very popular with our children.

Who do we think candy and fruit-flavored products are for? Certainly they are not for the adults who have been smoking Marlboros or Camels all their lives. Survey evidence shows what we would expect: that these candy and fruit-flavored products are far more popular with our young people than among adults.

Targeting our children like this is absolutely unacceptable—unacceptable for the health of our children and for the well-being of our health care system. Here we are debating health care reform at a time when we realize that it is 18 percent of our GDP, and over the next 10 years health care is going to be one-fifth of our economy. To be advertising to our children to start something that we know is going to be detrimental to their health is absolutely unacceptable.

If we are ever going to address the No. 1 preventable cause of death in the United States, we need to provide the FDA with the authority to restrict tobacco companies marketing to our children.

While progress has been made in the last decade, youth tobacco use remains far too high. More than 20 percent of high school students in my home State of Arkansas smoke, and more than 18 percent of Arkansas's high school boys use smokeless tobacco. Each year, a staggering 13,100 Arkansas kids try cigarettes for the first time, and another 3,900 additional kids become new and regular daily smokers. Ninety percent of all adult smokers began smoking in their teen years. Tobacco companies know they have to attract kids to be able to survive. They know that if they get kids hooked, then they will have those adult smokers, and their marketing efforts have paid off.

According to recent studies by the U.S. Centers for Disease Control and Prevention, more than 80 percent of kids smoke the three most heavily advertised brands. While tobacco companies claim they do not market to our children, they are surely doing a good job of getting kids to use their products.

We simply must do more to protect our children from the tobacco company advertising and promotion. Effective regulation of the tobacco industry must provide FDA with the authority to restrict tobacco company marketing to children. That is one of the key goals of the Family Smoking Prevention and Tobacco Act. It imposes those specific marketing restrictions on tobacco products, restrictions on those forms of tobacco marketing I mentioned earlier that have been shown to increase youth tobacco use.

Even more importantly, the bill gives the FDA the flexibility to further restrict tobacco marketing so it can respond to the inevitable innovative attempts by the tobacco companies to get around specific restrictions. The restrictions on marketing included in the FDA tobacco bill are critical to any effort to prevent kids from starting to smoke and reduce the toll caused by tobacco.

Even though tobacco companies claim they have stopped intentionally marketing to kids, they continue their tradition of designing products that appeal explicitly to new users. The large majority—and we cannot ignore it—the large majority of those new users are our children.

I mentioned that my children are about to be teens, and as the mother of twins about to be teens, I know that parents want to do all they can to protect their children. Children are faced with so much in today's world, whether it is violence, whether it is issues such as this, whether it is peer pressure. Our children are faced with many things. We want to protect them. We want to help them learn to wear seatbelts and bicycle helmets. We want to teach them all that we can, the skills they need in life so they can remain safe and healthy.

I look at the restrictions we put on our children each day to make sure they are wearing those helmets, to make sure they are not on the computer too much, to make sure they are using the computer safely. All of these things we do as parents to ensure we are doing our job to keep our children as safe as we possibly can.

We also need to protect our children from tobacco companies—their advertising and promotion. The Family Smoking Prevention and Tobacco Control Act does this. It would end special protection for the tobacco industry, and it would be safeguarding our children and creating a healthier nation in the process.

Again, I encourage my colleagues to work with me and all of the other Senators working on this bill to move this bill forward on behalf of our children, certainly on behalf of the health care needs of this country but, most importantly, for parents who are trying so hard to ensure their kids will get off on the right foot and that they will learn to make wise decisions and will not be faced with these types of temptations and others to stray in a way that is going to be unhealthy for them and unhealthy for their future.

Mr. President, I ask unanimous consent to reserve the remaining majority time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. LINCOLN. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

NUCLEAR WEAPONS

Mr. McCAIN. Mr. President, today we celebrate the unveiling in the Capitol of a statue of Ronald Reagan, one of our country's great Presidents and a personal hero to me throughout my political life. While there are many aspects of President Reagan's legacy we might reflect on today, I would like to take the opportunity to discuss one of them—his dream of a world free of nuclear weapons.

Speaking before the Japanese Diet on November 11, 1983, President Ronald Reagan said:

> The only value in possessing nuclear weapons is to make sure they can't ever be used. I know I speak for people everywhere when I say our dream is to see the day when nuclear weapons will be banished from the face of the earth.

That is my dream, too, and it is one shared by many of our most distinguished national security practitioners. In 2007, former Secretaries of State Henry Kissinger and George Shultz, along with former Secretary of Defense William Perry and Senator Sam Nunn, authored an article entitled ''A World Free of Nuclear Weapons,'' in which they laid out their vision of the globe free of the most dangerous weapons ever known.

This is a distant and difficult goal. We must proceed toward it prudently and pragmatically and with a focused concern for our security and the security of allies that depend on us. But the Cold War ended almost 20 years ago, and the time has come to take further measures to reduce dramatically the number of nuclear weapons in the world's arsenals. In so doing, the United States can—and indeed must—show the kind of leadership the world expects from us, in the tradition of American Presidents who worked to reduce the nuclear threat to mankind.

Our highest priority must be to reduce the danger that nuclear weapons will ever be used. Such weapons, while still important to deter an attack with weapons of mass destruction against us and our allies, represent the most abhorrent and indiscriminate form of warfare known to man. We do, quite literally, possess the means to destroy all mankind. We must seek to do all we can to ensure that nuclear weapons will never again be used. As the administration renews its nuclear weapons posture, it should, I believe, seek to reduce the size of our nuclear arsenal to the lowest number possible, consistent with our security requirements and global commitments. This means a move, as rapidly as possible, to a significantly smaller force. As we take such steps, it will be crucial to continue to deploy a safe and reliable nuclear deterrent, robust missile defenses, and superior conventional forces capable of defending the United States and our allies.

Today, we find ourselves at a nuclear crossroads. As rogue nations, including North Korea and Iran, push the nuclear envelope, the perils of a world awash in nuclear weapons is clear. Yet we should also consider the more hopeful alternative—a world in which there are far

fewer such weapons than there are today and in which proliferation, instability, and nuclear terrorism are far less likely.

In achieving this world, Ronald Reagan's dream will be more important than ever before. As Secretaries Kissinger and Shultz wrote with their colleagues in 2008:

Progress must be facilitated by a clear statement of our ultimate goal. Indeed, this is the only way to build the kind of international trust and broad cooperation that will be required to effectively address today's threats. Without the vision of moving towards zero, we will not find the essential cooperation required to stop our downward spiral.

Make no mistake, we must arrest the downward spiral. North Korea's recent nuclear test is just the latest provocative demonstration of the troubling reality the world faces today. Together with Iran's ongoing commitment to nuclear development, we face real dangers in the proliferation of the world's most terrible weapons. The United States must lead the world not only in reducing the size of existing nuclear arsenals but also in reversing the course of nuclear proliferation. This requires a tough-minded approach to both Iran and North Korea, both of which have gotten away with too much for far too long.

We must also help ensure that other potential nuclear programs do not get off the ground. Last week, former National Security Adviser Brent Scowcroft joined two colleagues in calling on the President to promote the international ban on the spread of fissile materials that can be used in the production of nuclear weapons. I agree and urge the President to do so.

But we must also strengthen enforcement. We must insist that countries that receive the benefits of peaceful nuclear cooperation return or dismantle what they have received if, at any point, they violate or withdraw from the Non-Proliferation Treaty. Leading up to the 2010 Non-Proliferation Treaty Review conference, we should lay the groundwork for building an international consensus to ensure that the International Atomic Energy Agency has the tools to be a meaningful agent for achieving the dream of a nuclear weapon-free world. We should work with allies and partners to interdict the spread of nuclear weapons and materials—including any borne on vessels traveling to and from North Korea—under the Proliferation Security Initiative.

As a nation, we have a number of important decisions in the coming months, including those related to a follow-on to the Strategic Arms Reduction Treaty with Russia, the administration's planned resubmission of the Comprehensive Test Ban Treaty for ratification, and the need for a robust missile defense shield.

As we move ahead with these and other decisions, let us keep in mind the dream of a nuclear-free world, enunciated so eloquently by our 40th President. As Secretary Shultz has written, this was a dream President Reagan pursued with great patience and depth of conviction. We would be wise to follow his lead.

Mr. President, I ask unanimous consent to have printed in the RECORD two articles by George Shultz, William Perry, Henry Kissinger, and Sam Nunn, one of January 4, 2007, and the other of January 15, 2008.

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

[From The Wall Street Journal, Jan. 4, 2007]

A WORLD FREE OF NUCLEAR WEAPONS

(By George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn)

Nuclear weapons today present tremendous dangers, but also an historic opportunity. U.S. leadership will be required to take the world to the next stage—to a solid consensus for reversing reliance on nuclear weapons globally as a vital contribution to preventing their proliferation into potentially dangerous hands, and ultimately ending them as a threat to the world.

Nuclear weapons were essential to maintaining international security during the Cold War because they were a means of deterrence. The end of the Cold War made the doctrine of mutual Soviet-American deterrence obsolete. Deterrence continues to be a relevant consideration for many states with regard to threats from other states. But reliance on nuclear weapons for this purpose is becoming increasingly hazardous and decreasingly effective.

North Korea's recent nuclear test and Iran's refusal to stop its program to enrich uranium—potentially to weapons grade—highlight the fact that the world is now on the precipice of a new and dangerous nuclear era. Most alarmingly, the likelihood that non-state terrorists will get their hands on nuclear weaponry is increasing. In today's war waged on world order by terrorists, nuclear weapons are the ultimate means of mass devastation. And non-state terrorist groups with nuclear weapons are conceptually outside the bounds of a deterrent strategy and present difficult new security challenges.

Apart from the terrorist threat, unless urgent new actions are taken, the U.S. soon will be compelled to enter a new nuclear era that will be more precarious, psychologically disorienting, and economically even more costly than was Cold War deterrence. It is far from certain that we can successfully replicate the old Soviet-American ''mutually assured destruction'' with an increasing number of potential nuclear enemies worldwide without dramatically increasing the risk that nuclear weapons will be used. New nuclear states do not have the benefit of years of step-by-step safeguards put in effect during the Cold War to prevent nuclear accidents, misjudgments or unauthorized launches. The United States and the Soviet Union learned from mistakes that were less than fatal. Both countries were diligent to ensure that no nuclear weapon was used during the Cold War by design or by accident. Will new nuclear nations and the world be as fortunate in the next 50 years as we were during the Cold War?

* * * * *

Leaders addressed this issue in earlier times. In his ''Atoms for Peace'' address to the United Nations in 1953, Dwight D. Eisenhower pledged America's ''determination to help solve the fearful atomic dilemma—to devote its entire heart and mind to find the way by which the miraculous inventiveness of man shall not be dedicated to his death, but consecrated to his life.'' John F. Kennedy, seeking to break the logjam on nuclear disarmament, said, ''The world was not meant to be a prison in which man awaits his execution.''

Rajiv Gandhi, addressing the U.N. General Assembly on June 9, 1988, appealed, ''Nuclear war will not mean the death of a hundred million people. Or even a thousand million. It will mean the extinction of four thousand million: the end of life as we know it on our planet earth. We come to the United Nations to seek your support. We seek your support to put a stop to this madness.''

Ronald Reagan called for the abolishment of ''all nuclear weapons,'' which he considered to be ''totally irrational, totally inhumane, good for nothing but killing, possibly destructive of life on earth and civilization.'' Mikhail Gorbachev shared this vision, which had also been expressed by previous American presidents.

Although Reagan and Mr. Gorbachev failed at Reykjavik to achieve the goal of an agreement to get rid of all nuclear weapons, they did succeed in turning the arms race on its head. They initiated steps leading to significant reductions in deployed long- and intermediate-range nuclear forces, including the elimination of an entire class of threatening missiles.

What will it take to rekindle the vision shared by Reagan and Mr. Gorbachev? Can a world-wide consensus be forged that defines a series of practical steps leading to major reductions in the nuclear danger? There is an urgent need to address the challenge posed by these two questions.

The Non-Proliferation Treaty (NPT) envisioned the end of all nuclear weapons. It provides (a) that states that did not possess nuclear weapons as of 1967 agree not to obtain them, and (b) that states that do possess them agree to divest themselves of these weapons over time. Every president of both parties since Richard Nixon has reaffirmed these treaty obligations, but non-nuclear weapon states have grown increasingly skeptical of the sincerity of the nuclear powers.

Strong non-proliferation efforts are under way. The Cooperative Threat Reduction program, the Global Threat Reduction Initiative, the Proliferation Security Initiative and the Additional Protocols are innovative approaches that provide powerful new tools for detecting activities that violate the NPT and endanger world security. They deserve full implementation. The negotiations on proliferation of nuclear weapons by North Korea and Iran, involving all the permanent members of the Security Council plus Germany and Japan, are crucially important. They must be energetically pursued.

But by themselves, none of these steps are adequate to the danger. Reagan and General Secretary Gorbachev aspired to accomplish more at their meeting in Reykjavik 20 years ago—the elimination of nuclear weapons altogether. Their vision shocked experts in the doctrine of nuclear deterrence, but galvanized the hopes of people around the world. The leaders of the two countries with the largest arsenals of nuclear weapons discussed the abolition of their most powerful weapons.

* * * * *

What should be done? Can the promise of the NPT and the possibilities envisioned at Reykjavik be brought to fruition? We believe that a major effort should be launched by the United States to produce a positive answer through concrete stages.

First and foremost is intensive work with leaders of the countries in possession of nuclear weapons to turn the goal of a world

without nuclear weapons into a joint enterprise. Such a joint enterprise, by involving changes in the disposition of the states possessing nuclear weapons, would lend additional weight to efforts already under way to avoid the emergence of a nuclear-armed North Korea and Iran.

The program on which agreements should be sought would constitute a series of agreed and urgent steps that would lay the groundwork for a world free of the nuclear threat. Steps would include:

Changing the Cold War posture of deployed nuclear weapons to increase warning time and thereby reduce the danger of an accidental or unauthorized use of a nuclear weapon.

Continuing to reduce substantially the size of nuclear forces in all states that possess them.

Eliminating short-range nuclear weapons designed to be forward-deployed. Initiating a bipartisan process with the Senate, including understandings to increase confidence and provide for periodic review, to achieve ratification of the Comprehensive Test Ban Treaty, taking advantage of recent technical advances, and working to secure ratification by other key states.

Providing the highest possible standards of security for all stocks of weapons, weapons-usable plutonium, and highly enriched uranium everywhere in the world.

Getting control of the uranium enrichment process, combined with the guarantee that uranium for nuclear power reactors could be obtained at a reasonable price, first from the Nuclear Suppliers Group and then from the International Atomic Energy Agency (IAEA) or other controlled international reserves. It will also be necessary to deal with proliferation issues presented by spent fuel from reactors producing electricity.

Halting the production of fissile material for weapons globally; phasing out the use of highly enriched uranium in civil commerce and removing weapons-usable uranium from research facilities around the world and rendering the materials safe.

Redoubling our efforts to resolve regional confrontations and conflicts that give rise to new nuclear powers.

Achieving the goal of a world free of nuclear weapons will also require effective measures to impede or counter any nuclear-related conduct that is potentially threatening to the security of any state or peoples.

Reassertion of the vision of a world free of nuclear weapons and practical measures toward achieving that goal would be, and would be perceived as, a bold initiative consistent with America's moral heritage. The effort could have a profoundly positive impact on the security of future generations. Without the bold vision, the actions will not be perceived as fair or urgent. Without the actions, the vision will not be perceived as realistic or possible.

We endorse setting the goal of a world free of nuclear weapons and working energetically on the actions required to achieve that goal, beginning with the measures outlined above.

[From the Wall Street Journal Online, Jan. 15, 2008]

TOWARD A NUCLEAR-FREE WORLD

(By George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn)

The accelerating spread of nuclear weapons, nuclear know-how and nuclear material has brought us to a nuclear tipping point. We face a very real possibility that the deadliest weapons ever invented could fall into dangerous hands.

The steps we are taking now to address these threats are not adequate to the danger. With nuclear weapons more widely available, deterrence is decreasingly effective and increasingly hazardous.

One year ago, in an essay in this paper, we called for a global effort to reduce reliance on nuclear weapons, to prevent their spread into potentially dangerous hands, and ultimately to end them as a threat to the world. The interest, momentum and growing political space that has been created to address these issues over the past year has been extraordinary, with strong positive responses from people all over the world.

Mikhail Gorbachev wrote in January 2007 that, as someone who signed the first treaties on real reductions in nuclear weapons, he thought it his duty to support our call for urgent action: ''It is becoming clearer that nuclear weapons are no longer a means of achieving security; in fact, with every passing year they make our security more precarious.''

In June, the United Kingdom's foreign secretary, Margaret Beckett, signaled her government's support, stating: ''What we need is both a vision—a scenario for a world free of nuclear weapons—and action—progressive steps to reduce warhead numbers and to limit the role of nuclear weapons in security policy. These two strands are separate but they are mutually reinforcing. Both are necessary, but at the moment too weak.''

We have also been encouraged by additional indications of general support for this project from other former U.S. officials with extensive experience as secretaries of state and defense and national security advisors. These include: Madeleine Albright, Richard V. Allen, James A. Baker III, Samuel R. Berger, Zbigniew Brzezinski, Frank Carlucci, Warren Christopher, William Cohen, Lawrence Eagleburger, Melvin Laird, Anthony Lake, Robert McFarlane, Robert McNamara and Colin Powell.

Inspired by this reaction, in October 2007, we convened veterans of the past six administrations, along with a number of other experts on nuclear issues, for a conference at Stanford University's Hoover Institution. There was general agreement about the importance of the vision of a world free of nuclear weapons as a guide to our thinking about nuclear policies, and about the importance of a series of steps that will pull us back from the nuclear precipice.

The U.S. and Russia, which possess close to 95% of the world's nuclear warheads, have a special responsibility, obligation and experience to demonstrate leadership, but other nations must join.

Some steps are already in progress, such as the ongoing reductions in the number of nuclear warheads deployed on long-range, or strategic, bombers and missiles. Other near-term steps that the U.S. and Russia could take, beginning in 2008, can in and of themselves dramatically reduce nuclear dangers. They include:

Extend key provisions of the Strategic Arms Reduction Treaty of 1991. Much has been learned about the vital task of verification from the application of these provisions. The treaty is scheduled to expire on Dec. 5, 2009. The key provisions of this treaty, including their essential monitoring and verification requirements, should be extended, and the further reductions agreed upon in the 2002 Moscow Treaty on Strategic Offensive Reductions should be completed as soon as possible.

Take steps to increase the warning and decision times for the launch of all nuclear-armed ballistic missiles, thereby reducing risks of accidental or unauthorized attacks. Reliance on launch procedures that deny command authorities sufficient time to make careful and prudent decisions is unnecessary and dangerous in today's environment. Furthermore, developments in cyber-warfare pose new threats that could have disastrous consequences if the command-and-control systems of any nuclear-weapons state were compromised by mischievous or hostile hackers. Further steps could be implemented in time, as trust grows in the U.S.-Russian relationship, by introducing mutually agreed and verified physical barriers in the command-and-control sequence.

Discard any existing operational plans for massive attacks that still remain from the Cold War days. Interpreting deterrence as requiring mutual assured destruction (MAD) is an obsolete policy in today's world, with the U.S. and Russia formally having declared that they are allied against terrorism and no longer perceive each other as enemies.

Undertake negotiations toward developing cooperative multilateral ballistic-missile defense and early warning systems, as proposed by Presidents Bush and Putin at their 2002 Moscow summit meeting. This should include agreement on plans for countering missile threats to Europe, Russia and the U.S. from the Middle East, along with completion of work to establish the Joint Data Exchange Center in Moscow. Reducing tensions over missile defense will enhance the possibility of progress on the broader range of nuclear issues so essential to our security. Failure to do so will make broader nuclear cooperation much more difficult.

Dramatically accelerate work to provide the highest possible standards of security for nuclear weapons, as well as for nuclear materials everywhere in the world, to prevent terrorists from acquiring a nuclear bomb. There are nuclear weapons materials in more than 40 countries around the world, and there are recent reports of alleged attempts to smuggle nuclear material in Eastern Europe and the Caucasus. The U.S., Russia and other nations that have worked with the Nunn-Lugar programs, in cooperation with the International Atomic Energy Agency (IAEA), should play a key role in helping to implement United Nations Security Council Resolution 1540 relating to improving nuclear security—by offering teams to assist jointly any nation in meeting its obligations under this resolution to provide for appropriate, effective security of these materials.

As Gov. Arnold Schwarzenegger put it in his address at our October conference, ''Mistakes are made in every other human endeavor. Why should nuclear weapons be exempt?'' To underline the governor's point, on Aug. 29–30, 2007, six cruise missiles armed with nuclear warheads were loaded on a U.S. Air Force plane, flown across the country and unloaded. For 36 hours, no one knew where the warheads were, or even that they were missing.

Start a dialogue, including within NATO and with Russia, on consolidating the nuclear weapons designed for forward deployment to enhance their security, and as a first step toward careful accounting for them and their eventual elimination. These smaller and more portable nuclear weapons are, given their characteristics, inviting acquisition targets for terrorist groups.

Strengthen the means of monitoring compliance with the nuclear Non-Proliferation Treaty (NPT) as a counter to the global spread of advanced technologies. More progress in this direction is urgent, and could be achieved through requiring the application of monitoring provisions (Additional Protocols) designed by the IAEA to all signatories of the NPT.

Adopt a process for bringing the Comprehensive Test Ban Treaty (CTBT) into effect, which would strengthen the NPT and aid international monitoring of nuclear activities. This calls for a bipartisan review, first, to examine improvements over the past

decade of the international monitoring system to identify and locate explosive underground nuclear tests in violation of the CTBT; and, second, to assess the technical progress made over the past decade in maintaining high confidence in the reliability, safety and effectiveness of the nation's nuclear arsenal under a test ban. The Comprehensive Test Ban Treaty Organization is putting in place new monitoring stations to detect nuclear tests—an effort the U.S should urgently support even prior to ratification.

In parallel with these steps by the U.S. and Russia, the dialogue must broaden on an international scale, including non-nuclear as well as nuclear nations.

Key subjects include turning the goal of a world without nuclear weapons into a practical enterprise among nations, by applying the necessary political will to build an international consensus on priorities. The government of Norway will sponsor a conference in February that will contribute to this process.

Another subject: Developing an international system to manage the risks of the nuclear fuel cycle. With the growing global interest in developing nuclear energy and the potential proliferation of nuclear enrichment capabilities, an international program should be created by advanced nuclear countries and a strengthened IAEA. The purpose should be to provide for reliable supplies of nuclear fuel, reserves of enriched uranium, infrastructure assistance, financing, and spent fuel management—to ensure that the means to make nuclear weapons materials isn't spread around the globe.

There should also be an agreement to undertake further substantial reductions in U.S. and Russian nuclear forces beyond those recorded in the U.S.-Russia Strategic Offensive Reductions Treaty. As the reductions proceed, other nuclear nations would become involved.

President Reagan's maxim of ''trust but verify'' should be reaffirmed. Completing a verifiable treaty to prevent nations from producing nuclear materials for weapons would contribute to a more rigorous system of accounting and security for nuclear materials.

We should also build an international consensus on ways to deter or, when required, to respond to, secret attempts by countries to break out of agreements.

Progress must be facilitated by a clear statement of our ultimate goal. Indeed, this is the only way to build the kind of international trust and broad cooperation that will be required to effectively address today's threats. Without the vision of moving toward zero, we will not find the essential cooperation required to stop our downward spiral.

In some respects, the goal of a world free of nuclear weapons is like the top of a very tall mountain. From the vantage point of our troubled world today, we can't even see the top of the mountain, and it is tempting and easy to say we can't get there from here. But the risks from continuing to go down the mountain or standing pat are too real to ignore. We must chart a course to higher ground where the mountaintop becomes more visible.

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

The PRESIDING OFFICER (Mr. BENNET). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ENERGY

Mr. INHOFE. Mr. President, as the ranking member and previously the chairman of the Environment and Public Works Committee, I understand we are actually the committee of jurisdiction over a lot of the energy concerns we have in this country. It is a real crisis. I know there are other things happening now that people are focused on, but this is certainly something the Presiding Officer is aware of, given the committees on which he is serving. When it comes to developing a comprehensive energy policy in the United States, we are faced with a stark contrast. We can develop and produce domestic supplies of reliable and affordable energy that will help jump-start our economy, create high-paying jobs, and bring down energy costs on consumers, all while making our Nation less dependent on foreign energy supplies, or we can implement policies designed to drive up the costs of energy on American families, shift jobs overseas, and deepen this recession.

For the sake of our economy, our energy security, and environmental goals, I choose the ''all of the above'' approach.

I sit and listen to people who say we want to do something about our dependence on foreign countries for our ability to run this machine called America. At the same time, they are against coal, they are against oil, they are against gas, they are against nuclear. Those are the things that are there, the technology is there and we can use them. But they are looking somehow into the future and saying there has to be some green solution. I am the first one to say, when the technology is there, I am going to be right there with them. It is not there yet.

Over the next several weeks, I am planning to speak on the floor several times about the benefits of nuclear energy and my proposals for reinvigorating that industry. Today, I will discuss how nuclear will help put Americans back to work and move our economy forward as well as focus on the regulatory challenges facing new nuclear construction and what I plan to do to help nuclear energy play an increasing role in meeting our energy needs.

One of the problems we have had is we have had several colleagues coming down, talking about why nuclear is good and why we should do it, but they have not addressed the barriers there and the bureaucratic problems we have right now.

The need to grow our domestic energy supply is clear. The Energy Information Administration projects that our demand for electricity will increase 26 percent by the year 2030, requiring 260 gigawatts of new electricity generation. Every source will need to grow to produce more energy to meet that demand. Curtis Frasier, the executive vice president of Shell America Gas & Power, was recently quoted in Greenwire, warning that the recession could be masking a global energy shortage.

He said:

When the economy returns, we're going to be back to the energy crisis.

He said:

Nothing has been done to solve that crisis. We've got a huge mountain to climb.

This is a very significant chart. It shows electricity growth is linked to the American economy. Mr. Frasier voices real concern. As you can see, this graph shows the total energy and shows the GDP. The GDP is the blue line going up and the electricity use and the total energy are lines that go right along with it. In fact, when it flattens out, such as it did in 1990 for about a 3-year period, all three flattened out at the same time. The same thing is true up here when it flattened out during 2005. So we see there is that linkage there, and it is a very real one.

This is not your father's nuclear industry. Today's nuclear industry has demonstrated marked improvement in safety, reliability, and costs since the late 1980s. The industry also has proved that safety and reliable performance are closely linked.

We have a chart here, ''Improved Safety Yields Better Performance.'' If you look at the two lines, we are talking about the line that would be the capacity factor, and this line, the red line, would be significant events. Significant events are things that are problems. We all remember significant events in nuclear energy. The press always highlights these and tries to make us believe this is a dangerous form when it is, in fact, not dangerous. The significant events have been going down. It is hard to see there. It goes from 1988 all up to the present year and it goes down as the capacity factor is going up. This is an indicator of the results, that the industry has dramatically increased its capacity by 45 percent and has operated roughly 90 percent of the time in the last 5 years. This improved performance is demonstrating that nuclear is both safe and reliable. It has made nuclear energy more affordable.

We have another chart that is the ''U.S. Electricity Production Costs.'' Nuclear energy generates nearly 20 percent of the energy that powers our economy and has the lowest production cost compared to other sources. You can see by the chart, not only has nuclear energy had the lowest production costs for the last 7 years, its production cost is very stable and not vulnerable to the price fluctuations here shown by the other resources.

These lines here represent nuclear and coal. They go along pretty much the same. However, if you look at fluctuations in gas and in petroleum, you can see they are moving. This is something that is very significant.

I might mention, even though we only are using 22 percent of our energy

coming from nuclear, countries such as France and other countries are doing 80 percent. That is what we are going to get to. We are going to try to do something to increase our nuclear capacity. Not only will nuclear energy give a boost to our economy by providing safe, reliable, and affordable electricity, it will also produce new jobs. Mark Ayers, the President of the AFL–CIO Building and Construction Trades Department, has described his union's relationship with the industry. He said—and this is the unions I am quoting now:

We will be there with you to help pursue the adoption of a diverse American energy portfolio that places a high priority on the reemergence of nuclear power.

Why is Mr. Ayers so supportive of nuclear energy? He knows the number of high-quality jobs that just one new nuclear plant would provide. It would be 1,400 to 1,800 jobs during construction for each new plant; 400 to 700 permanent jobs when the plant begins operating, with salaries 36 percent higher than the local average. It would provide 400 to 700 additional jobs providing goods and services.

It is a huge boost for the economy and for the labor unions, so we have their strong support. Clearly, increased development of nuclear energy would strongly benefit our economy by providing energy and putting Americans back to work. However, right now investors in new nuclear plants face political and regulatory risks. The capital investors still remember the cost overruns experienced during the construction of our existing fleet of plants, caused in part by a cumbersome licensing process. The licensing process has been revised but has, as yet, to be fully tested. The risk of licensing delays may be lower, but the potential consequences of regulatory delays remain significant.

This chart shows the locations of the potential new nuclear plants. On September 25 of 2007, the Nuclear Regulatory Commission filed an application to build and operate a plant near Bay City, TX. That was the first application for a new plant that the NRC has received in 34 years. Since then, 16 more applications have been filed for a total of 26 new nuclear reactors.

Let's stop and think about that. We are talking about 2007.

I ask unanimous consent I be given an additional 5 minutes of time.

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

Mr. INHOFE. That is, since 2007, we have been able to do that. We did nothing for 34 years, and now we have 16 more applications on file which would be for 26 nuclear reactors. Some applications cover more than one reactor. These efforts to develop new plants are critical to meeting our energy needs, and I am committed to doing what I can to help build these new plants.

One of the most significant factors contributing to this revitalization is the NRC's transformation over the last 12 years. In 1997, Republicans were the majority. I was the chairman of the Clean Air Subcommittee of the Environment and Public Works Committee, which had jurisdiction over nuclear energy. At that time, we had not had an oversight hearing in some 12 years, and I tell you, you cannot let a bureaucracy continue to operate without any oversight, so we started having oversight hearings. We gave targets that they had to do certain things by certain dates. As a result of that, they are now coming along and doing a good job.

This chart shows where the 16 applications are, so people can find their own State and see what it would do to the economy of their own State. Unfortunately, we don't have any in my State of Oklahoma. I wish we did and perhaps we will be able to in the future.

The next chart is the ''Applications Under Review By NRC.'' It is a little bit complicated, so I am not going to be using this chart. If anyone wants to know where the status is and what the companies are that have made the applications, certainly we have that information for them.

Despite significant efforts on the part of the NRC staff, this process has not unfolded as smoothly as it should. Schedules are not as detailed or transparent as they should be, and detailed schedules are a critical tool for managing such a large and complex process and to ensure it is thorough, efficient, and timely. Schedules are publicly available for safety evaluation reports and environmental impact statements but not for hearings or Commission consideration, which will ultimately determine when the license is actually issued.

At this time, there appears to be no information readily available regarding any of the actual dates that any of the new plant licenses will be issued. The absence of any specific schedules for issuing licenses seems to indicate a failure of the agency to properly plan and schedule its work, a failure to share such information, or both. This situation is troubling. How could a utility prepare for construction without a firm date when it can expect—be expected to receive their license?

These are huge investments we are talking about. There has to be predictability. How can an investor judge the risk of a project without being able to evaluate progress in the regulatory process? Both licensees and their potential investors would greatly benefit from the increased certainty.

I commend the Commission and staff for the level of effort that is reflected in existing schedules. However, I believe the Commission should pursue these remaining steps. It should require hearing boards to produce and to follow detailed schedules that reflect lessons learned during the review of the LES National Enrichment Facility in New Mexico. We would consider the recommendations we have there.

I firmly believe proper planning, detailed schedules, and the Commission engagement will foster more thorough, consistent, organized, and efficient efforts to issue new plants licenses.

I take my oversight role as the ranking member of the EPW Committee very seriously and will work to ensure that the NRC continues to build on the improvements made since I initiated oversight back in 1997. I intend to increase my focus on this and other licensing issues, including monthly progress reports on licensing activity and regular meetings with Chairman Jaczko. In our committee, we have Democrats and Republicans very supportive of this effort to expand our capability in nuclear energy.

My hope is to see that the NRC issues the first new license before the end of 2011 and eight more by 2013. Given construction estimates of 4 to 5 years, the first 2 reactors could be operational in 2016, with 14 more potentially in operation by the year 2018. Sixteen new reactors would be a good start to rejuvenating an industry that has been stagnant for 34 years. I believe these reactors can revitalize our economy and meet the growing demand for energy. I also agree with labor unions that are excited about the prospect of new jobs and what it will do for low-cost energy for America.

I look forward to the future. I plan to host a roundtable to highlight progress toward advanced design and to stay on board. Back in 1997, we hadn't had an oversight hearing in 12 years at that time, and we will make sure we don't repeat that mistake.

A lot has been done to prepare for nuclear construction, but a lot remains to be done. Whether the industry will succeed in building new plants will greatly depend upon President Obama's leadership. I am disappointed that the administration seems to send mixed signals regarding its support for nuclear energy. Last month in Prague, the President said:

We must harness the power of nuclear energy on behalf of our efforts to combat climate change and to advance peace and opportunity for all people.

Yet just this month his budget contained language terminating the Yucca Mountain program before the Nuclear Regulatory Commission could even do its review—30 years of research and $7.7 billion down the drain, purely for political reasons. It is unthinkable that could happen, but it has happened.

In addition, President Obama recently appointed, as Chairman of the Federal Energy Regulatory Commission, Joe Wellinghoff, who stated his belief that we won't need any more nuclear plants ever. This isn't right, and it is totally inconsistent.

These mixed messages will soon become clear. President Obama has recently designated a new Chairman of the NRC and is expected to propose two additional nominees soon. Time will tell whether the NRC is an effective and efficient regulator.

In his Senate confirmation hearing, DOE Secretary Steven Chu said:

Nuclear power . . . is going to be an important part of the energy mix. It is 20 percent of our electricity generated today, but it is 70 percent of the carbon-free portion of electricity today. And it is baseload. So I think it is very important that we push ahead.

For that reason and every other reason, for the economy and for the environment and for our ability to provide our own energy in this country and lower our reliance upon foreign countries, I believe we need to move forward rapidly. We intend to do so with nuclear energy.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. I ask unanimous consent that all time in morning business be yielded back.

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

Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 1256, which the clerk will report.

The legislative clerk read as follows:

A motion to proceed to the bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I rise to speak in support of the Family Smoking Prevention and Tobacco Control Act, a bill that will finally give the Food and Drug Administration the authority to regulate tobacco products.

This was the first bill for which I had the honor of voting in my new role as a member of the Health, Education, Labor, and Pensions Committee—the newest member—but it is the result of years of tireless effort by members of this committee and by their staffs. I especially commend its primary sponsor, our chairman, TED KENNEDY, who has long been committed to protecting our Nation's children from the dangers of tobacco and nicotine addiction, and Senator DODD, who is so ably leading that fight in his stead today. I thank them and our colleagues in the House for the efforts that have brought us this bill before the Senate today.

This legislation is long overdue and very much needed. Just last month, a three-judge panel of the U.S. Court of Appeals for the DC Circuit unanimously upheld the decision of the district court that the tobacco companies had engaged in racketeering. The court found that for at least 50 years, the companies have knowingly kept information from the American public about the health and safety risks of their products and that they continue to do so today. These companies have worked together to deceive the American public and cannot be trusted to regulate themselves.

As generations of customers died from illnesses related to smoking, the tobacco companies have kept their profits up by marketing their products to children through cartoon advertisements, candy flavorings, and sports sponsorships. Public health advocates, lawmakers, prosecutors, and family members who have lost loved ones to the ravages of smoking have attempted to take on the tobacco companies, but they confronted a coordinated effort backed by billions of dollars to protect this deadly business.

In the next year, 400,000 Americans will die from smoking-related illness and more than 450,000 children will become daily smokers. Every day, 3,500 kids pick up a cigarette for the first time.

Even those who do not smoke still pay a price—$96 billion each year in public and private health expenditures to treat illness caused by smoking. The companies will, of course, point to concessions and payouts over the years, but it is clearly not enough. As we work to reform our broken health care system, we cannot ignore this public health menace.

That is why it is vital that we finally pass this legislation. The FDA is the agency most prepared to take on the regulatory, scientific, and public health challenges created by tobacco products. This carefully crafted compromise bill gives FDA the tools necessary to take on the tobacco companies in three major areas: advertising and sales to young people, the composition of cigarettes, and representations of health effects of tobacco products.

We have wasted too much time fighting the same battles over the same issues for years. This legislation finally enacts tough but constitutionally sound regulations on advertising targeted toward young people. It puts a warning label on every pack of cigarettes that covers 50 percent of each side of the package. The companies will finally have to disclose the content of tobacco products, and FDA will have the authority to regulate hazardous ingredients. Tobacco product manufacturers will no longer be able to make unsubstantiated claims about their products—FDA will have to verify any health claim based on its impact on the population as a whole in order to protect tobacco users and potential tobacco users. This will be paid for by the tobacco product manufacturers and importers themselves, taking no resources away from the FDA's other vital missions.

So many of us have been touched by the ravages of smoking and lost family and friends. Yet we still see too many young people become addicted to cigarettes or pick up the newest smokeless tobacco product without knowing the real risks to their health. We cannot leave this to court settlements or to the industry itself. We have been waiting for 50 years, and the evidence shows we are still being deceived. Regulation is long past due. This bipartisan bill, with the support of over 1,000 public health, faith, education, and children's organizations, is the best opportunity to help protect our children from the menace of tobacco. We have delayed long enough.

I again thank Chairman KENNEDY, Senator DODD, and my colleagues on the HELP Committee for their hard work bringing this bill to the floor and getting us closer than any other point in the long history of this legislation to finally seeing the effective regulation of tobacco products.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CRAIG THOMAS RURAL HOSPITAL AND PROVIDER EQUITY ACT

Mr. ROBERTS. Mr. President, I rise today to again pay tribute to one of the Senate's finest: our colleague, the late Craig Thomas from Wyoming. Two years ago this week, the Senate lost a steady hand and a man who did much for his State of Wyoming. Craig was dependable in the finest sense of the word. He defined the word ''dependable.'' He was the epitome of a workhorse, not a show horse.

On a personal note, for many Senators, why, Craig was not only a colleague but a dear friend. I will cherish that always. Craig was also a fellow marine. In this case, Semper Fidelis—always faithful—is most appropriate. If anyone faced trouble in their life, the one person you would want by your side would be Craig Thomas.

This is why I am proud and honored again to join with my colleagues KENT CONRAD and TOM HARKIN, and with the new Senator from Wyoming, JOHN BARRASSO, and the distinguished Senator from Utah, ORRIN HATCH, to introduce the Senate Rural Health Caucus bill in honor of Senator Thomas. The bill we are introducing is the Craig Thomas Rural Hospital and Provider Equity Act, with emphasis on the ''equity.''

The people of Wyoming and all of Craig's colleagues knew he fought for rural America and always put the needs of his State above all else. On the health care front, why, Craig was truly

a champion for strengthening our rural health care delivery system and providing relief to our hospitals and other providers in our rural areas.

He served for 10 years as the cochair of the Senate Rural Health Caucus. He actually took over the reins as cochair after my fellow Kansan, Bob Dole, retired from the Senate. And as I know personally, it is hard to follow in the footsteps of Senator Dole—for that matter, Senator Thomas.

However, Craig did this with great ease and great pride. His steady leadership put the caucus on the map, and he made great strides in showing all of our colleagues the true needs of rural health care. We will truly miss him during the current health care debate. I and the members of the caucus miss him and his leadership greatly.

One of the biggest accomplishments for Craig in the Rural Health Caucus was passage of the Medicare Modernization Act in 2003, which provided a big boost to our rural hospitals and providers. There was recognition and support from our colleagues from all of our geographical areas, large and small, for including these badly needed rural health provisions.

These provisions included in the Medicare bill provided much needed relief to rural health providers, enhanced beneficiary access to quality health care services, and improved provider payments in our rural areas. So many times those payments simply do not even come close to the costs of the provider and the service they provide to our rural citizens.

However, you would never know that it was Craig Thomas behind the scenes working to get these rural health provisions included in the Medicare bill. Craig was more concerned with getting the work done rather than taking the credit. So instead of taking individual credit for his hard work and his dedication on the Medicare bill, he applauded the entire Rural Health Caucus and patted everybody else on the back. It is this kind of leadership that set Craig Thomas apart from his colleagues.

However, Craig knew that while passage of the Medicare bill was a giant step for rural health, we still had much work to do to ensure our rural system can continue to survive. Sometimes when they ask me about health care reform—''they'' meaning most of the people interested in health care reform: the media, others, the health care providers—I simply say one of the things we want to do is to make sure we preserve what we have. This is why we were proud and honored to carry on his legacy by introducing the Craig Thomas Rural Hospital and Provider Equity Act in the 110th Congress, and again in this Congress. We can enhance Craig's legacy certainly in this way.

I wish to especially recognize a member of Craig's former staff who has always worked extremely hard to advance rural health care causes and who has remained a champion for Wyoming as a member of Senator JOHN BARRASSO's staff: Erin Dempsey. I know my staff has worked very closely with Erin over the years, and I have a great amount of respect for her hard work. We always have an expression: We are only as good as our staff here—or at least some of us do actually admit to that. Erin, thank you for being such a hero alongside Craig, and now Senator BARRASSO. We are proud of you for everything you have done on behalf of rural health care.

This Congress, with health care reform at the front and center, Senators BARRASSO, CONRAD, HARKIN, HATCH, and I will do our very best to lead in Craig's absence and to ensure that rural health does not get left behind. I have made a personal commitment to make sure we get this bill done and ultimately provide the much needed relief to our rural communities.

The Craig Thomas Rural Hospital and Provider Equity Act recognizes that rural health care providers have very different needs than their urban counterparts and that health care is not one size fits all.

The Craig Thomas Rural Hospital and Provider Equity Act—and the acronym of that, by the way—everything has to be an acronym in Washington—is R-HoPE—so the R-HoPE Act of 2009 makes changes to Medicare regulations for rural hospitals and providers. It recognizes the difficulty in achieving the same economies of scale as large urban facilities. This legislation equalizes Medicare's disproportionate share of hospital payments to bring the rural hospitals in line with our urban hospitals. This bill also provides additional assistance for small rural hospitals that have a very low volume of patients. Often these hospitals have trouble making ends meet under the Medicare payment system.

The Craig Thomas Rural Hospital and Provider Equity Act, R-HoPE Act, also provides a Capital Infrastructure Loan Program to make loans available to help rural facilities improve crumbling buildings and infrastructure. In addition, rural providers can apply to receive planning grants to help assess capital and infrastructure needs.

The bill extends to January 1, 2011, two incentive programs aimed at improving the quality of care by attracting health care providers to health professional shortage areas. The first is the Medicare Incentive Payment Program, which provides a 10-percent bonus payment to physicians who will practice in shortage areas. The second is the Physician Fee Schedule Work Geographic Adjustment—that is a mouthful—but it simply means it will bring rural doctors' Medicare fee schedules for wages more in line with urban doctors.

The bill also recognizes that other providers do play a great role in the rural health care delivery system. Our bill increases the payment cap for rural health clinics to keep them in line with community health centers. It provides a 5-percent add-on payment for rural home health services. And it provides a 5-percent add-on payment for ground ambulance services in our rural areas.

One of the provisions in the bill—and this is the one that Craig Thomas certainly championed—is a provision to allow marriage and family therapists and licensed professional counselors to bill Medicare for their services and be paid the rate of social workers.

Currently, the Medicare program only permits psychiatrists, psychologists, social workers, and clinical nurse specialists to bill Medicare for mental health services that are provided to our seniors. However, most rural counties—most rural counties—simply do not have a psychiatrist or a psychologist. Marriage and family therapists, however, and licensed professional counselors are much more likely to practice in a rural setting and are often the only mental health professionals available.

Finally, this bill uses technology to improve home health services and quality of care by creating a pilot program providing incentives for home health agencies to purchase and utilize home monitoring and also communication technologies and facilitates telehealth services across State lines.

Today I am proud and honored to introduce this bill on behalf of our former Senator and colleague, Craig Thomas. We miss him greatly as a personal friend, a confidante and colleague. Our thoughts and prayers are with his wife Susan, his sons Peter, Patrick, and Greg, and his daughter Lexie.

Mr. President, it is time to pass this bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

NATIONAL DEBT

Mr. GREGG. Mr. President, I rise today to return to a topic I have discussed on the floor a number of times but which I think needs to be discussed again because of the severity of its implications for our Nation; that is, the massive amount of debt which we are running up in our country.

This massive expansion of our debt, at levels which we have never seen in our history, as proposed by the President's budget and the budget which passed this Congress, threatens the value of the dollar. It threatens to create instability through massive inflation. And it clearly threatens the future of our children.

I am not the only one who thinks this way. As you look around the world, there are a lot of folks taking a look at where we as a nation are going and asking the question: Can we afford this debt as a country?

Interestingly, just a week and a half ago or so, Standard & Poor's, the rating agency, looked at the English situation and put out a statement that the triple A bond rating of England was in jeopardy. They essentially took the adjective ''stable'' out from their designation of that bond rating and said

they had a negative bias on the triple A rating. They did not reduce it, but they did put out a major warning sign.

What does that mean? Well, if your bond rating as a nation drops, that means the world community does not have a lot of confidence in your ability to repay your debt and it is going to charge you a lot more to lend you money. The effect of a bond rating change for a nation such as the United Kingdom—which is one of the most stable and industrialized countries in the world—is catastrophic. What brought about this decision by Standard & Poor's to put, at least on a watch list, so to say, the bonds of the United Kingdom? It is the fact that England has so expanded its debt that its debt now represents approximately 52 percent of its gross national product.

Well, where do we stand as a nation in our debt relative to our gross national product? This chart reflects the fact that historically, in the last 30 or 40 years, our debt has averaged between 30 percent and 40 percent of GDP, but in this economic downturn, we are seeing a dramatic increase in our debt as a nation. In the short run, I have said many times, we can tolerate this for the purpose of trying to float the economy, for the purpose of the government being the lender of last resort, for the purpose of stabilizing the financial systems. A short-term, huge spike in our debt is not desired, but it can be managed. We have done this in the past. During World War II, for example, our debt went up dramatically. But the key is, it has to come back down. It just can't keep going up.

Well, today, our debt is about 57 percent of our gross national product, our public debt. It is up around here on the chart. As we see from this line, under the budget proposed by President Obama, it continues to go up, almost in a perpendicular manner, to the point where, by the end of the budget as proposed by the President and as passed by this Congress, the public debt will be approximately 82 percent of gross national product. That is not a sustainable situation. Over the next 10 years, under the budget as proposed by the President, we will be running deficits which represent $1 trillion a year, on average—$1 trillion a year, on average. As a percentage of our gross national product, those deficits will be between 4 percent and 5 percent.

As I have said before on this floor, you can't get into the European Union if your deficit exceeds 3 percent of your gross national product and your debt exceeds 60 percent of your gross national product.

These are all big numbers and nobody can catch up with those numbers, but the basic implication is very simple. Under the present path we are on, the debt is going to double in 5 years, triple in 10 years, and the implications to our children are that they are going to inherit a country where the payments required on that debt are going to be the single largest item of the Federal Government—$800 billion a year which will have to be paid in just interest. For every American, they will receive $130,000 of debt—every American household will have $130,000 of debt on that household to pay off the Federal responsibility—and $65,000 in interest payments annually for every American household. That is more than many American households' mortgages and more than their interest payments on their mortgages, but that is what every American household is going to owe as a result of this dramatic expansion in debt.

What is driving this debt? Well, in the short term, obviously, it is the economic downturn. But we are not going to be in this economic downturn forever. Everybody is presuming we are starting to move out of it, and we will because we are a resilient nation. In the outyears, what is driving this debt is spending—it is that simple—new, additional spending put on the books or planned to be put on the books under this budget.

This blue line here, which flattens out where the debt stabilizes over the next 5 years, is if we had current law. In other words, if the law that was in place before the President's budget was passed were to take effect and stay in place, that is the blue line. That is what the debt would do; it would stabilize. But because the President has proposed so much new spending in addition to the spending that is going to come as a result of the retirement of the baby boom generation and the expansion of entitlements, this debt just continues up in an astronomical way.

This is a real concern for us. I recognize it is hard for a Congress to deal with anything but the next election—and what we are talking about here is really what we are doing to the next generation—but we should be very concerned—more than concerned, we should be really focused on this as our primary issue of domestic policy as we go forward as being a threat to our prosperity as a nation.

What are other governments saying? Well, China, which is our biggest creditor—we financed this debt by lending from China. They give us money to spend on our operations as a government. They have always looked on the U.S. debt as something that was a good investment, a safe investment, but the Chinese are having second thoughts. In an extraordinarily embarrassing incident, the Secretary of the Treasury, speaking before an audience of sophisticated college students in Beijing, was asked about the status of our debt that is held by the Chinese. He told them that Chinese assets are very safe, and the audience laughed. The audience actually laughed at the Secretary of the Treasury saying that Chinese assets are very safe. That is an anecdotal incident, but it would never have happened 6 months ago, 2 years ago, because these types of increases in debt as a percentage of our economy were nowhere in sight then—nowhere in sight.

Then Mr. Yu, who is the former adviser to the Central Bank, made the following statement just a couple of days ago. He said:

> The United States Government should not be complacent and it should understand that there are alternatives to China buying U.S. bonds and bills. Investments in Euros are an alternative, and there are lots of raw materials we can buy too. China should not close those options.

Well, if the Chinese Government starts to reduce its purchase of our bonds and our need to sell bonds is going up, what happens? That means the interest on the bonds is going to have to go up because we are going to have to find somebody who wants to buy these bonds and we are going to have to make them attractive around the world. As the interest on the bonds goes up, taxpayers end up having to bear that burden and the next generation ends up having to bear that burden.

So what is the solution? How do we get around the fact that we are now on an unsustainable course which will lead to a fiscal calamity for our Nation and potentially put us in the position where we will have to devalue the dollar or have massive inflation?

Interestingly enough, the Economic Information Daily, another Chinese publication, hit the nail right on the head. Maybe because they are looking from the outside in and because of all they have invested they can see these things, because they said the question that should be asked of Secretary Geithner is, How do you propose implementing fiscal discipline? How will you maintain the stability of the dollar after the crisis—and I emphasize ''after.'' What they are saying is, after we get past this recession and the need to stabilize the financial structure of our country and the need to float the economy, how do we bend this curve back to something reasonable and sustainable? That is the question we should be asking around here as a Congress. We need to start asking it pretty soon.

The President has said—he said it again yesterday—that one way you do this is by addressing the cost of health care, and he is absolutely right. Health care is the primary driver—one of the primary drivers—of this massive increase in expenditures at the Federal level. But the President has put nothing on the table so far that bends the curve on the question of the cost of health care—in fact, just the opposite. His budget proposed that health care spending would go up $1.2 trillion over the next 10 years and, more importantly than that, it sets up a series of entitlements which will cost hundreds of billions—as I said, $1.6 trillion in new spending. He is suggesting that instead of keeping health care spending at about 17 percent of gross national product, which is a huge amount of money, by the way, more than any other industrialized country spends by almost 50 percent—the next closest

country spends about 11 percent on health care—he is suggesting that instead of maintaining health care costs at 17 percent of gross national product, it be allowed to rise to 18, 19, and 20 percent of gross national product. Well, we can't afford that. We can't afford that.

What we need in the area of health care is to address the issue that the President said, which is to control the costs of health care, not by expanding the size of the costs of health care but by using the dollars in the health system more effectively and by getting better quality at lower costs, which can be done, by the way. There are a lot of proposals for doing exactly that. But one of them isn't to create a single-payer plan or a public plan which essentially puts the government in charge of health care and, as a result, drives up the cost of health care significantly and drives the spending up and the borrowing up that goes with it. So, yes, we have to address it, but we have to address it in a way that actually controls spending, controls the rate of growth in spending and health care, and that doesn't aggravate this additional debt.

It is hard to understate the significance of the threat this debt represents. It is hard to understate it. I know I have spoken on this floor about it a number of times, but that is because it is so critical to our future as a nation. We literally are bankrupting the futures of our children by putting this much debt on their backs, by doubling the national debt in 5 years and tripling it in 10 years. I am beginning to feel a little bit like Cato the Elder, who used to speak in the Roman Senate and begin and end every speech with ''Carthago delenda est.'' Finally, somebody listened to him, and they actually did destroy Carthage.

Well, I am saying let's get the debt under control. Let's control the spending of this government. Let's do something about this outyear spending before we get to a position where the world loses confidence in our dollar, loses confidence in our debt, before we get into the position where we have to inflate the economy or we have to place taxes on our children that are so high that they have no chance to have as prosperous and as competitive a life as we have had. It is not fair, as I have said before, for one generation to create this type of debt and pass it on to the next generation to pay. It is not fair. It is not right. It is something we have never done as a nation. Whenever we have run up debt significantly like this, we have always paid it down on an equally quick basis. After World War II, when our debt got to over 100 percent of GDP, we brought it down very quickly. We need to bring it down today. We need to have discipline around here that leads to getting the debt of this Nation back to a responsible level, which means something under 50 percent, hopefully closer to the historic norm of 40 percent; where we get the deficits back to a responsible level, which means under 3 percent, hopefully even headed toward balance; and where we can tell our children that we are passing on to them a stronger nation, not a weaker nation, a more prosperous nation, not a nation confronting massive inflation, leading to the devalue of the dollar or massive tax increases.

Mr. President, I yield the floor and make the point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. GILLIBRAND). Without objection, it is so ordered.

Mr. BURR. Madam President, I needed to come to the floor and apologize for a misstatement I made yesterday on the current bill, the Kennedy tobacco bill. In yesterday's debate, I stated that the CBO, the Congressional Budget Office, report on the bill revealed that if enacted, smoking rates would decline 2 percent annually. In fact, I was wrong.

I prepared a chart yesterday that showed, based upon what CBO said, that we would reduce by 2016 the smoking rate in the country to 17.8 percent, and also the CDC's projection, which if we did nothing, we would reduce it to 15.9 percent, clearly showing the CBO estimate under the current bill we are considering would not bring the smoking rate down as much as doing nothing.

The mistake I made yesterday was I assumed the way I read it that the CBO estimate is it would reduce smoking 2 percent per year. In fact, what the CBO report actually said was it would reduce by 2 percent over 10 years. So, in fact, I have been way too generous to the current bill that it would reduce smoking to a point of 17.8 percent, which was figured based on a 2-percent-per-year reduction. In fact, the gap between doing nothing and passing this bill clearly is much bigger than I had anticipated; that by doing nothing, we get much more value, if the objective through passage of this legislation is to reduce the smoking rate in the United States.

The bill that is being considered does not change existing products. Let me restate that. We grandfather in all the tobacco products that are currently being marketed. What CBO has concluded is that then you have to permanently figure that about the same rate of Americans will continue to smoke because they do not have new options to turn to.

Let me make this pledge to my colleagues. If the CBO report that smoking will decrease by a scant 2 percent under the bill is because of new warning labels and graphic warning labels that are mandated in the bill, then let me say the substitute Senator HAGAN and I will offer provides for the same warning labels and the same graphic warning labels. If that is what gets the 2 percent reduction over 10 years, which clearly it has to be, then I am willing to cosponsor that bill right now and substitute it for the entire Kennedy bill, so we get the full 2 percent we get in the Kennedy bill over 10 years of reductions.

A simple warning label would be a tremendous improvement over this legislation—$787 million, a new mandate to the men and women in our military to pay for it, and it has been portrayed as an effort to reduce the usage of tobacco products with our youth.

I covered for all our colleagues yesterday the fact that when you go down and look at the CDC proposals to States on part of the $280 billion of MSA payments that the industry made to States, that the States had spent a pittance of what CDC projected on cessation programs to get people to stop smoking. But more alarming than the fact that States use the tobacco money to fill their budget gaps and build sidewalks rather than to fund programs to get people to stop smoking is the fact that in practically every case of 50 States, the marijuana prevalence use among youth was higher than the tobacco prevalence.

Let me say that again. Marijuana usage by our youth is projected by CDC to be higher in practically every State than what they have projected youth prevalence of tobacco use. It is actually smoking. That does not necessarily include smokeless.

For my colleagues, including myself, I have spoken on the fact that we must keep tobacco out of the hands of our children. It has an age limit. I would agree it has some problems on enforcement. But marijuana is illegal. It is supposed to be enforced in every community. It is supposed to be enforced in every State. Yet more kids use it than they do tobacco products.

In 1975, Congress commissioned the University of Michigan to track youth smoking rates. At that time, youth smoking was at an alltime high. However, those rates have started to come down and leveled off around 30 percent, all the way up to 1993.

For some unknown reason at the time, youth smoking rates started to increase around 1993, peaking at close to a new alltime high in 1997.

In 1998, 12th graders who said they tried cigarettes in the last 30 days was approximately 36 percent, according to the University of Michigan.

Congress did not have a good sense of why this was happening. Opponents of the tobacco industry started blaming all this on the alleged manipulation of young people by tobacco manufacturers through sophisticated marketing and advertising campaigns.

I heard a Member on the floor last night of the Senate basically blaming everything on these very creative marketing techniques. Trust me, if they

were that effective, every company would be figuring out how to adopt those techniques.

The tobacco industry has a checkered past, at best, when it comes to marketing and advertising. But what I am suggesting is, it may not have been all due to tobacco. There was another trend occurring in the 1993 to 1998 period that virtually mirrored that of youth smoking, and it was the increased use of illicit drugs by teenagers. Something much broader was happening among youths in our society during that time period. The Senate's answer to smoking rate increases was to pass a massive FDA tobacco regulation bill, the exact bill we are debating today. Congress said nothing else would work to save our kids and bring down youth smoking rates.

Senator KENNEDY made the following remarks during the 1998 Senate floor debate to emphasize the need to protect our children. I quote:

> FDA Commissioner David Kessler has called smoking a ''pediatric disease with its onset in adolescence.'' In fact, studies show that over 90 percent of the current adult smokers began to smoke before they reached the age of 18. It makes sense for Congress to do what we can to discourage young Americans from starting to smoke during these critical years. . . . Youth smoking in America has reached epidemic proportions. According to a report issued last month by the Centers for Disease Control and Prevention, smoking rates among high school students soared by nearly a third between 1991 and 1997. Among African-Americans, the rates have soared by 80 percent. More than 36 percent of high school students smoke, a 1991 year high. . . . With youth smoking at crisis levels and still increasing we cannot rely on halfway measures. Congress must use the strongest legislative tools available to reduce smoking as rapidly as possible.

Senator KENNEDY, on the Senate floor, May 19, 1998.

Of course, the Senate told the American public that passage of the massive FDA tobacco regulation bill back in 1998 contained the ''strongest legislative tools available'' to address youth smoking issue.

Congress did not pass the FDA bill we are debating today. What happened with youth smoking rates? They decreased since 1998 to current alltime lows. I am talking about record lows over a 34-year period. In 1998, we were told by some in the Senate that youth smoking rates would not come down absent a major bureaucratic expansion over tobacco at FDA. Those Senators were wrong, dead wrong.

Today, we continue the same debate over basically the same bill, and we are debating this as if nothing else has happened or changed. Obviously, something we are doing across this country is working, and it has nothing to do with what Congress is talking about doing. It has to do with the passage of the Master Settlement Agreement, advertising restrictions, awareness campaigns, and education.

None of these things are enhanced in H.R. 1256, the Kennedy bill. It is about design, not about keeping kids from smoking. CBO recently stated that if it was enacted, youth smoking would reduce, over the 10-year period, 2 percent—excuse me, 11 percent for youth, 2 percent overall. But according to the University of Michigan, youth smoking rates have declined by 5 percent over the last 5 years and 16 percent over the last 10 years.

If this is an indication of how youth smoking rates will go over the next 10 years, we will actually slow the decline by passing this bill.

Let me say that again. My colleagues do not understand. We slow the decline of youth usage by actually passing this bill. It is the University of Michigan, it is the Congressional Budget Office, all very reputable agencies.

I know I have a colleague on the floor who wants to speak. I am going to yield the floor to him. But let me remind my colleagues, we are talking about a massive expansion of regulation for the FDA, not a massive expansion of regulation over tobacco. There are a host of agencies currently that regulate tobacco. It is the most regulated product in the United States of America. Now we want to centralize that regulation into the FDA.

Let me read the FDA's mission statement:

> The FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our Nation's food supply, cosmetics and products that emit radiation.

Just in the first phrase, ''protecting the public health,'' you are not protecting public health when you allow cigarettes to be sold. So the fact that we have constructed a bill that grandfathers every existing product but makes it practically impossible to bring to market reduced-risk products that allow Americans to give up the cigarettes and to move to something else, the CBO was right, it will slow the reduction in smoking rates. We do nothing for disease and death. We do more for disease and death by not passing legislation than we do by passing legislation. If the authors of this bill are, in fact, honest and the effort is to reduce youth access and youth usage, then the Members of the Senate should do nothing.

Hopefully, tonight Senator HAGAN and I will offer a substitute that brings as much regulatory authority to an entity outside the Food and Drug Administration but one under the Secretary of Health and Human Services. Why? Because I spent 15 years in Washington trying to protect the integrity and the gold standard of the FDA, so that when every American goes to bed at night and they take that prescription they got from a pharmacist prescribed by a doctor, they don't have any question as to whether, one, it is safe, or, two, it is going to work; that when they go to the hospital and all of a sudden a doctor shows them a procedure they are going to have and a medical device is involved, they are not sitting wondering: Is this going to work? Is it going to hurt me? Because the FDA has already said it is safe and effective; as we bring on this new line of biological products that are going to cure terminal illnesses that are very expensive, we are not going to do it in a way that hurts our health because the FDA's gold standard is in place; that when we go to the store and we buy food, we are going to be assured it is safe, something we haven't been able to do for the last few years—spinach contamination, salmonella in peanut butter. The list goes on and on.

Why, with an agency that is struggling to meet their core mission, would we ask them to take on a product that in legislation we say we know you cannot prove it is protecting public health or it meets safety and efficacy, but on that we want you to turn your head, we want you to ignore the core mission for this new jurisdiction we are going to give you, but for everything else, we want you to apply that gold standard, we want to ensure drug safety, device safety, food safety but not with tobacco.

To my colleagues, it is very simple. Read the bill. You won't vote for this bill. You want to reduce youth consumption of tobacco? It is real simple. We reduce it faster by doing nothing.

Again, I think there will be a substitute that all Members can vote for tonight. It accomplishes further reductions of youth usage, because we don't constrict less harmful products in the future from coming to the market. We don't lock an adult population in to only being smokers because they are addicted to nicotine. We give them options, such as Sweden gave their citizens, where they have reduced adult tobacco smoking at incredible rates because of innovative new products that deliver nicotine in a way that reduces the risk of disease and reduces the rate of death.

If the objective here is to reduce disease, to reduce death, to reduce youth usage, then I would encourage my colleagues tonight, when Senator HAGAN and I introduce the substitute, to listen very carefully and support the substitute. But at the end of the day, if your objective is to reduce youth consumption of cigarettes, in the absence of passing that substitute, it is very clear—the CBO and the University of Michigan says: Pass nothing.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Madam President, I ask unanimous consent to refer to these tobacco orb products during my speech.

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

Mr. MERKLEY. Madam President, I want to start by thanking Senator DODD for his tireless advocacy on this issue. The need to regulate tobacco products has been evident for many years, and for year after year it has been impossible to accomplish this

goal. It is frankly unbelievable that while we heavily regulate the production and sale of aspirin, a product that is not addicting and not destructive, tobacco, which is addictive and is destructive, goes without regulation.

This bill will go a long way in helping to keep these addictive tobacco products out of the hands of our children. This bill gives the FDA the legal authority it needs to reduce youth smoking by preventing tobacco advertising targeting children. It provides the FDA with the authority to prevent the sale of tobacco products to minors as well as the authority to prevent the tobacco industry from misleading the public about the dangers of smoking.

Additionally, this bill takes important steps in the regulation of smokeless tobacco. We are all familiar with the dangers posed by cigarettes—the health effects have long been documented—both on users and bystanders. We are also familiar with the steps being taken in many cities and many States to rid our public areas of secondhand smoke. These actions, thankfully, have been quite successful, but they lead to a major dilemma for tobacco companies: if smoking becomes socially unacceptable, how can the industry replace the hundreds of thousands of tobacco addicts who die every year? The industry's response has been to bet heavily on smokeless tobacco products and to bet on addicting youngsters to those products.

Chewing tobacco has been around for a while, but it has its own limitations. There aren't many places—outside of this very Chamber—in the United States where you can find a spittoon. So the tobacco companies are looking for hip new smokeless tobacco products that don't require spitting and that can appeal to a new generation of children.

This picture was taken just a few blocks from this Capitol. It is of a new product called ''Snus'' that R.J. Reynolds is selling nationwide. It is a flavored, pouched tobacco product advertised as not requiring spitting. And as you can see here, it is advertised next to displays of candy and Peppermint Patties. I should note that this container was not the original designed for the Snus container. The original container was round. As reported by the Portland Oregonian last December, it came in containers similar to chewing tobacco, but teachers in schools noticed these containers in their students' pockets.

So now R.J. Reynolds has redesigned them so that teachers can't recognize that these are smokeless tobacco products in their students' pockets.

Clearly, the marketing is aimed at young people. But it gets even worse. Now R.J. Reynolds has come out with another product that they are test marketing in three cities across the country, one of which is in my home State of Oregon. Portland, OR, is a site for the test market of tobacco candy.

Tobacco candy, as you see here, also comes in what was designed to look like a cell phone in your pocket rather than a traditional can of smokeless tobacco. They have done two other things to make this product appealing, and I have a sample right here. First, they come in candy flavors. This one is euphemistically called ''fresh.'' It is a mint candy. This one is euphemistically called ''mellow.'' It is a caramel-flavored candy. So they have thrown in the candy flavoring and a really cool dispenser. And not only does the dispenser look like a cell phone—so teachers can't tell what it is—but it has a feature taken from the world of the Pez candy dispenser. You pop it open, and out pops a single tobacco tablet. You close it and shake it around, open it up again, and out pops another one. So we have three features here designed specifically to market to children: the cell phone shape, the candy flavoring, and the Pez-style dispenser.

Now, why is it tobacco companies need to market to children? It is because when adult testers try out a tobacco product, they rarely continue using it. Therefore, they rarely become a customer of a tobacco company. A teenager who tries one of these products—whose brain is still being wired and, therefore, is much more susceptible to the influence of nicotine—is much more likely to become addicted and become a lifelong customer or reliable customer. That is why the tobacco companies are marketing tobacco candy to our children.

There is no question that this tobacco candy is dangerous. The Indiana Poison Control has estimated that each tablet delivers 60 to 300 percent of the nicotine in a single cigarette. The product is addictive. The product causes cancer. And unless we pass this bill and give the FDA the authority to regulate, soon you will see this tobacco candy in a convenience store near you, and we will see more displays such as the one shown here in Portland—tobacco candy advertised right next to ice cream.

Once the companies master the technique of turning tobacco into kid-friendly candy, there is no end to the variety of products that can be turned out. Already RJR has announced they are planning to launch two new forms of tobacco candy; sticks, which look like toothpicks you suck on, and strips, which are nearly identical to breath mint strips that dissolve on your tongue.

Everywhere I go and talk about these products, people are outraged. Meanwhile, the tobacco industry and its champions are trying to justify these products as safe alternatives to smoking. That just isn't so. And that rhetoric poses a real danger to consumers who might think smokeless tobacco is harmless. In fact, this very rhetoric shows why we need to have the FDA regulating this product. In fact, the Surgeon General has determined the use of smokeless tobacco can lead to oral cancer, gum disease, heart attacks, heart disease, cancer of the esophagus, cancer of the stomach.

This is not a safe product. This is not safe tobacco. It is a product like cigarettes that causes cancer and kills. Further, it is not a method of helping smokers to quit smoking. The purpose of smokeless tobacco candy is not to help people quit tobacco products, it is designed to addict them to tobacco products. The idea that the tobacco companies would be out marketing a product designed to get people to quit using tobacco products is, quite frankly, obviously ridiculous. Unlike Nicorette or the nicotine patch, which are designed to help people quit smoking, tobaccoless candy does not help you quit and the doses do not get any lower over time.

The U.S. Public Health Service Clinical Practice Guideline notes:

> The use of smokeless tobacco products is not a safe alternative to smoking, nor is there evidence suggesting it is effective in helping smokers quit.

It is no secret these products are dangerous. Six years ago to this very day, Surgeon General Richard Carmona talked about what he called the ''public health myth'' that smokeless tobacco is a good alternative to smoking. He emphatically said that was simply not true, and I think it is worth quoting him at some length:

> I cannot conclude that the use of any tobacco product is a safer alternative to smoking. This message is especially important to communicate to young people, who may perceive smokeless tobacco as a safe form of tobacco use. Smokeless tobacco is not a safe alternative to cigarettes. Smokeless tobacco does cause cancer.

That statement is from a 2003 House hearing on tobacco harm reduction, and I ask unanimous consent, Madam President, to have printed in the RECORD the entire prepared testimony delivered that day.

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

TESTIMONY BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION, COMMITTEE ON ENERGY AND COMMERCE, UNITED STATES HOUSE OF REPRESENTATIVES

CAN TOBACCO CURE SMOKING? A REVIEW OF TOBACCO HARM REDUCTION

Statement of Richard H. Carmona, M.D., M.P.H., F.A.C.S., Surgeon General, U.S. Public Health Service, Acting Assistant Secretary for Health, Department of Health and Human Services

Mr. Chairman, distinguished members of the Subcommittee, thank you for the opportunity to participate in this important hearing. My name is Richard Carmona and I am the Surgeon General of the United States of America.

Let me start with a few statements that were once accepted throughout society that have now been relegated to the status of myth.

Men do not suffer from depression.

Domestic violence is a 'family' or 'private' matter.

The HIV-AIDS epidemic is of no concern to most Americans.

All of us here know that these three statements are very dangerous public health myths.

My remarks today will focus on a fourth public health myth which could have severe consequences in our nation, especially among our youth: smokeless tobacco is a good alternative to smoking. It is a myth. It is not true.

As the nation's Surgeon General, my top responsibility is to ensure that Americans are getting the best science-based information to make decisions about their health. So I very much appreciate the opportunity to come before this Subcommittee today and help refute this dangerous idea.

First, let me emphasize this:

No matter what you may hear today or read in press reports later, I cannot conclude that the use of any tobacco product is a safer alternative to smoking. This message is especially important to communicate to young people, who may perceive smokeless tobacco as a safe form of tobacco use.

Smokeless tobacco is not a safe alternative to cigarettes.

Smokeless tobacco does cause cancer.

Our nation's experience with low-tar cigarettes yields valuable lessons for the debate over smokeless tobacco.

Tobacco use is the leading preventable cause of death in the United States.

Each year, 440,000 people die of diseases caused by smoking or other form of tobacco use—that is about 20 percent of all deaths in our nation.

The office I lead as Surgeon General has long played a key role in exposing the risks of tobacco use. In 1986, the Surgeon General's Report The Health Consequences of Using Smokeless Tobacco reached four major conclusions about the oral use of smokeless tobacco:

1. Smokeless tobacco represents a significant health risk;
2. Smokeless tobacco can cause cancer and a number of non-cancerous oral conditions;
3. Smokeless tobacco can lead to nicotine addiction and dependence; and
4. Smokeless tobacco is not a safer substitute for cigarette smoking.

Recognizing these serious health consequences, Congress passed the Comprehensive Smokeless Tobacco Health Education Act in 1986. This law required the placement of Surgeon General's warnings on all smokeless tobacco products.

Mr. Chairman and Members of the Subcommittee, I respectfully submit that smokeless tobacco remains a known threat to public health just as it was when Congress acted in 1986.

Conversely, time has only brought more disease, death and destroyed lives.

The National Toxicology Program of the National Institutes of Health continues to classify smokeless tobacco as a known human carcinogen—proven to cause cancer in people.

As Surgeon General I cannot recommend use of a product that causes disease and death as a 'lesser evil' to smoking. My commitment, and that of my office, to safeguard the health of the American people demands that I provide information on safe alternatives to smoking where they exist.

I cannot recommend the use of smokeless tobacco products because there is no scientific evidence that smokeless tobacco products are both safe and effective aids to quitting smoking.

Smokers who have taken the courageous step of trying to quit should not trade one carcinogenic product for another, but instead could use Food and Drug Administration-approved methods such as nicotine gum, nicotine patches, or counseling.

While it may be technically feasible to someday create a reduced-harm tobacco product, the Institute of Medicine recently concluded that no such product exists today. When and if such a product is ever constructed, we would then have to take a look at the hard scientific data of that particular product.

Our nation's experience with low-tar, low-nicotine cigarettes is instructive to the issue at hand. Low-tar, low-nicotine cigarettes were introduced in the late 1960's and widely endorsed as a potentially safer substitute for the typical cigarette on the market at that time. Within a decade, the low-tar brands dominated the cigarette market. Many smokers switched to them for their perceived health benefits.

Unfortunately, the true health effects of these products did not become apparent for another 10 to 20 years. We now know that low-tar cigarettes not only did not provide a public health benefit, but they also may have contributed to an actual increase in death and disease among smokers.

First, many smokers switched to these products instead of quitting, which continued their exposure to the hundreds of carcinogens and other dangerous chemicals in cigarettes. Second, to satisfy their bodies' craving for nicotine, many smokers unwittingly changed the way they smoked these low-tar cigarettes: they began inhaling more deeply, taking more frequent puffs, or smoking more cigarettes per day.

In fact, we now believe that low-tar cigarettes may be responsible for an increase in a different form of lung cancer, adenocarcinoma, which was once relatively rare. This cancer is found farther down in the lungs of smokers, indicating deeper inhalations, and appears linked to a specific carcinogen particularly present in low-tar brands.

We must learn the lessons of the low-tar cigarette experience. Not only did they fall to reduce an individual's risk of disease, but they also appear to have increased population risk by delaying quitting and potentially contributing to initiation among young people. This has taught us that we must move cautiously in recommending any supposedly safer alternative for people trying to quit smoking—because now, with more knowledge and the benefit of hindsight, the science does not support early recommendations on low-tar cigarettes.

Mr. Chairman, in the interest of time I will shortly ask that the remainder of my statement and the scientific information contained in it be considered as read and made part of the record. But before I do that, I would like to ask for this Subcommittee and the Congress' help in getting the message out about the dangers of the myth of smokeless tobacco.

All of us in this room are very concerned about our nation's youth. Kids growing up today have a tough time of it. In addition to the normal struggles of puberty, many kids are facing a host of other challenges. Many, especially minority kids, must struggle to find their way in unsafe neighborhoods.

So the temptation to engage in behavior that is not healthy, and the opportunity to do so, is very hard for our young people to resist.

According to a 2000 survey by the Substance and Mental Health Services Administration (SAMHSA) (The National Household Survey on Drug Abuse), about 1 million kids from age 12–17 smoke every day. Another 2 million kids smoke occasionally.

And we know that smoking is often not a ''stand-alone'' risk behavior; it travels with others. The SAMHSA survey found that youth who were daily cigarette smokers or heavy drinkers were more likely to use illicit drugs than either daily smokers or heavy drinkers from older age groups. More than half of 12–17 year olds who were daily smokers had also used illicit drugs within the past month.

Every day, more than 2,000 kids in the U.S. will start to smoke, and more than 1,000 adults will die because of smoking. We have to get youth to stop starting. But the answer is not smokeless tobacco.

We have evidence to suggest that instead of smokeless tobacco being a less dangerous alternative to smoking, just as smoking is a gateway to other drugs, smokeless tobacco is a gateway to smoking.

So we must redouble our efforts to get our youth to avoid tobacco in all forms.

We have some real work to do on the ''culture'' of smokeless tobacco, which is glamorized by some sports stars. Chicago Cub Sammy Sosa, who has made a public commitment to avoiding smokeless tobacco, is a great example for kids. Past baseball great Joe Garagiola is now Chairman of the National Spit Tobacco Education program, and regularly lectures young players against the dangers of smokeless tobacco.

As Members of Congress, you can lead by example too, not just in legislation, but in your own lives. I encourage you to avoid tobacco in all its forms. Do not fall for the myth—a very dangerous public health myth—that smokeless tobacco is preferable to smoking. Do not let America's youth fall for it, either.

From the perspective of individual risk, the cumulative effect on smokers of switching to smokeless tobacco is simply not known. But we clearly know that use of smokeless tobacco has serious health consequences. Overall, smokeless tobacco products have been classified as a known human carcinogen. And limited scientific data indicate that former smokers who switch to smokeless tobacco may not have as great a decrease in lung cancer risks as quitters who do not use smokeless tobacco.

From the perspective of population risk, there are even more unanswered questions. Even if there was some decreased risk for smokers who switch to smokeless tobacco, that benefit may be more than offset by increased exposure of the overall population to this known carcinogen.

The marketing of smokeless tobacco as a potentially safer substitute for cigarettes could lead to:

More smokers switching to smokeless tobacco instead of quitting tobacco use completely;

A rise in the number of lifetime smokeless tobacco users if more youth begin using smokeless tobacco;

A rise in the number of cigarette smokers as a result of more youth starting to use smokeless tobacco and then switching to cigarette use; and

Some former smokers returning to using tobacco if they believe that smokeless tobacco is a less hazardous way to consume tobacco.

Concerns about youth initiation are especially troubling. The scientific evidence is clear that use of smokeless tobacco is a gateway to cigarette use. Young people may be especially attracted to smokeless tobacco if they perceive it to be safer than cigarettes. Studies show that more than one in five teenage males have used smokeless tobacco, with age 12 being the median age of first use. Surveys also show that more than two in five teenagers who use smokeless tobacco daily also smoke cigarettes at least weekly. Finally, independent research and tobacco company documents show that youth are encouraged to experiment with low-nicotine starter products and subsequently graduate to higher-level nicotine brands or switch to cigarettes as their tolerance for nicotine increases.

Finally, we simply do not have enough scientific evidence to conclude that any tobacco product, Including smokeless tobacco,

is a means of reducing the risks of cigarette smoking. At this time, any public health recommendation that positions smokeless tobacco as a safer substitute for cigarettes or as a quitting aid would be premature and dangerous. With the memory of our experience with low-tar cigarettes fresh in our minds, we must move extremely cautiously before making any statement or endorsement about the potential reduced risk of any tobacco product.

Finally, my strong recommendation as Surgeon General is a call for sound evidence about tobacco products and their individual and population based health effects. We need more research. We need to know more about the risks to individuals of switching from smoking to smokeless; and we need to know more about the risks to the entire population of a promotion campaign that would position smokeless tobacco as a safer substitute for smoking.

Until we have this science base, we must convey a consistent and uncompromised message: there is no safe form of tobacco use.

Thank you. I would be happy to answer any questions.

Mr. MERKLEY. Madam President, it is a travesty that R.J. Reynolds can launch an addictive carcinogenic candy targeted at children with no review by the Food and Drug Administration. Nicorette—designed to help you quit smoking—went to the FDA for approval, but caramel tobacco candy or mint tobacco candy—designed to hook kids on tobacco—is on the shelves in Portland, OR, right now with zero oversight.

This bill will finally bring some transparency and common sense to the regulation of tobacco. Finally, the FDA will be able to address the single greatest public health menace in our Nation. I am pleased that this bill does include an amendment that Senator BROWN and I authored to require the Tobacco Advisory Committee to expedite the review of tobacco candy. I look forward to passing this bill and to keeping tobacco candy from store shelves before the industry succeeds in hooking a whole new generation of our children.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REED. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. REED. Madam President, I rise today in support of the Family Smoking Prevention and Tobacco Control Act, but first, I would like to take a moment to recognize the outstanding leadership of Chairman KENNEDY on this important public health issue. This is not the first time he has ushered a bill on this topic from committee to the Senate floor. I am confident that my colleagues, in recognition of the tremendous, hazardous effects that tobacco has on children, adolescents, adults, and seniors, will join me in fulfilling one of chairman KENNEDY's wishes, and mine, of finally seeing this bill signed into law.

I would also like to thank Senator DODD for his dedication in carrying out the aggressive schedule of the HELP Committee set forth by the chairman so we can bring this legislation to the floor.

As a cosponsor of this legislation, I firmly believe that we cannot afford to wait another day for it to be enacted. This is not the first time that I have risen to speak on the importance of regulating the sale of tobacco products, but I am hopeful that with this legislation we will take a giant leap toward eradicating the use of nicotine, by discouraging our youth from ever lighting-up, and chip away at skyrocketing smoking-related healthcare costs.

Every year that passes, and this legislation is not enacted, another 4,700 children in Rhode Island try a cigarette for the first time—that amounts to 1,400 children in my State alone becoming regular, daily smokers each year. These new smokers become part of the 8.6 million individuals nationwide suffering from smoking-caused illnesses; they become part of the 400,000 deaths every year attributed to tobacco use. We can and must do more to curb the use of this very serious and deadly poison. This is a public health emergency that demands action.

Over the years, the tobacco industry has been confronted with opportunities to do the right thing—to be honest about the health effects of tobacco or even the intended targets of various marketing campaigns. In every instance they passed up that opportunity and actively fought to continue alluring generation after generation to use tobacco products.

I would like to use the time that I have today to walk through some of those occasions in an attempt to demonstrate how important the Family Smoking Prevention and Tobacco Control Act is to the American people, not only to our health, but to our economic prosperity.

In 1994, while I was in the House of Representatives, seven executives from the tobacco industry took an oath before a House committee that they would tell the truth about tobacco. In their statements and responses to questions from members on the committee, all seven individuals stated that they believed nicotine was not addictive, and that new marketing practices were not designed to reach younger and younger age groups, below the legal smoking age of 18.

In order to support these claims, the executives cited research councils and institutes. But these statements were contrary to what many public health officials were saying, and what I believed. This further obscured the notion that smoking was a direct cause of disease.

A total of 46 States—including my own—States in which the majority of my colleagues represent—then proceeded to call their bluff, one lawsuit at a time.

Through these cases, the American people learned that the lies and deceit of the tobacco industry extended far beyond that of a Congressional hearing room. The suits unearthed that the tobacco industry had established and funded the councils and institutes claiming tobacco was not a health hazard; and had internal documents stating that No. 1, nicotine is addictive; No. 2, smoking is a habit of addiction; and No. 3, that in order to continue to prosper, cigarettes must be marketed to younger and younger age groups—below the legal smoking age of 18.

The tobacco industry settled these lawsuits. The agreement, totaling nearly $206 billion, was ordered to be distributed to the States in an effort to recoup Medicaid dollars spent on smoking-related health care costs. While $206 billion seems like a lot to you and me, this amount of money only accounts for approximately 7 years of the Medicaid budgets of the 46 States.

The fact that the industry did settle should have been a clear sign that tobacco production and marketing needs to be regulated. Unfortunately, around the same time that the settlement occurred, the Supreme Court narrowly ruled—on a 5-to-4 margin—that the FDA did not have such authority to regulate their products. The tobacco industry continued to aggressively market tobacco products.

Nearly 10 years later, this past December, the Supreme Court upheld that tobacco firms could, in fact, be charged at the State level with deceptive advertising practices of cigarettes. We have on the one hand, no regulation; on the other hand, the possibility of State enforcement.

These two Supreme Court decisions further complicate the message received by Americans regarding the use, marketing and distribution of tobacco. In essence, the industry could be held liable for certain advertising practices, but direct, regulatory oversight of those practices does not exist. Appropriate guidelines do not exist. With this bill, we have the opportunity to ensure that guidelines are established.

To add yet another layer to this debate, only 2 weeks ago, the U.S. District Court of Appeals for the District of Columbia ruled that the tobacco industry falsely advertised ''light'' and ''low-tar'' cigarettes under the guise that they were less dangerous than other products. This ruling comes after 10 years from the date the suit was originally filed—10 years too late to prevent 10,000 Rhode Island children beginning to regularly use tobacco. Had we enacted the Family Smoking Prevention and Tobacco Control Act, or a similar version of this legislation, years ago, we could have prevented some of those in my State and across the country from ever smoking. Instead, the debate has dragged on for 10 years.

Unfortunately, this debate will continue to drag on. The tobacco industry has already publicly stated that it will

continue to argue the decision that was recently rendered. Rather than taking the tortuous, time-consuming and very expensive path of taking the case through litigation, I think we have to give the FDA the authority to regulate tobacco products.

We have the opportunity before us to put an end to the courtroom drama. With the Family Smoking Prevention and Tobacco Control Act, we can give the FDA the authority to regulate tobacco, restrict illegal advertising practices targeting children, prevent the unlawful sale of tobacco to our Nation's youth, and strengthen warning labels.

With this legislation, everyone wins. The tobacco industry would have clear guidance on advertising practices which could help them avoid lengthy litigation; young people will not be targeted by aggressive tobacco media campaigns; and the public health crisis caused by tobacco use—which costs the American people in health care dollars, in lost productivity, and in loss of loved ones—tremendous prices—would hopefully begin to fade.

In preparation for our discussion, I looked back at some of the past statements that I have made in support of regulating tobacco—and one sticks out in my mind: the tobacco industry has worked hard to earn the trust of the American people.

We must try to win that trust back. We must empower the FDA to regulate tobacco in order to rein in the use of tobacco by children, control the access that our children have to tobacco, and warn the American public about its dangers.

The Senate is finally once again on the path to having a meaningful debate about our Nation's health care system. It is my hope that this debate will result in appropriate, high quality health care coverage and access for every American. Of course, we hope to do all of this at the lowest possible cost.

If we are serious about reforming our health care system, why wait? Smoking-related health care costs are skyrocketing. Today the average cost of a pack of cigarettes in the country is about $5 but the social cost is much more.

Every year, the public and private health care expenditures caused by smoking total approximately $100 billion, and $100 billion in lost productivity. These are staggering totals.

I will repeat: we literally cannot afford to wait another day for this legislation to be enacted.

We have the opportunity to begin charting a new course today. With this bill, we will begin to chip away at health care costs, steer our youth away from smoking, and pave the way for a healthier future for our Nation.

I look forward to working with my colleagues to enact this important piece of legislation and set forth on this new path for a healthier and more prosperous America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANDERS. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SANDERS. Madam President, I am very pleased that we are finally taking up this very important legislation. Regulating tobacco through the FDA is an essential part of addressing public health issues related to tobacco use, and I fully support this long overdue legislation. The cost of smoking is estimated at $96 billion a year in health care costs. The human toll is even more appalling: 440,000 smoking-related deaths per year. Tobacco is responsible for one-third of all cancer deaths in the United States each year, and tobacco use is the most preventable cause of death in the country.

There are many important provisions in this bill, but this issue is primarily about our children. It is appalling that in Vermont, one in every six high school students smokes cigarettes, and nationally 20 percent—one in every five high school students—smoke. Every day, about 3,600 children between 12 and 17 years of age smoke their first cigarette; 1,100 of them will become regular smokers, and 300 of those will ultimately die from this habit. That is condemning over 100,000 kids every year to a certain early death caused by tobacco. No wonder that 70 percent of voters strongly support FDA having the authority to regulate tobacco.

Make no mistake, tobacco marketing and marketing to kids is big business. The tobacco industry spends about $36 million every day marketing and advertising its addictive products in the United States. That is over $13 billion a year. The multinational corporations that market tobacco are not spending that kind of money if they don't expect a big return. Some of these ads are not just trying to get older addicted smokers to switch brands, they are marketing to girls and young women to get them to start smoking and they are marketing to teenage boys to get them to start smoking. They are adding candy flavors to get young people to start smoking.

That our Nation's most vulnerable are subjected to these kinds of marketing campaigns of multimillion-dollar profit companies is a disgrace and an outrage. Can one imagine a company trying to addict our young people to a habit which will prematurely kill them? I am not quite sure what kind of morality exists on the part of people who do this. We are talking about an industry where the largest company, Philip Morris, brought in $18.5 billion in revenue in 2007 from their U.S. business alone and over $64 billion in total revenues internationally. The tobacco industry spent nearly $28 million lobbying Congress in 2008, and from 1998 to 2006, they spent over $248 million to prevent Congress from acting to protect the children and the citizens of our country from this addictive practice. Given these figures and the fact that profit margins are estimated at 46 cents per pack for Philip Morris, I cannot understand any argument against legislation to regulate the marketing, advertising, and product standards of cigarettes and other tobacco products.

Tobacco has been considered more addictive than heroin. Let me repeat: Tobacco has been considered more addictive than heroin. In fact, there are a number of anecdotal stories of former heroin addicts who were able to kick their heroin habit but not their tobacco habit. It was just too hard to quit tobacco compared to heroin. Imagine that.

Tobacco companies are adding nicotine and other chemicals to their products to make these products even more addictive. And they are not regulated. Nobody regulates them. They can add whatever they want whenever they want. So we have multinational corporate executives in three-piece suits making huge amounts in compensation packages based on selling a killing and addictive product to the American people and to our children. We should be very clear when we take a look at these CEOs and understand that they are nothing more than high-priced and high-paid drug pushers. This Congress has spoken out repeatedly against those horrendous people, the lowest of the low, who are trying to get our kids into heroin and other drugs. We should look at these CEOs in the same way and say to them: How dare you try to sell addictive products to our kids, get them hooked into smoking cigarettes, and force them to end their lives prematurely and, in many cases, very painfully.

While one major part of this issue is stopping tobacco use before it starts, Congress will also need to take up the issue of cessation. About 70 percent of all smokers say they want to quit smoking, but tobacco is so addictive that even the most motivated may try to quit eight or nine times before they are able to do so. I look forward to working with my colleagues in the Senate to address what I see as an addiction that leaves hard-working people struggling to make ends meet with limited choices in terms of cessation programs. What we have to do as a nation—and I know it is outside the scope of this particular bill—is to make it as easy as possible for anyone in America who wants help in order to stop smoking and kicking the habit to be able to do so. We are not there right now. Sometimes it is complicated. Sometimes it is expensive. Sometimes people do not know how to access cessation programs. But I think that is a goal we must strive for.

Studies have shown smoking has become even more concentrated among populations with lower incomes and with less education. Why do low-income people smoke? Medical research

shows that being poor is, needless to say, extremely stressful. And as anyone who has ever been addicted to tobacco knows, being anxious, being stressful makes you reach for a cigarette.

We have a lot of work in front of us. I think this bill is a very good step forward. The bottom line is, this Congress has to, through the FDA, regulate tobacco. Our goal has to be for these companies to stop pushing their dangerous and addictive product onto our people, especially our kids. Our goal has to be to come up with programs to make it as easy as possible for people to get off their addiction.

So we have a lot of work in front of us. I think this bill is a very good step forward.

Having said that, Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. FEINGOLD pertaining to the introduction of S. 1173 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. FEINGOLD. Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. UDALL of New Mexico. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. UDALL of New Mexico. Madam President, I rise to support the Family Smoking Prevention and Tobacco Control Act, and I wish to start by thanking Senator KENNEDY and all those who have fought for this legislation over the years.

Watching this debate, I can't help but think of the movie ''Groundhog Day.'' In that movie, Bill Murray has to live the same day over and over. Like him, I have been here before. We have all been here before.

The FDA first attempted to regulate tobacco products in August 1996, almost 13 years ago. In 2000, a narrow majority on the Supreme Court ruled that the Congress had not given the FDA authority to regulate tobacco. But even as the Court struck down the FDA rules, it noted that tobacco poses ''one of the most troubling public health problems facing our Nation today.''

Immediately after that decision, this body considered legislation to provide the needed authority. That legislation was introduced by the Senator from Rhode Island and our senior Senator from New Mexico. They argued that the FDA regulation of tobacco was ''long overdue.'' They pointed out that every day we delayed, more kids would start smoking and more citizens would face disease and death. That was almost a decade ago.

Since the FDA first tried to regulate tobacco, more than 20.6 million American kids smoked their first cigarette, and more than 2.6 million of those kids will die because they did. Almost $1 trillion has been spent on health care costs associated with smoking, and 4.6 million Americans have lost their lives to cigarettes.

We do not know how many young people would not be addicted today if these companies had been prevented from advertising their products to our children. We do not know how many cases of lung cancer and heart disease could have been prevented if tobacco companies had not boosted nicotine levels and marketed light cigarettes as if these cigarettes weren't killers. We don't know how many lives were lost while Congress failed to act. But we do know that number is too high—much too high.

I first became involved with this issue when I was New Mexico's attorney general. In May of 1997, we joined a lawsuit that would eventually involve 46 States and 6 territories. In some ways, this lawsuit was like any other. My client, the State of New Mexico, had lost thousands of lives and billions of dollars because of the defendant. Our suit simply demanded restitution and damages.

But on a broader level, the tobacco cases were unprecedented. We were responding to a threat that impacts every American. The suit began in Mississippi and it spread to almost every State, regardless of politics or geography. We were addressing a national problem because the Congress had failed to act.

In 1998, we negotiated a Master Settlement Agreement that was an important step forward. But we knew there was more to be done. Some have claimed the settlement makes FDA regulation of the tobacco industry unnecessary. As somebody who helped negotiate that agreement, let me tell you that nothing could be further from the truth.

The settlement was not intended as a substitute for adequate Federal regulation. In fact, the agreement originally called for FDA regulation as an integral part of efforts to protect the public. The National Association of Attorneys General recently filed an amicus brief saying the settlement has not stopped tobacco companies from marketing to kids.

In fact, tobacco company memos demonstrate that their business depends on recruiting what they call ''replacement smokers.'' Companies used to strategize about how to attract customers as young as 13, and evidence suggests this strategy has not changed. Even after the 1998 settlement agreement, one tobacco company noted, ''market renewal is almost entirely from 18-year-old smokers.'' They do not say they are targeting minors. That would be illegal. But somebody is going to have to explain to me how you can focus your business model on 18-year-olds without marketing to 17-year-olds.

When I came to Congress after my service as an AG, I strongly supported FDA regulation of tobacco. I knew then the settlement did not provide the kind of flexibility needed to effectively control tobacco industry actions. Since the settlement was signed, the tobacco companies have shown us they will evade it at every opportunity. On May 22, the DC Circuit Court of Appeals affirmed the 2006 ruling that found tobacco companies guilty of racketeering and fraud. The original ruling contained 1,300 pages describing tobacco company efforts to endanger the public health and to cover up their activities. Many of these actions were taken after the settlement agreement.

The court found the tobacco companies ''began to evade and at times even violate the settlement agreement's prohibitions almost immediately after signing the agreement.'' After disbanding a research program, according to the terms of the agreement, the companies initiated a new research program with the same office, the same board, and even the same phone numbers.

Given the obvious dangers of tobacco products and the behavior of the tobacco company executives over the years, why isn't this product already regulated by the FDA? This question was answered implicitly by the Supreme Court in 2000, and the answer is instructive. The Court found that tobacco, unlike other FDA-regulated drugs, has no health benefits. In other words, tobacco is too unhealthy to be regulated.

Whatever you think of that ruling, it poses a serious question. Should an agency that regulates Tylenol be unable to regulate a substance that kills 440,000 Americans every year—more than—and think about this for a minute—more than alcohol, AIDs, car crashes, illegal drugs, murders, and suicides combined? Tobacco kills more than all those combined. Is it possible that one of the world's most deadly addictive substances should be immune from the rules that govern almost every other addictive substance that can be legally sold in this country?

Some of those who have spoken on this bill have pointed out the FDA cannot solve the most significant problem with tobacco—that when used as directed, it kills the user. But the FDA can stop tobacco companies from adding ingredients that make their products more addictive and more deadly. It can stop them from lying to consumers about the health impact of their products, and it can stop them from marketing to our children. In

fact, the FDA is particularly qualified to do these things.

As I was preparing to come to the floor today, I got an e-mail from one of my constituents in Hobbs, NM, and she reminded me why this bill is so important. She had received an e-mail from a tobacco company. The company thought she was one of their customers, and they asked her to send me a form e-mail opposing this legislation. She forwarded their e-mail, and at the beginning of the e-mail she wrote:

They strongly urged me to copy the following message to you and to vote against it. What they don't know is I don't smoke. But my 12 and 7-year-olds do because they have to go visit their dad, who smokes around them. Not only do they get a lot of secondhand smoke, but my oldest one idolizes her dad and will probably end up smoking because of him. So by all means, pass the bill.

Congress has waited too long to protect this woman and her children. It is time to get this done.

In ''Groundhog Day,'' Bill Murray wakes up to a different day when he finally does the right thing. I am hoping we will all wake up after this vote to a new day—a day when our citizens have the health protections they should expect from their government. I would ask you to join me in supporting this commonsense legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I yield 45 minutes postcloture time to Senator BURR.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Madam President, let me say to my colleague, who had his constituent send him a letter and who served in an incredibly effective fashion as State attorney general and who was involved in the MSA, the MSA was very clear. States extorted—that is what I call it—money from the tobacco companies to pay for health care costs. That money that was part of the Master Settlement Agreement was laid out on behalf of the tobacco industry to address the health care costs in those States but also to provide the resources so those States could, in fact, do cessation programs for adults to stop smoking.

What is our experience in the country relative to the recommendations given by the Centers for Disease Control to those States in terms of what they ought to spend on programs to get individuals to stop smoking? Well, in the State of New Mexico, they have done very well. They have actually spent 44 percent of what the CDC suggested they spend.

But I think you would also find it shocking to know that the prevalence of marijuana usage in that State is 1 percent higher than the prevalence of smoking by youth. The prevalence of youth marijuana usage is 1 percent higher than the prevalence of smoking cigarettes by youth. In addition to that, I might add that the prevalence of alcohol among the youth there is almost double what the usage is of smoking or the prevalence of marijuana usage.

There are two objectives to regulating differently an industry that is currently the most regulated industry in America, and the sponsors of this bill have stated it numerous times: No. 1, to reduce youth usage; No. 2, to reduce disease and death. That is the public health component, and I agree totally with it. But I think what we have to look at is the experience of what is happening today and what the assessments are of the bill that is being considered that would grant FDA jurisdiction of this product.

Today, the Centers for Disease Control says smoking is being reduced annually by 2 to 4 percent. The Congressional Budget Office has looked at the Kennedy bill and assessed that over the next 10 years the bill would reduce consumption by smokers at 2 percent. Let me say that again. Currently, doing nothing—not spending billions of dollars, not giving new authorities to the FDA—we reduce smoking by 2 to 4 percent per year. But if we put this bill into effect—at $787 million annually—and we give the FDA authority and jeopardize the gold standard of the agency which approves drugs and biologics, medical devices and food safety, we are actually not going to reduce smoking usage as much as if we did nothing.

Why is that? This is very important because you will hear me talk over the next several days about reduced-risk products. Reduced-risk products are products that deliver the nicotine needed for the addiction but reduce the risk of disease and death because it may be moved from smoking products to smokeless products. The truth is, under the Kennedy bill, we basically eliminate any product that wasn't marketed in February of 2007—over 2 years. We have put a marker in the bill that says if there is a product in the marketplace that was not sold in February of 2007, it can't be sold any more. But if it is a product that was sold before February 2007, the FDA can't change it one bit. It is grandfathered in.

So what is the CBO's assessment? What the Kennedy bill does is it grandfathers every cigarette that was on the market 2½ years ago and it doesn't allow the FDA to change it in any way. The only thing it does is to increase the warning label. I stated on the floor earlier today that if putting a warning label on it reduces the usage of cigarettes, I am willing to do it today. I will cosponsor it with anybody. The truth is, what this bill does is it locks in these products; therefore, it eliminates the choices adults have to try to get off of cigarettes and move to a reduced-risk product.

My colleague pointed to the Supreme Court ruling on the tobacco industry, and he was partially correct. He just didn't tell the whole story. The whole story was the Court said, in 1998, when the FDA Modernization Act was written and passed and signed into law, Congress opened the entirety of the FDA Act and had the opportunity to give the FDA tobacco jurisdiction and chose at the time not to do it. That was 11 years ago; 11 years ago, the FDA Modernization Act was passed. I was the lead sponsor of that bill, writing that bill in the House of Representatives. It took 2½ years to construct it. Every Member believed that the gold standard of the FDA was so important that we never lost focus on the fact that we had to maintain the integrity of the mission statement of the FDA. But no Member of Congress ever attempted to extend jurisdiction over tobacco to the FDA because they were concerned at the time that to do that would lessen that gold standard at the FDA.

How can you tell an agency that has a regulatory responsibility to protect the safety and effectiveness of those products they regulate that we want you to do it on drugs and biologics and medical devices, but we don't want you to do it on this new product of tobacco? The risk and concerns and fears at the time were that this might diminish the effectiveness of the FDA.

What has happened in 11 years? For 11 years, we have had a steady decrease in smokers. Now we are going to adopt a bill that potentially locks us into just the products in 2007. Why have we had a reduction? Because new reduced-risk products have come to the marketplace. We ought to continue to bring new reduced-risk products to the marketplace. Unfortunately, this bill does not do that. As a matter of fact, in section 910 of this bill, a so-called new tobacco product would not be marketed unless these three things were met: No. 1, it can show the marketing is appropriate for the protection of public health; No. 2, the increased likelihood that existing users of tobacco products will stop using such products; and No. 3, the likelihood that those not using such products will not start.

Let's take the first requirement and put it into English. Before a company could market a new tobacco product, it would have to show that its use is appropriate for the protection of public health. Who in the world can show that the use of a tobacco product is appropriate for public health? It is impossible. In other words, this new tobacco product—be it a cigarette, raw tobacco, perhaps an alternative tobacco product—the companies would have to show that this new product is appropriate for the protection of public health. Somebody is going to have to explain to me how a cigarette can be appropriate for the protection of public health. It cannot be done. Therein lies why I grandfathered products before 2007.

Even if by some miracle the inventer could show a product was appropriate for the protection of public health, this would only meet a third of the qualifications for a new product to come to

market. It would also have to show that the product will make smokers or those using chewing tobacco less likely to smoke or chew and will prevent new people from starting. Again, somebody will have to show me how you can provide an example of a tobacco product currently for sale that would satisfy these standards: it discourages people from smoking, and it deters young people from starting. The bill's manager, the author of the bill, could not share with us exactly how you accomplish that.

How does one go about assembling the data that is needed for new products when, in fact, you cannot actually ask consumers about a product that has yet to have an application approved. It is a catch-22. It sounds good.

Let me highlight another problem with the bill as it relates to harm reduction. You heard me discuss harm-reduction products or products that are less harmful. These are not found in H.R. 1256.

I am sure my colleagues are aware that the legislation would ban several products not sold in 2007. One of the products is a product called snus. We have seen the can. It is a Swedish smokeless tobacco, it is pasteurized, and it doesn't require one to spit. It is a tool that in Sweden has been used to get people off of cigarettes. Yes, it is still the use of tobacco products, but it meets the threshold of diminishing the risk of death and disease. Some suggest because there is a wintergreen and there is a spice, that this is attractive to kids. That is not the case. If that were the case, we would see wintergreen marijuana, because the usage or preference among youth is higher. The truth is, that has nothing to do with it. As I understand it, the product does not require the burning of tobacco. It does not require the actual smoking of tobacco. It generates no secondhand smoke. It will not affect the children near a user. According to the research done by a host of reputable scientists and public health organizations, use of this product instead of cigarettes can actually reduce death and disease associated with smoking. Why would you ban this product if the pretext of passing this bill is to reduce the risk of death and disease? You would not. But we eliminate the ability for this product to come to market in the future, and that which is at market today we ban from the market. In other words, it is clear that snus is far less dangerous than cigarettes, and it would be appropriate for the protection of public health because it eliminates secondhand smoke, it moves people away from smoking cigarettes. It would meet much of the standard of the bill, but the legislation still mandates that the manufacturer of snus demonstrate that snus will not encourage nonusers to start.

Again, I am not sure how you communicate with the general public—which is strictly prohibited in the bill until you have an approved application. If you need to communicate with the public in order to understand whether the product would cause nonusers to start for a reduced product approval application but you cannot communicate with consumers until you have an approved application, how would you ever get approval under section 911? The devil is in the details. In fact, you cannot communicate, but you have to communicate to be able to pass the third threshold of allowing the product to come to the marketplace.

So it is disingenuous to suggest that this bill is for the purposes of reducing death and disease when, in fact, those things that are proven to reduce death and disease have strictly been forbidden. And in the case of those that are at market today, they would be pulled from the marketplace.

It would be fair to say that what we are doing is freezing the marketplace for cigarettes and chewing tobacco. In 2007, I raised the issue with the HELP Committee because this same bill was brought up. The answer I was told then was that it may be difficult to bring a reduced-risk product to market. Bringing a reduced-exposure product to market is much simpler. So I said: Let's take a look at it. Maybe a cigarette with less benzene or nitrosamines can work, so I read the reduced-exposure portion of section 911.

The first part of the reduced-exposure language reads that in the absence of conducting a 20- to 25-year study on tobacco products, if you can show a reduction in a harmful constituent in the product, you can classify it as reduced exposure. That seems reasonable.

Then, in addition, those little pesky words pop up: ''additional findings.'' The reduced-exposure language states that you must show how the product would actually be used by consumers. Once again, catch-22—you can't talk to consumers until you have an approved application. You can't show how the product is going to be used by consumers unless you can talk to consumers. Therefore, there is no such thing as reduced exposure.

The bottom line? The bill that is being considered to give FDA jurisdiction brings no new harm reduction to tobacco users in America. It does to smokers exactly what the bill states, it locks in place all the cigarettes that were sold prior to February 1, 2007. Any of the reduced-risk product that has been introduced in over 2½ years automatically goes off the market, and the pathway through FDA for any new technology that might not burn tobacco or that might use tobacco in a different way that enables somebody to quit smoking and reduces death and disease—there is no pathway for it to happen because there is no way to communicate with the public until you have an application, and a part of the application process means you have to communicate with the public to meet the test that has been designed.

You know what this is typical of what the American people think about Congress, that we say one thing and we do something else. That is exactly what we are doing here.

I will offer a substitute with Senator HAGAN tonight, I believe. That substitute will bring full regulatory authority to an entity to regulate this industry. I am not up here saying we cannot regulate it better than we do today. It is the most regulated product in America. It is regulated by more agencies than any product that is sold today. Can we do it more extensively? Sure. Can we have better warning labels? Absolutely. Can we be graphic in our description of what these products cost? Certainly. But the question is, Where is it more appropriate to do the regulation?

I suggest that creating a new entity under the Secretary of Health and Human Services, where they have full authority to regulate this product, to limit its advertising, to eliminate its advertising, is a more appropriate place than to give it to the FDA, where their mission statement is to prove the safety and efficacy of all products they regulate, but they can never do it on tobacco products; to put it under the same guidance of the Secretary of Health and Human Services, who also oversees the FDA.

What is so magical about putting this at the FDA? I will tell you, because they have attempted to do it for 10 years. It is because when you put it there, over time you will be able to outlaw this product—or you think.

I go back to this chart from the CDC, the Centers for Disease Control, where in 48 out of 50 States the prevalence of youth marijuana usage is higher than the prevalence of youth smoking. Don't think just because you outlaw it you are going to reduce this country's youth usage. As a matter of fact, you may find out you have increased youth access.

The way to do it is to take the money the manufacturers gave to the States and use the money to provide the education, to provide the cessation programs, to provide the reduced-use products that will allow individuals to get off cigarettes and go to something that really does reduce death and disease. But if you pass the Kennedy bill, that is not what we are doing. What we are doing is we are locking in forever the 21 or 22 percent of the American people who are going to smoke. In fact, the Centers for Disease Control said that if we do nothing, by 2016 we will reduce, from 21 or 22 percent, the smoking rate in America to 15.9 percent. We will actually reduce it over 6 percentage points by doing nothing.

Yet we are getting ready, if we don't support the substitute, to lock in a measure that assures us indefinitely into the future that 21 or 22 percent of the country will choose cigarettes as their means of tobacco usage. It means we will continue the rate of death and disease. We may look back and say: But we picked the strongest regulatory agency that we could to be in charge of

the regulation of this product. Tell that to a patient waiting for a lifesaving drug and the reviewer who was reviewing the application was moved over to the tobacco section, because this new responsibility they had made them take senior reviewers and get them over because they had to regulate this product from day one. Tell the individual in America who is harmed because of a medical device that should have never been approved but got through the system because the gold standard of safety and efficacy was not adhered to at FDA because they were asked to turn to tobacco and not prove that public health was important on this product and, therefore, new reviewers looked at it and said: We don't have to be 100 percent accurate on devices. Or the biologic companies, when they see a delay in the approval of an application, that actually invest billions of dollars to bring a lifesaving biologic to the marketplace that ends a terminal or chronic illness, what if this product doesn't come because of what we do?

These are questions we should be asking ourselves. The American people deserve us to fully vet this. But in 2 days of markup on this bill, when questions were asked, the answers were ignored. They were more interested in the speed with which we pass this than the accuracy of the policies that we put in place. I have tried to keep the debate since yesterday on facts. I have tried, when I made a claim, to produce the numbers. The CDC is typically a credible source. The Congressional Budget Office is usually a credible source. The University of Michigan, many have come on the floor and used it as a credible source. This is not industry hype. These are institutions that we come to the floor and use to make our claims every day. What all of them say is: Don't pass this bill. But they don't say not to do something.

Tonight Members will have an opportunity to vote for a substitute, a substitute that gives the same level of authority, that does away with advertising in total, that puts the same descriptive labels on so that people cannot only read it in plain English but see it in detail. It just doesn't put it at the FDA. Why? Because I spent 2½ years of my life trying to modernize the Food and Drug Administration through a piece of legislation we passed in 1998. Why did it take so long? Because the FDA regulates 25 cents of every dollar of our economy. When the American people go to bed at night, they know if they take a drug that was prescribed by a doctor and filled by a pharmacist, it will not hurt them. More importantly, it is probably going to help them. It will make them better. Or when they go to the hospital or the doctor's office and they use a device, they know it has been reviewed and it is safe. They know that when they go to the grocery store, there is an agency called the Food and Drug Administration that is responsible for food safety. What they buy and what they eat is actually not going to kill them.

Yet we have seen instances over the last 3 years where spinach is sneaked through and peanut butter is sneaked through. And as we become a more global economy, our concerns about where it is made and what they put on it mean that our review of food safety has to be as stringent as everything else. The FDA is struggling today. The biggest mistake we could make is to give them another product and say, regulate this, and don't regulate it based upon the same standards you do everything else. But that is what we are doing.

If you want to reduce youth access, youth usage, if you want to reduce death and disease, vote for the substitute tonight. Reject the base bill. If we do that, we will have successfully done our job. If, in fact, we fall prey to jeopardizing the gold standard of the FDA, mark my words, this body will be back at some point fixing a mistake they made.

My only hope today is that there won't be an American who loses their life by the actions we have taken. I am willing to concede that if the FDA gets the jurisdiction, the authority to regulate this industry, we will miss the opportunity to take a lot of Americans off of cigarettes and move them to other products, other products that are better for their health and not as likely to kill them. The statistics say that that will happen. Ask yourself, knowing that, is it worth risking that you might change the gold standard at the FDA, that you might lower the bar for drug or device approval, that we might actually slip on food safety. I am not sure the risk is worth it.

This is about our kids. Vote for the substitute. This is about the status quo. This is about letting an outside group have a win that has fought this for 10 years because they are in some battle with an industry.

Is it worth it for us to give them a win versus the American people? I don't think so. I encourage my colleagues to support the substitute tonight. Reject the base bill.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, pending before the Senate now is consideration of a bill that would dramatically change the way we regulate tobacco and tobacco products in America. This is an issue which has meant a lot to me during the course of my time in the House and in the Senate.

Many years ago—over 20 years ago—I offered an amendment which was the first successful attempt to regulate tobacco. I should say, earlier efforts at warning labels go back many years. But this was the first successful attempt to regulate the use of tobacco product.

What we did 20 years ago was suggest that the old days and the old ways of allowing people to smoke on airplanes had to change. Some of us are old enough to remember those days when you would make a reservation to fly on an airplane and you would tell them whether you wanted to sit in the smoking on nonsmoking section—as if there was any difference. For the most part, if you happen to be seated, at least, in the last seat of the nonsmoking section, you might as well be smack dab in the middle of the smoking section.

So we decided to eliminate smoking on airplanes. That was an amendment I offered in the House of Representatives over 20 years ago. It had the opposition of the tobacco lobby and the opposition of all the political leadership in the House of Representatives—Democrats and Republicans. They all opposed it for a variety of different reasons. But we called it anyway, and the amendment was successful. What it taught me was that Members of Congress are members of the largest frequent flyer club in America. We spend more time on airplanes than most. If there is something we want to change, it affects us personally. And this did.

So Democrats and Republicans came forward, and we started a trend which I think has been very beneficial for this country because once I passed that amendment, Senator FRANK LAUTENBERG of New Jersey took it up here in the Senate. He successfully passed it. We worked together to eventually eliminate smoking on airplanes, and the American people noticed. They liked it. They reached an obvious and rational conclusion: If secondhand smoke is dangerous in an airplane, then it is also dangerous in a train, in a bus, in an office, in a school, in a hospital, in a restaurant. Of course, the dominoes just kept falling. As they fell, there were more and more restrictions on smoking in public-type places.

So there were many things still to be done, and we started thinking about the obvious need for change. We knew we were up against one of the most powerful lobbies on Capitol Hill with the tobacco lobby. Not only were they very wealthy, with a lot of revenue from the sale of their product, but they also had ingratiated themselves to many Members of Congress of both parties. They did it in obvious ways: in contributing to campaigns. They were a major factor in some districts where they either manufactured their product or tobacco was grown. But they also befriended many Members of Congress, providing charitable contributions to hometown charities for Members of the House and Senate. It went a long way to build up good will and to convince Members of Congress to oppose any other changes when it came to tobacco regulation.

Well, there were things we knew needed to be done. You see, each day in America, 3,000 to 4,000 children start smoking for the first time—3,000 to 4,000 a day. During the course of that decisionmaking, about a third or a fourth of them will decide to stick with it. They will stick with it long enough that the nicotine chemical in the cigarette creates a craving and satisfies an addiction which is tough to break.

Oh, I have seen people walk away from a lifetime of smoking in a few days. But I have also seen people struggling for their entire lives trying to break that smoking habit—patches notwithstanding and hypnosis and all those things. For a lot of people, it is a very hard thing to do.

The tobacco companies know if they are going to have 400,000 of their customers die each year, they have to replace them with children. If people wait until they are 18 years old or 21 years old, they are likely to be smart enough not to start smoking, but if you are 12 or 13, it is an adventure. It is something that is forbidden, and it shows that you are just like a grownup, and kids try it.

The tobacco companies know that. Although they deny it, they market to kids. They sell their products in a way that appeals to children, hoping that teenagers and even younger will start taking up this tobacco habit because it is not only cool, it tastes good. The advertising is appealing. Tobacco companies spend over $13 billion a year promoting their products and many of those marketing efforts are directed right at our kids.

Mr. BROWN. Mr. President, would the assistant majority leader yield for a moment?

Mr. DURBIN. I would be happy to.

Mr. BROWN. Mr. President, I wanted to reemphasize the words of the assistant majority leader for a moment because I was walking through and heard his comments about tobacco companies' efforts to get children addicted.

As the assistant majority leader said, more than 1,000 Americans a day—400,000 a year—die from tobacco-related illnesses. I remember 15 years ago sitting in the House Energy and Commerce Health Subcommittee listening to tobacco executives talk to us about a whole host of things that they weren't exactly truthful about. But from the point Senator DURBIN makes that 400,000 Americans die a year from tobacco-related illnesses, it is clear that what the tobacco companies know they have to do is they have to replenish their customers. They have to find more than 1,000 new customers a day. They don't go to our age group. They do not go to 50-year-olds and 60-year-olds or 40-year-olds or even 30-year-olds; they go to the people the age of the pages sitting in front of us. They go to teenagers. Those are the people whom they know they must addict to replenish their customer base, if you will. That is why this legislation is so important and why the efforts of the assistant majority leader over the last 20 years, as a Member of the House and Senate, are so important, the victories he has had such as stopping smoking on airplanes and all of those other places. This legislation is extraordinarily important.

I yield back to the assistant majority leader.

Mr. DURBIN. Mr. President, I thank my colleague from Ohio for joining in. He certainly recalls those infamous hearings in the House of Representatives when the tobacco company executives stood up and ceremoniously testified under oath that nicotine was not addictive. That, I think, was the beginning of the end of the tobacco lobby in Washington, DC. Everyone knew that they were, at best, misleading and, at worst, just plain lying to the American people. When it came to their advertising, they denied for years that kids were their targets. They said it hadn't been the case.

Then one can take a look at some of the tobacco companies' internal documents that came out during the course of lawsuits, and let me tell my colleagues some of the things they found.

The Lorillard Tobacco Company was quoted as saying: ''The base of our business is the high school student.''

Philip Morris, in their internal documents, said: ''Today's teenager is tomorrow's potential regular customer.''

U.S. Tobacco: ''Cherry Skoal is for somebody who likes the taste of candy, if you know what I'm saying.'' I think I know what they are saying.

R.J. Reynolds, in an internal document, said:

> Many manufacturers have ''studied'' the 14–20 market in hopes of uncovering the ''secret'' of the instant popularity some brands enjoy to the almost exclusion of others. . . . creating a ''fad'' in this market can be a great bonanza.

So make no mistake about it. We know. We all know. Tobacco companies have directed their ad campaigns and their recruitment at our children. I have said it before; it bears repeating. I have never met a parent who has said to me, I got the greatest news last night. My daughter came home and announced she had started smoking.

I have never heard that. I don't think I ever will. Most parents know that is a bad decision and one that can be fatal.

Cigarette companies claim they have finally stopped intentionally marketing to kids and targeting youth in their research and in their promotions, but they continue to advertise cigarettes in ways that reach these populations. They continue to make products that appeal to kids.

For example, take a look at this one on this chart. This is a product called Liquid Zoo. The packaging is powerful, and the cigarettes come in fun flavors: Coconut cigarettes. How about that one? Vanilla cigarettes. Strawberry cigarettes. Liquid Zoo offers these. It is almost as if you are going into an ice cream store, which most kids like to do, because you are offering the flavors they will find in the ice cream.

Look at the Sweet Dreams and Chocolate Dreams cigarettes over here; again, a variety of kid-friendly flavors. This time, the cigarettes themselves, if you will notice down here, are pastel colors to make them even more appealing to children. Not only are these cigarettes designed to appeal to kids, but the tobacco companies buy the ads in magazines that teenagers read and try to draw them to their brands through advertising.

Here is a familiar one: Camel. Look at this ad for Camel cigarettes that ran in Rolling Stone Magazine, Cosmopolitan, and Vogue in 2004 and 2005. You can see from this ad it is appealing. These packages are designed in ways to appeal to young people, and the advertising as well. It took 39 State attorneys general to get on the tobacco companies' case before they finally agreed to stop marketing these cigarettes.

So what is next? Well, until we pass this legislation, it is inevitable that these tobacco companies will dream up another way to market their product to the kids.

This bill before us will make a difference. For the first time we are going to get serious about this. Tobacco products are one of the few, and maybe the only, products in America that go unregulated. You can't sell food or medicine in America without the Food and Drug Administration, or even the U.S. Department of Agriculture, taking a look at it. I will concede they don't inspect every package of food you will find in the store, but they have an overall responsibility to make sure that that product is safe for Americans to consume. But tobacco is an exception. Tobacco is not regulated. Tobacco is not inspected. They somehow manage to wiggle their way somewhere between food and drugs, saying, Oh, we are not a food product, and we are definitely not a drug product you would find in a pharmacy. But we know better. Even though it is an odd way to deliver a chemical—a drug—tobacco delivers nicotine and a lot of other chemicals as well. So even though they were successful in Congress for decades exempting themselves from coverage and inspection by the Food and Drug Administration, this bill is going to change that.

Senator TED KENNEDY is recovering from cancer, a brain tumor he has been fighting for many months now, and we all wish him the very best. He was the one who pushed this bill. He is the one who believed that the Food and Drug Administration should regulate tobacco products. I am sorry he can't be on the floor, because I would like to give him a big shout-out for the years he put into this effort. But we are here, and we have a chance to pass this legislation.

Here is what the bill does. It prohibits the colorful and alluring images in advertising that these tobacco companies shamelessly use to appeal to

children. This bill also limits ads to only black-and-white text in newspapers and magazines with significant young readership, and in stores that are accessible to children. It makes it harder for them to reach out to these kids and to dazzle them with their artwork and all of their images. It bans outdoor advertising near schools and playgrounds so kids won't be standing, waiting to go into school, looking up at a billboard suggesting that after school, you better get a pack of cigarettes. It ends incentives to buy cigarettes by prohibiting free giveaways with the purchase of tobacco products, and it finally puts a stop to tobacco sponsorship of sports and entertainment events.

I wish to tell my colleagues that most of us know the warnings that have been on cigarette packages for more than 40 years have outlived their usefulness. Does anybody notice them anymore? They put them on the sides of packages. They are really routine. Folks don't pay attention.

Well, we are going to change that. We are going to have much more effective warning labels on these products. This bill requires large, clearly visible warning labels at least covering half of the front and half of the back of the package of cigarettes. These labels will have large text and graphics displaying the dangers of smoking. Some people say, Why waste your time warning people? They know it already. Maybe they do. Maybe they need to be reminded. But we have an obligation as a government, as a people, to do everything we can to discourage this deadly addiction.

We are also going to require much larger warning labels in print ads for products. Some of these pictures I have shown my colleagues, you almost need a magnifying glass to find the Surgeon General's warning, which sadly has gone ignored too often. We are going to improve that by requiring that warning messages take up at least 20 percent of any advertisement they have in a magazine or on a billboard.

Study after study shows that advertising can influence young buyers. We certainly want to influence them to make a healthy decision when it comes to tobacco. This bill makes critical changes to limit kids' exposure to tobacco ads, and we know that is going to prevent kids from trying cigarettes and getting addicted.

One of the things we do in this bill as well is finally tell those who buy tobacco products what they are buying. If you believe a cigarette is just tobacco leaves ground up and put into a paper cylinder, you have missed the point. Those cigarettes are loaded with chemicals, not just the obvious naturally occurring nicotine but added nicotine to increase the addiction of smokers, as well as other chemicals which they think will make the taste of tobacco more appealing and will in some ways help the new smoker get through that first two or three cigarettes where they might be coughing. They are trying to make it a smooth transition from ordinary breathing to breathing with tobacco smoke, so they load up the cigarettes with these chemicals.

If you go in and buy a box of macaroni at the store and take a look at the side of the package, you will see the contents. What is that macaroni made of? It will have 6 or 8 or 10 different things and a nutrition labeling box. If you pick up one of these packs of cigarettes and look for the ingredients, what is included in that cigarette, you won't find it. Why the exception? Because the tobacco lobby made sure there was an exception. They don't want you to know what is in that little paper cylinder of tobacco. Now that is going to change. This bill before us is going to give the Food and Drug Administration the authority to require disclosure of ingredients so that consumers know what they are getting into, and, of course, in the process, give us information we need to find out what kind of dangerous, toxic chemicals are being added to cigarettes. Those listening may say, Well, this Senator is getting carried away calling them toxic chemicals. In fact, they are. They are toxic, and they are carcinogenic, they are dangerous, and they make that smoking experience even more hazardous for the people who are involved in it. Don't we owe that warning to consumers across America? Don't we owe it to our kids? Shouldn't we try to protect the American people from the dangers that are associated with the No. 1 preventable cause of death in America today, tobacco-related illness?

This bill has been a long time coming. Some of us have been battling this tobacco industry for two decades, and more. Now we have a chance to do something. We had a press conference earlier with Senator CHRIS DODD of Connecticut, and he has kind of picked up this standard and is carrying it for Senator KENNEDY, who is the inspiration for most of us when it comes to this issue. Senator DODD just completed the Credit Card Reform Act a couple of weeks ago, a measure we have been trying to bring to the Senate floor for 25 years. He successfully guided it through. Here he is back 2 weeks later with an issue that has been waiting in the wings for at least 10 or 20 years. I salute Senator DODD for his extraordinary leadership on these two historic issues.

Senator LAUTENBERG, my colleague when it came to banning smoking on airplanes, was at the press conference. Senator JACK REED of Rhode Island, who has always been stalwart when it comes to this issue, was there. I said at the press conference: I wonder if 20 years from now, a child or grandchild of one of these Senators will come up and say Granddad, explain to me. You mean you actually sold these cigarettes with warning labels people couldn't read and they didn't have to disclose their ingredients, and they could sell them to kids and they could advertise to kids? You mean that actually happened? Well, it is happening right now, and unless we pass this bill, it will continue to happen. Unless we pass this bill, 1,000 of our children today and every single day will start smoking and start an addiction which will lead to the deaths of at least one out of three. That is the reality. We can face our responsibility here, pass this bill on a bipartisan basis and say to America, it took a long time, but this Congress of the United States of America has finally put the public health of the people we represent ahead of the tobacco lobby.

Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BOND. Mr. President, I ask unanimous consent that I may be permitted to proceed as in morning business for up to 12 minutes.

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

NORTH KOREA

Mr. BOND. Mr. President, East Asia is a very interesting and challenging area. There are tremendous opportunities. We have great friends there. The potential for trade and better relations continues to grow in many ways, and there are many good things that are happening that we need to pursue in that part of the world, but they are also coupled with some immense challenges. There are some real problems there. Unfortunately, we were reminded of one of those key challenges most recently; that is, North Korea.

One of the world's most secretive societies, North Korea has increased its isolation from the rest of the world by continuing to pursue its nuclear ambitions, along with its missile capability potentially to deliver those weapons.

As one of the countries still under Communist rule, Supreme Leader Kim Jong-il heads a rigid, state-controlled system where no dissent is tolerated. Its destroyed economy has suffered from natural disasters, poor planning, and a failure to keep up with its burgeoning neighbors—China and South Korea.

North Korea, officially named the ''Democratic People's Republic of Korea''—and that in itself is an oxymoron—maintains one of the world's largest armies, but the standards of training, the discipline, and the equipment are reported to be very poor.

The Korean war ended with the armistice of 1953. But when one visits the demilitarized zone, as I did in March of 2006, the tension of the zone feels as if

the war has done anything but end. The north has recently fueled the tension by launching six short-range missiles, renouncing the 1953 armistice, and threatening continued attacks on South Korea.

After 15 years of negotiations, bilateral and multilateral talks, and a state of affairs worse than when we started, it is time for tougher action, barring all-out war. We hear people say: We want to talk with them, we want to negotiate with them, we need to pass a resolution. The bottom line, as we say in the old country music song: We need a little less talk and a lot more action. Talk has not gotten the job done. We need action.

A key to the successful resolution of this difficult situation is our good friend China. China provides as much as 90 percent of the north's energy, 40 percent of its food. Like Russia, it has used its Security Council veto, regrettably, against attempts to isolate Pyongyang. Without its support, its poor neighbor would struggle to survive. And it appears that the North Koreans may be exhausting Beijing's patience. Recent nuclear tests, last month's rocket launch, increasing threats, and the suspected restarting of the Yongbyon nuclear plant have reignited debate about how best to deal with this very troublesome neighbor. Beijing was swift to slap down the recent nuclear test. I hope that was the final straw for China.

We need China to play a constructive leadership role and support the Security Council resolution in toughening existing sanctions and implementing them. When you look at the sanctions that have been applied to Iran, sanctions should be applied to North Korea that are at least as tough if not tougher than those on Iran. After all, it is North Korea that has actually tested and detonated a nuclear weapon and fired missiles over Japan and throughout the region. And the North Koreans' continued sabre-rattling could lead to proliferation in the region and alter balances of power. Our friends there may not be willing to see a nuclear North Korea unchecked and unbridled, posing threats to them. We do not need to put our allies and friends in a position where they believe they must have a nuclear counterweight.

After 15 years of happy-talk and discouraging attempts during the last months of the Bush administration to turn the six-party talks into two-party talks, the time for tougher action is way overdue. My personal opinion was the two-party negotiations last fall were a tragic mistake. Obviously, they did not stop what has happened since.

North Korea poses security and humanitarian challenges to the world and particularly to China's core interests. China's ability to contain North Korea is critical in demonstrating it will provide leadership on the world stage, but it is certainly not fair to ask China to handle it all. This is the world's problem, and I believe we can work together with China and our critical allies in Japan and South Korea to defuse this situation.

South Korea's President Lee Myungbak, unlike his predecessor, has embraced the United States instead of North Korea. He has embraced working constructively within the six-party framework and with the United States, and we certainly ought not to be getting into bilateral negotiations. The six-party talks at the minimum are absolutely essential.

South Korea is one of our most important security partners in the region. I was proud last year to support the United States-Korea Defense Cooperation Enhancement Act to strengthen this important alliance. We must take the next step and approve the United States-Korea Free Trade Agreement to further strengthen our economic and strategic partnership. It is in our interest, their interest, and the interest of peace and prosperity in the region.

Japan is steadily increasing the role it is playing in international security affairs. We must continue to support these initiatives. Japan and the United States work very closely together on the AEGIS missile defense system, and robust support for ballistic missile defense is now more important than ever.

We have seen that these countries have the ability to shoot off missiles. We used to think we have mutually assured destruction. We feared the only place that would be sending missiles at us might be the former Soviet Union. That ain't so. North Korea has shown its ability, and others are working on it.

But we have made progress. According to the head of the Missile Defense Agency, LTG Patrick O'Reilly, the United States has fine-tuned its ability to shoot down long-range missiles launched by North Korea, based on a trio of tests mimicking such an attack. At a recent conference at the National Defense University, he went on to say:

> We have made adjustments to give ourselves even higher confidence, even though we intercepted three out of three times in that scenario.

General O'Reilly, in response to a question, said the U.S. ability to hit a specific spot on a target missile had improved ''dramatically'' during the tests. ''So, do I think it is likely that you're going to intercept if somebody launches out there?'' He said, ''Yes, I do. And the basis is those three tests and what we know about the threat. . . .''

I can tell you that President Obama was fully engaged, working with our National Security Council, to be able to use the resources we have at our disposal should a North Korean missile launch have threatened the United States or other of our close allies or our interests. I congratulate him on that. I applaud him for having that in place and being willing to use what was necessary. But unfortunately—and I don't understand why, with the threats we have—President Obama's defense budget reduced funding for more ground-based interceptors in Alaska and California. It scaled back funding for the airborne laser interceptor and canceled further research and development for multiple kill vehicles—all of this at a time when North Korea is increasing its sabre-rattling and Iran is showing no signs of reducing its program and continues to issue threats to Israel and its neighbors in the Middle East.

When I visited Israel in December, I went over to talk about intelligence. They only wanted to talk about one thing. They needed missile defense—short-range, medium-range, long-range—because they are looking at weapons coming in, missiles coming into them: short range, potentially ultimately long range. To protect our allies and Israel, we are working with them on the Arrow and certain other programs that I am proud to support that give them that defense, but they are in a position where they are subject to attack, not only from long-range and medium-range missiles but very short-range missiles, and we have to provide them that kind of capability.

I hope my colleagues will reconsider the proposed cuts to ballistic missile defense. It is a threat that is here, it is now, it is threatening our allies and, yes, possibly, even the United States.

As far as North Korea goes, in addition, I have recently agreed to cosponsor Senator BROWNBACK's North Korea Sanctions Act. The legislation would require the Secretary of State to relist North Korea as a state sponsor of terrorism. This requirement could be waived by Presidential certification as provided for in the bill. But we were able to hurt North Korea significantly when we imposed sanctions on the bank, the Bank of Asia, which was handling their transfer of funds. But in a very unfortunate, misguided effort to try to win the friendship of North Korea, we took off those sanctions last year. That was a mistake.

This is a challenging area. It is one in which I hope others will pay great attention, and I look forward, when the budgets come before us, to talking about the need for ballistic missile defense. We are seeing that threat. It is being visited on a daily basis on our allies in Israel. It is no time to back away from the tremendous technology we have that could protect us, our allies, and our interests around the world.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURR. Mr. President, while the Senate is in consideration of a bill to regulate tobacco, I think it is extremely important that Members of

the body understand that tobacco is not an unregulated industry today. Let me preface this by saying that I am not proposing that we do not do something additionally in the Senate. I think we can regulate more effectively. But what I have put up—I know it is hard for the Presiding Officer to see—is the current regulatory structure of the tobacco industry in America. It shows every Federal agency that currently has a regulatory jurisdiction over tobacco: Department of Transportation, Department of Treasury, Department of Commerce, Department of Justice, the Executive Office of the President, Department of Health and Human Services, Department of Education, Department of Labor, General Services Administration—the GSA—the Department of Veterans Affairs, Federal Trade Commission, Department of Agriculture, the Environmental Protection Agency, the U.S. Postal Service, and the Department of Defense. These are all Federal agencies that currently, today, regulate the product of tobacco. For any person to come to the floor of the Senate and claim that there is not sufficient regulation of this industry right now is ludicrous. As a matter of fact, this is the most regulated product sold in the United States of America currently.

The proposal Senator KENNEDY has introduced is a proposal that concentrates all the regulation of tobacco in the Food and Drug Administration, an agency that was created for the sole purpose, by its mission statement, of approving the safety and efficacy of drugs, biologics, medical devices, cosmetics, products that emit radiation, and responsibility for food safety.

We are going to shift from all these Federal agencies and all the flowcharts underneath them of different aspects of regulation currently for the tobacco industry, and we will concentrate this in the Food and Drug Administration. It probably makes a lot of sense from the standpoint of consolidation, but what I want my colleagues to understand is that this truly today is the most regulated product sold in America, when we look at the expanse of the regulatory framework that exists today.

The authors of the bill have suggested we have to allow the FDA to have jurisdiction because there should be two objectives. One is to reduce death and disease, and the other is to reduce youth usage of tobacco products. These are two goals I embrace wholeheartedly.

Let me share this chart. It starts with a product I consider to be the base: 100 percent of these products presents a health risk. What is the product? Nonfiltered cigarettes. I know the President of the Senate probably remembers when all his friends smoked nonfiltered cigarettes. The truth is, we probably still have some friends who do it today. The continuum of risk goes down in the next category, filtered cigarettes. The industry introduced filtered cigarettes at some point, probably before I was born. The risk is only reduced by 10 percent. It meant it was 10 percent less likely to have a risk involved in it. But still, clearly, 90 percent of users having the risk is pretty unacceptable.

Then we go to a category that never hit the market, except for experimentally through market testing. That was tobacco-heated cigarettes, a product that didn't actually burn tobacco, but it had a ceramic disk in the front that glowed and got hot. As that hot air was pulled through the tobacco, the nicotine was extracted and delivered, but the product never burned. It never created secondhand smoke. In fact, it never had any smoke that actually was emitted afterward. Whatever was emitted was a vapor, and it dissipated.

Then we have a new category called electronic cigarettes, a fascinating product, rather expensive. It actually runs off a battery. It extracts the nicotine and delivers it into the system in a totally different way than the tobacco-heated cigarette. But, clearly, we see that in two new iterations, we have gone from 100 percent risk to 90 percent risk to 45 percent risk and now, with this new electronic cigarette, to a risk of less than 20 percent. One would say, moving from here to here from the standpoint of risk is an advantageous opportunity for people who use nonfiltered cigarettes. If we could get them over here, we have reduced the risk of death, and we have reduced the risk of disease.

Let me move out to the next category, which is smokeless tobacco, U.S. smokeless tobacco. I need to draw the distinction because globally there are new types of smokeless tobacco. But U.S. smokeless tobacco all of a sudden reduces the risk to 10 percent. We have gone from 100 percent to 10 percent. We have reduced by 90 percent the risk presented by the use of tobacco products. Now we move to the next category, which is probably hard to see. I would equate this to about 2 or 3 percent risk. This is Swedish smokeless snus, a pasteurized product. It is actually spitless. It can be swallowed because of the pasteurization. But, again, products that deliver the nicotine need to allow somebody to go from a nonfiltered product all the way over here to a U.S. smokeless or to a Swedish smokeless. We have now gone from 100 percent risk to 2 or 3 percent risk.

Now a new category, not even on the market, a category already targeted as a product that should not be: dissolvable tobacco, a product that dissolves in the mouth. That delivers what this person needs over here from the standpoint of being addicted to nicotine but puts the category of risk somewhere down in the 1 percent category. As innovation has taken place, we have allowed the opportunity for people to come off products that had 100 percent risk down to products that reduce the risk by 99 percent. Then we have therapeutics, such as gum and patches and lozenges, that have minimal risk and pharmaceutical products that allow people to actually either reduce or quit the habit of tobacco usage.

When we look at the goal of a tobacco bill—and the authors have said the goal is to reduce disease, death, and youth usage—I ask the Presiding Officer, if you reduce from 100 percent the risk to 10 percent for U.S. smokeless or 2 percent for Swedish smokeless, does that embrace the spirit or intent of what the author of the bill is trying to do? I say yes. But what I have to share with my colleagues is this category that is at 2 percent, under the current bill being considered, would be banned. Why? Because of an arbitrary date that they have chosen to say if the product wasn't sold in the United States before February of 2002, then this product is not allowed to stay on the marketplace.

My point is, if the authors say the objective of the legislation is to reduce the risk, as you reduce the risk, you reduce the likelihood of disease, the severity of death, isn't this the category we would like more smokers to move to? I think the answer is obviously yes. We would like to move people away. We would like to reduce the health cost. We would like to reduce death. If we can do that by bringing this new age of products to the marketplace, this is beneficial to everybody. It makes a lot of sense.

That is not what the legislation does. I have spent this day coming to the floor trying to emphasize with my colleagues that what the legislation does is grandfathers two categories, nonfiltered cigarettes and filtered cigarettes. It says these are the only products that will be allowed to stay on the market. It means the 20 percent of Americans who currently have chosen to smoke, hopefully adults, are not locked into these categories from the standpoint of choice. Yet in Sweden, they created this new product, and they have had a massive movement of people from these two categories to this category. This is not something I have made up. The data is there to show.

The authors of the bill would suggest we allow this product to be created, but there are three thresholds they have to meet. The three thresholds they have set are absurd. Let me focus on the third threshold. They suggest that the manufacturer would have to prove this product wouldn't be used by a nontobacco user. For you to accumulate data to know whether a nontobacco user would be interested in using this product, you would have to go out and present the product to them and explain it before they could comment on whether they would be inclined to want to try it. But the bill forbids any communication about a product that hasn't been approved. So I ask, how do we get a product approved if the threshold is to tell them what the likelihood is of people who haven't used tobacco products using it, if you can't talk to people who haven't used

tobacco products about using the product because the product hasn't been approved?

In Washington we call this a quite crafty way of making a claim but reversing in the bill the ability to use it. In essence, the bill that is under consideration creates these two categories indefinitely and says: It is OK if we have 20 percent of the American people who choose to use those products. Hopefully, over time, more adults won't choose to use them. We are willing to accept that 20 percent are using them, and they are going to die or have severe disease.

If that is the case, then how can you come out and claim that this is a public health bill, that we are going to pass this bill because of the responsibilities we have to public health?

Since 1998, smoking rates in America have dropped from approximately 23.5 percent to 19.5 percent. The Centers for Disease Control and Prevention, the agency that many come to the floor and quote with great frequency because of their expertise, says if the Senate does nothing, if we don't pass a piece of legislation, by 2016, the rate of smokers in America will drop to 15.7 percent. But if we look at the Congressional Budget Office that has had an opportunity to see the Kennedy bill, they estimate the Kennedy bill will reduce smoking 2 percent over the next 10 years. Meaning in 2019, the rate will fall from 19.5 percent to 17.5 percent. You get where I am going? By giving the FDA regulatory authority, we are going to increase by over 2.5 percent the number of smokers in the country than if we did nothing. That doesn't make much sense, does it?

Let me explain. When we lock in these two categories and we eliminate the ability for somebody who is a smoker to find one of these products to move to, we have now locked in the category of smokers. When we explain it to somebody, it makes tremendous sense. The question is, Why would we do this? I expect Sweden to be up here arguing that this is the right strategy. Yet Sweden is the one that is the most progressive. Why? Because they are truly focused on the health of Swedes. The fact that we claim that we are doing this because of death and disease isn't true. We are doing this because 10 years ago somebody wanted to do something punitive to an industry. As a matter of fact, the date that is set in the Kennedy bill is February 2007, meaning if the product wasn't sold before 2007, it is banned from the marketplace. Why did they use February 2007? Because they wouldn't even change the bill they passed out of committee in 2007 to reflect 2009, which is the current date. There was so little attention paid to this piece of legislation that they didn't even go through to purge the date and change it. They printed the same page of the bill they had last time.

I have said several times throughout, the only thing I ask Members to do before they vote on this bill is to read it. I don't think that is too much to ask. If they read the bill, they will never vote for it. If they read the bill, they will understand that, one, this makes a lot of sense. But, two, remember, when I went over the current regulatory structure, I didn't mention the Food and Drug Administration. I did mention the Department of Health and Human Services. As we go down this flowchart of things under the HHS, there is no FDA. We are choosing an agency of the Federal Government that has never regulated tobacco. How can that possibly make sense? Maybe if you claimed you were going to put it at the Centers for Disease Control, they actually have some responsibility within the framework currently of regulating tobacco. But not the FDA. We may have taken the only piece of the Federal Government that doesn't currently have any jurisdictional responsibilities to regulate tobacco, and we are giving them 100 percent of the requirement to regulate tobacco.

The truth is, we don't need the FDA to do it. We can do it by creating a new entity under the Secretary of HHS, the same person who is over the FDA today, and we would suggest doing that by creating a new center. That new center would be responsible to regulate in total tobacco products throughout the industry.

It is a Harm Reduction Center. Think about that: Harm Reduction Center. Let me go back to this chart: The continuum of risk. If the objective is to reduce death and disease, then you have to drive the risk down. To drive the risk down, you have to bring less harmful products to the marketplace. So you have two choices. You have a bill that will do that through creating a Harm Reduction Center that regulates with all the authority the FDA has or you can choose the Kennedy bill, which basically isolates these two categories of 100 percent risk and 90 percent risk; and you put that into statute that the FDA cannot touch products that are over here, as shown on the chart, but, more importantly, you structure it in a way that the FDA could never approve any new products that are less harmful.

The Harm Reduction Center actually has two responsibilities. One, it is to regulate the entire tobacco industry and, two, to facilitate smokers moving over to lower risk options because we want to reduce the harm that potentially can be caused.

I am going to speak later tonight, as I offer this substitute, which I hope every Member will take the opportunity to read on behalf of Senator HAGAN and myself. I am sure we will both speak tonight and throughout the day tomorrow as we get ready to have a vote. It is my hope Members will take the opportunity to review the substitute.

Let me put Members on notice right now, some will come to the floor and claim: Well, this is a substitute that the HELP Committee considered and they rejected it 12 to 8, 13 to 8—I cannot remember exactly what it was. Let me put Members on notice before they come down here and make claims on it, it is not the same bill. It is not the same substitute. I am sure staff now is going to scramble to figure out what is in this new bill.

We listened to criticism. Where we thought we could better the bill, we did that. The fact is, there are still going to be Members who come and make claims tonight, tomorrow—before this is all settled—that are not accurate. I put them on notice now: I will come to the floor and expose exactly what you say.

This is not a debate where we are going to use the charts we had 10 years ago and say they are relevant today. This is not a debate where we are going to have information that was produced in 1990 for an issue we are discussing and debating in 2009. It is not right to do that to the American people.

In concluding—because I see my colleague is here wanting to speak—I pointed out earlier that in 1998 the industry made a massive payment to the 50 States of this country. It was called the Master Settlement Agreement, MSA. Mr. President, $280 billion that the industry, over a fixed period of time, was paying out to States. It was for two purposes: No. 1, to subsidize health care costs—the Medicaid costs in States—that might have been from the direct cause of tobacco usage; and, No. 2, so States would have the resources they needed to create cessation programs so people would move from this category, as shown on the chart, to this category or quit tobacco use all together.

I came to the floor yesterday—and I will say for the purposes of the Presiding Officer in the Senate, who is from Illinois—CDC made recommendations to every State to do this every year: How much of the money they got that year should be used for cessation programs.

Well, in Illinois, Illinois devoted 6.1 percent of what the CDC recommended for cessation programs to cessation programs—6.1 percent. Mr. President, 19.9 percent of the youth in Illinois have a prevalence to smoking—way too high. In Illinois, though, 43.7 percent have a prevalence to alcohol use. In Illinois, 20.3 percent have a prevalence of marijuana use. I am not picking on the Presiding Officer of the Senate, and I am certainly not picking on Illinois. I will have used all 50 States before this is over with.

As I said, one of the shocking things to me, as I explored this chart, was that I found that, I believe it was, 48 out of the 50 States have higher youth prevalence in marijuana use than of smoking.

Well, some are going to claim the reason you have to give FDA jurisdiction over this is because the age limitation of 18 is not working, that youth are getting products. Well, you know

what. There is no age where it is legal to buy marijuana, especially for youth. Yet in 48 out of 50 States, the prevalence of marijuana usage is higher than the prevalence of smoking.

Do not believe for a minute you are going to construct a regulatory regimen here that is going to take a product that is legal to people over 18 and it is going to allow a framework where people under 18 are not going to get it, when a higher percentage of them can get a product that is illegal for everybody in America.

I might also say to the Presiding Officer, his State is not the lowest from the standpoint of the percentage they chose of the CDC recommendation to devote to cessation programs. As a matter of fact, one State had a commitment of 3.7 percent.

Now, $280 billion—paid for by the tobacco industry to cover health care costs and cessation programs—I would suggest to you, if the States had all spent 100 percent of what the CDC told them they needed to spend, we would not be here talking about the regulation of the tobacco industry because cessation programs would have worked and the rate of 19.6 percent today of smokers would have reduced drastically.

I would remind you that the CDC says, if we do nothing, by 2016, we reduce the rate to 15.7 percent of the American people. But when CBO looked at the Kennedy bill, they said, in 10 years, in 2019, the Kennedy bill would reduce smoking to 17.5 percent. If we do nothing, we get to 15.7 percent. If we pass this bill, we get to 17.5 percent. If the objective is to have less smokers, the answer is: Do nothing.

But tonight, sometime around 6 o'clock, Senator HAGAN and I will come to the floor not to suggest to our colleagues that we do nothing but to suggest to our colleagues we do the right thing, that we find the appropriate place to put regulation, that we give it the same teeth the FDA has, that we give them the ability not just to have black-and-white print advertising—such as the Kennedy bill does—I suggest in my substitute we eliminate print advertising, we do away with it in total.

We do not worry about whether Vogue magazine, which is typically bought by an adult woman, might be looked at by a teenage girl. If we just eliminate print advertising, we do not have that problem. The Kennedy Bill limits it to black and white. We ban it in total.

If Members will take the opportunity to read both bills—to read the substitute, to read the base bill—they will find out we are actually more expansive from the standpoint of regulation. We actually accomplish the task of reducing disease and death. I believe, by some of the things we do, we actually reduce the amount of youth usage, such as by eliminating print ads.

But there is a big difference. I do not turn it over to the FDA. I do not do that for a selfish reason—purely selfish. I spent 2½ years, 15 years ago, when I got to the U.S. House of Representatives, where I was tasked by the chairman of the Energy and Commerce Committee to write a bill that modernized the Food and Drug Administration. It took 2½ years to do. It was signed into law in 1998.

We opened the entirety of the Food and Drug Administration and revamped all the ways it worked to make sure we could reach new efficiencies in the approval of lifesaving drugs, biologics, which were new, devices. We spent a meticulous amount of time going through this with one goal in mind: Do not lower the gold standard the American people have come to expect through the FDA; do not lower the standard an applicant has to reach so we can assure the safety and efficacy of the products we regulate.

Well, I thought that was important, and in 1998 it became law. And you know what. When we had the entirety of the FDA bill open to every Member of the House and the Senate, no Member of Congress offered an amendment to give the FDA authority over tobacco because they knew, at the time, the integrity of the FDA was more important than who controlled it from a regulatory standpoint. They did not want to jeopardize the integrity of what the FDA core mission was.

But here now, 11 years later—I might also say, the Supreme Court ruled in a court case that the FDA did not have jurisdiction over tobacco. The reason they chose was, in 1998, the Congress opened the FDA Act and did not give FDA authority. Therefore, it was not the intent of Congress for FDA to have authority.

So those who claim this is part of the FDA—should have been, always would be—it is not the case. Because Members of Congress had the opportunity and did not do it. Why? Because of the integrity of the Food and Drug Administration. Why in the world would we have changed, in 11 years, to where we would risk the gold standard of drug approval, of biologic approval, of medical devices approval? Why would we risk at a time where, every year for the past 3 years, we have had an issue on food safety—we have had salmonella in peanut butter; we have had tainted spinach; we have had imported products that have killed Americans; and the FDA is the agency responsible for the regulation of food safety—why would we dump on an agency today that is struggling to meet their core mission of food safety a new product such as tobacco?

Why would we take an agency, such as the FDA, that regulates 25 cents of every $1 of the U.S. economy, and say: You know what. You have never regulated tobacco before, but we would like you to do it now. We would like you to take senior reviewers who are approving lifesaving applications for drugs, and we would like you to move them over to the tobacco area.

What else can they do? You cannot go out in the world and find people automatically at the FDA who have ever regulated tobacco. So they are going to take their most senior folks. What does that mean? The likelihood is, we are going to wait longer for that lifesaving drug. We are not going to reduce health care costs because chronic disease is not going to have new therapies because the applications will not be acted on. Heaven forbid we do this and all of a sudden somebody dies as a result of an FDA reviewer who looked at it and said: Well, you know, I know our core mission is to prove the safety and efficacy of all the products we regulate—with the exception of tobacco because you cannot prove it is safe and effective—so if I am going to turn my head on tobacco, maybe I will turn my head on this medical device because it does not look too bad, and all of a sudden somebody dies from it.

This is a huge mistake for the Senate to do. I urge my colleagues: Read the bill. You will not vote for it. Read the substitute, it will supply the sufficient amount of regulation to an industry that can be better regulated, should be better regulated—more importantly, a substitute that goes much further from the standpoint of reducing youth usage of tobacco, which gets at the heart of death and disease.

In fact, the substitute is the only bill that accomplishes what the authors of the current base bill suggest is the reason we are debating this issue. This chart I have in the Chamber proves it. It does it in the most visual of ways. If we do not allow these products to come, you have now locked it into this. That is not what the authors suggest is the objective.

I urge my colleagues, tonight, when given the opportunity, listen intently, read the bills. Tomorrow, when you are given an opportunity to vote, vote for the substitute. Do not support the base bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to express my appreciation to Senator BURR for his hard work on this issue. He is one of our most able Members. I think the fundamental premise of the study that showed his bill will reduce smoking more than the bill on the floor, the Kennedy bill, is something that should give us pause. I know they have worked very hard on it. He has worked very hard on it, and I hope my colleagues will avail themselves of his suggestion to read it—both bills—and make a judgment on what they think is best for the country.

UNPRECEDENTED BUDGET DEFICITS

Mr. President, the unprecedented budget deficits we see today are creating fears of a surge in bond interest yields and a fall in the U.S. credit rating. I wish to talk about that. I have talked about it previously. But I would repeat my fundamental assertion that nothing comes from nothing, nothing

ever could, as Julie Andrews said. Debts must be paid, and they will be paid one way or the other. Either somebody is going to lose—either you are going to print money and inflate the money or you are going to pay back the debt with interest to whomever will loan you the money to fund the debt. We are moving into a decade of the most unprecedented deficits in the history of our country. Nothing has ever been seen like it before. It is irresponsible. We have not discussed it enough. It is breathtaking to people who examine it.

The estimated deficit for fiscal year 2009, the one we are in, ending September 30, is expected to be $1.84 trillion. That is a lot of money. That number dwarfs even the $500 billion maximum, inflation-adjusted deficit—nearly the same dollars to dollars—during World War II. It was only $500 billion in World War II. So this year, the deficit is projected to be 12.9 percent of the gross domestic product. In 1 year, the deficit will be 12.9 percent of the gross domestic product of the United States of America. That is a level not seen since World War II.

David Walker, the former Comptroller General of the United States—that is what we call the Government Accountability Office—has been speaking out for a number of years on deficits. He criticized President Bush for deficits. He continues now to speak out since he has left government. He has concluded that the United States of America is in danger of losing our AAA credit rating. He points out that the cost of insuring U.S. Government debt has risen so much that it recently cost more to buy protection on U.S. debt than debt issued by McDonald's Corporation. That is his statement. In fact, a Wall Street Journal editorial in March noted that the insurance rate for U.S. Government bonds rose 700 percent to 100 basis points between March of 2008 and March of 2009. That means in this past month of March, it costs $10,000 to insure $1 million in Treasury bonds. Who would think you would have to get insurance to guarantee the payment of U.S. Treasury bonds? As of May 28, that insurance cost had fallen to 45 basis points, but that is still more than three times what it was in March of 2008, just a year ago. Not only that, as of May 28, the cost of insuring our government's debt is higher than that of France and Germany.

Mr. Walker goes on to note that the United States has had a AAA credit rating since 1917. Furthermore, he states that given the current national debt and deficit, the United States may not deserve the AAA rating we have today. That is a warning. I hope that is not so. I hope we don't see a reduction of our AAA rating, which has a real impact in how much we have to pay to borrow money, and we are borrowing a lot. But I think this man deserves hearing. This is a serious commentator on American deficits and debt.

So the idea he has proposed is not farfetched. In fact, the Standard & Poor's—S&P—a few weeks ago lowered its outlook on Great Britain's debt. They put it on a negative outlook. While the United Kingdom is keeping its AAA rating for now, the Wall Street Journal notes that the negative outlook that S&P has found is a precursor to a downgrade. They also note that Japan's debt, in fact, has already been downgraded to AA2 from AAA. So the question is, are we next?

Not only is our credit rating in danger, but it is costing more and more to borrow. This is very important. While it may appear to be a separate problem, I think it is related to us spending more and borrowing too much. The yield on the 10-year Treasury bond, which rises with the increased government debt and expectations of inflation, has surged 54 percent this year, from 2.4 percent to 3.7 percent as of yesterday. It was 3.2 percent 2 weeks ago. Yesterday it was 3.7 percent. That is a significant surge.

So let me say it this way, and to repeat: We will borrow this year a record amount of money. Not only that, over the next 10 years, we will continue to borrow at unprecedented rates. We are borrowing because we are spending more than we take in—a lot more than we take in—and nothing comes from nothing.

How do we spend more than we take in, in taxes? How do we do it? We borrow the money. How do we borrow the money? We sell Treasury bills. We ask people to take their money out of their bank account and buy U.S. Treasury bills. We have had an unusual situation with interest rates being low, because people were so afraid if they bought stock or private bonds, that companies may go bankrupt, and they were interested in buying government bonds, Treasury bonds, presumably the most secure bonds in the world. So we have had a bargain and we have been taking advantage of it. But all of a sudden now we are beginning to see a surge in these interest rates, because people are thinking: Well, if I don't get a 3-percent return when I buy a Treasury bill, and inflation next year is 5 percent, and my money is tied up for 10 years, I am losing 2 percent a year. I am not gaining money; I am losing money. The world looks at it like that. The Chinese and people in Saudi Arabia who have excess wealth and bought Treasury bills are looking at this too and they are demanding higher interest rates. That is why it is going up. That means each year we will pay a larger percentage of the tax money we take in to pay interest on the debt than we would have if that had not been the case.

I am told that this rampant rise in Treasury rates is the talk of Wall Street. How has it happened? Net debt sales; that is, the net sales of Treasury bills and the borrowing the government has done, increased from $332 billion last year to $1.555 billion this year. That is a lot. That is almost five times. When you put too much of a product on the market, things happen, and people start demanding better returns. Two weeks ago, Barron's reported as big news that the U.S. Department of Treasury bond yields could top 4 percent this year. And it seems, since it already hit 3.7 percent yesterday, that we may get there sooner than Barron's even anticipated.

So how does all this stack up with what the President estimated when he submitted his budget earlier this year? His budget estimated an average yield on Treasury bonds at 2.8 percent for the entire year. We already hit 3.7, and Barron's said we are going to hit 4, so we are ahead of Barron's schedule already. So the 10-year Treasury bill is increasing, and hopefully, it won't surge out of reason. Some are worried about that. It does look like it may well reach that 4 percent or more this year. That is bad news for American taxpayers.

So we are like the credit cardholder. When interest rates go up, it costs us more. When the interest rates on Treasury bills go up, we have to pay more to get people to loan us money so we can spend it. I guess it is fair to say we have only ourselves to blame.

Even if you took the President's assumptions, interest on the debt is supposed to be $170 billion this year. So this Nation will pay on the debt we already have accumulated $170 billion in interest this year. That is a lot of money. We spend $40 billion on the Federal highway program. We spend less than $100 billion on Federal aid to education in America. We are already spending, and will spend this year, $170 billion on interest, on debt we have run up before. That equals $1,435 per household. That is a lot of money, $1,435. By 2019, according to the Congressional Budget Office, our own Budget Office's evaluation of what the President's budget is going to be, 10 years from now, the interest on the debt will not be $170 billion; it will be $800 billion. That would be $3,433 per household, more than twice the current debt interest payment that each household in America is to incur. Why? Because we are spending too much. We are spending money we don't have. We spent $800 billion on a stimulus package. We are spending $700 billion on the TARP Wall Street bailout. Our increase in spending for the underlying Federal budget this year, the nondefense, the discretionary spending was a 9-percent increase. That is huge, many times the rate of inflation, a 9-percent baseline increase. Most of my colleagues know that if you increase spending, or have an interest rate of 7 percent, your money will double in 10 years. So at 9 percent, in less than 10 years, the amount of our spending would double; entire government spending in 8 or 9 years would be doubled. That is why we are running up debt. But the most troubling thing is, it is going to continue.

We have heard the President say, I am worried about this. We are going to

have to talk about this in the future. Have you heard that? Oh, yes. This is a big problem. We are going to have to do something about it in the future. Well, the future is becoming now. The budget that he submitted to us didn't do anything about it in the future. Let me be frank with my colleagues. The budget this year, the deficit this year the President projected would be $1.76 trillion. That has already been proven to be low. They are now estimating $1.84 trillion in 1 year. And they project it dropping down to maybe $500 billion in 3 or 4 years, assuming the economy is growing well. But over the 10 years, in the tenth year of his budget deficit, the annual deficit in the tenth year, is over $1 trillion. And over the 10 years, the average deficits from the President's own submitted budget would be almost $1 trillion a year, and the highest deficit prior to this we have ever had was $455 billion last year. So this is averaging almost twice, really twice the highest deficit we have ever had.

The President has said, correctly, that these trends are unsustainable. He recognizes that. He also said, according to Bloomberg at a townhall meeting in New Mexico on May 14, that current deficit spending is unsustainable. He warned of skyrocketing interest rates for consumers if the United States continues to finance government by borrowing from other countries. So I agree with him on that, but it is time to start doing something.

China remains the biggest foreign holder of United States debt in Treasuries, and Prime Minister Wen Jiabao stated in March that China is worried about its investments.

Not only that, but yields are currently rising despite an extremely unusual move by the Federal Reserve to directly purchase Treasury bonds. So the U.S. Federal Reserve—our banking gurus—have decided they will take money and purchase U.S. Treasury bonds to keep the interest rates from going up so fast, because there are not enough people out there to buy them all, I suggest. It holds the interest rates down somewhat.

The Fed has not done anything like this since the 1960s. It is very unusual. Even then, it was a much smaller operation. They announced a $300 billion purchase plan in March and have made $100 billion in purchases so far. If those purchases are not carefully managed, they could lead to inflation down the road; there is no doubt about it. Not only that, but the Fed could get stuck with sizable losses if the yield on those Treasury bills continues to rise.

According to Barron's, if rates rise 1 percentage point, it could lead to a $140 billion loss for the Fed in that deal of purchasing these bonds. That is $140 billion. The Federal highway spending in America is $40 billion. This is a huge sum of money.

Let's look at the deficit and debt that are driving our interest rates higher as part of his detailed budget released in May. The President raised his estimate of a deficit from $1.75 trillion to $1.84 trillion. I ask, do we remember that at that same time when the President released his budget, he also released a plan that was going to show that he was committed to frugality, and it would supposedly save $17 billion? Remember that? Some people had to laugh at it, really. It was pretty amazing. There were these numbers out there, and he announced this frugality package to save $17 billion. It wasn't clearly understood, in my view, how insignificant that was, because at the same time they were announcing saving $17 billion, the reaccounting of the projected deficit for this very fiscal year jumped $90 billion. So it dwarfed the $17 billion in spending cuts that were announced at that time. So we had a $17 billion efficiency project, which remains to be seen whether it will be successful, and the total deficit expectation jumped $90 billion.

The President's budget proposes to take us to a debt level of 82 percent of GDP by 2019. In 2019, the amount of debt, in the country at that point would amount to 82 percent of our entire gross domestic product in America. That is a level not seen since 1946, at the height of World War II. The difference between now and then, of course, is that that was during a war. It was widely known that those expenditures were temporary, and when the war was over, they would end; and, in fact, they did.

However, today, the President is projecting deficits averaging nearly $1 trillion as far as the eye can see, with no projections to show them drop, or be reduced. It has been popular to complain that, well, President Bush had deficits—and he did. I criticized him for that, and I think he could have done a better job. His highest deficit was $455 billion. This year's deficit will be $1.8 trillion, and they will average $900 billion over the next 10 years. Not 1 year in the next 10 years, according to the President's own budget, will his deficit be as low as the highest deficit President Bush had, which was $455 billion. Even as a percentage of the total gross domestic product, it is astounding. President Bush's deficits averaged 3.2 percent of GDP. President Obama's budget, over the next 10 years, will average 7.3 percent of GDP each year—twice what President Bush's averaged.

I am worried that we are not getting the kind of bang for our buck that we hoped to get. We got an $800 billion stimulus package that was supposed to go out there and build infrastructure and create jobs now. It was money that had to be spent in a hurry. The truth is, though, that most of that money is not going to be spent until after 2010. It takes time to get that money out. The CBO estimated that $162 billion of the $311 billion now appropriated won't be spent until 2011, or later—not to mention that there is no evidence of the government ever taxing and spending its way out of a recession. That is not, historically speaking, proven to work.

Christina Romer, the Chairman of President Obama's Council of Economic Advisers, wrote about this in 1992, in a paper titled ''What Ended the Great Depression?'' in the 1930s. She concluded:

> Nearly all of the observed recovery of the U.S. economy prior to 1942 was due to monetary expansion [from gold inflows].

She gives almost no credit to the increased spending that occurred.

Another report with Ms. Romer's name on it, one that the President's economic team put out this January—and she is the head of the team—was titled ''The Job Impact of the American Recovery and Reinvestment Plan.'' It estimates that the $800 billion stimulus package will lower the unemployment rate and create 3.6 million new jobs, and it includes a chart. The chart, if you look at it today—and it has been examined by others, such as Greg Mankiw, Chairman of the Council of Economic Advisers—it shows that their projected unemployment rate, without the stimulus package—that rate would hit a certain level. Now that we have had the $800 billion stimulus package, what does it show? That we are trending, on unemployment, exactly where they projected the unemployment rate would be if there were no stimulus package at all.

Indeed, if you look at the numbers, very little of it has gotten out of there, and you can see how little was stimulative, or job creating, or how much of it was spent on things it should not have be spent on. Indeed, this Senate rejected and failed to adopt my amendment that would have said at least the employers who hired people with this money ought to run the E-Verify system to make sure the people they hire are here legally in America and are entitled to work. That wasn't even part of it.

Unemployment continues to go up. It was 8.9 percent in May, and a lot of people think it may hit 10 percent. I hope not, but I think it is likely to continue above 9 percent, which is higher than what was projected, for sure.

I say all this to point out that some of the brilliant thinkers in our country believe we had to do all this; if we had not, the country would sink into the ocean. We could have this problem and that problem. But the testimony we had in the Budget Committee from the Congressional Budget Office, whose numbers have held up pretty well so far, and they are basically hired by the Democratic majority here, but they are nonpartisan and do a good job. They projected only a slight difference in unemployment, if you had a stimulus package—only slightly better than if you didn't have one at all. But, more importantly, they concluded that over 10 years, the stimulus package, if we passed it, would have a net negative effect on the economy. It should help some in the 2 or 3 years from the moneys being pumped out—it has to help some out soon.

But the crowding out of private borrowing, the interest that will have to be paid on the debt over the 10-year period, will mean that the economy will be less healthy at the end of 10 years than if we hadn't had the bailout package or stimulus package at all, which confirms my view that nothing comes from nothing. There is no free lunch. Debts have to be repaid. You cannot create something out of thin air. If you spend something today and you have resources today to spend today, and you took them from tomorrow, they are not going to be there tomorrow. Somebody is going to have a greater burden to carry—our young people—than if we hadn't taken their money and spent it today.

I have to say that I am not happy about this. I am worried about it. I do believe deficits matter. People who say deficits don't matter—and some Republicans used to say that—what planet are they from? Of course, deficits matter. You can cover them up, the Fed can help, and smart monetary policy and spending policies may make a difference here and there, but in the long run, it drives you down, and we have to be serious about it. I hope as time goes by, we can work together in a bipartisan way to try to establish some control over our spending.

Just Monday, GM went into bankruptcy. We already have $20 billion in Federal Government money going into General Motors prior to bankruptcy, and the White House plans to add another $30 billion. That is a substantial additional investment. This is what the numbers show. First, the White House said we are going to be out of GM and get our money back in 5 years. That is their goal, right? You heard that we are going to get the money back. But the Wall Street Journal has calculated this, and they have said for the Federal Government to get their money back out of GM, they would have to sell their stock, and GM's market cap, the total value of their stock, would have to reach a value of $80 billion. So to get our money back in 5 years, the market cap or value of GM stock would have to total $80 billion. Let me remind you that at its peak, in 2000, the highest GM ever got as a market cap was $56 billion. Their current market cap is less than $1 billion—$441 million dollars. It goes beyond rationality to believe that in 5 years—or maybe ever—we are going to get our money back out of GM. I am worried about that.

That is one more example of the kind of spending we are doing, and the money is being spent in a way that is not controlled. How does the Secretary of the Treasury decide how much money to give? And to what corporation? What about suppliers of GM? What about automobile dealers, who are losing their shirts and going into bankruptcy? Nobody bailed them out.

Somewhere along the way, it has been decided that we need to do this. It should have been done according to the established constitutionally-approved reorganization policies of bankruptcy. The U.S. Government could have put some money into GM in an effective way, I think, and had a positive benefit. But just to pour the money in, as we have, in an unprincipled way, is not good.

I will repeat one more time my concern about the unlawful way, the unprecedented way, in which this money is allocated.

The money comes from the TARP, the Wall Street bailout. I opposed it because I thought the language was too broad, but even I didn't know it was this broad. But we were told if we passed the TARP bill, Secretary Paulson and the Treasury Department would buy toxic assets. He was specifically asked at a House committee meeting whether he would buy stock in banks. He said: No. His goal was to get the money flowing again in the financial markets, and we had to do something about the financial markets. Senators were eventually convinced, and it was rammed through here in the very shortest period of time—in a panic, really. A week had not gone by when he had decided to buy stock and not buy toxic assets, not to buy toxic mortgages. As time has gone by, that same money is used to buy stock in what was once a private corporation.

I think this is unbelievable. There are no hearings on where the money is going. There is no public ability to understand what kind of justification these banks, GM, or Chrysler had to put forward to receive billions of dollars from the taxpayers. It was all done basically in secret, as far as I can understand. They are telling the company they have to do this and that and firing the CEO and all of those kinds of things that have been occurring. I don't think the American people are happy with that. The American people are very concerned—I believe they are rightly concerned—because we are doing some things that have never been done in the history of our Republic. It is not healthy.

I hope that somehow we can get our footing again, get our balance, and return to the tried-and-true principles that made this country great.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

HEALTH CARE

Mr. BENNETT. Mr. President, we have just heard from the President of the United States with respect to an effort to get a bipartisan health care plan. I have been to the White House summit on health care. I have heard the President speak directly to this issue. I applaud him in his effort to make sure we deal with this problem intelligently, and I accept at face value his desire that it be done in a bipartisan manner.

But as we have this discussion about doing this in a bipartisan manner, it all ultimately comes down to one sticking point that seems to be firmly established in the President's position and firmly established in the position of those who sit on this side of the aisle. At the moment, that sticking point seems to be irreconcilable. I want to talk about it in direct terms so that we understand what it is we are talking about and those who listen will understand why those of us who are Republicans are determined to stand firm on this point.

This is the point: Shall there be a public plan, a government-run option in the choices that are available to people with respect to health care?

Along with Senator WYDEN of Oregon, I have cosponsored the Healthy Americans Act, which is determined to create as many options as possible, to create a wide range of choices for Americans to make with respect to their health care.

We recognize we are going to have to change the tax laws in order to give people control over their own health care dollars. Right now, health care is the only part of the economy where the individual receiving the goods or services does not control the money that pays for the goods or services. So it is obvious that you will not have market forces available in that circumstance. If the individual who is receiving the goods or services controls the money that pays for the goods or services, he or she will make a different choice than if someone else is controlling the money. But in health care, somebody else makes the choice, and that is why the core function of the Healthy Americans Act, which Senator WYDEN and I are cosponsoring, says individuals should be in control of their own money and we should have as many choices as possible so that individuals can go out in the market.

There will be competing forces. Competition brings prices down. Competition creates new opportunities. Competition fills niche markets. We believe all of that will happen if we have this degree of choice.

When we have had this conversation with officials of the administration, they don't disagree. As a matter of fact, many officials of the administration have said to me: We really like what you are doing with Senator WYDEN, and we applaud you, Senator BENNETT, for reaching out in a bipartisan way to try to solve this problem. But we just have one additional factor we would like to add to your bill. We would like to say that as a backup, as a final option, we want a government-run plan to be there as one of the available choices, just in case none of the others work. That is, as I say, the sticking point here.

I have said to members of the administration: If we end up with a government-run plan as one of the options in my bill, I will vote against my own bill.

The government-run option will change the playing field, will ultimately drive out all of the other choices because the government is in a position to subsidize it. The government is in a position to make it more

attractive than anything else and thereby gain the blessing of the voters because the voters will say: The government took care of those greedy companies that would otherwise make me pay this, that, or the other. Here, the government choice is cheaper; isn't it wonderful that the government is looking out for me? Ultimately, we would end up with a government plan, single payer for the whole country.

I know there are many of my friends on the other side of the aisle who want that, and they are very open about it and very direct about it. They say a number of things. They say the government plan is cheaper, the government plan provides health care for everybody, the government plan is fairer, and that is what we ought to have.

I wish to spend a little time talking about the experience of those countries that have adopted that attitude. If I may be personal and give my own example before I get into the statistics, I will tell you about a situation when I was living in Great Britain and had a medical problem. I won't bore you, Mr. President, with the details of the problem, simply that I went to a doctor in Scotland to see if anything should be done. The doctor first signed me up because under the British system a doctor—this shows how long ago it was, but the system has not changed—got a shilling a week for every patient he signed up on his list. So immediately he wanted to sign me up so he would get that shilling for having me there, which would be a decimal of a pound today rather than that old designation.

Once he had me signed up, as I say, he examined me. He said: Yes, you do need treatment. And he gave me a piece of paper that would allow me to go to the Edinburgh Royal Infirmary, where I was to see a surgeon. So I went to the Edinburgh Royal Infirmary and sat there for most of the day before a doctor could finally see me.

The doctor saw me and checked me out and said: Yes, indeed, you should be scheduled for surgery.

I said: Fine. I have a schedule. Can you give me some idea when the surgery will be so I can arrange my affairs to be available?

He said: My guess would be 9 months.

I said: I am going to be returning to the United States in less than 9 months, so I guess we can just forget this.

I communicated that to my father, who was in the United States, and he said: I don't think so. Can you get a surgeon who would operate on you right away?

So I inquired and I was told: Yes, you can get a private surgeon, but the private surgeon cannot take the health care system dollars or pounds. He is outside of it. If he stays in private practice, he cannot participate in the national health system at all.

I said: OK, that is fine.

My father said: I will pay it. Where can you go?

I went to the private surgeon and, yes, he had a practice where he took only patients who were outside of the health plan. He looked at it and said: Yes, you need surgery.

I said: All right. When?

He said: Will Wednesday be soon enough?

This was on a Monday.

I said: All right.

We went into a private hospital. It was separated from the national health service. He performed the surgery. I paid him cash, got the thing taken care of, and finished my time in Great Britain with that particular problem solved.

I would like to think that was only the case back when I was younger, but I find it is still the case, not only in Great Britain but in other countries that have this kind of problem.

Let me share a few statistics with you of what happens with respect to this single-payer system.

One of the things we are told by those who support single payers is that the outcomes in these other countries are really not any different than they are in America, that we are paying far more in America and the outcomes are basically the same. The statistic they usually use in order to prove that America is not any better is life expectancy and infant mortality. They say as a country, our life expectancy is not that much better than anybody else's and our infant mortality rate is as high or higher than other countries. Shame on us, we are not getting good health care that we are paying for.

Life expectancy is tied in very many cases to either ethnic or geographic locations. The life expectancy, for example, in Utah, where the behavior is a little different than it is in some other places, is substantially higher and has little or nothing to do with the health care. It has to do with the culture in Utah that causes people to behave in a healthier lifestyle.

Let's go beyond this broad-brush approach and look at some specifics.

The largest international study to date has found that the 5-year survival rate for all types of cancer among both men and women is higher in the United States than in Europe. Isn't that a statistic showing that we are getting a better result in America than in Europe? A cancer survival rate is not something that is due to the geography of where you are born. If you are born in the inner city, that has something to do with infant mortality rates, or if you live in a healthy environment, that has something to do with life expectancy. Cancer survival rate has to do with health care, and the health care in the United States is better than it is in Europe and has produced a higher survival rate for both men and women.

In Britain, there are one-fourth as many CT scanners per capita as there are in the United States and one-third as many MRIs. If we think the CT scanner and the MRI produce a better result in terms of health care, we want to be in the United States. We do not want to be in one of these single-payer, government plans of the kind President Obama wants as an option destroying the other options and choices there would be if we pass the Healthy Americans Act.

The rate for treating kidney failure—dialysis or transplants—is five times higher in the United States for patients between the ages of 45 and 84 and nine times higher for patients 85 years and older. Again, there is a personal interest here because members of my family have kidney disease. I want them in the United States with the kind of system we have where they do not have to wait and they do not have to worry about government regulations. I want them here where it is five times better than it is in Europe with respect to kidney disease.

Right now, nearly 1.8 million Britons are waiting for hospital or outpatient treatments at any given time—1.8 million waiting in the circumstance that I described in my own situation. In 2002 to 2004, dialysis patients waited an average of 16 days for permanent blood vessel access in the United States, or 20 days in Europe, and 62 days in Canada.

We often hear about the benefits of being in Canada. I have constituents who come from Canada, who have moved to Utah. Every time this comes up, they come to me and say: Senator, whatever you do, do not give us the Canadian system. Whatever you do, make sure that America doesn't go in the direction the Canadians have gone.

Let me give you some examples to demonstrate why that is good advice. This is one that broke out in the debate in the Canadian Parliament. A woman by the name of Emily Morely, in March of 2006, was informed by her doctor that her cancer had spread and she needed to see an oncologist, and then she was told: You will not be able to get an appointment for months. Well, if my cancer is spreading, I don't want to wait months for an appointment. Her family raised a ruckus, they called the local newspaper, a petition was signed by her neighbors demanding she get care, and then, in response to that, the government got her to a specialist. Once again, in the government, you respond to the voters. If you are getting bad publicity in the press, or the voters don't like what you are doing: Oh, let's take her to a specialist. So she got to a specialist and he told her she had only 3 months to live.

Well, she at least had time to put her affairs in order. Had she not had the intervention of her family and her neighbors, it is quite likely she would have died before even seeing an oncologist for the first time.

But let's go to another example that may be even closer to home to the legislators. A member of Parliament in Canada, Belinda Stronach, strongly supports the Canadian health care system, and she would object to this kind of argument that the Canadian health care system isn't very good. But where did she go when she was diagnosed with

cancer in 2007? She went to California and paid for the treatment out of pocket. Even a member of Parliament who supports the Canadian system recognized that the government plan didn't work for her. And with her own health at risk, she came to America and took advantage of what we offer here.

There is the case of the mother in Calgary, Alberta who was expecting quadruplets. I am the father of twins, and they came as a great surprise. Quadruplets is something I am not sure we could handle, and certainly they would require very good facilities to deal with a pregnancy that produces quadruplets. She is in Albert, Canada, and she is flown to Great Falls, MT, to deliver the quadruplets. Great Falls, MT, is not thought of as one of the great centers of health care excellence in the United States. Yet the facilities in this small town in Montana were better than any facility available anywhere in Alberta.

These are the examples of a government-run plan and because people who are getting the service don't control the money the government plan can end up focusing on overall cost control to the detriment of the people who are trying to access it. I don't think ultimately the American voters, having gotten used to the access that they currently have—being used to the idea that they do not have to wait—would ultimately tolerate a government plan.

My consult to President Obama and to my colleagues here in the Senate is to slow down a little. We are talking about restructuring 18 percent of the entire economy. We spend 18 percent of our GDP on health care. I agree absolutely that it is long past time that we addressed this issue; that we rationalize the challenge; and that we do things that make it far more effective.

As I have spent the last 3 or so years working with Senator WYDEN to try to understand the problem and fashion the Healthy Americans Act in a way that will solve the problem, I have discovered a great truth that I didn't realize before, and that is this: The greatest cost control factor in health care is quality. The best health care is the cheapest health care. And it has been achieved in those places that have focused on quality first and the patient first, and it has not involved any government intervention.

Dartmouth has done a study and told us the three cities in the United States where you get the best health care. They are Seattle, WA; Rochester, MN; and Salt Lake City, UT. I take some pride in that fact. And then the Dartmouth study goes on to say that if every American got his or her health care in Salt Lake City, UT, it would not only be the best in the United States, it would be one-third cheaper than the national average.

Those are the kinds of examples we should be focusing on and learning from, and then doing our best to write legislation that would support that. Slow down. We are not going to understand this in time for any artificial deadline set for some political agenda. I understand the sense of urgency that the Obama administration feels on this issue, and I share the idea that now is the time to address it. This is the Congress in which we should pass it. But I don't think setting a deadline to say it must be done in July, when we are talking about 18 percent of GDP, is that persuasive.

We can examine these alternatives a little more carefully than the present deadline will allow us to do. We can say: All right, why is quality the best cost control, and does our bill create the kinds of incentives and rewards focused on quality that will produce that result, instead of saying: Whatever else you do, you have to have a government option in there. You have to have a government plan that can compete with all the rest of this, and thus set us up for the kind of situation where we would move as a nation to imitate Great Britain or Canada or the others that have produced the kinds of examples I have talked about here.

So I am more than willing and I am anxious to work with President Obama and his administration, to work with my friends across the aisle. I have worked with Senator WYDEN for these past 3-plus years to try to fashion an intelligent solution. But I repeat what I said at the beginning: The sticking point in this entire debate is the demand on the part of the Obama administration that the final product have within it a government plan as one of the options. And if that happens, I vote against my own bill. If that happens, I do everything I can to say no. Because I am convinced if that happens, we end up with a situation where there is only one option that survives.

One of my colleagues has described this, I think, quite well. He says: Having a government plan as one of the options is a little like taking an elephant into a room full of mice and then saying: All right, this is a roomful of animals, let's let them compete. And as the elephant walks around the room, pretty soon there aren't any mice left. A government plan is the elephant in the room.

Those of us who want to solve this problem intelligently say: Let's learn from the examples of those people who have adopted a single-payer system. Let us realize that the American experiment in health care produces better outcomes in all of the areas I have outlined. And as politicians, let's realize that the American voter will never stand for the kind of rationing by delay that seems to have crept into every other system. Let's take our time to do it right. There is a bipartisan consensus to get it done. We can work together and make that accomplishment, if we are not quite so insistent that the government plan ultimately is the only way to go.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The 30 hours postcloture under rule XXII has expired. The question is on agreeing to the motion to proceed to H.R. 1256.

The motion was agreed to.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I ask unanimous consent the only amendments in order today after the amendment is offered by myself, Senator DODD, the HELP Committee substitute amendment, be the Lieberman amendment re: TSP, and the substitute amendment of Senators BURR AND HAGAN.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER FOR RECESS

Mr. DODD. Mr. President, I now ask unanimous consent the Senate stand in recess from 6 p.m. to 6:30 p.m. My intention would be to address for a few minutes some comments and then would defer to others who may want to speak until we recess at 6 p.m.

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

The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

Mr. DODD. Mr. President, I rise to offer an amendment in the nature of a substitute to H.R. 1256.

As I understand it from the leadership, while there will be some comments I will make this evening, briefly, about the substitute, and others may have some comments to make before the evening concludes, there will be no votes this evening. The leadership has notified us of that, so colleagues ought to be aware there will be no votes at all this evening.

If I could, I wish to take a few minutes to describe the substitute amendment, and I will yield the floor to others who want to talk before the 6 p.m. hour arrives and others who may come back around 6:30 to make some additional comments.

AMENDMENT NO. 1247

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows.

The Senator from Connecticut [Mr. DODD] proposes an amendment numbered 1247.

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

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

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

Mr. DODD. Mr. President, this substitute amendment represents the work of the Committee on Health, Education, Labor and Pensions, which was reported out of our committee by a vote of 15 to 8 prior to the Memorial Day recess. In this substitute we have included some very important changes as a result of good work by my friend and colleague from Wyoming, Senator ENZI. I thank him and thank his staff, as well as the majority staff, for their work in reaching agreement on this amendment. It was important to my colleague from Wyoming that we improve the language on civil monetary penalties on companies that violate the law, and I agree with those suggestions. Senator ENZI also made clear, and I agree with him, that we need to make sure that over time, Congress and the public need to understand how this bill is being implemented, so we have enhanced the reporting requirements on the Food and Drug Administration and called on the General Accountability Office to make a study of the bill's implementation.

These are strong provisions and I appreciate very much the diligence of my colleague from Wyoming, his work, and the work of his staff as well.

Otherwise, the substitute would still give the Food and Drug Administration the authority to regulate the tobacco industry and put in place very tough provisions for families that, for far too long, have been absent when it comes to how cigarettes are marketed to America's children.

We cannot afford to wait any longer. Every day we delay, as I have said over and over, another 3,000 to 4,000 children across our country—as they did today and will again tomorrow, will again every single day—3,000 to 4,000 of our young people are ensnared by the tobacco companies that target them with impunity as they try smoking for the very first time. Those numbers are incredible; 3,000 to 4,000 every single day take that first cigarette, begin that process. Almost a third to a quarter of them will actually become addicted. Roughly a third of that number will die, in many cases prematurely, because of that process that starts today with 3,000 to 4,000 children.

A thousand of these children become addicted. Of these addicted, a third, as I said, will die eventually of smoking-related diseases. Absent any action by this Congress, more than 6 million children alive today will die from smoking, including more than 76,000 people in my own State of Connecticut.

The purpose of this historic public health legislation is very simple. It is to protect America's children and to give them the longer, healthier future they deserve. This is a cry from parents as well, including parents who smoke. As I said earlier, parents who smoke, if all of them could be here in this Chamber today and have the privilege that I have to have a microphone attached to my pocket here to talk about this, as smokers, would plead that their children never ever begin this habit. If they could wish anything, they would wish their children would avoid this deadly habit. So it is not just those who do not smoke or those who are offended by it or those who are worried about the health implications. I don't know of anybody who wants to see a young child begin the habit of smoking.

Yet for almost 10 years we have been unable to get this bill passed—almost 10 years of effort, led by our colleague from Massachusetts, Senator KENNEDY, who has tried over and over to get this legislation up and to get it adopted by both Chambers.

For the benefit of our colleagues, they should know this Chamber has adopted legislation, but at the time we did, the other body didn't. Candidly, the other body has acted as well, but when they did, we did not. So we have had this kind of circus going on over the last 8 or 10 years, where when the Senate acted, the House didn't; then the House acted but the Senate didn't. We are on the cusp of both Chambers acting and a President who will sign this bill into law to make a difference for the millions of people who have been adversely affected by this subject matter.

I also want to address some of the points our opponents of the bill have been saying about the legislation. Let me be clear. The Food and Drug Administration is absolutely the right agency for this job. It is the one Federal agency with the necessary scientific expertise, regulatory experience, and public health mission to do the job. No other agency of government is able to do all three of these.

Many others can do good work, but they can't do all three. They don't have the scientific expertise, they don't have the regulatory experience, and they don't have the public health mission that the Food and Drug Administration does.

The FDA regulates food, drugs, cosmetics, even pet food, but they do not regulate tobacco. They can regulate what your cat has and what your dog has but not what your child starts today, the 3,000 to 4,000 who do. We have been able to get that done so your pets are OK, but your child may not be because of our failure over the years to make sure tobacco will be regulated by the FDA. Tobacco, we know, is the most dangerous consumer product sold in the United States, or anywhere in the world for that matter. Yet it is currently exempted from oversight by the agency that regulates virtually every other product that Americans consume.

Some have said this bill will drain precious resources away from the FDA. In fact, what we have done with this bill ensures that the Food and Drug Administration is given adequate resources to perform its new tobacco product responsibilities without taking any resources from its other important activities. We do this by setting up a special division within the FDA to do just this job and we allocate specific resources, collected as user fees, to fund the very efforts we are seeking to accomplish. So all of the other functions the FDA does are not going to be adversely affected because of what we have written into this bill. The legislation does this, as I said, by assessing user fees on the companies and the cost of regulating tobacco is paid entirely by these user fees.

Some have also suggested that we should not act because States have squandered the funding provided in the Master Settlement Agreement on smoking and tobacco products. Some States have, and we do not defend their actions. But this is not a reason for inaction now, when we can protect as many children as we will with the adoption of this legislation.

Furthermore, while the 1998 Master Settlement Agreement on tobacco between the States and the tobacco industry was a very positive step, it simply did not go far enough. In order to protect the public and to prevent and reduce smoking, especially among children and kids, tobacco products must be regulated by the Food and Drug Administration. Since the Master Settlement Agreement was signed, marketing expenditures by the tobacco industry have reached record levels. The industry spends $13 billion a year—$13 billion a year—to market their products to America's children.

This bill would restrict the tobacco industry's ability to market to children. Mr. President, 400,000 people die every year from tobacco-related illnesses. That is more than die from alcohol abuse, automobile accidents, violent crime, illegal drugs, and suicide. All of them combined do not equal the number of deaths caused by tobacco products and by cigarettes. In order to make up those loss numbers, the industry targets the youngest of our citizens, our children. They do it with a $13 billion appropriation to go out and actually solicit the children to become addicted to these products.

Let me be clear that despite what some have claimed, this bill does not grandfather any existing tobacco products. In fact, this legislation will finally allow the Food and Drug Administration to take action on these products that have had special protection for decades. For the very first time, the FDA will have the broad authority to require changes in existing tobacco products and make them less risky or less addictive.

Some opponents have sought to downplay the significant impact of this bill. The Congressional Budget Office has estimated that the bill will reduce adult smoking by 2 percent over 10

years. This is true. But what opponents do not tell us is that a 2-percent decline in adult smoking is about 900,000 fewer adult smokers. That is not insignificant, almost a million people. That 2 percent sounds small, but when you translate it into actual numbers, it is somewhere in the neighborhood of 900,000 to a million people. More importantly, opponents leave out the fact that, according to the Congressional Budget Office, this bill would reduce youth smoking by 11 percent. Such a decline would save the lives of some 700,000 children from premature smoking-related deaths.

For adults to quit smoking is hard. I could be a personal witness to this, having been a smoker. I can tell my colleagues how hard it is to quit. People I know try every day and fail. It is hard. It is a very addictive product. So as a former smoker, I know what this is like and how hard it can be for people to break this habit. But 90 percent of the adults who smoke started as kids. They started as children. If we can break that link with children so that they don't begin this deadly habit, then we can start saving lives. And if lives don't impress you, how about money? It is billions of dollars we spend every year as part of our health care costs. A lot of those don't die but end up being sick or ill for years in a very debilitated fashion as a result of smoking-related products, particularly cigarettes.

In a few days, we are going to be dealing with health care. There is a lot of division here about what we ought to do on health care. One subject matter we are not divided on is prevention. To avoid chronic illnesses, the best way is to prevent them from happening in the first place. If we thought we could make a dent of even 100,000 lives, what about 200,000 lives because we made a difference in the number of children who started this deadly habit each year? What better way to begin the debate about prevention than going after the one cause, the self-inflicted wound that we impose on ourselves because of smoking habits? That is self-infliction that we do. We know it kills. We know what damage it does. Here we have the ability in a few days, maybe, or less, to actually do something in a meaningful way that has never, ever happened before. Cat food, pet food, dog food get regulated by the FDA, and finally tobacco will, tobacco and cigarettes.

Passing this bill will be a historic victory for our Nation's health, helping parents protect their children, as every parent across the country tonight would pray and hope their child would never begin this deadly habit. Their Federal Government is now going to be of some assistance. We are going to provide for these products the same kinds of protections we do for animals in terms of what they eat every night in your homes. We will now say the same kind of protection ought to be afforded to your children. Parents deserve peace of mind when it comes to how dangerous tobacco products are marketed. With this legislation, that is precisely what we will give them.

I commend my colleagues in this Chamber who over the years have voted, when they have had the opportunity, to implement this legislation. I thank immensely our colleague from Massachusetts, Senator KENNEDY. I thank Mike DeWine of Ohio, who is no longer with us as a Member. He was Senator KENNEDY's partner on this issue, as were HENRY WAXMAN and TOM DAVIS on the House side. This has had bipartisan support. Tonight, our friend from Massachusetts is at home recovering from his own struggle with illness. But he may be watching at this hour. We want him to know how grateful we are to him for his undying efforts to make this bill a reality.

I thank MIKE ENZI. MIKE cares deeply about this issue. He gets passionate about a lot of subject matters, but this is one where I have seen the most passion by my colleague from Wyoming. He can tell his own personal stories of what he has witnessed over the years. While he may have some problems with this particular proposal, he has no problem with the idea that we ought to be cutting back and making significant inroads in children beginning this deadly habit.

Our substitute is a bipartisan effort to bring together these ideas and once and for all to do something in a way that will make a difference in the lives of millions of people in this country and hopefully one day around the world as well. This habit is not confined to our own Nation. We can't legislate for the world, but we can legislate for ourselves, to say to America's parents that tonight and over the next day or so we will make a huge difference, I believe, in their children's lives by limiting the ability of this industry to appeal and market directly to their children. That is what this bill does.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1246 TO AMENDMENT NO. 1247

Mr. BURR. Mr. President, I ask unanimous consent to call up an amendment in the nature of a substitute, No. 1246, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. BURR], for himself and Mrs. HAGAN, proposes an amendment numbered 1246 to amendment No. 1247.

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

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

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

Mr. BURR. Mr. President, let me say it is shocking that the argument as to why we should do this is because the Food and Drug Administration regulates cat and dog food, what we have just heard. The truth is, the FDA regulates every pharmaceutical product, every medical device, every biological product, lifesaving drugs, chronic disease, treatments, therapies. It is in charge of food safety, of products that emit radiation. It is the gold standard of the world from the standpoint of the approval and assurance of safety and efficacy of things Americans take that are prescribed by doctors and filled by pharmacists. They know when they go home, they can take it because it is safe and effective. Now we are talking about giving that same agency a product for which they can't prove safety and efficacy—their core mission statement for every product they regulate. They will have to turn their head on tobacco because it kills. It causes disease. It isn't safe. This makes no sense.

What the substitute does is create a tobacco harm reduction center. It locates it at the Department of Health and Human Services, under the Secretary—the same Secretary who oversees the Food and Drug Administration.

Within that tobacco harm reduction center, it gives the authority to the center to regulate all cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and other tobacco products that are deemed by the Secretary to be necessary for regulation. We don't lessen the regulation of this industry. As a matter of fact, as Members have an opportunity to hear tomorrow about this substitute amendment, we increase the regulatory authority. We do it under the same guidance of the Secretary of Health and Human Services. We define what adulterated and misbranded tobacco products are. We give the tobacco harm reduction center the ability to pull products directly from the market and to prevent those products from going to market. Misbranded product would be a label that is false or misleading, labels that don't contain all the information, are not in compliance with section 109, and tobacco or ingredients are not disclosed. It requires tobacco manufacturers to submit extensive lists of ingredients, substances, compounds, and additives by brand style to the tobacco harm reduction center. It requires the center to determine and make public a list of harmful constituents, including smoke constituents and by brand styles. It requires annual registration and submission of additional information by the manufacturers to the center. It requires establishment of tobacco product design standards and establishes tar and nicotine ceilings for cigarettes. It eliminates candy and fruit descriptors on cigarette advertising and marketing. It gives the center the authority to remove tobacco products from interstate commerce if such products pose an unreasonable risk of substantial harm to public health.

This is about public health. The objective of any bill should be to reduce

youth usage, to reduce disease, to reduce death. If we put it in the FDA, we grandfather a tremendous amount of smoking products, but we don't allow a pathway for new, less harmful products to reach the marketplace. In our case, we allow reduced-risk products to come but under the supervision, the direction of the harm reduction center.

It requires all tobacco manufacturers of imported tobacco products to establish and maintain records, make reports, provide information as the Secretary requests, not as we prescribe. It requires premarket approval of new combustible tobacco products before entering interstate commerce. It bans the use of such descriptions as ''light,'' ''ultra-light,'' and ''low tar'' on packaging, advertising, and marketing of cigarettes. It requires testing and reporting of all tobacco product constituents, ingredients, additives, including smoke constituents and by brand styles. It creates a scientific advisory committee of 19 people. It establishes a new warning label that communicates the health risk of cigarettes, with placement for cigarettes on the front of the packaging. It requires ingredient disclosures and other information on all tobacco packaging. It has the graphic warning labels required. It establishes new warning labels that communicate the health risks of smokeless tobacco. It requires ingredient disclosure and information on tobacco products. The list goes on and on.

The authors of the base bill and the substitute that has been offered in its place suggest that they do a better job of making sure that youth don't access tobacco products. That is just wrong. Every State sets an age limit. One bill does not police the process more than the other.

The one thing this substitute does, this amendment in the nature of a substitute, is we ban print advertising except in a publication that is an industry publication. So every general print ad, every general print publication, a publication that a mom might buy but a teenager might look at, we eliminate advertising. What does the base bill do? It limits it to black-and-white advertising.

Don't come to the floor and suggest one does a better job than this substitute. When you ban advertising, you have banned the ability to market to the youth. When you ban descriptors and other items such as candy and fruit descriptors, we do that as effectively, we just do it through a harm reduction center. Why? Because it is under the same leadership of the Secretary of HHS.

I don't want to jeopardize the gold standard of the FDA. I don't want to compromise the gold standard that it has to meet the test of safety and efficacy so the American people have trust in products. We jeopardize that when we give the FDA this mission.

Some will claim the FDA is the only one that can do it. As I showed before, there is the regulatory chart for tobacco today in the United States. Every Federal agency is listed up here, including HHS. FDA has no current jurisdiction. They have no expertise to regulate tobacco.

It is the most regulated product sold in America today. But I am not on the floor arguing that this is enough. We can do better. We can consolidate that regulation. We can build on the strengths of all of these underneath the heads. But to add FDA is a huge mistake.

We just got faxed to us the endorsement of this substitute amendment, No. 1246, by the American Association of Public Health Physicians. The Association of Public Health Physicians endorses the Burr-Hagan amendment. All of a sudden, health care entities are looking at these two bills, and they are saying: The amendment in the nature of a substitute, No. 1246, actually does accomplish what is best for public health. And public health physicians are willing to put their name on it.

We are going to have an opportunity tomorrow to talk at length about what is in the substitute. My colleague, Senator HAGAN, cosponsor of this bill, will have an opportunity to address it either tonight or tomorrow. I look forward to the opportunity to do that.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 6:30 p.m.

Thereupon, at 6 p.m., the Senate recessed until 6:30 p.m. and reassembled when called to order by the Presiding Officer (Mr. BENNET.)

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT—Continued

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, basic instinct in humankind directs so much attention to the well-being of our children. We do it in various ways. Now you see it creeping into better nutrition. We see it in our attention to environmental conditions, to global climate change. We see it in our attention to deal with violent behavior against children. We do whatever we can to protect our kids, to protect them and do whatever it takes to do what we can to make sure they grow up healthy, they have long lives.

One of the ways we can be effective is to protect our kids against addiction. I use the word deliberately. ''Addiction'' immediately conjures up a view of drugs—prescription drugs, prohibited drugs. We are not talking about that addiction. I am talking about a serious addiction, an addiction to tobacco—to tobacco—that has such a devastating effect on the people who smoke and often on those who are around the people who smoke.

We heard from Senator DODD earlier about what happens from smoking. It kills more than 400,000 Americans each and every year. Many of them are of younger ages. In addition to the lethal dose, there is that kind of attack on health that disables people—emphysema, conditions that affect the heart, all kinds of things. We know lung cancer is among the most dangerous.

Senator DURBIN, who was a Member of the House at the time, and I decided to take up the fight against big tobacco and their powerful special interests more than 20 years ago when we wrote the law banning smoking on airplanes. We stood up to big tobacco because smoking on airplanes was so unhealthful. We learned the dangers of secondhand smoke. Many of the people who were cabin attendants were subjected to terrible respiratory discomfort and danger.

As a matter of fact, there was a study that was done, and it said even those who never smoked—people who worked in the cabin of the airplane—would show nicotine in their body fluids weeks after they had worked a trip. That is how pervasive this was. But big tobacco fought back. They fought back ferociously. They unleashed their forces. Money flowed to protect their addicted clientele and to keep them there. They brought phony science and high-paid lobbyists to squash this assault on behalf of public health. They had phony experts testify to Congress, up here on television, saying unashamedly that there was no evidence that secondhand smoke was dangerous, even though they knew in the tobacco companies. In the 1930s they learned that nicotine was so addictive and that it would continue to help them earn enormous profits. We fought back, and we succeeded in banning smoking on airplanes. It was a tough fight because of all of the misinformation that the industry spread. That then started a smoke-free revolution, and it did change the world culture on tobacco.

Some years later I authored a law that banned smoking in buildings that provided services to children, any building that had Federal funds. It could have been a library, a clinic, a daycare center; whatever it was, there was no smoking allowed in those buildings, except if it was in a separate room that ventilated directly to the outside. They fought us on that, but the people won. It is as clear to me today as it was then that this industry has not earned the trust to regulate itself. That is a plea they make, but no one believes they mean it.

Ten years ago, I was able to gather unpublished, internal reports by the tobacco industry showing that so-called

''light'' and ''low-tar'' cigarettes were a poor disguise of the true harm that these cigarettes brought. The cigarette makers were seducing smokers into thinking that these cigarettes were a healthier choice than those previously generally sold.

Real government oversight was essential to protect the public, especially our young, from this deadly product. As we know, since the 1980s, the tobacco industry has continued to engage in one sophisticated marketing campaign after another to get youngsters addicted to nicotine—just get them started and they are yours—even though selling and marketing cigarettes to children is generally against the law. It is our obligation, our responsibility to end the recruitment of kids as the next generation of smokers.

If there was ever any doubt about how effective and real this unlawful marketing is, just consider that more than 3 million young people—people who are under the age of 18—in our society are smokers. What is more, currently 3,500 kids every day try smoking. That, for many, is the first step to a life of addiction.

When I served in the Army, we were given an emergency pack in case we got in trouble, in case we were isolated from our units, and the emergency pack had some food, including a high-nutrition chocolate bar, but it also had four cigarettes in a little sleeve. Everybody got cigarettes free, even if you didn't use them before. The temptation to use them then was great, and it was right down the addiction alley.

The legislation we are talking about now that is being debated in this Chamber would finally grant some supervision and give a Federal agency—the Food and Drug Administration—the authority to regulate the tobacco industry. The bill, very simply, would give the FDA jurisdiction over the content and the marketing of tobacco products, and more explicit warning labels would be required. President Obama supports this effort, and it is now our turn and our obligation to safeguard families and children by passing this critical bill.

The legislation would give us more and better information about cigarettes. The fact is that we still don't know a cigarette's exact contents. That means 40 million Americans—the number of people in this country who are addicted to smoking—burn and inhale a product whose real ingredients are a mystery. Think about it. We see evidence of the fact that these people are typically locked in a vice, a vice so embarrassing that they sneak into hallways, they stand outside in a huddle in the rain, or in all kinds of weather conditions, whatever they are, to get the puffs on cigarettes. I know people who work in the Capitol here whom I see frequently going down the hall to get outside in inclement weather. Why? To smoke. So we have a situation we can't deal with. We have to understand what is in these products. The real ingredients are a mystery. To lead so many Americans on a dangerous path to a debilitating disease, and often lethal, is not simply wrong, it is the definition of negligence. If this legislation is successful, the FDA would monitor the content of cigarettes and could call for the reduction or removal of the toxic substances.

FDA oversight would also ensure that cigarette makers don't deceive Americans through trick advertising and promotional campaigns. History has proven how untrustworthy the tobacco companies are. Just think: More than 20 percent of twelfth graders said they have smoked in the last 30 days—20 percent of kids in the twelfth grade, typically 16, 17, 18 years old, have had a cigarette in the last 30 days.

For years, we have set our sights on getting the FDA to regulate cigarettes. Why? To protect our kids. No other government agency is as qualified to get this job done. In fact, one out of every five products that Americans purchase is regulated by the FDA. They watch over all kinds of things. Now they are looking at chemicals that are in products that very small children have contact with. The agency currently oversees prescription drugs, over-the-counter medicines, and medical devices, and it already regulates a number of well-known nicotine delivery products, such as the Nicorette gum and the patch.

For the last 45 years, ever since the Surgeon General's office began issuing warnings about cigarettes, big tobacco has used every tactic imaginable, including sham organizations, influential lobbyists, and powerful lawyers, to avoid public scrutiny. It is time to make big tobacco accountable to the public. It is time to make it accountable so that we can protect our children from the danger that kills more than 400,000 Americans every year.

I, too, was a smoker at one time, until over 30 years ago. Many times I thought about quitting, but the temptation to light up was always there and overcame any decision that could persuade me to stop from lighting up and taking a few drags. What happened? One night after dinner my third daughter, who was about 7 or 8—she was in maybe second grade—said, Daddy, why are you smoking? I said, well, because it makes me feel relaxed. It feels good when I am doing it after I have eaten. This little kid looked at me and she said, Daddy, today in school we learned that if you smoke, you get a black box in your throat. She was 7 years old. She said, I love you and I don't want you to have a black box in your throat. That convinced me. Within days I had my last cigarette.

I will close with another hideous reminder about the woman who appeared in front of one of my committees. She had already had an operation on her esophagus, I think, but in her throat, she actually had a hole in her throat. She admitted that despite the fact that she had essentially lost her voice box, she still smoked through the hole in her throat. She said her doctor got angry with her when after this serious surgery she was asking for a cigarette. The hold on people is almost unbreakable. But we can do our part here in the Senate if we pass this bill.

I ask my colleagues to vote yes on this legislation. It is good for your constituents, it is good for your families, it is good for America's financial well-being. We spend over $100 billion a year as a result of premature death and disability from tobacco use.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HAGAN. Mr. President, we are going to hear a lot this week about how the Family Smoking Prevention and Smoking Control Act is going to prevent youth from taking up smoking. I fully support that goal. I think all of us do. I don't think anybody here believes that smoking among our Nation's youth isn't a problem. Every day, over 3,500 youth in our country try their first cigarette and another thousand become regular daily smokers. Clearly, we must do something to deter our children from smoking.

As I mentioned yesterday, this bill before us goes much further than that. It grants the FDA extremely broad authority to take action that it considers to be in the interest of public health. I reiterate that is an interesting standard—especially when you consider that cigarettes, when used as intended, are a dangerous, unhealthy product. This bill puts the FDA in an impossible situation.

My colleague from North Carolina, Senator BURR, is offering a sensible alternative to the bill before us that focuses on reducing tobacco use among our Nation's youth. I joined Senator BURR in supporting this alternative because I believe it balances the need to curb teenage smoking while protecting tobacco farmers and, in turn, North Carolina's families. Similar to the Family Smoking Prevention and Tobacco Control Act, this alternative would be financed through user fees assessed on tobacco manufacturers.

While the bill before us today would place additional burdens on the already overtaxed FDA, our alternative instead creates the Tobacco Regulatory Agency—a Federal agency within the Department of Health and Human Services dedicated solely to regulating the manufacture, marketing, and use of tobacco products.

Unlike the Family Smoking Prevention and Tobacco Control Act, this alternative bill has a smoking-cessation

component which would require the administrator to develop recommendations to reduce smoking and reduce the harm of tobacco use.

The alternative contains language similar to the amendment I offered in the committee to ensure that the technology is available to meet the standards and that the Tobacco Regulatory Agency does not have the authority to regulate tobacco growers. In fact, the alternative explicitly states that the new Tobacco Regulatory Agency would not have authority over the actual tobacco growers and tobacco cooperatives. It takes this protection one step further by prohibiting any changes to traditional farming practices, including standard cultivation practices, the curing process, seed composition, tobacco type, fertilization, soil, record keeping, or any other requirement affecting farming practices.

The alternative also prescribes requirements for cigarette and smokeless tobacco labels and warnings, and it requires the administrator of the new agency to publicly disclose the ingredients in each brand of tobacco.

Finally, as I mentioned, this alternative requires some thoughtful changes that will reduce teen smoking rates. It prohibits fruits and candy branding on cigarettes. None of us want that. It also reduces the utilization of any character cartoons in advertisements. It prohibits providing any free samples, sponsoring sports events, and any advertising on television and radio in order to sell cigarettes. Stiff penalties are imposed for distributing tobacco products to minors and for minors possessing tobacco products.

Again, I think this alternative offers a better approach to curb teen smoking. It helps adults to quit smoking, and it ensures that the Federal Government can adequately regulate tobacco and protect the 12,000 tobacco farmers and 65,700 employees in tobacco-related industries in North Carolina.

Finally, I say this to my colleagues. I have no doubt they would view an amendment to this bill supported by two Senators from North Carolina with suspicion. But if they will look at the amendment that Senator BURR has offered, I think they will agree this is a serious amendment that actually addresses the issues with which this underlying bill purports to deal. I hope my colleagues will consider the Burr amendment with an open mind.

Mr. UDALL of Colorado. Mr. President, I am here to add my voice to the strong bipartisan support for the bill before us today. I also thank Senator TED KENNEDY for his tireless effort to shepherd its success. While this legislation is long overdue, I think it is especially timely and appropriate that we have the opportunity to see it signed into law in the midst of a historic health reform debate.

We have known for some time that one of the biggest obstacles we face in reforming our broken health care system is the nearly exponential rise in health care costs. An enormous contributor to these costs is the price tag for treating chronic disease and preventable illness, particularly the pulmonary disorders and throat and lung cancer that come with smoking.

What better way to help lower health care costs and promote wellness and prevention than by going after the No. 1 cause of preventable death and disease in this country? Coloradans currently pay taxes to cover over $1 billion per year in smoking and tobacco-driven costs. That is nearly $600 per Colorado household.

As we are struggling to find ways to pay for a revamped health care system that provides quality care to everyone who needs it, let's have part of that pay-for be this bill by preventing millions of American children and teens from becoming addicted to a product that is really a one-way ticket to disease, cancer, and many times death.

While I have been disturbed by so many of the sobering facts, figures, and statistics we have heard throughout this debate, there is one in particular that I think really drives home the underlying issue here: 90 percent of current adult smokers were addicted by the age of 18.

That means that, in order to maintain its bottom line, big tobacco isn't finding new customers in our age range. The only way for them to continue making big profits is to target what they have, in the past, deemed ''their base'': our children. As a father, it terrifies me to know that tobacco companies view our children as ''replacement smokers.''

As tobacco companies continue to find more creative ways to get kids to join their customer base through deceptive marketing and other tactics, parents must continue to educate their children about the dangers of smoking. But we can give them a helping hand by ensuring that youth magazines aren't full of colorful ads tailored specifically to make them the new generation of smokers—tailored to encourage addiction. We can help them by ensuring that the convenience store across the street from their kids' high school doesn't have an advertised ''back-to-school'' special on newly introduced fruit-flavored tobacco products, displayed prominently next to their shelves of gum and candy products. As we have heard from my colleagues who have spoken before me, practices like these have been documented, and they are horribly unacceptable.

In addition to many important tools this legislation would give to the FDA to protect children and consumers, this bill will allow the agency to restrict tobacco advertising, especially to children; prevent sales to youth; improve and strengthen warning labels on products; prevent misleading marketing and misrepresentation; regulate and remove many of the hazardous chemicals and ingredients used to make tobacco products more addictive—and many times more deadly.

Because this bill is, at its root, about people, I would like to share the story of a Coloradan who knew firsthand the effects of cigarette smoke and spent many years fighting to keep kids safe.

First diagnosed with throat cancer in 2002, David Hughes was a musician, Colorado outdoorsman and cave explorer, father, and husband. Having begun his smoking habit as a teenager, he quit cigarettes upon diagnosis and bravely endured 70 radiation treatments, chemotherapy, and successful surgery. Feeling as if he had a new lease on life, David went back to school and started a woodworking business, spent even more time with his wife Kathy and son Nathan, and volunteered with the Loveland Alliance on Smoking and Health to fight for smoke-free air for his family and community. He worked especially hard to keep cigarettes out of the hands of children, knowing firsthand the lifelong addiction that can come from being exposed to tobacco early on.

Unfortunately, 4 years later, the cancer returned—this time to his lungs—eventually taking his life on June 4, 2008, but not without a spirited fight fueled by an infectiously positive attitude and love for his family and friends.

David's wife Kathy has called 2009 her and Nathan's year of ''adventurous recovery.'' I hope getting this bill signed into law will help, if even in just a small way, give them the energy to continue their adventure and give them the peace of mind of knowing that their father and husband's powerful advocacy on behalf of this cause will help prevent other families from experiencing similar heartache and loss.

David's story underscores the importance of this legislation to real people and the affect it can have on real lives.

The time to act on this bill is now. The idea for the Family Smoking Prevention and Tobacco Control Act has been around for over a decade, and the provisions contained in this version have been debated and polished by countless capable policymakers. The FDA is the only agency that combines the scientific know-how and regulatory authority to get the job done. This bill is fiscally responsible and fully paid for through user fees to tobacco companies.

Given the current rate of tobacco use, it is estimated that 92,000 Colorado kids alive in my home State today could ultimately die of smoking. While the long-term goal is to shrink this figure to zero, let's pass this legislation this week and put a significant dent in such an overwhelming and unacceptable number.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1256 TO AMENDMENT NO. 1247

(Purpose: To modify provisions relating to Federal employees retirement)

Mr. SCHUMER. Mr. President, under the previous order, on behalf of Senator LIEBERMAN, I call up his amendment, which is at the desk.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for Mr. LIEBERMAN, for himself, Ms. COLLINS, Mr. AKAKA, and Mr. VOINOVICH, proposes an amendment numbered 1256 to amendment No. 1247.

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

MORNING BUSINESS

Mr. SCHUMER. I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

COMMENDING NONCOMMISSIONED OFFICERS

Mr. REID. Mr. President, I rise today in recognition of the Army's 234th anniversary. On June 14, 2009, the Army celebrates its 234th year of courageous and noble service to the people of the United States of America.

The Army has designated 2009 as ''The Year of the Noncommissioned Officer,'' in recognition of the dedicated and selfless service of noncommissioned officers, known as the ''Backbone of the Army,'' throughout the Nation's history. Our country nation owes a debt of gratitude to those noncommissioned officers who have defended our country and freedom worldwide, serving in harm's way across the globe to defend freedom and secure the peace for the American people. It is fitting that we should pay special tribute to the Army's noncommissioned officer corps on the 234th anniversary of the Army's establishment in 1775.

At Fort Lewis, WA, home of the I Corps, known as ''America's Corps,'' noncommissioned officers are observing the Army's birthday while preparing for deployment into harm's way, training for future service to the Nation, and upholding the high standards of our armed services.

It is my desire to thank and honor those courageous, dedicated and selfless men and women. I am grateful for the Army's outstanding corps of noncommissioned officers at Fort Lewis, WA, under the direction of COL Cynthia Murphy, Garrison Commander, and Command Sergeant MAJ Matthew Barnes, for their role in defending our Nation and serving its people as the keepers of the Army's high standards, the trainers and maintainers who make our Army the greatest force for good across the globe, and the heart and soul of our fighting forces at home and abroad. They are truly the ''Backbone of the Army.''

150TH ANNIVERSARY OF VIRGINIA CITY, NV

Mr. REID. Mr. President, I rise today in honor of a very historic event—this Saturday marks the 150th anniversary of the founding of Virginia City, NV. Many Americans know Virginia City from the old TV show ''Bonanza,'' but this city also played an extremely important role in the history of the United States in the second half of the 19th century.

Virginia City's roots as a mining town began in 1850 as the '49ers traveled through on their way to California. Men often stopped in this area to practice their gold-mining skills but never found much of value until 1859 when Peter O'Riley and Patrick McLaughlin found some gold in the dirt. Henry Comstock passed by shortly after and talked his way into a share of what would later be named after him: the Comstock Lode. For several months, they mined the earth, tossing aside buckets full of ''blue stuff'' that got in the way of only a small amount of gold. Out of curiosity, they sent away a sample of this blue stuff to be tested, and it turned out to be made up of three-fourths silver ore. News spread quickly, and by the following spring, 10,000 men had arrived hoping to make their fortune.

This silver lode proved more difficult to mine than the gold in California, and mines collapsed before they could reach much of the ore. American ingenuity persevered, however, and a whole list of new technologies were developed that would be used in mines across the country. In no time, the ground below Virginia City was crisscrossed with mines, and the city itself was a boom town full of boarding houses and saloons. The official value of all the gold and silver taken out of the Comstock between 1859 and 1882 is over $300 million. These riches helped Nevada in its effort to become an independent territory and then its own State in 1864.

Virginia City also produced some of America's great historical figures. George Hearst made his fortune in Nevada before founding the newspaper empire he became famous for, and Samuel Clemens first used the name ''Mark Twain'' while writing for the local paper, the Territorial Enterprise.

Today, Virginia City has a population of less than a tenth of what it had at its peak in the 1870s. However, it remains a vibrant community and an outstanding monument to the Wild West. The millions of tourists who visit Virginia City each year can stroll the wooden sidewalks, explore old mines, pan for gold, and watch the annual international camel and ostrich races. I am happy I will be able to celebrate this historic anniversary in Virginia City, and I am proud to recognize the city's achievements today.

CHANGES TO S. CON. RES. 13

Mr. CONRAD. Mr. President, section 311(a) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the allocations of a committee or committees, the aggregates, and other appropriate levels in the resolution for legislation that authorizes the Food and Drug Administration to regulate products and assess user fees on manufacturers and importers of those products to cover the cost of the regulatory activities. Additionally, section 307 of S. Con. Res. 13 permits the chairman to adjust the allocations of a committee or committees, aggregates, and other appropriate levels in the resolution for legislation that, among other things, reduces or eliminates the offset between the survivor benefit plan annuities and veterans' dependency and indemnity compensation. The adjustments under both reserve funds are contingent on the legislation not increasing the deficit over either the period of the total of fiscal years 2009 through 2014 or the period of the total of fiscal years 2009 through 2019.

I find that the amendment in the nature of a complete substitute to H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, contains language that fulfills the conditions of the deficit-neutral reserve funds for the Food and Drug Administration and America's veterans and wounded servicemembers. Therefore, pursuant to sections 311(a) and 307, I am adjusting the aggregates in the 2010 budget resolution, as well as the allocation to the Senate Health, Education, Labor, and Pensions Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 13 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 311 DEFICIT-NEUTRAL RESERVE FUND FOR THE FOOD AND DRUG ADMINISTRATION AND SECTION 307 DEFICIT-NEUTRAL RESERVE FUND FOR AMERICA'S VETERANS AND WOUNDED SERVICEMEMBERS

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2009	1,532.571
FY 2010	1,653.722
FY 2011	1,929.684
FY 2012	2,129.674
FY 2013	2,291.204
FY 2014	2,495.884
(1)(B) Change in Federal Revenues:	
FY 2009	0.000
FY 2010	−12.264
FY 2011	−158.947
FY 2012	−230.719
FY 2013	−224.133
FY 2014	−137.774

Section 101	
(2) New Budget Authority:	
FY 2009	3,674.397
FY 2010	2,888.696
FY 2011	2,844.909
FY 2012	2,848.114
FY 2013	3,012.188
FY 2014	3,188.874
(3) Budget Outlays: FY2009	
FY 2009	3,358.510
FY 2010	3,003.315
FY 2011	2,968.399
FY 2012	2,882.772
FY 2013	3,019.399
FY 2014	3,174.863

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 311 DEFICIT-NEUTRAL RESERVE FUND FOR THE FOOD AND DRUG ADMINISTRATION AND SECTION 307 DEFICIT-NEUTRAL RESERVE FUND FOR AMERICA'S VETERANS AND WOUNDED SERVICEMEMBERS

[In millions of dollars]

Current Allocation to Senate Health, Education, Labor, and Pensions Committee:	
FY 2009 Budget Authority	−22,436
FY 2009 Outlays	−19,058
FY 2010 Budget Authority	4,487
FY 2010 Outlays	1,526
FY 2010–2014 Budget Authority	50,349
FY 2010–2014 Outlays	44,474
Adjustments:	
FY 2009 Budget Authority	0
FY 2009 Outlays	0
FY 2010 Budget Authority	0
FY 2010 Outlays	0
FY 2010–2014 Budget Authority	17
FY 2010–2014 Outlays	17
Revised Allocation to Senate Health, Education, Labor, and Pensions Committee:	
FY 2009 Budget Authority	−22,436
FY 2009 Outlays	−19,058
FY 2010 Budget Authority	4,487
FY 2010 Outlays	1,526
FY 2010–2014 Budget Authority	50,366
FY 2010–2014 Outlays	44,491

FURTHER CHANGES TO S. CON. RES. 13

Mr. CONRAD. Mr. President, section 401(c)(5) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the section 401(b) discretionary spending limits, budgetary aggregates, and allocations pursuant to section 302(a) of the Congressional Budget Act of 1974 for the aggregate difference for discretionary appropriations in 2010 and related outlays between the Congressional Budget Office's reestimate of the President's budget and the Office of Management and Budget's original estimate of such policies.

On May 29, the Congressional Budget Office released its reestimate of the President's request for discretionary appropriations. Based on that reestimate, I am revising both the discretionary spending limits and the allocation to the Senate Committee on Appropriations for discretionary budget authority and outlays. As specified by section 401(c)(5), the adjustment reflects the aggregate difference in budget authority in 2010 between the CBO reestimate and the original OMB estimate of the President's request for discretionary spending, as well as the related outlays. For 2010, I am revising the amount of budget authority by $3.766 billion and the amount of outlays by $2.355 billion. In addition, I am similarly adjusting the budgetary aggregates consistent with section 401(c)(5) of S. Con. Res. 13. In addition to the 2010 adjustments in budget authority and outlays, I am adjusting outlays in fiscal years 2011 through 2014 to reflect further changes in outlays that result from the adjustment in budget authority in 2010.

I ask unanimous consent that the following revisions to S. Con. Res. 13 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 401(c)(5)—REVISED APPROPRIATIONS FOR FISCAL YEAR 2010

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2009	1,532.571
FY 2010	1,653.722
FY 2011	1,929.684
FY 2012	2,129.674
FY 2013	2,291.204
FY 2014	2,495.884
(1)(B) Change in Federal Revenues:	
FY 2009	0.000
FY 2010	−12.264
FY 2011	−158.947
FY 2012	−230.719
FY 2013	−224.133
FY 2014	−137.774
(2) New Budget Authority:	
FY 2009	3,674.397
FY 2010	2,892.462
FY 2011	2,844.909
FY 2012	2,848.114
FY 2013	3,012.188
FY 2014	3,188.874
(3) Budget Outlays:	
FY 2009	3,358.510
FY 2010	3,005.670
FY 2011	2,969.115
FY 2012	2,883.130
FY 2013	3,019.578
FY 2014	3,174.976

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 401(c)(5) TO THE ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS TO THE SENATE APPROPRIATIONS COMMITTEE AND THE SECTION 401(b) SENATE DISCRETIONARY SPENDING LIMITS

In millions of dollars	Initial allocation limit	Adjustment	Revised allocation limit
FY 2009 Discretionary Budget Authority	1,480,686	0	1,480,686

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 401(c)(5) TO THE ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS TO THE SENATE APPROPRIATIONS COMMITTEE AND THE SECTION 401(b) SENATE DISCRETIONARY SPENDING LIMITS—Continued

In millions of dollars	Initial allocation limit	Adjustment	Revised allocation limit
FY 2009 Discretionary Outlays	1,247,230	0	1,247,230
FY 2010 Discretionary Budget Authority	1,082,255	3,766	1,086,021
FY 2010 Discretionary Outlays	1,304,885	2,355	1,307,240

CLEAN WATER RESTORATION ACT

Mr. BARRASSO. Mr. President, we all know that one word can make a world of a difference, especially in Washington. Some are advocating for the removal of the word ''navigable'' from the Clean Water Restoration Act. Doing so would give the government control over all wet areas in the country. In this case, one word will send common sense soaring out the window.

It snows in Wyoming. When the snow melts, it often leaves large puddles on ranches and farms across the State.

The Federal Government should not be regulating mud puddles.

This proposal will be detrimental to Wyoming's farmers and ranchers. We have been living out here for a long time quite successfully without the ''helpful hand'' of Washington.

A recent article printed in the June edition of the Wyoming Farm Bureau Federation's newspaper, ''Wyoming Agriculture'' really hit home. I recommend my colleagues read the article by Kerin Clark. I believe it is an accurate reflection of the feelings of Wyoming farmers and ranchers on this issue. I ask unanimous consent that it be printed in the RECORD.

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

What's in one word?

Deletion of ''navigable'' from CWA would have far-reaching consequences

Federal control of a ditch or grass waterway that is only filled with water after a rainstorm. Sound outlandish? Not, if the term ''navigable'' is deleted from the Clean Water Act and that is just what proponents of the Clean Water Restoration Act (CWRA) are pushing to do.

''This proposal, if passed, would clearly define intrastate waters as waters of the United States and give control to areas that only have water during rainfall events,'' Don Parrish, American Farm Bureau Federation (AFBF) Senior Director, Regulatory Relations, stated. ''It is clearly the largest expansion of the Clean Water Act since it was passed in 1972.''

The deletion of the term ''navigable'' from the Clean Water Act could have grave consequences for Wyoming water.

''Under both proposals the sponsors make it explicit they intend to roll-back the Supreme Court decision in SWANCC which gives the opportunity for agencies to regulate intrastate water,'' Parrish continued.

''Both bills also intend to roll-back the Supreme Court decision in Rapanos,'' He explained. ''This was about ephemerals a loosely defined set of waters, what the Corp of Engineers and EPA define as only having water

in them during and after a precipitation event.''

''What is water and what is a ditch is hard to ascertain,'' He continued. ''It is extremely broad and goes beyond what the Supreme Court has allowed.''

According to Parrish, the implications of rolling back these two Supreme Court rulings are many including: 1) All intrastate waters and all water confined and retained completely on the property of a single owner would be federalized; 2) the use of all water, if linked to economic and commerce would be federalized; 3) Any areas that have flowing water only during, and for a short duration after, precipitation events would be treated as ''waters of the U.S.''; 4) the agencies would be allowed to use any and all economic activity involving water, including the production of agricultural and forestry products, as the hook for federal regulatory reach; and 5) environmental activists would have the ability to sue landowners or the agencies to expand Federal jurisdiction.

The proposals would allow the Corp of Engineers and the Environmental Protection Agency to use the broadest possible regulatory reach of federal waters. ''It probably even reaches the preverbal western water hole'' Parrish stated. ''If cattle drink from the water hole and then rancher sell those cattle out-of-state to be finished and that could be an economic hook for federal regulation of that water.''

In a May 2009 Field and Stream article, passage of the Clean Water Restoration Act is listed as one of the five crucial goals sportsmen must work toward right now. ''Sportsmen need to understand what the implications are for landowning and not just shooting ducks,'' Parrish continued. ''Farmers and ranchers have to make a living working the land and this legislation will make it harder to do that. Thus, keeping the land in open spaces and providing habitat for wildlife and birds would be even harder.''

The American Farm Bureau Federation opposes the Clean Water Restoration Act because it is an expansion of federal jurisdiction.

''Farmers and ranchers do good things for the environment, we support the Clean Water Act,'' Parrish concluded. ''But removing the term ''navigable'' from the CWA gives total control to the federal government and leaves little or no authority for the states and owners of private property.''

HONORING OUR ARMED FORCES

SENIOR AIRMAN ASHTON L.M. GOODMAN

Mr. BAYH. Mr. President, I rise today with a heavy heart to honor the life of SA Ashton L. M. Goodman, from Indianapolis, IN. Ashton was 21 years old when she lost her life on May 26, 2009, from injuries sustained from a bomb attack near Bagram Air Field, Afghanistan. She was a member of the 43rd Logistics Readiness Squadron, Pope Air Force Base, NC.

Today, I join Ashton's family and friends in mourning her death. Ashton will forever be remembered as a loving daughter, sister, and friend to many. She is survived by her mother, Vicki Goodman; father and stepmother, Mark and Chasity Goodman; brother, Levi Goodman; grandmother, Lois Kammers; aunt, Yvonne Chapman; stepsisters, Amber and Michelle Jefferies; half-sisters, Brianna and Courtney Goodman; and a host of other friends and relatives.

Ashton joined the Air Force in 2006, following her graduation from Indianapolis's Warren Central High School. She served as a driver for the Air Force in Afghanistan, working with the Panshir Provincial Reconstruction Team, a unit that rebuilds roads and schools in Afghanistan. Ashton, who loved animals, was training to be a biologist. In high school, she worked at a local pet store and was active in the Zoo Teen Club, a student group that volunteers at the Indianapolis Zoo. She was also a member of the Japan Club.

While we struggle to express our sorrow over this loss, we can take pride in the example Ashton set as a soldier. Today and always, she will be remembered by family and friends as a true American hero, and we cherish the legacy of her service and her life.

As I search for words to do justice to this valiant fallen soldier, I recall President Abraham Lincoln's words as he addressed the families of soldiers who died at Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as we can take some measure of solace in knowing that Ashton's heroism and memory will outlive the record of the words here spoken.

It is my sad duty to enter the name of Ashton L. M. Goodman in the official Record of the U.S. Senate for her service to this country and for her profound commitment to freedom, democracy, and peace. I pray that Ashton's family can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Ashton.

NOMINATION OF REGINA McCARTHY

Mr. LAUTENBERG. Mr. President, I rise today to speak in support of Regina McCarthy, President Obama's nominee to be Assistant Administrator of the Environmental Protection Agency for Air and Radiation. Ms. McCarthy has decades of experience administering environmental programs at the state level under both Democratic and Republican administrations. Her qualifications are unquestionable, and her confirmation will help move our country toward a safer environment and a healthier economy.

We are at a critical point in the history of our Nation and indeed our planet. New science appears seemingly every month showing the danger posed by climate change. Already this year, new peer-reviewed studies revealed that the Arctic will likely be ice-free in the summer as early as 2012— not 2050, as predicted by the Nobel Prize-winning Intergovernmental Panel on Climate Change—IPCC—in 2007. Another peer-reviewed study in the Proceedings of the National Academy of Sciences showed that global emissions, if they continue at current rates, would increase global temperatures by 12 degrees Fahrenheit by the end of the century. This is on the extreme high end of temperature projections by the IPCC. Finally, two new studies found that ice melt from Antarctica and Greenland will likely raise sea levels by five to six feet by the end of the century, far above the two feet predicted by the IPCC, which did not consider melting from those two sources.

Regina McCarthy will be on the front lines of our Nation's battle to stabilize the climate. The office she will manage is responsible for improving air quality and reducing the greenhouse gas emissions that cause global warming.

Congress must act quickly to place strong, science-based limits on emissions, and force polluters to pay to clean up the damage they have done to our environment and our health. We must do so in a way that creates jobs, allows businesses and individuals to save money through efficiency, and pulls the country out of this recession and into a clean energy future.

The coal and oil industries are powerful, and are spending billions of dollars fighting the science and fighting any policies that would break their stranglehold on our Nation's energy policy. In the first 3 months of this year alone, the oil and gas industry spent $37.3 million to lobby the Federal Government. That is money that could be going toward cleaning up their operations. Instead it goes toward impeding our progress toward a clean energy jobs bill to stop climate change.

Despite those obstacles, the House has reported legislation out of committee and we are working toward a bill in the Environment and Public Works Committee. However, as Congress works toward comprehensive legislation, our planet cannot afford to wait to begin reducing emissions. That's why President Obama's EPA recently found that greenhouse gases are pollutants under the Clean Air Act. This will allow the EPA to use existing authority to regulate some of the largest sources of greenhouse gases, such as power plants, refineries, and automobiles.

Just as the EPA does not use the Clean Air Act to regulate small sources of air pollution such as residential buildings, churches, or hospitals for pollutants like smog and soot, it will not regulate these sources for greenhouse gases. Our economy grew rapidly as we dramatically reduced emissions of air pollutants under the Clean Air Act, and I am certain we can use the Clean Air Act to reduce greenhouse gases while creating clean energy jobs and reviving our economy.

Ms. McCarthy is supremely qualified to succeed in that task. Throughout her 25 years of experience at the State level, she has proven to be practical and intelligent in her approach to protecting the environment. She most recently served as the commissioner for the Connecticut Department of Environmental Protection—DEP—and was appointed to this post by Republican Governor M. Jodi Rell in December 2004. Prior to serving in this capacity, Ms. McCarthy worked on environmental issues for 20 years at the State and local level in Massachusetts. She served as the deputy secretary of operations for the Massachusetts Office of Commonwealth Development, a ''super Secretariat'' that coordinates policies and programs of that state's environmental, transportation, energy and housing agencies. She was appointed to this position by then-Governor Mitt Romney.

Ms. McCarthy is known for her active role as Connecticut DEP commissioner in promoting the Regional Greenhouse Gas Initiative, RGGI, a cooperative initiative by 10 Northeastern States, including New Jersey, to implement a cap-and-trade program for greenhouse gas emissions from powerplants. That experience will serve her well when she is tasked with implementing the climate legislation that Congress must—and will—pass.

Our planet cannot wait any longer for lower emissions from cars and power plants, American workers cannot wait any longer for clean energy jobs, and our economy cannot wait any longer for the technological innovations and improved efficiency that will lay the groundwork for lasting, sustainable prosperity. Confirming Regina McCarthy will let her get to work cleaning up our environment, and we in the Senate will begin the work of passing a bill that makes polluters pay, creates clean energy jobs, and revives our economy.

SRI LANKA

Mr. FEINGOLD. Mr. President, last month Sri Lanka saw an end to the longstanding military conflict between the Liberation Tigers of Tamil Eelam, the LTTE, and the Sri Lankan Government. In the immediate days that followed the end of fighting, President Mahinda Rajapaksa delivered a speech to his nation's parliament which formally marked the conclusion of an armed conflict that has escalated since January, but stretches back over 26 years.

This tragic war has claimed the lives of over 70,000 Sri Lankans, displaced hundreds of thousands, and seen systematic and brutal atrocities committed by both sides. Over the last 5 months, as the conflict intensified, it drew increasing and unprecedented attention from the international community. Nevertheless, obtaining a clear picture of this conflict, especially the situation of the estimated 290,000 people living in internally displaced persons camps, has been obscured by the Sri Lankan Government's severe restrictions on access for media, international observers, and humanitarian aid workers. If we are to see a sustainable solution to this conflict over the long term, it is vital that the Sri Lankan Government remove these restrictions now and allow access to all independent actors.

I was pleased that President Rajapaksa acknowledged that Sri Lanka must not accept a military solution as the ultimate solution. As we have seen in conflicts around the world, a military ceasefire will not hold if the underlying causes that led to this conflict are not addressed. The fundamental grievances of the Tamil minority have been overshadowed, distorted, and in some cases silenced by the severe tactics of the LTTE, who since 1997 have been designated by the United States as a terrorist organization. The LTTE claimed to be the voice of the Tamil people, and yet their commitment to both indiscriminate and targeted violence, as well as reports from the last days of fighting that they used Tamil civilians as human shields, would indicate otherwise. If we are to see legitimate reconciliation in Sri Lanka, the grievances of the Tamil minority must be seen as distinct from the violence of the LTTE and addressed thoroughly and justly.

I urge President Rajapaksa to take steps now to demonstrate a serious commitment to a political solution, the rule of law, and most importantly, to genuinely addressing the needs of the Tamil people. At the same time, in proportion to the passion and effort with which the world's diplomats have demanded peace and respect for civilians throughout this conflict, donor countries must remain actively engaged and dedicated to helping bring about a lasting resolution to this decades-old conflict.

I am especially concerned about issues surrounding resettlement. In the wake of this conflict, land mines line those roads which still exist and cover farmers' fields in northern Sri Lanka. Schools, hospitals, roads, homes, and businesses have been damaged and in some cases completely destroyed. Some 290,000 internally displaced people languish in squalid humanitarian camps the safe and voluntary return of whom must be a top priority for postconflict recovery. The Sri Lankan Government must not shirk its responsibility to help these people return to their homes swiftly and safely. The international community, too, can provide assistance to help these people return home safely or seek other lasting solutions. The U.S. government should join with its international partners to coordinate demining efforts, work with the Sri Lankan government to develop and rebuild infrastructure, and ensure that those who have been displaced are able to reclaim the land that is rightfully theirs.

These events are critical steps in the right direction in a long and complicated history. If we seek to address this conflict comprehensively, we must learn from past setbacks and help identify new opportunities for the people of Sri Lanka. It will not be easy, but on behalf of all the innocent civilians whose lives have been caught in the crossfire of this conflict, we must support this opportunity to finally achieve lasting and long awaited peace in Sri Lanka.

U.N. KENYA REPORT

Mr. FEINGOLD. Mr. President, this week the U.N. Special Rapporteur, Mr. Philip Alston, has released his final report on extrajudicial, summary or arbitrary executions in Kenya. His report states that, despite significant investigative work, no concrete steps have been taken to prosecute perpetrators of the violence after Kenya's December 2007 election. It also finds that both the Sabaot Land Defense Forces—SLDF—and the Kenyan government's security forces engaged in widespread brutality in Mount Elgon, including torture and unlawful killings. These alleged abuses have not been seriously investigated by the police or the military. Finally, the report concludes that the police in Kenya continue to carry out extrajudicial killings and that death squads continue to exist within the police to assassinate high-profile suspected criminals.

The report makes a number of detailed recommendations for how Kenya can address these problems, beginning with the replacement of the existing police commissioner and a clear public order that extrajudicial killings will not be tolerated, then followed by a comprehensive reform of the police. In addition, the report calls for the attorney general to resign and for the Kenyan government to take steps to reduce corruption and incompetence in the judiciary. With regard to the post-election violence, the report calls for the Kenyan government to establish a special tribunal to seek accountability for persons bearing the greatest responsibility for the violence after the elections. And with regard to the killings in Mount Elgon, the report calls on the government to immediately set up an independent commission to investigate human rights abuses, including those committed by the SLDF.

I urge the Obama administration to issue a strong response to the release of the Special Rapporteur's final report and press for the implementation of these recommendations. I was pleased that Assistant Secretary Carson traveled earlier this month to Nairobi as part of his first trip to Africa following his confirmation. He met with government leaders there and delivered a strong message of concern. This was an important step. It must now be followed by concrete actions that both support reforms and press for individuals found guilty of killings and

kleptocracy to be held accountable. To that end, I noted with interest that the President's budget request included increased military assistance for Kenya. Such assistance may be justified, but before we provide it, we need to make sure that steps are being taken by the Kenyan government to investigate past abuses and stop continuing ones. We need to ensure that U.S. taxpayer dollars do not enable a pattern of impunity in Kenya's security forces.

For some time I have worried about the very real possibility that political instability in Kenya could worsen and that armed conflict could return if these underlying rule of law problems are not addressed. That backsliding would be tragic, not least because Kenya is an extremely important country for the stability of the Horn of Africa and east Africa. Moreover, it is a country with vast potential that has been and continues to be a leader on the African continent. The United States, given our longstanding and historic partnership with Kenya must step up to the plate and work to ensure Kenya achieves its full potential. We can begin by ensuring the U.N. Special Rapporteur's report serves as a guide and a catalyst for needed reforms and renewed progress.

REMEMBERING TIANANMEN SQUARE

Mr. KAUFMAN. Mr. President, tomorrow marks 20 years since China's crackdown on democracy advocates in Tiananmen Square that resulted in an estimated 700 deaths of innocent civilians. Unfortunately, this represents a mere estimate of the senseless loss of life because the Chinese government has not been transparent in disclosing what happened at Tiananmen Square, and has actively suppressed reporters, protestors, and medical personnel who may have provided a firsthand account. Twenty years later, this suppression continues in the form of government-led crack downs on New Media sources, such as blogs, Twitter, and social networking sites including Facebook, where state censors target internet service providers in an attempt to control the free flow of information.

As we solemnly mark 20 years since Tiananmen Square, it is critical to highlight the ongoing limitations on human rights and freedom of the press in China. This Tuesday, a column was published in the Washington Post by Dan Southerland, the former China bureau chief, which did just that. I ask unanimous consent that this important editorial be printed in the RECORD.

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

TIANANMEN: DAYS TO REMEMBER

Two years ago I met a Chinese student who was entering graduate school in the United States. I told her I had been in Beijing during ''6–4,'' the Chinese shorthand for the massacre of June 4, 1989.

''What are you talking about?'' she asked.

At first I thought she might not have understood my Chinese, but it soon became clear that ''June 4'' meant nothing to her. I probably shouldn't have been surprised.

In the 20 years since that day in 1989 when Chinese troops opened fire on unarmed civilians near Tiananmen Square, Chinese censors have managed to erase all mention of that tragedy from the country's textbooks and state-run media.

But for me, Tiananmen is impossible to forget. As Beijing bureau chief for The Post, I covered the student demonstrations that began in mid-April, tried to track a murky power struggle among top Chinese leaders and managed a small team of young, Chinese-speaking American reporters.

What I remember best was the sudden openness of many Beijing citizens of all professions. They were inspired by throngs of students calling for political reform, media freedom and an end to ''official profiteering.''

People I believed to be Communist Party supporters were suddenly telling me what they really thought. Some who had been silent in the past even debated politics on street corners. In early May, Chinese journalists petitioned for the right to report openly on the Tiananmen protests, which on May 17 swelled to more than a million people marching in the capital. Journalists from all the leading Chinese newspapers, including the People's Daily, the mouthpiece of the Communist Party, joined in. Their slogan was ''Don't force us to lie.''

For a brief period, Chinese journalists were allowed to report objectively on the student protests. But this press freedom was short-lived and ended May 20 with the imposition of martial law and the entry of the People's Liberation Army into Beijing.

At first, Beijing residents manning makeshift barriers blocked the troops. But late on the evening of June 3, tanks, armored personnel carriers and soldiers firing automatic weapons broke through to the square.

The death toll quickly became a taboo subject for Chinese media.

Chinese doctors and nurses who had openly sided with students on the square, and who had allowed reporters into operating rooms to view the wounded, came under pressure to conceal casualty figures.

One brave doctor at a hospital not far from Tiananmen Square led me and a colleague to a makeshift morgue, where we saw some 20 bullet-riddled bodies laid out on a cement floor. I later learned that the doctor was ''disciplined'' for allowing us to view that scene.

A Chinese journalist I considered a friend tried to convince me that government estimates of fewer than 300 killed were correct and that these included a large number of military and police casualties. I later learned from colleagues of his that this journalist was working for state security.

After comparing notes with others, my guess was that the actual death toll was at least 700, and that most of those killed were ordinary Beijing residents.

It's almost incredible that the Chinese government has succeeded for so long in covering up a tragedy of this magnitude.

But for those who closely monitor the continued repression of civil liberties in China—and the government's stranglehold on news deemed ''sensitive''—it's not surprising.

Chinese authorities continue to intimidate reporters, block Web sites and jam broadcasts of outside news organizations. China is the world's leading jailer of journalists and cyber-dissidents. Chinese youths are among the most Web-savvy in the world. But Chinese search engines, chat and blog applications, as well as Internet service providers, are equipped with filters that block out certain keywords incorporated in a blacklist that is continually updated.

China's censorship is multipronged, sometimes heavy-handed and sometimes sophisticated, allowing debate on some issues and shutting it down on others, such as Tiananmen.

Censors hold online service providers and Internet cafe owners responsible for the content that users read and post. A small blogging service will usually err on the side of caution rather than lose its license because of a debate about June 4.

Lines that cannot be crossed shift from time to time, leaving citizens uncertain and therefore prone to self-censorship.

The good news is that the blackout isn't complete. We know from Radio Free Asia's call-in shows that some younger Chinese know just enough about Tiananmen to want to learn more. I work with several Chinese broadcasters who were students in Beijing on June 4. Many of them saw more than I did. And they are here to remind me—and many Chinese—of a history we should never forget.

ADDITIONAL STATEMENTS

COMMENDING LUCIA MOCZ

• Mr. AKAKA. Mr. President, I congratulate Mililani High School senior Lucia Mocz for winning the third place Addiction Science Award at this year's Intel International Science and Engineering Fair, ISEF. With over 1,500 students participating from more than 50 countries, the Intel ISEF is the world's largest science competition for high school students. The awards were presented by the National Institute on Drug Abuse—NIDA—at a ceremony on May 14, 2009.

I wish to acknowledge Lucia's technical skill, innovation, and creativity in creating her winning project. Lucia's computer science project, ''Complex Evaluation of Danger and Tranquility in Urban Settings: An Immunocomputing Intelligence Approach,'' used an artificial intelligence algorithm to generate highly detailed maps correlating indicators of danger and tranquility in the urban region of her hometown. While there are medical and behavioral science awards given by various public and private agencies, this is the first series of awards given exclusively for projects that advance addiction science.

However, this young woman could not have achieved what she has done without the additional support and knowledge of science and social issues provided by her teachers. I commend the teachers at Mililani High School, who played a role in Lucia's success. Their dedication to instructing, nourishing and inspiring the next generation of professionals is exemplary. Her family is recognized as well for their commitment, sacrifice, and support that all helped to encourage and instill the important values that led to her award.

I would also like to note NIDA Director Dr. Nora D. Volkow's comments that ''our judges recognized a provocative strategy that could one day help

us better understand how the built environment relates to patterns of drug abuse . . . This approach nicely mirrors the multidimensionality of the many factors known to influence the risk and consequences of drug abuse in our communities.''

I encourage Lucia to continue to study and follow her passions for applied science and social issues. I wish nothing but the best for the her and her family and wish her continued success as she faces the challenges of college and beyond.●

COMMENDING DR. NANCY ZIMPHER

● Mr. BROWN. Mr. President, today I honor the accomplishments of Dr. Nancy Zimpher, president of the University of Cincinnati. For the last 5 years, Dr. Zimpher has served the university, its students, and the Cincinnati community, and she will soon leave to become the chancellor of the State University of New York.

An Ohio native, President Zimpher earned her academic credentials at the Ohio State University and has devoted her professional life to improving higher education for America's young people. In 2003, she became the 25th president, and the first woman to lead the University of Cincinnati. Shortly after her arrival, UC embarked on a comprehensive strategic plan to transform the University of Cincinnati into one of the nation's top research universities. Dr. Zimpher's work resulted in a significant increase in the graduation rate along with nearly a 10-percent increase in university enrollment.

During her tenure at UC, President Zimpher has been highly engaged on the national and regional level regarding education policy. As chair of the Coalition of Urban Serving Universities, Dr. Zimpher was heavily involved in issues surrounding the reauthorization of the Higher Education Act and was a strong advocate for issues facing urban research universities.

I have had the opportunity to work closely with Dr. Zimpher on issues relating to workforce development. Dr. Zimpher served on the host committee of our inaugural Ohio College Presidents' Conference, where she was instrumental in forming partnerships between universities and employers. One of Dr. Zimpher's greatest achievements at UC was the founding of Strive, a Cincinnati-northern Kentucky collaborative focused on college access and success. This partnership involves higher education institutions in the Cincinnati region, urban P–12 school districts in Cincinnati and northern Kentucky, as well as business, civic, and nonprofit organizations. As President Obama has recognized through the creation of the Promise Neighborhoods initiative, these types of partnerships are essential to the health of urban communities like Cincinnati.

The State of Ohio, the city of Cincinnati, and the university are grateful to President Zimpher for her service. I am confident the university will continue to grow and increase in national stature because of her hard work and leadership. I wish her the best in her new position at SUNY and I know that we will continue to work together in the future.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 4:06 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 325. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Avra/Black Wash Reclamation and Riparian Restoration Project.

H.R. 689. An act to interchange the administrative jurisdiction of certain Federal lands between the Forest Service and the Bureau of Land Management, and for other purposes.

H.R. 1120. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Central Texas Water Recycling and Reuse Project, and for other purposes.

H.R. 1280. An act to modify a land grant patent issued by the Secretary of the Interior.

H.R. 1380. An act to establish a grant program for automated external defibrillators in elementary and secondary schools.

H.R. 1393. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that Act, and for other purposes.

H.R. 1662. An act to amend the Child Care and Development Block Grant Act of 1990 to require child care providers to provide to parents information regarding whether such providers carry current liability insurance.

H.R. 2330. An act to direct the Secretary of the Interior to carry out a study to determine the suitability and feasibility of establishing Camp Hale as a unit of the National Park System.

H.R. 2430. An act to direct the Secretary of the Interior to continue stocking fish in certain lakes in the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area.

H. J. Res. 40. Joint resolution to honor the achievements and contributions of Native Americans to the United States, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 325. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Avra Black Wash Reclamation and Riparian Restoration Project; to the Committee on Energy and Natural Resources.

H.R. 689. An act to interchange the administrative jurisdiction of certain Federal lands between the Forest Service and the Bureau of Land Management, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1120. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Central Texas Water Recycling and Reuse Project, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1280. An act to modify a land grant patent issued by the Secretary of the Interior; to the Committee on Energy and Natural Resources.

H.R. 1380. An act to establish a grant program for automated external defibrillators in elementary and secondary schools; to the Committee on Health, Education, Labor, and Pensions.

H.R. 1393. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that Act, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1662. An act to amend the Child Care and Development Block Grant Act of 1990 to require child care providers to provide to parents information regarding whether such providers carry current liability insurance; to the Committee on Health, Education, Labor, and Pensions.

H.R. 2330. An act to direct the Secretary of the Interior to carry out a study to determine the suitability and feasibility of establishing Camp Hale as a unit of the National Park System; to the Committee on Energy and Natural Resources.

H.R. 2430. An act to direct the Secretary of the Interior to continue stocking fish in certain lakes in the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area; to the Committee on Energy and Natural Resources.

MEASURES DISCHARGED

The following bill was discharged from the Committee on Commerce, Science, and Transportation by unanimous consent, and referred as indicated:

S. 1144. A bill to improve transit services; including in rural States; to the Committee on Banking, Housing, and Urban Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1754. A communication from the Chief of Publications and Regulations, Internal

Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance Necessary to Facilitate Business Election Filing; Finalizing Controlled Group Qualification Rules'' ((RIN1545–BF25)(TD 9451)) received in the Office of the President of the Senate on May 27, 2009; to the Committee on Finance.

EC–1755. A communication from the Chief of Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Application of Sections 7702 and 7702A to Life Insurance Contracts that Mature after Age 100'' (Notice 2009–47) received in the Office of the President of the Senate on May 27, 2009; to the Committee on Finance.

EC–1756. A communication from the Chief of Publications and Regulations, Internal Revenue Service, Department of Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tier 1 Issue—Section 965 Foreign Earnings Repatriation Directive #3'' (LMSB–4–0409–017) received in the Office of the President of the Senate on May 27, 2009; to the Committee on Finance.

EC–1757. A communication from the Chief of Publications and Regulations, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 42.—Low-Income Housing Credit'' (Notice 2009–44) received in the Office of the President of the Senate on May 27, 2009; to the Committee on Finance.

EC–1758. A communication from the Chief of Publications and Regulations, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Treatment of Certain Employer-Owned Life Insurance Contracts'' (Notice 2009–48) received in the Office of the President of the Senate on May 27, 2009; to the Committee on Finance.

EC–1759. A communication from the Chief of Publications and Regulations, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Tier 1 Issue—International Hybrid Instrument Transactions'' (LMSB–4–0509–122) received in the Office of the President of the Senate on May 27, 2009; to the Committee on Finance.

EC–1760. A communication from the Assistant General Counsel of the Division of Regulatory Services, Office of Postsecondary Education, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Regulations—Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access to Retain Talent Grant Program'' (RIN1840–AC96) received in the Office of the President of the Senate on May 26, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC–1761. A communication submitted jointly by the Chairman and the General Counsel, National Labor Relations Board, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1762. A communication from the Acting Administrator, General Services Administration transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1763. A communication from the Secretary, Federal Maritime Commission, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1764. A communication from the Secretary of Energy, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1765. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1766. A communication from the Chairman, National Credit Union Administration, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from October 1, 2008 through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1767. A communication from the Director of Legislative Affairs, Office of the Director of National Intelligence, transmitting, pursuant to law, a report relative to action on a nomination for the position of Associate Director of National Intelligence and Chief Information Officer, received in the Office of the President of the Senate on May 27, 2009; to the Select Committee on Intelligence.

EC–1768. A communication from the Staff Director, U.S. Commission on Civil Rights, transmitting, pursuant to law, a report relative to the Commission's recent appointment of members to the Connecticut Advisory Committee; to the Committee on the Judiciary.

EC–1769. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a manufacturing license agreement for the export of technical data, defense services, and defense articles for the manufacture and support of the S–70B(SH–60J/K) Helicopters, parts and support equipment in the amount of $100,000,000 or more with Japan; to the Committee on Foreign Relations.

EC–1770. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of technical data, defense services, and defense articles for the manufacture of the AN/APG–63(V)1 Radar System Retrofit Kits in the amount of $100,000,000 or more with Japan; to the Committee on Foreign Relations.

EC–1771. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of technical data, defense services, and defense articles for the manufacture and support of the S–70A(UH–60J) Helicopters, parts and support equipment in the amount of $100,000,000 or more with Japan; to the Committee on Foreign Relations.

EC–1772. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license agreement for the export of defense articles and defense services in the amount of $50,000,000 or more with the United Kingdom, Germany, Netherlands, Sweden, Luxembourg, Belgium, France, and Kazakhstan; to the Committee on Foreign Relations.

EC–1773. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more with Canada; to the Committee on Foreign Relations.

EC–1774. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense services and defense articles in the amount of $50,000,000 or more with Mexico; to the Committee on Foreign Relations.

EC–1775. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of technical data, and defense services articles in the amount of $50,000,000 or more with Mexico; to the Committee on Foreign Relations.

EC–1776. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more with the United Kingdom, Russia, Germany, Netherlands, Sweden, Luxembourg, Belgium, France, and Kazakhstan; to the Committee on Foreign Relations.

EC–1777. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more with the United Arab Emirates; to the Committee on Foreign Relations.

EC–1778. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more with Iraq, the United Kingdom, the United Arab Emirates; to the Committee on Foreign Relations.

EC–1779. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad with Mexico; to the Committee on Foreign Relations.

EC–1780. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad with Israel; to the Committee on Foreign Relations.

EC–1781. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad with Japan; to the Committee on Foreign Relations.

EC–1782. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to

law, a report relative to provisions of Section 7072 of the Foreign Operations, and Related Programs Appropriations Act, 2009, as they relate to restrictions on assistance to the central government of Serbia; to the Committee on Foreign Relations.

EC–1783. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the status of the Government of Cuba's compliance with the United States-Cuba September 1994 ''Joint Communique'' and on the treatment of persons returned to Cuba in accordance with the United States-Cuba May 1995 ''Joint Statement''; to the Committee on Foreign Relations.

EC–1784. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Suspending Prohibitions on Certain Sales and Leases Under the Anti-Economic Discrimination Act of 1994 with regards to Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, the United Arab Emirates, and Yemen; to the Committee on Foreign Relations.

EC–1785. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2009–0068—2009–0073); to the Committee on Foreign Relations.

EC–1786. A communication from the Deputy Assistant Administrator of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Schedules of Controlled Substances: Placement of Lacosamide into Schedule V'' (Docket Number DEA–325) received in the Office of the President of the Senate on June 3, 2009; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. REID:

S. 1166. A bill to amend the Internal Revenue Code of 1986 to allow taxpayers to designate part or all of any income tax refund to support reservists and National Guard members; to the Committee on Finance.

By Mr. THUNE (for himself, Mr. VITTER, Mr. BROWNBACK, Mr. ROBERTS, and Mr. INHOFE):

S. 1167. A bill to require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SCHUMER:

S. 1168. A bill to authorize the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812 under the American Battlefield Protection Program; to the Committee on Energy and Natural Resources.

By Mrs. GILLIBRAND (for herself, Ms. COLLINS, Mr. CARDIN, Mr. SANDERS, Mr. BROWNBACK, and Mr. SPECTER):

S. 1169. A bill to amend title 10, United States Code, to provide for the treatment of autism under TRICARE; to the Committee on Armed Services.

By Ms. MURKOWSKI:

S. 1170. A bill to improve aviation safety in Alaska, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR (for himself, Mr. BROWNBACK, Mr. BAYH, Mr. ISAKSON, Mr. CHAMBLISS, Mr. LUGAR, and Mr. INHOFE):

S. 1171. A bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program; to the Committee on Finance.

By Mr. BROWN:

S. 1172. A bill to direct the Secretary of Energy to establish a grant program to facilitate the production of clean, renewable energy from municipal solid waste, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FEINGOLD:

S. 1173. A bill to establish a demonstration project to train unemployed workers for employment as health care professionals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions .

By Ms. CANTWELL (for herself, Ms. COLLINS, and Mr. WHITEHOUSE):

S. 1174. A bill to amend the Public Health Service Act and the Social Security Act to increase the number of primary care physicians and primary care providers and to improve patient access to primary care services, and for other services; to the Committee on Finance.

By Ms. CANTWELL:

S. 1175. A bill to amend the Public Utility Regulatory Policies Act of 1978 to authorize the Secretary of Energy to make loans to electric utilities to carry out projects to comply with any Federal renewable electricity standard, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. CANTWELL:

S. 1176. A bill to amend the Public Health Service Act to promote and improve the allied health professionals; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KOHL (for himself and Mr. WYDEN):

S. 1177. A bill to improve consumer protections for purchasers of long-term care insurance, and for other purposes; to the Committee on Finance.

By Mr. WEBB (for himself and Mr. WARNER):

S. 1178. A bill to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe; to the Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. INHOFE (for himself, Mr. BROWN, Mr. GRAHAM, Mr. KYL, Mr. MENENDEZ, Mr. VITTER, Mr. LIEBERMAN, Mr. COBURN, and Mr. WEBB):

S. Res. 167. A bill commending the people who have sacrificed their personal freedoms to bring about democratic change in the People's Republic of China and expressing sympathy for the families of the people who were killed, wounded, or imprisoned, on the occasion of the 20th anniversary of the Tiananmen Square Massacre in Beijing, China from June 3 through 4, 1989; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 144

At the request of Mr. KERRY, the names of the Senator from Nebraska (Mr. NELSON), the Senator from Missouri (Mr. BOND) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 144, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 424

At the request of Mr. LEAHY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 424, a bill to amend the Immigration and Nationality Act to eliminate discrimination in the immigration laws by permitting permanent partners of United States citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of citizens and lawful permanent residents and to penalize immigration fraud in connection with permanent partnerships.

S. 451

At the request of Ms. COLLINS, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Mississippi (Mr. COCHRAN), the Senator from Nevada (Mr. ENSIGN) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors 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 names of the Senator from Iowa (Mr. HARKIN) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 461, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 491

At the request of Mr. WEBB, the name of the Senator from Maryland (Ms. MIKULSKI) 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. 535

At the request of Mr. NELSON of Florida, the name of the Senator from Washington (Mrs. MURRAY) 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. 546

At the request of Mr. REID, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Colorado (Mr. UDALL) were added as cosponsors 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. 565

At the request of Mr. DURBIN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 565, a bill to amend title XVIII of the Social Security Act to provide continued entitlement to coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare Program that have received a kidney transplant and whose entitlement to coverage would otherwise expire, and for other purposes.

S. 581

At the request of Mr. BENNET, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 581, a bill to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to require the exclusion of combat pay from income for purposes of determining eligibility for child nutrition programs and the special supplemental nutrition program for women, infants, and children.

S. 614

At the request of Mrs. HUTCHISON, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 614, a bill to award a Congressional Gold Medal to the Women Airforce Service Pilots (''WASP'').

S. 645

At the request of Mrs. LINCOLN, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 645, a bill to amend title 32, United States Code, to modify the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 663

At the request of Mr. NELSON of Nebraska, the names of the Senator from Florida (Mr. MARTINEZ) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 663, a bill to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to establish the Merchant Mariner Equity Compensation Fund to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 718

At the request of Mr. HARKIN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 718, a bill to amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

S. 769

At the request of Mrs. LINCOLN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 769, a bill to amend title XVIII of the Social Security Act to improve access to, and increase utilization of, bone mass measurement benefits under the Medicare part B program.

S. 812

At the request of Mr. BAUCUS, the names of the Senator from North Carolina (Mr. BURR) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. 812, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

At the request of Mr. THUNE, his name was added as a cosponsor of S. 812, supra.

S. 823

At the request of Ms. SNOWE, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 823, a bill to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

S. 832

At the request of Mr. NELSON of Florida, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 832, a bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes.

S. 837

At the request of Mr. BROWNBACK, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 837, a bill to require that North Korea be listed as a state sponsor of terrorism, to ensure that human rights is a prominent issue in negotiations between the United States and North Korea, and for other purposes.

S. 891

At the request of Mr. BROWNBACK, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 891, a bill to require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.

S. 934

At the request of Mr. HARKIN, the names of the Senator from Hawaii (Mr. INOUYE), the Senator from Michigan (Mr. LEVIN), the Senator from North Dakota (Mr. DORGAN), the Senator from Vermont (Mr. SANDERS), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Massachusetts (Mr. KERRY) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 934, a bill to amend the Child Nutrition Act of 1966 to improve the nutrition and health of schoolchildren and protect the Federal investment in the national school lunch and breakfast programs by updating the national school nutrition standards for foods and beverages sold outside of school meals to conform to current nutrition science.

S. 950

At the request of Mrs. LINCOLN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 950, a bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat Medicare beneficiaries without a requirement for a physician referral, and for other purposes.

S. 982

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 982, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 1023

At the request of Mr. DORGAN, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. 1023, a bill to establish a non-profit corporation to communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

S. 1026

At the request of Mr. CORNYN, the names of the Senator from Oklahoma (Mr. COBURN), the Senator from Kansas (Mr. BROWNBACK), the Senator from Georgia (Mr. ISAKSON) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1026, a bill to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of marked absentee ballots of absent overseas uniformed service voters, and for other purposes.

S. 1048

At the request of Mr. HARKIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 1048, a bill to amend the Federal Food, Drug, and Cosmetic Act to extend the food labeling requirements of the Nutrition Labeling and Education Act of 1990 to enable customers to make informed choices about the nutritional content of standard menu items in large chain restaurants.

S. 1064

At the request of Mr. LIEBERMAN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1064, a bill to amend the American Recovery and Reinvestment Act of 2009 to provide for enhanced State and local oversight of activities conducted under such Act, and for other purposes.

S. 1066

At the request of Mr. SCHUMER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1066, a bill to amend title XVIII of the Social Security Act to preserve access to ambulance services under the Medicare program.

S. 1067

At the request of Mr. FEINGOLD, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor

of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1103

At the request of Mr. VITTER, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1103, a bill to amend the Help America Vote Act of 2002 to establish standards for the distribution of voter registration application forms and to require organizations to register with the State prior to the distribution of such forms.

S. 1113

At the request of Mr. PRYOR, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1113, a bill to amend title 49, United States Code, to direct the Secretary of Transportation to establish and maintain a national clearinghouse for records related to alcohol and controlled substances testing of commercial motor vehicle operators, and for other purposes.

S. 1121

At the request of Mr. HARKIN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1121, a bill to amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

S. 1147

At the request of Mr. KOHL, the names of the Senator from New York (Mrs. GILLIBRAND) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 1147, a bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

S. 1148

At the request of Mr. GRASSLEY, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Nebraska (Mr. JOHANNS) were added as cosponsors of S. 1148, a bill to amend the Clean Air Act to modify a provision relating to the renewable fuel program.

S. CON. RES. 14

At the request of Mr. BARRASSO, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. RES. 71

At the request of Mr. WYDEN, the name of the Senator from Maryland (Mr. CARDIN) 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 Covenants on Human Rights.

S. RES. 142

At the request of Mr. ENZI, the names of the Senator from Nebraska (Mr. JOHANNS), the Senator from Kansas (Mr. ROBERTS) and the Senator from Idaho (Mr. RISCH) were added as cosponsors of S. Res. 142, a resolution designating July 25, 2009, as ''National Day of the American Cowboy''.

AMENDMENT NO. 1229

At the request of Mr. VITTER, his name was added as a cosponsor of amendment No. 1229 intended to be proposed to H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

At the request of Mr. DORGAN, the names of the Senator from Iowa (Mr. GRASSLEY) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of amendment No. 1229 intended to be proposed to H.R. 1256, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID:

S. 1166. A bill to amend the Internal Revenue Code of 1986 to allow taxpayers to designate part or all of any income tax refund to support reservists and National Guard members; to the Committee on Finance.

Mr. REID. Mr President, I rise today to introduce legislation to help reduce the financial burden placed on our Reserve and National Guard troops and their families. More than a quarter of a million have deployed in support of operations in Iraq and Afghanistan, and we must make it a priority to honor their service at home.

Nevada alone has more than three thousand Guards men and women, and a thousand Reservists—many of whom work full-time jobs when they are not on active duty. Since September 11th, our National Guard and Reserve Troops have significantly increased their deployments beyond what had been forecasted, advertised or expected. They have continued their engagements around the globe while still responding to historic callouts in support of disaster relief.

In our Democracy, we enjoy the luxury of an all-volunteer military force. Yet in volunteering, many of our Citizen-Soldiers are financially penalized for their service. Far too frequently, when a Service Member is mobilized in service to their state or our nation, they suffer a financial burden in the reduced pay received while mobilized. A National Guard medic might earn much less while he or she is deployed in Afghanistan than they did working a full-time job in a Nevada hospital. This legislation gives American taxpayers the option of contributing money to help our military families to make up for wages lost during a deployment.

The bill I am introducing today allows Americans to designate all or a portion of their income tax refunds to the Reserve Income Replacement Program. The Program is a compensation that must be paid to all eligible Service Members when they incur a loss in monthly income as a result of a mobilization. The funds that volunteers donate will be transferred from the Treasury Department to this program, which was developed specifically to provide payments to eligible members of the National Guard and Reserve who are involuntary serving on active-duty and who are experiencing a monthly active-duty income differential of more than $50. In 2007, the IRS issued 106 million refunds that totaled $246 billion with the average refund coming in at $2,342. Even a small percentage of this amount could make a significant difference in the lives of these reservist and National Guard families.

The financial stress of deployments during a recession has placed enormous pressures on our National Guard and Reserve Service Members and their families. Many of these members are returning from war only to find their businesses facing extreme difficulty. This bill would not only assist the Guard with monetary resources, but it would also rightfully focus more attention on the financial struggles that our brave and dedicated citizen Soldiers and Airmen undertake in defense of our country. With this legislation, we can show them that their service is not taken for granted.

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

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

S. 1166

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 ''Voluntary Support for Reservists and National Guard Members Act''.

SEC. 2. DESIGNATION OF OVERPAYMENTS TO SUPPORT RESERVISTS AND NATIONAL GUARD MEMBERS.

(a) DESIGNATION.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new part:

''PART IX—DESIGNATION OF OVERPAYMENTS TO RESERVE INCOME REPLACEMENT PROGRAM

''Sec. 6097. Designation.

"SEC. 6097. DESIGNATION.

''(a) IN GENERAL.—In the case of an individual, with respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that a specified portion (not less than $5) of any overpayment of tax for such taxable year be paid over to the Reserve Income Replacement Program (RIRP) under section 910 of title 37, United States Code.

''(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made in such manner as the Secretary prescribes by regulations except that such designation shall be made either on the first page of the return or on the page bearing the taxpayer's signature.

''(c) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any portion of an overpayment of tax designated under subsection (a) shall be treated as—

''(1) being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if later, the date the return is filed, and

''(2) a contribution made by such taxpayer on such date to the United States.''.

(b) TRANSFERS TO RESERVE INCOME REPLACEMENT PROGRAM.—The Secretary of the Treasury shall, from time to time, transfer to the Reserve Income Replacement Program (RIRP) under section 910 of title 37, United States Code, the amounts designated under section 6097 of the Internal Revenue Code of 1986, under regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Defense.

(c) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''PART IX. DESIGNATION OF OVERPAYMENTS TO RESERVE INCOME REPLACEMENT PROGRAM''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

By Mr. PRYOR (for himself, Mr. BROWNBACK, Mr. BAYH, Mr. ISAKSON, Mr. CHAMBLISS, Mr. LUGAR, and Mr. INHOFE):

S. 1171. A bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35–mile rule for designating critical access hospitals under the Medicare Program; to the Committee on Finance.

Mr. PRYOR. Mr. President, I rise today to introduce legislation with Senators BROWNBACK, BAYH, ISAKSON, and CHAMBLISS. The Critical Access Flexibility Act of 2009 will return to States the flexibility needed to help preserve local hospitals that serve rural communities.

Hospitals are often the largest employers in rural America. They provide much needed jobs and are facing serious financial difficulties during this economic downturn. Without immediate relief, many small hospitals are at serious risk of closure, job loss, or reductions in patient services. Rural areas most often have sicker, older, and poorer populations. In these difficult times, it is crucial that we protect hospitals serving our rural communities.

A Critical Access Hospital, CAH, is a hospital that is certified to receive cost-based reimbursement from Medicare. The reimbursement that CAHs receive is intended to improve their financial performance and thereby reduce hospital closures. CAHs are certified under a different set of Medicare conditions of participation that are more flexible than those used for acute care hospitals. In order for a hospital to be classified as a CAH, it must meet a number of conditions including a distance requirement that it must be 35 miles away from the nearest hospital. Prior to enactment of the 2003 Medicare Modernization Act, MMA, hospitals that were designated as ''necessary providers'' by a State could be exempt from the distance requirement.

I am joining with Senators BROWNBACK, BAYH, and ISAKSON today to introduce legislation that restores a state's authority to waive the mileage requirements if all other requirements are met and the State designates the facility as a necessary provider. Existing requirements that cannot be waived include requiring that CAHs be nonprofit or public hospitals in a rural area, offer 24-hour emergency room services, and have no more than 25 acute care inpatient beds.

There are at least two communities in my State where changing conditions are threatening small town hospitals, and restoring the flexibility for States to make exemptions for the distance requirement would help residents of these communities continue to be able to receive necessary medical care from a local hospital. I know from talking to my colleagues in the Senate and to health care providers that this is the case throughout rural America. In recent years, there have been legislative efforts for single hospitals to be singled out and granted an exemption to the distance requirement. I believe the best way to address this problem is to have a uniform national policy that gives States the flexibility they need.

I want to thank Senators BROWNBACK, BAYH, ISAKSON, and CHAMBLISS for their work, leadership and support on this very important legislation, and I urge the rest of my colleagues to support this effort.

By Mr. FEINGOLD:

S. 1173. A bill to establish a demonstration project to train unemployed workers for employment as health care professionals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, today I introduce the Community-Based Health Care Retraining Act, which would amend the Workforce Investment Act to help communities with both significant job losses and shortages in the health care professions create programs to retrain displaced workers for high-demand health care jobs. I have introduced similar legislation in the past to help workers who are displaced from the manufacturing and service sectors.

In light of the state of our economy and the tremendous increase in unemployment across this country, I have tried to broaden the bill to cover workers from all sectors. According to the Department of Labor, in the last year the number of unemployed people in the United States has increased by 6 million. In April alone, private sector employment fell by 539,000, bringing the unemployment rate to 8.9 percent. In my home State of Wisconsin, the unemployment rate is up to 8.8 percent.

In Wisconsin, we have seen the loss of many manufacturing jobs, including at the idled General Motors automobile assembly plant in my hometown of Janesville, and in Kenosha, where Chrysler recently announced that the Kenosha Chrysler plant will cease production in 2010. But these large factories are just the tip of the iceberg. Some small manufacturing businesses are also going out of business in communities around Wisconsin, and others are struggling to survive.

In addition, the economic troubles in the last few years have permeated other industries besides manufacturing, including construction, business, and also the retail industry.

The people in my State are facing tough economic challenges, but they are meeting them head-on. Wisconsin has a determined workforce that is a tremendous asset as we look to rebuild this economy. These talented, hard-working people are ready, willing, and able to work, and Congress should be doing more to help connect them with jobs in growing industries.

That is exactly what I am proposing to do as I introduce this Community-Based Health Care Retraining Act. This bill will help more dislocated workers find jobs in the growing health care industry. My bill would create $25 million in grants to help workforce development boards in our communities identify health care job openings and train people for these positions. This bill is also paid for, so it won't increase the deficit. This bill is a small step toward two critically important goals: helping the hard-working Americans whose jobs have disappeared and providing all Americans with the health care they deserve.

The Community-Based Health Care Retraining Act puts control in the hands of the local communities. It allows local workforce development boards to partner with institutions of higher education and other community leaders to design programs that can retrain dislocated workers for jobs in the health care industry. Allowing the local workforce boards and their partners to apply for the grant funds and design the programs means that each community can use the funds differently to address the specific needs it faces. Particularly in such challenging economic times, I think a one-size-fits-all approach will not work; communities know best about the resources they need to run an efficient program. I believe the Federal programs should be flexible enough to allow partnerships to tailor the programs to meet the needs of individual communities.

For years, despite limited resources and increases in demand for their services, our workforce development boards have worked tirelessly to retrain workers for new employment. These boards are a tremendous asset for local economies, bringing together members of the labor, business, education, and other communities to ensure that the boards are doing their best to provide the most valuable services and training. In Wisconsin, workforce development boards are leading the way in finding innovative solutions to retraining workers for new careers on shoestring budgets. I look forward to the long overdue reauthorization of the Workforce Investment Act this year and to the opportunity to provide better support for these boards.

I wish to take this time to commend the leaders of these boards in Wisconsin and across the country for their dedication and hard work. Workforce development agencies in Wisconsin have already been training people for health care jobs. But in these difficult times, we have to do more to support our communities in these efforts. We must do our best to ensure that communities across the country have the resources they need to help employ more dislocated workers.

As we face the challenge of helping Americans who lose jobs, we must look to industries that continue to grow and demand more workers. As many of my colleagues know, there is, in fact, a real shortage of health care workers in the United States. Congress continues to fund programs that address nursing shortages and recently provided stimulus funds for health care retraining, but we need to develop longer term and wider ranging programs. Shortages of health care professionals of all sorts pose a real threat to the health of our communities by impacting access to timely, high-quality health care.

As Congress looks forward to reforming our Nation's health care system, we must also ensure that there are enough trained professionals to provide services. According to the Bureau of Labor Statistics, we are going to need an additional 700,000 nursing aides, home health aides, and other health professionals in long-term care before the year 2016.

This bill will help provide communities with the resources they need to run retraining programs for the health professions.

Partnerships funded by the legislation will be able to use these funds for a variety of purposes, including for implementing training programs, providing tuition assistance, providing transportation assistance, and also to increase capacity for existing training programs that are already working but could use more resources.

We must ensure we are doing what we can to train laid-off Americans into fields such as health care that continue to demand more workers, and this Community-Based Health Care Retraining Act takes a small but important step toward that goal.

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

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

S. 1173

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 ''Community-Based Health Care Retraining Act''.

SEC. 2. HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2916) is amended by adding at the end the following:

''(f) HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.—

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

''(A) COVERED COMMUNITY.—The term 'covered community' means a community or region—

''(i) that has experienced a significant percentage decline in rates of employment; and

''(ii)(I) that is determined by the Secretary of Health and Human Services (in consultation with the medical community) to be an area with a shortage of health care professionals described in subparagraph (C)(i); or

''(II) that is underserved by the health care structure, such as a rural community, a community with a significant minority population, or a community for which an applicant can otherwise demonstrate need for increased training for health care professionals.

''(B) COVERED WORKER.—The term 'covered worker' means an individual who—

''(i)(I) has been terminated or laid off, or who has received a notice of termination or layoff;

''(II)(aa) is eligible for or has exhausted entitlement to unemployment compensation; or

''(bb) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

''(III) is unlikely to return to a previous industry or occupation;

''(ii)(I) has been terminated or laid off, or has received a notice of termination or layoff, as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise; or

''(II) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

''(iii) is an incumbent worker employed in a health care profession, and whose training will provide an opportunity for employment of other individuals by increasing—

''(I) the number of instructors serving the covered community; or

''(II) the number of vacant positions in the covered community.

''(C) HEALTH CARE PROFESSIONAL.—The term 'health care professional'—

''(i) means an individual who is involved with—

''(I) the delivery of health care services, or related services, pertaining to—

''(aa) the identification, evaluation, management, and prevention of diseases, disorders, or injuries; or

''(bb) home-based or community-based long-term care;

''(II) the delivery of dietary and nutrition services;

''(III) the delivery of dental services; or

''(IV) rehabilitation and health systems management; and

''(ii) includes individuals in health care professions for which there is a shortage in the community involved, as determined by the Secretary of Health and Human Services (in consultation with the medical community) or as otherwise demonstrated by the applicant.

''(D) TRIBAL COLLEGE OR UNIVERSITY.—The term 'tribal college or university' means a Tribal College or University, as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

''(2) ESTABLISHMENT OF PROJECT.—In accordance with subsection (b), the Secretary shall establish and carry out a health professions training demonstration project.

''(3) GRANTS.—In carrying out the project, the Secretary, after consultation with the Secretary of Health and Human Services, shall make grants to eligible entities to pay for the Federal share of the cost of enabling the entities to carry out programs in covered communities to train covered workers for employment as health care professionals (referred to in this subsection as 'training programs'). The Secretary shall make each grant in an amount of not less than $100,000 and not more than $500,000, and each such grant shall be for a period of 5 years.

''(4) ELIGIBLE ENTITIES.—Notwithstanding subsection (b)(2)(B), to be eligible to receive a grant under this subsection to carry out a training program in a covered community, an entity shall be a partnership that consists of—

''(A) a local workforce investment board established under section 117 that is serving the covered community; and

''(B) an institution of higher education, as defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002), in partnership with at least 1 of the following:

''(i) A health clinic or hospital.

''(ii) A home-based or community-based long-term care facility or program.

''(iii) A health care facility administered by the Secretary of Veterans Affairs.

''(iv) A tribal college or university.

''(v) A labor organization, or an industry or industry group.

''(vi) A local economic development entity serving the covered community.

''(vii) A joint labor-management partnership.

''(5) APPLICATIONS.—To be eligible to receive a grant under this subsection, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including, at a minimum—

''(A) a proposal to use the grant funds to establish or expand a training program in order to train covered workers for employment as health care professionals, including information that demonstrates the long-term viability of the training program beyond the period of the grant;

''(B) information demonstrating the need for the training and support services to be provided through the training program;

''(C) information describing the manner in which the entity will expend the grant funds, and the activities to be carried out with the funds;

''(D) information demonstrating that the entity meets the requirements of paragraph (4);

''(E) with respect to training programs carried out by the applicant, information—

''(i) on the graduation rates of the training programs involved;

''(ii) on the retention measures carried out by the applicant;

''(iii) on the length of time necessary to complete the training programs of the applicant; and

''(iv) on the number of qualified covered workers that are refused admittance into the training programs because of lack of capacity; and

''(F) a description of how the applicant has engaged all relevant stakeholders, including the health care industry to be served by the training program, local labor organizations and other workforce groups, and local industry, in the design of the training program to be served with grant funds.

''(6) SELECTION.—In making grants under paragraph (3), the Secretary, after consultation with the Secretary of Health and Human Services, shall—

''(A) consider the information submitted by the eligible entities under paragraph (5)(E);

''(B) select—

''(i) eligible entities submitting applications that meet such criteria as the Secretary of Labor determines to be appropriate; and

''(ii) among such entities, the eligible entities serving the covered communities with the greatest need for the grants and the greatest potential to benefit from the grants; and

''(C) give preference to eligible entities—

''(i) submitting applications to serve covered workers who have been terminated or laid off or have received a notice of termination or layoff from a manufacturing, service, or construction industry, or another industry with significant decline in employment as determined by the Secretary; and

''(ii) with a demonstrated history of similar and successful partnerships with State boards or local boards, institutions of higher education (as defined in paragraph (4)(B)), industry groups, and labor organizations.

''(7) USE OF FUNDS.—

''(A) IN GENERAL.—An entity that receives a grant under this subsection shall use the funds made available through the grant for training and support services that meet the needs described in the application submitted under paragraph (5), which may include—

''(i) implementing training programs for covered workers;

''(ii) providing support services for covered workers participating in the training programs, such as—

''(I) providing tuition assistance;

''(II) establishing or expanding distance education programs;

''(III) providing transportation assistance; or

''(IV) providing child care; or

''(iii) increasing capacity, subject to subparagraph (B), at an educational institution or training center to train individuals for employment as health professionals, such as by—

''(I) expanding a facility, subject to subparagraph (B);

''(II) expanding course offerings;

''(III) hiring faculty;

''(IV) providing a student loan repayment program for the faculty;

''(V) establishing or expanding clinical education opportunities;

''(VI) purchasing equipment, such as computers, books, clinical supplies, or a patient simulator; or

''(VII) conducting recruitment.

''(B) LIMITATION.—Any such grant funds that are used to expand facilities may only be used to rent or modernize existing facilities, not to build additional facilities. The entity shall use not less than 50 percent of the grant funds to carry out activities described in clause (i) or (ii) of subparagraph (A), unless the entity demonstrates, in the application submitted under paragraph (5), a need to spend more than 50 percent of the grant funds on activities described in subparagraph (A)(iii).

''(8) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of the cost described in paragraph (3) shall be—

''(i) for the first year of the grant period, 95 percent;

''(ii) for the second such year, 85 percent;

''(iii) for the third such year, 75 percent;

''(iv) for the fourth such year, 65 percent; and

''(v) for the fifth such year, 55 percent.

''(B) NON-FEDERAL SHARE.—The eligible entity shall provide the non-Federal share of the cost in cash or in kind, fairly evaluated, including plant, equipment, or services.

''(9) EVALUATION.—

''(A) IN GENERAL.—Under the Secretary's existing authority under section 172, not more than 1 percent of the funds provided under this subsection shall be used for evaluation of the training programs described in paragraph (3). Eligible entities receiving grants under this section shall use not more than 1 percent of the grant funds for purposes of evaluation or documentation of the training programs.

''(B) CONTENTS.—In conducting an evaluation under subparagraph (A), an eligible entity shall provide data detailing the success of the training program carried out by the entity under paragraph (3), including—

''(i) information on the number and percentage of participating covered workers who complete a training program, including those who earn a degree or certificate through such training programs;

''(ii) information on the rate of employment of covered workers who have completed the training program;

''(iii) an assessment of how well the needs of the health care community were addressed by the training program; and

''(iv) any other data determined to be relevant by the entity to demonstrate the success of the training program.

''(C) REPORT.—The Secretary shall compile the information resulting from the evaluation or documentation conducted under subparagraph (A), and shall submit a report to Congress containing the information.

''(10) FUNDING.—Of the amounts appropriated to, and available at the discretion of, the Secretary or the Secretary of Health and Human Services for programmatic and administrative expenditures, a total of $25,000,000 shall be used to establish and carry out the demonstration project described in paragraph (2) in accordance with this subsection.''.

Service Employees International Union (SEIU), Wisconsin Hospital Association, Wisconsin Workforce Development Association, University of Wisconsin System, Southwest Wisconsin Workforce Development Board, Workforce Development Board of South Central Wisconsin, Moraine Park Technical College, Gundersen Lutheran, American Health Care Association, South Central AHEC, Rural Wisconsin Health Cooperative, National Rural Recruitment and Retention Network (3RNet), American Indian Higher Education Consortium, Wisconsin Indianhead Technical College, Madison Area Technical College, Wisconsin Community Action Program Association (WISCAP), UMOS, Fox Valley Technical College, Columbia County Economic Development Corporation, Lakeshore Technical College, Western Technical College, Workforce Connections Inc., Blackhawk Technical College, Mid-State Technical College, Northeast Wisconsin Technical College, Southwest Technical College, Chippewa Valley Technical College, Northcentral Technical College, Gateway Technical College.

By Ms. CANTWELL (for herself, Ms. COLLINS, and Mr. WHITEHOUSE):

S. 1174. A bill to amend the Public Health Service Act and the Social Security Act to increase the number of primary care physicians and primary care providers and to improve patient access to primary care services, and for other services; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I rise today to introduce the Preserving Patient Access to Primary Care Act of 2009, together with my colleagues from Maine, Senator SUSAN COLLINS, and from Rhode Island, Senator SHELDON WHITEHOUSE. As we set about the urgently important business of health care reform, we will be hearing a lot about the uninsured. But there is another urgent problem in our health care system: the underserved. We must address both problems as we set about reforming the health care system.

It does you little good to have health care insurance if the nearest primary care physician is hundreds of miles away.

This bipartisan proposal sets out a multifaceted approach to supporting and expanding our primary care workforce as well as enhancing the coordination of care within our health care system. I am grateful for the input and collaboration of key health-care stakeholders in Washington state that has helped make this legislation possible. In my state, we know it is possible to both increase health care quality while also lowering costs, all within an integrated system that places a priority on expanding our primary care workforce and protecting patients' relationships with their doctors.

A dramatic increase in the primary care physician workforce will be needed. My legislation not only addresses the needs of those individuals to whom health insurance coverage will be extended but also of those who are currently insured but who live in areas underserved by our current health care system.

I believe we can address this problem by adopting long overdue reforms to improve pay levels for primary care providers while also taking measures to ensure an adequate primary care workforce, particularly in rural areas. As more Americans gain health care coverage, the experts estimate there will be a shortage of 46,000 primary care physicians available to care for the influx of patients by the year 2025. As the need grows, the number of medical students choosing primary care is rapidly dwindling.

Detailed studies from the Center for Evaluative Clinical Sciences at Dartmouth and the Commonwealth Fund found that populations with ready access to primary care physicians realize improved health outcomes, reduced mortality, lower utilization of health care resources, and lower overall costs of care. Yet despite what we know, all across this country, we are failing to realize the benefits of primary care and

a system of having a primary care physician coordinate a patient's health care needs. This bill includes several key provisions aimed at achieving a high quality, more comprehensive integrated health system.

Specific provisions include: scholarship and loan repayment opportunities for primary care providers who serve in areas with critical shortages of primary care services. New residency positions for primary care with a focus on more opportunities to train in ambulatory care settings—including community in health centers. Increased reimbursements for primary care providers. Medicare payments for care coordination services, and bonus payments to providers who serve as integrated patient-centered medical homes. Improved access to primary care for seniors by eliminating copayments for preventives care services in Medicare.

I look forward to working with my colleagues in the Senate to ensure we make the necessary investments in our primary care workforce. Mr. President, I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

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

S. 1174

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 ''Preserving Patient Access to Primary Care Act of 2009''.

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

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Approximately 21 percent of physicians who were board certified in general internal medicine during the early 1990s have left internal medicine, compared to a 5 percent departure rate for those who were certified in subspecialties of internal medicine.

(2) The number of United States medical graduates going into family medicine has fallen by more than 50 percent from 1997 to 2005.

(3) In 2007, only 88 percent of the available medicine residency positions were filled and only 42 percent of those were filled by United States medical school graduates.

(4) In 2006, only 24 percent of third-year internal medicine resident intended to pursue careers in general internal medicine, down from 54 percent in 1998.

(5) Primary care physicians serve as the point of first contact for most patients and are able to coordinate the care of the whole person, reducing unnecessary care and duplicative testing.

(6) Primary care physicians and primary care providers practicing preventive care, including screening for illness and treating diseases, can help prevent complications that result in more costly care.

(7) Patients with primary care physicians or primary care providers have lower health care expenditures and primary care is correlated with better health status, lower overall mortality, and longer life expectancy.

(8) Higher proportions of primary care physicians are associated with significantly reduced utilization.

(9) The United States has a higher ratio of specialists to primary care physicians than other industrialized nations and the population of the United States is growing faster than the expected rate of growth in the supply of primary care physicians.

(10) The number of Americans age 65 and older, those eligible for Medicare and who use far more ambulatory care visits per person as those under age 65, is expected to double from 2000 to 2030.

(11) A decrease in Federal spending to carry out programs authorized by title VII of the Public Health Service Act threatens the viability of one of the programs used to solve the problem of inadequate access to primary care.

(12) The National Health Service Corps program has a proven record of supplying physicians to underserved areas, and has played an important role in expanding access for underserved populations in rural and inner city communities.

(13) Individuals in many geographic areas, especially rural areas, lack adequate access to high quality preventive, primary health care, contributing to significant health disparities that impair America's public health and economic productivity.

(14) About 20 percent of the population of the United States resides in primary medical care Health Professional Shortage Areas.

SEC. 3. DEFINITIONS.

(a) GENERAL DEFINITIONS.—In this Act:

(1) CHRONIC CARE COORDINATION.—The term ''chronic care coordination'' means the coordination of services that is based on the Chronic Care Model that provides on-going health care to patients with chronic diseases that may include any of the following services:

(A) The development of an initial plan of care, and subsequent appropriate revisions to such plan of care.

(B) The management of, and referral for, medical and other health services, including interdisciplinary care conferences and management with other providers.

(C) The monitoring and management of medications.

(D) Patient education and counseling services.

(E) Family caregiver education and counseling services.

(F) Self-management services, including health education and risk appraisal to identify behavioral risk factors through self-assessment.

(G) Providing access by telephone with physicians and other appropriate health care professionals, including 24-hour availability of such professionals for emergencies.

(H) Management with the principal nonprofessional caregiver in the home.

(I) Managing and facilitating transitions among health care professionals and across settings of care, including the following:

(i) Pursuing the treatment option elected by the individual.

(ii) Including any advance directive executed by the individual in the medical file of the individual.

(J) Information about, and referral to, hospice care, including patient and family caregiver education and counseling about hospice care, and facilitating transition to hospice care when elected.

(K) Information about, referral to, and management with, community services.

(2) CRITICAL SHORTAGE HEALTH FACILITY.—The term ''critical shortage health facility'' means a public or private nonprofit health facility that does not serve a health professional shortage area (as designated under section 332 of the Public Health Service Act), but that has a critical shortage of physicians (as determined by the Secretary) in a primary care field.

(3) PHYSICIAN.—The term physician has the meaning given such term in section 1861(r)(1) of the Social Security Act.

(4) PRIMARY CARE.—The term ''primary care'' means the provision of integrated, high-quality, accessible health care services by health care providers who are accountable for addressing a full range of personal health and health care needs, developing a sustained partnership with patients, practicing in the context of family and community, and working to minimize disparities across population subgroups.

(5) PRIMARY CARE FIELD.—The term ''primary care field'' means any of the following fields:

(A) The field of family medicine.

(B) The field of general internal medicine.

(C) The field of geriatric medicine.

(D) The field of pediatric medicine

(6) PRIMARY CARE PHYSICIAN.—The term ''primary care physician'' means a physician who is trained in a primary care field who provides first contact, continuous, and comprehensive care to patients.

(7) PRIMARY CARE PROVIDER.—The term ''primary care provider'' means—

(A) a nurse practitioner; or

(B) a physician assistant practicing as a member of a physician-directed team;

who provides first contact, continuous, and comprehensive care to patients.

(8) PRINCIPAL CARE.—The term ''principal care'' means integrated, accessible health care that is provided by a physician who is a medical subspecialist that addresses the majority of the personal health care needs of patients with chronic conditions requiring the subspecialist's expertise, and for whom the subspecialist assumes care management, developing a sustained physician-patient partnership and practicing within the context of family and community.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) PRIMARY MEDICAL CARE SHORTAGE AREA.—

(1) IN GENERAL.—In this Act, the term ''primary medical care shortage area'' or ''PMCSA'' means a geographic area with a shortage of physicians (as designated by the Secretary) in a primary care field, as designated in accordance with paragraph (2).

(2) DESIGNATION.—To be designated by the Secretary as a PMCSA, the Secretary must find that the geographic area involved has an established shortage of primary care physicians for the population served. The Secretary shall make such a designation with respect to an urban or rural geographic area if the following criteria are met:

(A) The area is a rational area for the delivery of primary care services.

(B) One of the following conditions prevails within the area:

(i) The area has a population to full-time-equivalent primary care physician ratio of at least 3,500 to 1.

(ii) The area has a population to full-time-equivalent primary care physician ratio of less than 3,500 to 1 and has unusually high needs for primary care services or insufficient capacity of existing primary care providers.

(C) Primary care providers in contiguous geographic areas are overutilized.

(c) MEDICALLY UNDERSERVED AREA.—

(1) IN GENERAL.—In this Act, the term ''medically underserved area'' or ''MUA'' means a rational service area with a demonstrable shortage of primary healthcare resources relative to the needs of the entire population within the service area as determined in accordance with paragraph (2) through the use of the Index of Medical Underservice (referred to in this subsection as the ''IMU'') with respect to data on a service area.

(2) DETERMINATIONS.—Under criteria to be established by the Secretary with respect to the IMU, if a service area is determined by the Secretary to have a score of 62.0 or less, such area shall be eligible to be designated as a MUA.

(3) IMU VARIABLES.—In establishing criteria under paragraph (2), the Secretary shall ensure that the following variables are utilized:

(A) The ratio of primary medical care physicians per 1,000 individuals in the population of the area involved.

(B) The infant mortality rate in the area involved.

(C) The percentage of the population involved with incomes below the poverty level.

(D) The percentage of the population involved age 65 or over.

The value of each of such variables for the service area involved shall be converted by the Secretary to a weighted value, according to established criteria, and added together to obtain the area's IMU score.

(d) PATIENT CENTERED MEDICAL HOME.—

(1) IN GENERAL.—In this Act, the term ''patient centered medical home'' means a physician-directed practice (or a nurse practitioner directed practice in those States in which such functions are included in the scope of practice of licensed nurse practitioners) that has been certified by an organization under paragraph (3) as meeting the following standards:

(A) The practice provides patients who elect to obtain care through a patient centered medical home (referred to as ''participating patients'') with direct and ongoing access to a primary or principal care physician or a primary care provider who accepts responsibility for providing first contact, continuous, and comprehensive care to the whole person, in collaboration with teams of other health professionals, including nurses and specialist physicians, as needed and appropriate.

(B) The practice applies standards for access to care and communication with participating beneficiaries.

(C) The practice has readily accessible, clinically useful information on participating patients that enables the practice to treat such patients comprehensively and systematically.

(D) The practice maintains continuous relationships with participating patients by implementing evidence-based guidelines and applying such guidelines to the identified needs of individual beneficiaries over time and with the intensity needed by such beneficiaries.

(2) RECOGNITION OF NCQA APPROVAL.—Such term also includes a physician-directed (or nurse-practitioner-directed) practice that has been recognized as a medical home through the Physician Practice Connections—patient centered Medical Home (''PPC–PCMH'') voluntary recognition process of the National Committee for Quality Assurance.

(3) STANDARD SETTING AND QUALIFICATION PROCESS FOR MEDICAL HOMES.—The Secretary shall establish a process for the selection of a qualified standard setting and certification organization—

(A) to establish standards, consistent with this subsection, to enable medical practices to qualify as patient centered medical homes; and

(B) to provide for the review and certification of medical practices as meeting such standards.

(4) TREATMENT OF CERTAIN PRACTICES.—Nothing in this section shall be construed as preventing a nurse practitioner from leading a patient-centered medical home so long as—

(A) all of the requirements of this section are met; and

(B) the nurse practitioner is acting consistently with State law.

(e) APPLICATION UNDER MEDICARE, MEDICAID, PHSA, ETC.—Unless otherwise provided, the provisions of the previous subsections shall apply for purposes of provisions of the Social Security Act, the Public Health Service Act, and any other Act amended by this Act.

TITLE I—MEDICAL EDUCATION

SEC. 101. RECRUITMENT INCENTIVES.

Title VII of the Higher Education Act of 1965 (20 U.S.C. 1133 et seq.) is amended by adding at the end the following:

''PART F—MEDICAL EDUCATION RECRUITMENT INCENTIVES

''SEC. 786. MEDICAL EDUCATION RECRUITMENT INCENTIVES.

''(a) IN GENERAL.—The Secretary is authorized to award grants or contracts to institutions of higher education that are graduate medical schools, to enable the graduate medical schools to improve primary care education and training for medical students.

''(b) APPLICATION.—A graduate medical school that desires to receive a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(c) USES OF FUNDS.—A graduate medical school that receives a grant under this section shall use such grant funds to carry out 1 or more of the following:

''(1) The creation of primary care mentorship programs.

''(2) Curriculum development for population-based primary care models of care, such as the patient centered medical home.

''(3) Increased opportunities for ambulatory, community-based training.

''(4) Development of generalist curriculum to enhance care for rural and underserved populations in primary care or general surgery.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of the fiscal years 2010 through 2012.''.

SEC. 102. DEBT FORGIVENESS, SCHOLARSHIPS, AND SERVICE OBLIGATIONS.

(a) PURPOSE.—It is the purpose of this section to encourage individuals to enter and continue in primary care physician careers.

(b) AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.—Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following:

''Subpart XI—Primary Care Medical Education

''SEC. 340I. SCHOLARSHIPS.

''(a) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall

award grants to critical shortage health facilities to enable such facilities to provide scholarships to individuals who agree to serve as physicians at such facilities after completing a residency in a primary care field (as defined in section 3(a)(5) of the Preserving Patient Access to Primary Care Act of 2009).

''(b) SCHOLARSHIPS.—A health facility shall use amounts received under a grant under this section to enter into contracts with eligible individuals under which—

''(1) the facility agrees to provide the individual with a scholarship for each school year (not to exceed 4 school years) in which the individual is enrolled as a full-time student in a school of medicine or a school of osteopathic medicine; and

''(2) the individual agrees—

''(A) to maintain an acceptable level of academic standing;

''(B) to complete a residency in a primary care field; and

''(C) after completing the residency, to serve as a primary care physician at such facility in such field for a time period equal to the greater of—

''(i) one year for each school year for which the individual was provided a scholarship under this section; or

''(ii) two years.

''(c) AMOUNT.—

''(1) IN GENERAL.—The amount paid by a health facility to an individual under a scholarship under this section shall not exceed $35,000 for any school year.

''(2) CONSIDERATIONS.—In determining the amount of a scholarship to be provided to an individual under this section, a health facility may take into consideration the individual's financial need, geographic differences, and educational costs.

''(3) EXCLUSION FROM GROSS INCOME.—For purposes of the Internal Revenue Code of 1986, gross income shall not include any amount received as a scholarship under this section.

''(d) APPLICATION OF CERTAIN PROVISIONS.—The provisions of subpart III of part D shall, except as inconsistent with this section, apply to the program established in subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Scholarship Program established in such subpart.

''(e) DEFINITIONS.—In this section:

''(1) CRITICAL SHORTAGE HEALTH FACILITY.—The term 'critical shortage health facility' means a public or private nonprofit health facility that does not serve a health professional shortage area (as designated under section 332), but has a critical shortage of physicians (as determined by the Secretary) in a primary care field.

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is enrolled, or accepted for enrollment, as a full-time student in an accredited school of medicine or school of osteopathic medicine.

''SEC. 340J. LOAN REPAYMENT PROGRAM.

''(a) PURPOSE.—It is the purpose of this section to alleviate critical shortages of primary care physicians and primary care providers.

''(b) LOAN REPAYMENTS.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a program of entering into contracts with eligible individuals under which—

''(1) the individual agrees to serve—

''(A) as a primary care physician or primary care provider in a primary care field; and

''(B) in an area that is not a health professional shortage area (as designated under section 332), but has a critical shortage of primary care physicians and primary care providers (as determined by the Secretary) in such field; and

''(2) the Secretary agrees to pay, for each year of such service, not more than $35,000 of the principal and interest of the undergraduate or graduate educational loans of the individual.

''(c) SERVICE REQUIREMENT.—A contract entered into under this section shall allow the individual receiving the loan repayment to satisfy the service requirement described in subsection (a)(1) through employment in a solo or group practice, a clinic, a public or private nonprofit hospital, or any other appropriate health care entity.

''(d) APPLICATION OF CERTAIN PROVISIONS.—The provisions of subpart III of part D shall, except as inconsistent with this section, apply to the program established in subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Scholarship Program established in such subpart.

''(e) DEFINITION.—In this section, the term 'eligible individual' means—

''(1) an individual with a degree in medicine or osteopathic medicine; or

''(2) a primary care provider (as defined in section 3(a)(7) of the Preserving Patient Access to Primary Care Act of 2009).

''SEC. 340K. LOAN REPAYMENTS FOR PHYSICIANS IN THE FIELDS OF OBSTETRICS AND GYNECOLOGY AND CERTIFIED NURSE MIDWIVES.

''(a) PURPOSE.—It is the purpose of this section to alleviate critical shortages of physicians in the fields of obstetrics and gynecology and certified nurse midwives.

''(b) LOAN REPAYMENTS.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a program of entering into contracts with eligible individuals under which—

''(1) the individual agrees to serve—

''(A) as a physician in the field of obstetrics and gynecology or as a certified nurse midwife; and

''(B) in an area that is not a health professional shortage area (as designated under section 332), but has a critical shortage of physicians in the fields of obstetrics and gynecology or certified nurse midwives (as determined by the Secretary), respectively; and

''(2) the Secretary agrees to pay, for each year of such service, not more than $35,000 of the principal and interest of the undergraduate or graduate educational loans of the individual.

''(c) SERVICE REQUIREMENT.—A contract entered into under this section shall allow the individual receiving the loan repayment to satisfy the service requirement described in subsection (a)(1) through employment in a solo or group practice, a clinic, a public or private nonprofit hospital, or any other appropriate health care entity.

''(d) APPLICATION OF CERTAIN PROVISIONS.—The provisions of subpart III of part D shall, except as inconsistent with this section, apply to the program established in subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Scholarship Program established in such subpart.

''(e) DEFINITION.—In this section, the term 'eligible individual' means—

''(1) a physician in the field of obstetrics and gynecology; or

''(2) a certified nurse midwife.

''SEC. 340L. REPORTS.

''Not later than 18 months after the date of enactment of this section, and annually thereafter, the Secretary shall submit to Congress a report that describes the programs carried out under this subpart, including statements concerning—

''(1) the number of enrollees, scholarships, loan repayments, and grant recipients;

''(2) the number of graduates;

''(3) the amount of scholarship payments and loan repayments made;

''(4) which educational institution the recipients attended;

''(5) the number and placement location of the scholarship and loan repayment recipients at health care facilities with a critical shortage of primary care physicians;

''(6) the default rate and actions required;

''(7) the amount of outstanding default funds of both the scholarship and loan repayment programs;

''(8) to the extent that it can be determined, the reason for the default;

''(9) the demographics of the individuals participating in the scholarship and loan repayment programs;

''(10) the justification for the allocation of funds between the scholarship and loan repayment programs; and

''(11) an evaluation of the overall costs and benefits of the programs.

''SEC. 340M. AUTHORIZATION OF APPROPRIATIONS.

''To carry out sections 340I, 340J, and 340K there are authorized to be appropriated $55,000,000 for fiscal year 2010, $90,000,000 for fiscal year 2011, and $125,000,000 for fiscal year 2012, to be used solely for scholarships and loan repayment awards for primary care physicians and primary care providers.''.

SEC. 103. DEFERMENT OF LOANS DURING RESIDENCY AND INTERNSHIPS.

(a) LOAN REQUIREMENTS.—Section 427(a)(2)(C)(i) of the Higher Education Act of 1965 (20 U.S.C. 1077(a)(2)(C)(i)) is amended by inserting ''unless the medical internship or residency program is in a primary care field (as defined in section 3(a)(5) of the Preserving Patient Access to Primary Care Act of 2009)'' after ''residency program''.

(b) FFEL LOANS.—Section 428(b)(1)(M)(i) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(1)(M)(i)) is amended by inserting ''unless the medical internship or residency program is in a primary care field (as defined in section 3(a)(5) of the Preserving Patient Access to Primary Care Act of 2009)'' after ''residency program''.

(c) FEDERAL DIRECT LOANS.—Section 455(f)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087e(f)(2)(A)) is amended by inserting ''unless the medical internship or residency program is in a primary care field (as defined in section 3(a)(5) of the Preserving Patient Access to Primary Care Act of 2009)'' after ''residency program''.

(d) FEDERAL PERKINS LOANS.—Section 464(c)(2)(A)(i) of the Higher Education Act of 1965 (20 U.S.C. 1087dd(c)(2)(A)(i)) is amended by inserting ''unless the medical internship or residency program is in a primary care field (as defined in section 3(a)(5) of the Preserving Patient Access to Primary Care Act of 2009)'' after ''residency program''.

SEC. 104. EDUCATING MEDICAL STUDENTS ABOUT PRIMARY CARE CAREERS.

Part C of title VII of the Public Health Service Act (42 U.S.C. 293k) is amended by adding at the end the following:

''SEC. 749. EDUCATING MEDICAL STUDENTS ABOUT PRIMARY CARE CAREERS.

''(a) IN GENERAL.—The Secretary shall award grants to eligible State and local government entities for the development of informational materials that promote careers in primary care by highlighting the advantages and rewards of primary care, and that encourage medical students, particularly students from disadvantaged backgrounds, to become primary care physicians.

''(b) ANNOUNCEMENT.—The grants described in subsection (a) shall be announced through a publication in the Federal Register and

through appropriate media outlets in a manner intended to reach medical education institutions, associations, physician groups, and others who communicate with medical students.

''(c) ELIGIBILITY.—To be eligible to receive a grant under this section an entity shall—

''(1) be a State or local entity; and

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

''(d) USE OF FUNDS.—

''(1) IN GENERAL.—An entity shall use amounts received under a grant under this section to support State and local campaigns through appropriate media outlets to promote careers in primary care and to encourage individuals from disadvantaged backgrounds to enter and pursue careers in primary care.

''(2) SPECIFIC USES.—In carrying out activities under paragraph (1), an entity shall use grants funds to develop informational materials in a manner intended to reach as wide and diverse an audience of medical students as possible, in order to—

''(A) advertise and promote careers in primary care;

''(B) promote primary care medical education programs;

''(C) inform the public of financial assistance regarding such education programs;

''(D) highlight individuals in the community who are practicing primary care physicians; or

''(E) provide any other information to recruit individuals for careers in primary care.

''(e) LIMITATION.—An entity shall not use amounts received under a grant under this section to advertise particular employment opportunities.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2010 through 2013.''.

SEC. 105. TRAINING IN A FAMILY MEDICINE, GENERAL INTERNAL MEDICINE, GENERAL GERIATRICS, GENERAL PEDIATRICS, PHYSICIAN ASSISTANT EDUCATION, GENERAL DENTISTRY, AND PEDIATRIC DENTISTRY.

Section 747(e) of the Public Health Service Act (42 U.S.C. 293k) is amended by striking paragraph (1) and inserting the following:

''(1) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $198,000,000 for each of fiscal years 2010 through 2012.''.

SEC. 106. INCREASED FUNDING FOR NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS.

(a) IN GENERAL.—There is authorized to be appropriated $332,000,000 for the period of fiscal years 2010 through 2012 for the purpose of carrying out subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254l et seq.). Such authorization of appropriations is in addition to the authorization of appropriations in section 338H of such Act (42 U.S.C. 254q) and any other authorization of appropriations for such purpose.

(b) ALLOCATION.—Of the amounts appropriated under subsection (a) for the period of fiscal years 2010 through 2012, the Secretary shall obligate $96,000,000 for the purpose of providing contracts for scholarships and loan repayments to individuals who—

(1) are primary care physicians or primary care providers; and

(2) have not previously received a scholarship or loan repayment under subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254l et seq.).

TITLE II—MEDICAID RELATED PROVISIONS

SEC. 201. TRANSFORMATION GRANTS TO SUPPORT PATIENT CENTERED MEDICAL HOMES UNDER MEDICAID AND CHIP.

(a) IN GENERAL.—Section 1903(z) of the Social Security Act (42 U.S.C. 1396b(z)) is amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

''(G) Methods for improving the effectiveness and efficiency of medical assistance provided under this title and child health assistance provided under title XXI by encouraging the adoption of medical practices that satisfy the standards established by the Secretary under paragraph (2) of section 3(d) of the Preserving Patient Access to Primary Care Act of 2009 for medical practices to qualify as patient centered medical homes (as defined in paragraph (1) of such section).''; and

(2) in paragraph (4)—

(A) in subparagraph (A)—

(i) in clause (i), by striking ''and'' at the end;

(ii) in clause (ii), by striking the period at the end and inserting ''; and''; and

(iii) by inserting after clause (ii), the following new clause:

''(iii) $25,000,000 for each of fiscal years 2010, 2011, and 2012.''; and

(B) in subparagraph (B), by striking the second and third sentences and inserting the following: ''Such method shall provide that 100 percent of such funds for each of fiscal years 2010, 2011, and 2012 shall be allocated among States that design programs to adopt the innovative methods described in paragraph (2)(G), with preference given to States that design programs involving multipayers (including under title XVIII and private health plans) test projects for implementation of the elements necessary to be recognized as a patient centered medical home practice under the National Committee for Quality Assurance Physicians Practice Connection-PCMH module (or any other equivalent process, as determined by the Secretary).''.

(b) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2010.

TITLE III—MEDICARE PROVISIONS

Subtitle A—Primary Care

SEC. 301. REFORMING PAYMENT SYSTEMS UNDER MEDICARE TO SUPPORT PRIMARY CARE.

(a) INCREASING BUDGET NEUTRALITY LIMITS UNDER THE PHYSICIAN FEE SCHEDULE TO ACCOUNT FOR ANTICIPATED SAVINGS RESULTING FROM PAYMENTS FOR CERTAIN SERVICES AND THE COORDINATION OF BENEFICIARY CARE.—Section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) is amended—

(1) in clause (ii)(II), by striking ''(iv) and (v)'' and inserting ''(iv), (v), and (vii)''; and

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

''(vii) INCREASE IN LIMITATION TO ACCOUNT FOR CERTAIN ANTICIPATED SAVINGS.—

''(I) IN GENERAL.—Effective for fee schedules established beginning with 2010, the Secretary shall increase the limitation on annual adjustments under clause (ii)(II) by an amount equal to the anticipated savings under parts A, B, and D (including any savings with respect to items and services for which payment is not made under this section) which are a result of payments for designated primary care services and comprehensive care coordination services under section 1834(m) and the coverage of patient centered medical home services under section 1861(s)(2)(FF) (as determined by the Secretary).

''(II) MECHANISM TO DETERMINE APPLICATION OF INCREASE.—The Secretary shall establish a mechanism for determining which relative value units established under this paragraph for physicians' services shall be subject to an adjustment under clause (ii)(I) as a result of the increase under subclause (I).

''(III) ADDITIONAL FUNDING AS DETERMINED NECESSARY BY THE SECRETARY.—In addition to any funding that may be made available as a result of an increase in the limitation on annual adjustments under subclause (I), there shall also be available to the Secretary, for purposes of making payments under this title for new services and capabilities to improve care provided to individuals under this title and to generate efficiencies under this title, such additional funds as the Secretary determines are necessary.''.

(b) SEPARATE MEDICARE PAYMENT FOR DESIGNATED PRIMARY CARE SERVICES AND COMPREHENSIVE CARE COORDINATION SERVICES.—

(1) IN GENERAL.—Section 1834 of the Social Security Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

''(n) PAYMENT FOR DESIGNATED PRIMARY CARE SERVICES AND COMPREHENSIVE CARE COORDINATION SERVICES.—

''(1) IN GENERAL.—The Secretary shall pay for designated primary care services and comprehensive care coordination services furnished to an individual enrolled under this part.

''(2) PAYMENT AMOUNT.—The Secretary shall determine the amount of payment for designated primary care services and comprehensive care coordination services under this subsection.

''(3) DOCUMENTATION REQUIREMENTS.—The Secretary shall propose appropriate documentation requirements to justify payments for designated primary care services and comprehensive care coordination services under this subsection.

''(4) DEFINITIONS.—

''(A) COMPREHENSIVE CARE COORDINATION SERVICES.—The term 'comprehensive care coordination services' means care coordination services with procedure codes established by the Secretary (as appropriate) which are furnished to an individual enrolled under this part by a primary care provider or principal care physician.

''(B) DESIGNATED PRIMARY CARE SERVICES.—The term 'designated primary care service' means a service which the Secretary determines has a procedure code which involves a clinical interaction with an individual enrolled under this part that is inherent to care coordination, including interactions outside of a face-to-face encounter. Such term includes the following:

''(i) Care plan oversight.

''(ii) Evaluation and management provided by phone.

''(iii) Evaluation and management provided using internet resources.

''(iv) Collection and review of physiologic data, such as from a remote monitoring device.

''(v) Education and training for patient self management.

''(vi) Anticoagulation management services.

''(vii) Any other service determined appropriate by the Secretary.''.

(2) EFFECTIVE DATE.—The amendment made by this section shall apply to items and services furnished on or after January 1, 2010.

SEC. 302. COVERAGE OF PATIENT CENTERED MEDICAL HOME SERVICES.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) in subparagraph (DD), by striking ''and'' at the end;

(2) in subparagraph (EE), by inserting ''and'' at the end; and

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

''(FF) patient centered medical home services (as defined in subsection (hhh)(1));''.

(b) DEFINITION OF PATIENT CENTERED MEDICAL HOME SERVICES.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Patient Centered Medical Home Services

''(hhh)(1) The term 'patient centered medical home services' means care coordination services furnished by a qualified patient centered medical home.

''(2) The term 'qualified patient centered medical home' means a patient centered medical home (as defined in section 3(d) of the Preserving Patient Access to Primary Care Act of 2009).''.

(c) MONTHLY FEE FOR PATIENT CENTERED MEDICAL HOME SERVICES.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended by adding at the end the following new subsection:

''(p) MONTHLY FEE FOR PATIENT CENTERED MEDICAL HOME SERVICES.—

''(1) MONTHLY FEE.—

''(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall establish a payment methodology for patient centered medical home services (as defined in paragraph (1) of section 1861(hhh)). Under such payment methodology, the Secretary shall pay qualified patient centered medical homes (as defined in paragraph (2) of such section) a monthly fee for each individual who elects to receive patient centered medical home services at that medical home. Such fee shall be paid on a prospective basis.

''(B) CONSIDERATIONS.—The Secretary shall take into account the results of the Medicare medical home demonstration project under section 204 of the Medicare Improvement and Extension Act of 2006 (42 U.S.C. 1395b–1 note; division B of Public Law 109–432) in establishing the payment methodology under subparagraph (A).

''(2) AMOUNT OF PAYMENT.—

''(A) CONSIDERATIONS.—In determining the amount of such fee, subject to paragraph (3), the Secretary shall consider the following:

''(i) The clinical work and practice expenses involved in providing care coordination services consistent with the patient centered medical home model (such as providing increased access, care coordination, disease population management, and education) for which payment is not made under this section as of the date of enactment of this subsection.

''(ii) Ensuring that the amount of payment is sufficient to support the acquisition, use, and maintenance of clinical information systems which—

''(I) are needed by a qualified patient centered medical home; and

''(II) have been shown to facilitate improved outcomes through care coordination.

''(iii) The establishment of a tiered monthly care management fee that provides for a range of payment depending on how advanced the capabilities of a qualified patient centered medical home are in having the information systems needed to support care coordination.

''(B) RISK-ADJUSTMENT.—The Secretary shall use appropriate risk-adjustment in determining the amount of the monthly fee under this paragraph.

''(3) FUNDING.—

''(A) IN GENERAL.—The Secretary shall determine the aggregate estimated savings for a calendar year as a result of the implementation of this subsection on reducing preventable hospital admissions, duplicate testing, medication errors and drug interactions, and other savings under this part and part A (including any savings with respect to items and services for which payment is not made under this section).

''(B) FUNDING.—Subject to subparagraph (C), the aggregate amount available for payment of the monthly fee under this subsection during a calendar year shall be equal to the aggregate estimated savings (as determined under subparagraph (A)) for the calendar year (as determined by the Secretary).

''(C) ADDITIONAL FUNDING.—In the case where the amount of the aggregate actual savings during the preceding 3 years exceeds the amount of the aggregate estimated savings (as determined under subparagraph (A)) during such period, the aggregate amount available for payment of the monthly fee under this subsection during the calendar year (as determined under subparagraph (B)) shall be increased by the amount of such excess.

''(D) ADDITIONAL FUNDING AS DETERMINED NECESSARY BY THE SECRETARY.—In addition to any funding made available under subparagraphs (B) and (C), there shall also be available to the Secretary, for purposes of effectively implementing this subsection, such additional funds as the Secretary determines are necessary.

''(4) PERFORMANCE-BASED BONUS PAYMENTS.—The Secretary shall establish a process for paying a performance-based bonus to qualified patient centered medical homes which meet or achieve substantial improvements in performance (as specified under clinical, patient satisfaction, and efficiency benchmarks established by the Secretary). Such bonus shall be in an amount determined appropriate by the Secretary.

''(5) NO EFFECT ON PAYMENTS FOR EVALUATION AND MANAGEMENT SERVICES.—The monthly fee under this subsection shall have no effect on the amount of payment for evaluation and management services under this title.''.

(d) COINSURANCE.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

(1) by striking ''and'' before ''(W)''; and

(2) by inserting before the semicolon at the end the following: '', and (X) with respect to patient centered medical home services (as defined in section 1861(hhh)(1)), the amount paid shall be (i) in the case of such services which are physicians' services, the amount determined under subparagraph (N), and (ii) in the case of all other such services, 80 percent of the lesser of the actual charge for the service or the amount determined under a fee schedule established by the Secretary for purposes of this subparagraph''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2012.

SEC. 303. MEDICARE PRIMARY CARE PAYMENT EQUITY AND ACCESS PROVISION.

(a) IN GENERAL.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as amended by section 302(c), is amended by adding at the end the following new subsection:

''(q) PRIMARY CARE PAYMENT EQUITY AND ACCESS.—

''(1) IN GENERAL.—Not later than January 1, 2010, the Secretary shall develop a methodology, in consultation with primary care physician organizations and primary care provider organizations, the Medicare Payment Advisory Commission, and other experts, to increase payments under this section for designated evaluation and management services provided by primary care physicians, primary care providers, and principal care providers through 1 or more of the following:

''(A) A service-specific modifier to the relative value units established for such services.

''(B) Service-specific bonus payments.

''(C) Any other methodology determined appropriate by the Secretary.

''(2) INCLUSION OF PROPOSED CRITERIA.—The methodology developed under paragraph (1) shall include proposed criteria for providers to qualify for such increased payments, including consideration of—

''(A) the type of service being rendered;

''(B) the specialty of the provider providing the service; and

''(C) demonstration by the provider of voluntary participation in programs to improve quality, such as participation in the Physician Quality Reporting Initiative (as determined by the Secretary) or practice-level qualification as a patient centered medical home.

''(3) FUNDING.—

''(A) DETERMINATION.—The Secretary shall determine the aggregate estimated savings for a calendar year as a result of such increased payments on reducing preventable hospital admissions, duplicate testing, medication errors and drug interactions, Intensive Care Unit admissions, per capita health care expenditures, and other savings under this part and part A (including any savings with respect to items and services for which payment is not made under this section).

''(B) FUNDING.—The aggregate amount available for such increased payments during a calendar year shall be equal to the aggregate estimated savings (as determined under subparagraph (A)) for the calendar year (as determined by the Secretary).

''(C) ADDITIONAL FUNDING AS DETERMINED NECESSARY BY THE SECRETARY.—In addition to any funding made available under subparagraph (B), there shall also be available to the Secretary, for purposes of effectively implementing this subsection, such additional funds as the Secretary determines are necessary.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to services furnished on or after January 1, 2010.

SEC. 304. ADDITIONAL INCENTIVE PAYMENT PROGRAM FOR PRIMARY CARE SERVICES FURNISHED IN HEALTH PROFESSIONAL SHORTAGE AREAS.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

''(x) ADDITIONAL INCENTIVE PAYMENTS FOR PRIMARY CARE SERVICES FURNISHED IN HEALTH PROFESSIONAL SHORTAGE AREAS.—

''(1) IN GENERAL.—In the case of primary care services furnished on or after January 1, 2010, by a primary care physician or primary care provider in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act) as a health professional shortage area as identified by the Secretary prior to the beginning of the year involved, in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid (on a monthly or quarterly basis) an amount equal to 10 percent of the payment amount for the service under this part.

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

''(A) PRIMARY CARE PHYSICIAN; PRIMARY CARE PROVIDER.—The terms 'primary care physician' and 'primary care provider' have the meaning given such terms in paragraphs (6) and (7), respectively, of section 3(a) of the Preserving Patient Access to Primary Care Act of 2009.

''(B) PRIMARY CARE SERVICES.—The term 'primary care services' means procedure codes for services in the category of the Healthcare Common Procedure Coding System, as established by the Secretary under section 1848(c)(5) (as of December 31, 2008 and as subsequently modified by the Secretary) consisting of evaluation and management services, but limited to such procedure codes

in the category of office or other outpatient services, and consisting of subcategories of such procedure codes for services for both new and established patients.

''(3) JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, respecting the identification of primary care physicians, primary care providers, or primary care services under this subsection.''.

(b) CONFORMING AMENDMENT.—Section 1834(g)(2)(B) of the Social Security Act (42 U.S.C. 1395m(g)(2)(B)) is amended by adding at the end the following sentence: ''Section 1833(x) shall not be taken into account in determining the amounts that would otherwise be paid pursuant to the preceding sentence.''.

SEC. 305. PERMANENT EXTENSION OF FLOOR ON MEDICARE WORK GEOGRAPHIC ADJUSTMENT UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(E)) is amended by striking ''and before January 1, 2010,''.

SEC. 306. PERMANENT EXTENSION OF MEDICARE INCENTIVE PAYMENT PROGRAM FOR PHYSICIAN SCARCITY AREAS.

Section 1833(u) of the Social Security Act (42 U.S.C. 1395l(u)) is amended—

(1) in paragraph (1)—

(A) by inserting ''or on or after July 1, 2009'' after ''before July 1, 2008''; and

(B) by inserting ''(or, in the case of services furnished on or after July 1, 2009, 10 percent)'' after ''5 percent''; and

(2) in paragraph (4)(D), by striking ''before July 1, 2008'' and inserting ''before January 1, 2010''.

SEC. 307. HHS STUDY AND REPORT ON THE PROCESS FOR DETERMINING RELATIVE VALUE UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

(a) STUDY.—The Secretary shall conduct a study on the process used by the Secretary for determining relative value under the Medicare physician fee schedule under section 1848(c) of the Social Security Act (42 U.S.C. 1395w–4(c)). Such study shall include an analysis of the following:

(1)(A) Whether the existing process includes equitable representation of primary care physicians (as defined in section 3(a)(6)); and

(B) any changes that may be necessary to ensure such equitable representation.

(2)(A) Whether the existing process provides the Secretary with expert and impartial input from physicians in medical specialties that provide primary care to patients with multiple chronic diseases, the fastest growing part of the Medicare population; and

(B) any changes that may be necessary to ensure such input.

(3)(A) Whether the existing process includes equitable representation of physician medical specialties in proportion to their relative contributions toward caring for Medicare beneficiaries, as determined by the percentage of Medicare billings per specialty, percentage of Medicare encounters by specialty, or such other measures of relative contributions to patient care as determined by the Secretary; and

(B) any changes that may be necessary to reflect such equitable representation.

(4)(A) Whether the existing process, including the application of budget neutrality rules, unfairly disadvantages primary care physicians, primary care providers, or other physicians who principally provide evaluation and management services; and

(B) any changes that may be necessary to eliminate such disadvantages.

(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

Subtitle B—Preventive Services

SEC. 311. ELIMINATING TIME RESTRICTION FOR INITIAL PREVENTIVE PHYSICAL EXAMINATION.

(a) IN GENERAL.—Section 1862(a)(1)(K) of the Social Security Act (42 U.S.C. 1395y(a)(1)(K)) is amended by striking ''more than'' and all that follows before the comma at the end and inserting ''more than one time during the lifetime of the individual''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2010.

SEC. 312. ELIMINATION OF COST-SHARING FOR PREVENTIVE BENEFITS UNDER THE MEDICARE PROGRAM.

(a) DEFINITION OF PREVENTIVE SERVICES.—Section 1861(ddd) of the Social Security Act (42 U.S.C. 1395w(dd)) is amended—

(1) in the heading, by inserting ''; Preventive Services'' after ''Services'';

(2) in paragraph (1), by striking ''not otherwise described in this title'' and inserting ''not described in subparagraphs (A) through (N) of paragraph (3)''; and

(3) by adding at the end the following new paragraph:

''(3) The term 'preventive services' means the following:

''(A) Prostate cancer screening tests (as defined in subsection (oo)).

''(B) Colorectal cancer screening tests (as defined in subsection (pp)).

''(C) Diabetes outpatient self-management training services (as defined in subsection (qq)).

''(D) Screening for glaucoma for certain individuals (as described in subsection (s)(2)(U)).

''(E) Medical nutrition therapy services for certain individuals (as described in subsection (s)(2)(V)).

''(F) An initial preventive physical examination (as defined in subsection (ww)).

''(G) Cardiovascular screening blood tests (as defined in subsection (xx)(1)).

''(H) Diabetes screening tests (as defined in subsection (yy)).

''(I) Ultrasound screening for abdominal aortic aneurysm for certain individuals (as described in subsection (s)(2)(AA)).

''(J) Pneumococcal and influenza vaccine and their administration (as described in subsection (s)(10)(A)).

''(K) Hepatitis B vaccine and its administration for certain individuals (as described in subsection (s)(10)(B)).

''(L) Screening mammography (as defined in subsection (jj)).

''(M) Screening pap smear and screening pelvic exam (as described in subsection (s)(14)).

''(N) Bone mass measurement (as defined in subsection (rr)).

''(O) Additional preventive services (as determined under paragraph (1)).''.

(b) COINSURANCE.—

(1) GENERAL APPLICATION.—

(A) IN GENERAL.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), as amended by section 302, is amended—

(i) in subparagraph (T), by striking ''80 percent'' and inserting ''100 percent'';

(ii) in subparagraph (W), by striking ''80 percent'' and inserting ''100 percent'';

(iii) by striking ''and'' before ''(X)''; and

(iv) by inserting before the semicolon at the end the following: '', and (Y) with respect to preventive services described in subparagraphs (A) through (O) of section 1861(ddd)(3), the amount paid shall be 100 percent of the lesser of the actual charge for the services or the amount determined under the fee schedule that applies to such services under this part''.

(2) ELIMINATION OF COINSURANCE FOR SCREENING SIGMOIDOSCOPIES AND COLONOSCOPIES.—Section 1834(d) of the Social Security Act (42 U.S.C. 1395m(d)) is amended—

(A) in paragraph (2)—

(i) in subparagraph (A), by inserting '', except that payment for such tests under such section shall be 100 percent of the payment determined under such section for such tests'' before the period at the end; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) in clause (i)—

(aa) by striking ''(i) IN GENERAL.—Notwithstanding'' and inserting ''Notwithstanding'';

(bb) by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively, and moving such clauses 2 ems to the left; and

(cc) in the flush matter following clause (ii), as so redesignated, by inserting ''100 percent of'' after ''based on''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by inserting '', except that payment for such tests under such section shall be 100 percent of the payment determined under such section for such tests'' before the period at the end; and

(ii) in subparagraph (C)—

(I) by striking clause (ii); and

(II) in clause (i)—

(aa) by striking ''(i) IN GENERAL.—Notwithstanding'' and inserting ''Notwithstanding''; and

(bb) by inserting ''100 percent of'' after ''based on''.

(3) ELIMINATION OF COINSURANCE IN OUTPATIENT HOSPITAL SETTINGS.—

(A) EXCLUSION FROM OPD FEE SCHEDULE.—Section 1833(t)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395l(t)(1)(B)(iv)) is amended by striking ''and diagnostic mammography'' and inserting '', diagnostic mammography, and preventive services (as defined in section 1861(ddd)(3))''.

(B) CONFORMING AMENDMENTS.—Section 1833(a)(2) of the Social Security Act (42 U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (F), by striking ''and'' after the semicolon at the end;

(ii) in subparagraph (G)(ii), by adding ''and'' at the end; and

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

''(H) with respect to preventive services (as defined in section 1861(ddd)(3)) furnished by an outpatient department of a hospital, the amount determined under paragraph (1)(W) or (1)(X), as applicable;''.

(c) WAIVER OF APPLICATION OF DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended—

(1) in clause (1), by striking ''items and services described in section 1861(s)(10)(A)'' and inserting ''preventive services (as defined in section 1861(ddd)(3))'';

(2) by inserting ''and'' before ''(4)''; and

(3) by striking '', (5)'' and all that follows up to the period at the end.

SEC. 313. HHS STUDY AND REPORT ON FACILITATING THE RECEIPT OF MEDICARE PREVENTIVE SERVICES BY MEDICARE BENEFICIARIES.

(a) STUDY.—The Secretary, in consultation with provider organizations and other appropriate stakeholders, shall conduct a study on—

(1) ways to assist primary care physicians and primary care providers (as defined in section 3(a)) in—

(A) furnishing appropriate preventive services (as defined in section 1861(ddd)(3) of the Social Security Act, as added by section 312) to individuals enrolled under part B of title XVIII of such Act; and

(B) referring such individuals for other items and services furnished by other physicians and health care providers; and

(2) the advisability and feasability of making additional payments under the Medicare program to physicians and primary care providers for—

(A) the work involved in ensuring that such individuals receive appropriate preventive services furnished by other physicians and health care providers; and

(B) incorporating the resulting clinical information into the treatment plan for the individual.

(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

Subtitle C—Other Provisions

SEC. 321. HHS STUDY AND REPORT ON IMPROVING THE ABILITY OF PHYSICIANS AND PRIMARY CARE PROVIDERS TO ASSIST MEDICARE BENEFICIARIES IN OBTAINING NEEDED PRESCRIPTIONS UNDER MEDICARE PART D.

(a) STUDY.—The Secretary, in consultation with physician organizations and other appropriate stakeholders, shall conduct a study on the development and implementation of mechanisms to facilitate increased efficiency relating to the role of physicians and primary care providers in Medicare beneficiaries obtaining needed prescription drugs under the Medicare prescription drug program under part D of title XVIII of the Social Security Act. Such study shall include an analysis of ways to—

(1) improve the accessibility of formulary information;

(2) streamline the prior authorization, exception, and appeals processes, through, at a minimum, standardizing formats and allowing electronic exchange of information; and

(3) recognize the work of the physician and primary care provider involved in the prescribing process, especially work that may extend beyond the amount considered to be bundled into payment for evaluation and management services.

(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

SEC. 322. HHS STUDY AND REPORT ON IMPROVED PATIENT CARE THROUGH INCREASED CAREGIVER AND PHYSICIAN INTERACTION.

(a) STUDY.—The Secretary, in consultation with appropriate stakeholders, shall conduct a study on the development and implementation of mechanisms to promote and increase interaction between physicians or primary care providers and the families of Medicare beneficiaries, as well as other caregivers who support such beneficiaries, for the purpose of improving patient care under the Medicare program. Such study shall include an analysis of—

(1) ways to recognize the work of physicians and primary care providers involved in discussing clinical issues with caregivers that relate to the care of the beneficiary; and

(2) regulations under the Medicare program that are barriers to interactions between caregivers and physicians or primary care providers and how such regulations should be revised to eliminate such barriers.

(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

SEC. 323. IMPROVED PATIENT CARE THROUGH EXPANDED SUPPORT FOR LIMITED ENGLISH PROFICIENCY (LEP) SERVICES.

(a) ADDITIONAL PAYMENTS FOR PRIMARY CARE PHYSICIANS AND PRIMARY CARE PROVIDERS.—Section 1833 of the Social Security Act (42 U.S.C. 13951), as amended by section 304, is amended by adding at the end the following new subsection:

''(y) ADDITIONAL PAYMENTS FOR PROVIDING SERVICES TO INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY.—

''(1) IN GENERAL.—In the case of primary care providers' services furnished on or after January 1, 2010, to an individual with limited English proficiency by a provider, in addition to the amount of payment that would otherwise be made for such services under this part, there shall also be paid an appropriate amount (as determined by the Secretary) in order to recognize the additional time involved in furnishing the service to such individual.

''(2) JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, respecting the determination of the amount of additional payment under this subsection.''.

(b) NATIONAL CLEARINGHOUSE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a national clearinghouse to make available to the primary care physicians, primary care providers, patients, and States translated documents regarding patient care and education under the Medicare program, the Medicaid program, and the State Children's Health Insurance Program under titles XVIII, XIX, and XXI, respectively, of the Social Security Act.

(c) GRANTS TO SUPPORT LANGUAGE TRANSLATION SERVICES IN UNDERSERVED COMMUNITIES.—

(1) AUTHORITY TO AWARD GRANTS.—The Secretary shall award grants to support language translation services for primary care physicians and primary care providers in medically underserved areas (as defined in section 3(c)).

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to award grants under this subsection, such sums as are necessary for fiscal years beginning with fiscal year 2010.

SEC. 324. HHS STUDY AND REPORT ON USE OF REAL-TIME MEDICARE CLAIMS ADJUDICATION.

(a) STUDY.—The Secretary shall conduct a study to assess the ability of the Medicare program under title XVIII of the Social Security Act to engage in real-time claims adjudication for items and services furnished to Medicare beneficiaries.

(b) CONSULTATION.—In conducting the study under subsection (a), the Secretary consult with stakeholders in the private sector, including stakeholders who are using or are testing real-time claims adjudication systems.

(c) REPORT.—Not later than January 1, 2011, the Secretary shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

SEC. 325. ONGOING ASSESSMENT BY MEDPAC OF THE IMPACT OF MEDICARE PAYMENTS ON PRIMARY CARE ACCESS AND EQUITY.

The Medicare Payment Advisory Commission, beginning in 2010 and in each of its subsequent annual reports to Congress on Medicare physician payment policies, shall provide an assessment of the impact of changes in Medicare payment policies in improving access to and equity of payments to primary care physicians and primary care providers. Such assessment shall include an assessment of the effectiveness, once implemented, of the Medicare payment-related reforms required by this Act to support primary care as well as any other payment changes that may be required by Congress to improve access to and equity of payments to primary care physicians and primary care providers.

SEC. 326. DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (4)(F)(i), by striking ''paragraph (7)'' and inserting ''paragraphs (7) and (8)'';

(2) in paragraph (4)(H)(i), by striking ''paragraph (7)'' and inserting ''paragraphs (7) and (8)''; and

(3) by adding at the end the following new paragraph:

''(8) DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.—

''(A) ADDITIONAL RESIDENCY POSITIONS.—

''(i) REDUCTION IN LIMIT BASED ON UNUSED POSITIONS.—

''(I) IN GENERAL.—The Secretary shall reduce the otherwise applicable resident limit for a hospital that the Secretary determines had residency positions that were unused for all 5 of the most recent cost reporting periods ending prior to the date of enactment of this paragraph by an amount that is equal to the number of such unused residency positions.

''(II) EXCEPTION FOR RURAL HOSPITALS AND CERTAIN OTHER HOSPITALS.—This subparagraph shall not apply to a hospital—

''(aa) located in a rural area (as defined in subsection (d)(2)(D)(ii));

''(bb) that has participated in a voluntary reduction plan under paragraph (6); or

''(cc) that has participated in a demonstration project approved as of October 31, 2003, under the authority of section 402 of Public Law 90–248.

''(ii) NUMBER AVAILABLE FOR DISTRIBUTION.—The number of additional residency positions available for distribution under subparagraph (B) shall be an amount that the Secretary determines would result in a 15 percent increase in the aggregate number of full-time equivalent residents in approved medical training programs (as determined based on the most recent cost reports available at the time of distribution). One-third of such number shall only be available for distribution to hospitals described in subclause (I) of subparagraph (B)(ii) under such subparagraph.

''(B) DISTRIBUTION.—

''(i) IN GENERAL.—The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after the date of enactment of this paragraph. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the number of additional residency positions available for distribution under subparagraph (A)(ii).

''(ii) DISTRIBUTION TO HOSPITALS ALREADY OPERATING OVER RESIDENT LIMIT.—

''(I) IN GENERAL.—Subject to subclause (II), in the case of a hospital in which the reference resident level of the hospital (as defined in clause (ii)) is greater than the otherwise applicable resident limit, the increase in the otherwise applicable resident limit

under this subparagraph shall be an amount equal to the product of the total number of additional residency positions available for distribution under subparagraph (A)(ii) and the quotient of—

''(aa) the number of resident positions by which the reference resident level of the hospital exceeds the otherwise applicable resident limit for the hospital; and

''(bb) the number of resident positions by which the reference resident level of all such hospitals with respect to which an application is approved under this subparagraph exceeds the otherwise applicable resident limit for such hospitals.

''(II) REQUIREMENTS.—A hospital described in subclause (I)—

''(aa) is not eligible for an increase in the otherwise applicable resident limit under this subparagraph unless the amount by which the reference resident level of the hospital exceeds the otherwise applicable resident limit is not less than 10 and the hospital trains at least 25 percent of the full-time equivalent residents of the hospital in primary care and general surgery (as of the date of enactment of this paragraph); and

''(bb) shall continue to train at least 25 percent of the full-time equivalent residents of the hospital in primary care and general surgery for the 10-year period beginning on such date.

In the case where the Secretary determines that a hospital no longer meets the requirement of item (bb), the Secretary may reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this clause.

''(III) CLARIFICATION REGARDING ELIGIBILITY FOR OTHER ADDITIONAL RESIDENCY POSITIONS.—Nothing in this clause shall be construed as preventing a hospital described in subclause (I) from applying for additional residency positions under this paragraph that are not reserved for distribution under this clause.

''(iii) REFERENCE RESIDENT LEVEL.—

''(I) IN GENERAL.—Except as otherwise provided in subclause (II), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before the date of enactment of this paragraph, for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

''(II) USE OF MOST RECENT ACCOUNTING PERIOD TO RECOGNIZE EXPANSION OF EXISTING PROGRAM OR ESTABLISHMENT OF NEW PROGRAM.—If a hospital submits a timely request to increase its resident level due to an expansion of an existing residency training program or the establishment of a new residency training program that is not reflected on the most recent cost report that has been settled (or, if not, submitted (subject to audit)), after audit and subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes the additional residents attributable to such expansion or establishment, as determined by the Secretary.

''(C) CONSIDERATIONS IN REDISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B) (other than an increase under subparagraph (B)(ii)), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions within the first 3 cost reporting periods beginning on or after July 1, 2010, made available under this paragraph, as determined by the Secretary.

''(D) PRIORITY FOR CERTAIN AREAS.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B) (other than an increase under subparagraph (B)(ii)), the Secretary shall distribute the increase to hospitals based on the following criteria:

''(i) The Secretary shall give preference to hospitals that submit applications for new primary care and general surgery residency positions. In the case of any increase based on such preference, a hospital shall ensure that—

''(I) the position made available as a result of such increase remains a primary care or general surgery residency position for not less than 10 years after the date on which the position is filled; and

''(II) the total number of primary care and general surgery residency positions in the hospital (determined based on the number of such positions as of the date of such increase, including any position added as a result of such increase) is not decreased during such 10-year period.

In the case where the Secretary determines that a hospital no longer meets the requirement of subclause (II), the Secretary may reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this paragraph.

''(ii) The Secretary shall give preference to hospitals that emphasizes training in community health centers and other community-based clinical settings.

''(iii) The Secretary shall give preference to hospitals in States that have more medical students than residency positions available (including a greater preference for those States with smaller resident-to-medical-student ratios). In determining the number of medical students in a State for purposes of the preceding sentence, the Secretary shall include planned students at medical schools which have provisional accreditation by the Liaison Committee on Medical Education or the American Osteopathic Association.

''(iv) The Secretary shall give preference to hospitals in States that have low resident-to-population ratios (including a greater preference for those States with lower resident-to-population ratios).

''(E) LIMITATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), in no case may a hospital (other than a hospital described in subparagraph (B)(ii)(I), subject to the limitation under subparagraph (B)(ii)(III)) apply for more than 50 full-time equivalent additional residency positions under this paragraph.

''(ii) INCREASE IN NUMBER OF ADDITIONAL POSITIONS AVAILABLE FOR DISTRIBUTION.—The Secretary shall increase the number of full-time equivalent additional residency positions a hospital may apply for under this paragraph if the Secretary determines that the number of additional residency positions available for distribution under subparagraph (A)(ii) exceeds the number of such applications approved.

''(F) APPLICATION OF PER RESIDENT AMOUNTS FOR PRIMARY CARE AND NONPRIMARY CARE.—With respect to additional residency positions in a hospital attributable to the increase provided under this paragraph, the approved FTE resident amounts are deemed to be equal to the hospital per resident amounts for primary care and nonprimary care computed under paragraph (2)(D) for that hospital.

''(G) DISTRIBUTION.—The Secretary shall distribute the increase to hospitals under this paragraph not later than 2 years after the date of enactment of this paragraph.''.

(b) IME.—

(1) IN GENERAL.—Section 1886(d)(5)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second sentence, is amended—

(A) by striking ''subsection (h)(7)'' and inserting ''subsections (h)(7) and (h)(8)''; and

(B) by striking ''it applies'' and inserting ''they apply''.

(2) CONFORMING PROVISION.—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) is amended by adding at the end the following clause:

''(x) For discharges occurring on or after the date of enactment of this clause, insofar as an additional payment amount under this subparagraph is attributable to resident positions distributed to a hospital under subsection (h)(8)(B), the indirect teaching adjustment factor shall be computed in the same manner as provided under clause (ii) with respect to such resident positions.''.

SEC. 327. COUNTING RESIDENT TIME IN OUTPATIENT SETTINGS.

(a) D–GME.—Section 1886(h)(4)(E) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)) is amended—

(1) by striking ''under an approved medical residency training program''; and

(2) by striking ''if the hospital incurs all, or substantially all, of the costs for the training program in that setting'' and inserting ''if the hospital continues to incur the costs of the stipends and fringe benefits of the resident during the time the resident spends in that setting''.

(b) IME.—Section 1886(d)(5)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended—

(1) by striking ''under an approved medical residency training program''; and

(2) by striking ''if the hospital incurs all, or substantially all, of the costs for the training program in that setting'' and inserting ''if the hospital continues to incur the costs of the stipends and fringe benefits of the intern or resident during the time the intern or resident spends in that setting''.

(c) EFFECTIVE DATES; APPLICATION.—

(1) IN GENERAL.—Effective for cost reporting periods beginning on or after July 1, 2009, the Secretary of Health and Human Services shall implement the amendments made by this section in a manner so as to apply to cost reporting periods beginning on or after July 1, 2009.

(2) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security (42 U.S.C. 1395ww(d)(5)(B))Act or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. 1395ww(h)).

SEC. 328. RULES FOR COUNTING RESIDENT TIME FOR DIDACTIC AND SCHOLARLY ACTIVITIES AND OTHER ACTIVITIES.

(a) GME.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)), as amended by section 327(a), is amended—

(1) in paragraph (4)(E)—

(A) by designating the first sentence as a clause (i) with the heading ''IN GENERAL'' and appropriate indentation and by striking ''Such rules'' and inserting ''Subject to clause (ii), such rules''; and

(B) by adding at the end the following new clause:

''(ii) TREATMENT OF CERTAIN NONHOSPITAL AND DIDACTIC ACTIVITIES.—Such rules shall provide that all time spent by an intern or resident in an approved medical residency training program in a nonhospital setting that is primarily engaged in furnishing patient care (as defined in paragraph (5)(K)) in non-patient care activities, such as didactic conferences and seminars, but not including research not associated with the treatment or diagnosis of a particular patient, as such

time and activities are defined by the Secretary, shall be counted toward the determination of full-time equivalency.'';

(2) in paragraph (4), by adding at the end the following new subparagraph:

''(I) In determining the hospital's number of full-time equivalent residents for purposes of this subsection, all the time that is spent by an intern or resident in an approved medical residency training program on vacation, sick leave, or other approved leave, as such time is defined by the Secretary, and that does not prolong the total time the resident is participating in the approved program beyond the normal duration of the program shall be counted toward the determination of full-time equivalency.''; and

(3) in paragraph (5), by adding at the end the following new subparagraph:

''(M) NONHOSPITAL SETTING THAT IS PRIMARILY ENGAGED IN FURNISHING PATIENT CARE.—The term 'nonhospital setting that is primarily engaged in furnishing patient care' means a nonhospital setting in which the primary activity is the care and treatment of patients, as defined by the Secretary.''.

(b) IME DETERMINATIONS.—Section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B)), as amended by section 326(b), is amended by adding at the end the following new clause:

''(xi)(I) The provisions of subparagraph (I) of subsection (h)(4) shall apply under this subparagraph in the same manner as they apply under such subsection.

''(II) In determining the hospital's number of full-time equivalent residents for purposes of this subparagraph, all the time spent by an intern or resident in an approved medical residency training program in non-patient care activities, such as didactic conferences and seminars, as such time and activities are defined by the Secretary, that occurs in the hospital shall be counted toward the determination of full-time equivalency if the hospital—

''(aa) is recognized as a subsection (d) hospital;

''(bb) is recognized as a subsection (d) Puerto Rico hospital;

''(cc) is reimbursed under a reimbursement system authorized under section 1814(b)(3); or

''(dd) is a provider-based hospital outpatient department.

''(III) In determining the hospital's number of full-time equivalent residents for purposes of this subparagraph, all the time spent by an intern or resident in an approved medical residency training program in research activities that are not associated with the treatment or diagnosis of a particular patient, as such time and activities are defined by the Secretary, shall not be counted toward the determination of full-time equivalency.''.

(c) EFFECTIVE DATES; APPLICATION.—

(1) IN GENERAL.—Except as otherwise provided, the Secretary of Health and Human Services shall implement the amendments made by this section in a manner so as to apply to cost reporting periods beginning on or after January 1, 1983.

(2) DIRECT GME.—Section 1886(h)(4)(E)(ii) of the Social Security Act, as added by subsection (a)(1)(B), shall apply to cost reporting periods beginning on or after July 1, 2009.

(3) IME.—Section 1886(d)(5)(B)(xi)(III) of the Social Security Act, as added by subsection (b), shall apply to cost reporting periods beginning on or after October 1, 2001. Such section, as so added, shall not give rise to any inference on how the law in effect prior to such date should be interpreted.

(4) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act or for direct graduate medical education costs under section 1886(h) of such Act.

SEC. 329. PRESERVATION OF RESIDENT CAP POSITIONS FROM CLOSED AND ACQUIRED HOSPITALS.

(a) GME.—Section 1886(h)(4)(H) of the Social Security Act (42 U.S.C. Section 1395ww(h)(4)(H)) is amended by adding at the end the following new clauses:

''(vi) REDISTRIBUTION OF RESIDENCY SLOTS AFTER A HOSPITAL CLOSES.—

''(I) IN GENERAL.—Subject to the succeeding provisions of this clause, the Secretary shall, by regulation, establish a process under which, in the case where a hospital with an approved medical residency program closes on or after the date of enactment of the Balanced Budget Act of 1997, the Secretary shall increase the otherwise applicable resident limit under this paragraph for other hospitals in accordance with this clause.

''(II) PRIORITY FOR HOSPITALS IN CERTAIN AREAS.—Subject to the succeeding provisions of this clause, in determining for which hospitals the increase in the otherwise applicable resident limit is provided under such process, the Secretary shall distribute the increase to hospitals located in the following priority order (with preference given within each category to hospitals that are members of the same affiliated group (as defined by the Secretary under clause (ii)) as the closed hospital):

''(aa) First, to hospitals located in the same core-based statistical area as, or a core-based statistical area contiguous to, the hospital that closed.

''(bb) Second, to hospitals located in the same State as the hospital that closed.

''(cc) Third, to hospitals located in the same region of the country as the hospital that closed.

''(dd) Fourth, to all other hospitals.

''(III) REQUIREMENT HOSPITAL LIKELY TO FILL POSITION WITHIN CERTAIN TIME PERIOD.—The Secretary may only increase the otherwise applicable resident limit of a hospital under such process if the Secretary determines the hospital has demonstrated a likelihood of filling the positions made available under this clause within 3 years.

''(IV) LIMITATION.—The aggregate number of increases in the otherwise applicable resident limits for hospitals under this clause shall be equal to the number of resident positions in the approved medical residency programs that closed on or after the date described in subclause (I).

''(vii) SPECIAL RULE FOR ACQUIRED HOSPITALS.—

''(I) IN GENERAL.—In the case of a hospital that is acquired (through any mechanism) by another entity with the approval of a bankruptcy court, during a period determined by the Secretary (but not less than 3 years), the applicable resident limit of the acquired hospital shall, except as provided in subclause (II), be the applicable resident limit of the hospital that was acquired (as of the date immediately before the acquisition), without regard to whether the acquiring entity accepts assignment of the Medicare provider agreement of the hospital that was acquired, so long as the acquiring entity continues to operate the hospital that was acquired and to furnish services, medical residency programs, and volume of patients similar to the services, medical residency programs, and volume of patients of the hospital that was acquired (as determined by the Secretary) during such period.

''(II) LIMITATION.—Subclause (I) shall only apply in the case where an acquiring entity waives the right as a new provider under the program under this title to have the otherwise applicable resident limit of the acquired hospital re-established or increased.''.

(b) IME.—Section 1886(d)(5)(B)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(v)), in the second sentence, as amended by section 326(b), is amended by striking ''subsections (h)(7) and (h)(8)'' and inserting ''subsections (h)(4)(H)(vi), (h)(4)(H)(vii), (h)(7), and (h)(8)''.

(c) APPLICATION.—The amendments made by this section shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B))or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. 1395ww(h)).

(d) NO AFFECT ON TEMPORARY FTE CAP ADJUSTMENTS.—The amendments made by this section shall not affect any temporary adjustment to a hospital's FTE cap under section 413.79(h) of title 42, Code of Federal Regulations (as in effect on the date of enactment of this Act).

SEC. 330. QUALITY IMPROVEMENT ORGANIZATION ASSISTANCE FOR PHYSICIAN PRACTICES SEEKING TO BE PATIENT CENTERED MEDICAL HOME PRACTICES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services shall revise the 9th Statement of Work under the Quality Improvement Program under part B of title XI of the Social Security Act to include a requirement that, in order to be an eligible Quality Improvement Organization (in this section referred to as a `QIO') for the 9th Statement of Work contract cycle, a QIO shall provide assistance, including technical assistance, to physicians under the Medicare program under title XVIII of the Social Security Act that seek to acquire the elements necessary to be recognized as a patient centered medical home practice under the National Committee for Quality Assurance's Physician Practice Connections-PCMH module (or any successor module issued by such Committee).

TITLE IV—STUDIES

SEC. 401. STUDY CONCERNING THE DESIGNATION OF PRIMARY CARE AS A SHORTAGE PROFESSION.

(a) IN GENERAL.—Not later than June 30, 2010, the Secretary of Labor shall conduct a study and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions a report that contains—

(1) a description of the criteria for the designation of primary care physicians as professions in shortage as defined by the Secretary under section 212(a)(5)(A) of the Immigration and Nationality Act;

(2) the findings of the Secretary on whether primary care physician professions will, on the date on which the report is submitted, or within the 5-year period beginning on such date, satisfy the criteria referred to in paragraph (1); and

(3) if the Secretary finds that such professions will not satisfy such criteria, recommendations for modifications to such criteria to enable primary care physicians to be so designated as a profession in shortage.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Secretary of Labor shall consider workforce data from the Health Resources and Services Administration, the Council on Graduate Medical Education, the Association of American Medical

Colleges, and input from physician membership organizations that represent primary care physicians.

SEC. 402. STUDY CONCERNING THE EDUCATION DEBT OF MEDICAL SCHOOL GRADUATES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to evaluate the higher education-related indebtedness of medical school graduates in the United States at the time of graduation from medical school, and the impact of such indebtedness on specialty choice, including the impact on the field of primary care.

(b) REPORT.—

(1) SUBMISSION AND DISSEMINATION OF REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the study required by subsection (a) to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives, and shall make such report widely available to the public.

(2) ADDITIONAL REPORTS.—The Comptroller General may periodically prepare and release as necessary additional reports on the topic described in subsection (a).

SEC. 403. STUDY ON MINORITY REPRESENTATION IN PRIMARY CARE.

(a) STUDY.—The Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration, shall conduct a study of minority representation in training, and in practice, in primary care specialties.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration, shall submit to the appropriate committees of Congress a report concerning the study conducted under subsection (a), including recommendations for achieving a primary care workforce that is more representative of the population of the United States.

AMERICAN COLLEGE OF
OSTEOPATHIC FAMILY PHYSICIANS,
Arlington Heights, IL, May 21, 2009.

Hon. MARIA CANTWELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CANTWELL: On behalf of the American College of Osteopathic Family Physicians (ACOFP), I am pleased to offer you our strong support for the ''Preserving Patient Access to Primary Care Act''. This legislation lays the groundwork for a much needed boost to the primary care physician workforce through reforms of both the Medicare payment system and the graduate medical education (GME) system. The ACOFP lauds your ambitious leadership on these important issues and looks forward to helping you secure enactment of this legislation.

As you are well aware, the current Medicare physician payment system neglects to recognize the value of primary care services in the health care delivery system. Studies show that access to primary health care is associated with better health outcomes and lower health care costs. We commend you on the emphasis your legislation places on addressing payment equity among physicians by increasing payments for evaluation and management services and providing bonus payments for care coordination and other tenets central to the delivery of primary care.

The ACOFP applauds the provisions included in the ''Preserving Patient Access to Primary Care Act'' to expand the Patient Centered Medical Home (PCMH). Building upon the progress made in the current Medicare demonstration projects, your legislation would require that Medicare transition to a new payment methodology to provide monthly payments to PCMH practices that provide care coordination to Medicare beneficiaries. Additionally, grants to states for inclusion of the PCMH into Medicaid and SCHIP programs will further provide patients with on-going access to coordinated care by a physician.

Over the last decade, the population of our country has increased and grown older. Increasing access to health care coverage for all Americans is at the center of the health care reform debate. We must work to ensure that our nation's physician workforce is capable of meeting future increased demand. Central to achieving this is a strong GME system.

The current Medicare payment system in the United States neglects the value of didactic experiences, training opportunities in non-hospital settings, and voluntary physician supervision of medical residents within the GME system. The ACOFP is supportive of your efforts to create new training opportunities in non-hospital settings as well as those seeking to clarify existing regulations governing non-hospital training. Recent statistics associated with career choices of medical school graduates reveal the acute need to increase our nation's supply of family physicians. The ACOFP strongly believes that by providing experiences in non-hospital settings for resident physicians, especially those in primary care specialties, increases the likelihood that they will seek practice opportunities in those settings.

Finally, the ACOFP supports your efforts to increase the number of primary care physicians through new scholarship and loan forgiveness programs. We recognize that the education debt burden carried by medical school graduates discourages students from seeking careers in public health service, seeking careers in family practice or practicing in underserved areas. According to the American Association of Colleges of Osteopathic Medicine (AACOM), the average osteopathic medical school graduate has a debt load of $168,031. Further, the average first year medical resident stipend is $44,747. Scholarships and loan forgiveness for physicians who agree to practice primary care medicine in underserved areas would allow medical school graduates to pursue careers in medical specialties based upon their individual career interests rather than their financial obligations, while additionally addressing geographic disparities in access to care.

Again, thank you for your leadership on this important legislation. The ACOFP and our members stand ready to assist you in securing enactment of this important legislation.

Respectfully,

JAN D. ZIEREN,
ACOFP President.

MAY 20, 2009.

Hon. MARIA CANTWELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CANTWELL: I am writing on behalf of the American Nurses Association (ANA) to applaud your efforts to address the shortage of primary care providers by introducing the Preserving Patient Access to Primary Care Act of 2009. ANA strongly supports this legislation because it recognizes the integral role nurses and nurse practitioners play in the delivery of primary care and helps bring the focus of our health care system back where it belongs—on the patient and the community.

The American Nurses Association is the only full-service national association representing the interests of 2.9 million registered nurses (RNs). Through our 51 constituent nursing associations, we represent RNs across the nation in all educational and practice settings. ANA believes that a health care system that is patient-centered, comprehensive, accessible, and delivers quality care for all is something that should not be a partisan or political issue.

The Preserving Patient Access to Primary Care Act of 2009 would provide scholarship and loan repayment opportunities for primary care providers who serve in areas with critical shortages of primary care services. Secondly, the bill would increase Medicare reimbursements for primary care providers, and provide Medicare payments for care coordination services, and monthly payments to practices which serve as patient centered medical homes. Moreover, the Preserving Patient Access to Primary Care Act of 2009 aims to support an interdisciplinary model in which providers, physicians and nurses, are able to practice collaboratively and to the full extent of their education and licensure on behalf of the patient.

The American Nurses Association is proud to support this legislation and we look forward to working with you and others in the health care community to ensure that your vision of strengthening primary care becomes reality.

Sincerely,

ROSE GONZALEZ,
Director, Government Affairs,
American Nurses Association.

AMERICAN OSTEOPATHIC ASSOCIATION,
Washington, DC, May 20, 2009.

Hon. MARIA CANTWELL,
U.S. Senate,
Washington, DC.

Hon. SUSAN COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATORS CANTWELL AND COLLINS: On behalf of the American Osteopathic Association (AOA) and the 64,000 osteopathic physicians it represents, I am pleased to inform you of our strong support for the ''Preserving Patient Access to Primary Care Act.'' We believe your legislation would provide a critical boost to the primary care physician workforce through innovative changes to the Medicare payment structure and graduate medical education system, among other reforms. The AOA commends your leadership on these important issues and we are committed to assisting you in securing enactment of this legislation.

We applaud the emphasis your legislation places upon improving primary care through alternative payment mechanisms. As you know, the Medicare physician payment system is fundamentally flawed and fails to recognize the value of primary care services in achieving savings through prevention and care coordination. Studies indicate that income disparities have a significant negative impact on the choice of primary care as a career. The ''Preserving Patient Access to Primary Care Act'' would promote payment equity for primary care physicians by increasing payments for evaluation and management services and providing bonus payments for other important primary services. The AOA appreciates your foresight and recognition of the long-term savings that will be realized through increased access to primary care.

The AOA strongly supports an expansion of the Patient Centered Medical Home (PCMH) through the Medicare demonstration project and grants to states for inclusion of PCMH models in their Medicaid and SCHIP programs. Your legislation provides a monthly primary care management fee for physicians who are designated the health home of a Medicare beneficiary and provide continuous

medical care. This policy is consistent with the principles of the patient-centered medical home as envisioned by the AOA. The PCMH payment policy contained in this legislation accounts for the considerable practice expenses involved in comprehensive care coordination and facilitates widespread adoption of the medical home. The AOA strongly supports this move toward a model of health care delivery that is based on an ongoing personal relationship with a physician.

Over the past 10 years our population has increased and aged, and to ensure that our nation's physician workforce is capable of meeting increased demand, we must begin to educate and train a larger cadre of physicians now. A strong graduate medical education (GME) system capable of providing training opportunities across specialties and geographic regions is central to building the physician workforce. However, these institutions are currently confronted with fierce competition from private markets, increasing costs and shrinking federal support. In addition to increasing residency training programs to meet the needs of our growing population, this legislation would appropriately permit Direct Graduate Medical Education (DGME) and Indirect Medical Education (IME) reimbursement for didactic educational activities and allow hospitals to count the time residents spend providing patient care in outpatient settings. The AOA strongly supports these provisions.

Finally, the AOA strongly supports your efforts to address the burden of the educational debt carried by many young physicians that may discourage them from seeking careers in public health service, practicing in underserved areas, or seeking careers in primary care specialties. The average osteopathic medical school graduate has a debt load of $168,031 and the average first year medical resident stipend is $44,747, making student debt a significant hardship throughout a physician's training. By providing scholarships and loan forgiveness for primary care physicians who agree to practice in underserved areas, this legislation would address geographic disparities in access to care and allow medical school graduates to pursue training opportunities in medical specialties based upon their individual career interests and talents versus their financial obligations.

Today, one in five medical students in the United States is enrolled in a college of osteopathic medicine. The current colleges of osteopathic medicine, and those set to open in the future, are located in regions that historically have had limited access to physician services. The location of current and future colleges of osteopathic medicine reflects the osteopathic profession's commitment to rural and underserved communities. We believe that our graduates and their patients will benefit greatly from the primary care policies and programs in this legislation.

Again, thank you for introducing this important legislation. The AOA and our members stand ready to assist you in promoting primary care and securing enactment of the ''Preserving Patient Access to Primary Care Act.''

Sincerely,

CARLO J. DIMARCO,
President.

By Mr. KOHL (for himself and Mr. WYDEN):

S. 1177. A bill to improve consumer protections for purchasers of long-term care insurance, and for other purposes; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today to express my support for the Confidence in Long-Term Care Insurance Act of 2009. With America aging at an unprecedented rate, and with the high and rising costs of caring for a loved one, the financing of long-term care must be addressed if we are going to get health care costs under control. I am proud to be an original cosponsor of this bill. I wish to also thank my colleague Senator WYDEN for his leadership on addressing the financing of long-term care.

We all know that long-term care is expensive. The cost of an average nursing home is nearly $75,000 per year. However, according to the Congressional Research Service, most Americans do not realize that neither Medicare nor Medicaid will cover these costs unless their household savings are nearly eliminated. States share the responsibility of providing Medicaid funding for long-term care with the federal government, and are also looking for ways to reduce their expenses. As of today, 43 states are in the process of launching ''Partnership'' programs, which provide incentives to consumers who purchase private long-term care insurance. But in the rush to ease the burden of long-term care costs on state budgets, we fear that some key concerns are being overlooked.

We have a duty to make sure these policies, which may span many decades, are financially viable. Several long-term care insurance providers have applied for TARP funds in recent months, raising questions about their solvency. In addition, many insurance companies have been raising their policyholders' monthly premiums, which can be devastating for older persons who are living on a fixed income. Many Americans living on modest or fixed incomes, who have held policies for many years, have seen premium rates double when a company encounters financial difficulties. For such consumers, the choices are stark and very limited: they can either dig deeper and pay the increased premiums, or let their policy lapse, leaving them with no coverage if they ever need care.

Last year, I was joined by several Senate and House colleagues in releasing a GAO report on whether adequate consumer protections are in place for those who purchase long-term care insurance. The report found that rate increases are common throughout the industry, and that consumer protections are uneven. While some states have adopted requirements that keep rates relatively stable, some have not, leaving consumers unprotected.

The Confidence in Long-Term Care Insurance Act takes several important steps to ensure that premiums increases are kept at a minimum, insurance agents receive adequate training, and that complaints and appeals are addressed in a timely manner. We should also make it easier for consumers to accurately compare policies from different insurance carriers, particularly with regard to what benefits are covered and whether the plan offers inflation protection. States should also have to approve materials used to market Partnership policies. The Confidence in Long-Term Care Insurance Act will institute many of these needed improvements.

In closing, I urge my colleagues to support the Confidence in Long-Term Care Insurance Act of 2009. It is estimated that two out of three Americans who reach the age of 65 will need long-term care services and supports at some point to assist them with day-to-day activities, and enable them to maintain a high-quality, independent life. Long-term care insurance is an appropriate product for many who wish to plan for a secure retirement. But we must guarantee that consumers have adequate information and protections, and that premiums won't skyrocket down the road. I thank Senator WYDEN for his commitment to ensuring we address the important issue of long-term care financing. I look forward to working with my colleagues to enact the legislation we are introducing today.

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

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

S. 1177

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 ''Confidence in Long-Term Care Insurance Act of 2009''.

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

TITLE I—NATIONAL MARKET SURVEY; MODEL DISCLOSURES AND DEFINITIONS; LTC INSURANCE COMPARE

SEC. 101. NAIC NATIONAL MARKET SURVEY.

(a) IN GENERAL.—The Secretary shall request the NAIC to conduct biennial reviews of the national and State-specific markets

for long-term care insurance policies and to submit biennial reports to the Secretary on the results of such reviews.

(b) CONTENT.—The Secretary shall request that the biennial reviews include, with respect to the period occurring since any prior review, analysis of the following:

(1) Information on key market parameters, including the number of carriers offering long-term care insurance, and the scope of coverage offered under those policies (such as policies offering nursing-home only benefits, policies offering comprehensive coverage, and hybrid products in which long-term care benefits are present).

(2) The number of complaints received and resolved, including benefit denials.

(3) The number of policies that are cancelled (including because of having lapsed or not being renewed) and reasons for such cancellations.

(4) The number of agents trained and the content of that training, including a description of agent training standards, the extent to which competency tests are included in such standards, and the pass and fail rates associated with such tests.

(5) The number of policyholders exhausting benefits.

(6) Premium rate increases sought by carriers and the range of the amount of the increase sought.

(7) Premium rate increases that were approved and the range of the amount of increase.

(8) The number of policyholders affected by any approved premium rate increases.

(9) Requests for exceptions to State reserving or capital requirements.

(c) TIMING FOR BIENNIAL REVIEW AND REPORT.—The Secretary shall request the NAIC to—

(1) complete the initial market review under this section not later than 2 years after the date of enactment of this Act;

(2) submit a report to the Secretary on the results of the initial review not later than December 31, 2011; and

(3) complete each subsequent biennial review and submit each subsequent biennial report not later than December 31 of each second succeeding year.

(d) CONSULTATION REQUIRED.—The Secretary shall request the NAIC to consult with State insurance commissioners, appropriate Federal agencies, issuers of long-term care insurance, States with experience in long-term care insurance partnership plans, other States, representatives of consumer groups, consumers of long-term care insurance policies, and such other stakeholders as the Secretary or the NAIC determine appropriate, to conduct the market reviews requested under this section.

(e) DEFINITIONS.—In this section and section 102:

(1) LONG-TERM CARE INSURANCE POLICY.—The term ''long-term care insurance policy''—

(A) means—

(i) a qualified long-term care insurance contract (as defined in section 7702B(b) of the Internal Revenue Code of 1986); and

(ii) a qualified long-term care insurance contract that covers an insured who is a resident of a State with a qualified State long-term care insurance partnership under clause (iii) of section 1917(b)(1)(C) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)) or a long-term care insurance policy offered in connection with a State plan amendment described in clause (iv) of such section; and

(B) includes any other insurance policy or rider described in the definition of ''long-term care insurance'' in section 4 of the model Act promulgated by the National Association of Insurance Commissioners (as adopted December 2006).

(2) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners.

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

SEC. 102. MODEL DISCLOSURES AND DEFINITIONS.

(a) IN GENERAL.—The Secretary shall request the NAIC, in consultation with State health agencies as appropriate, to carry out the activities described in subsection (b).

(b) ACTIVITIES DESCRIBED.—The activities described in this subsection are the following:

(1) DEVELOP MODEL DISCLOSURES AND DEFINITIONS FOR MARKETING OF POLICIES.—To develop model language for marketing of long-term care insurance policies (including, as appropriate, language specific to qualified long-term care insurance contracts, partnership long-term care insurance policies, and such other contracts for coverage of long-term care services or benefits as the NAIC determines appropriate), that includes the following:

(A) CONSISTENT DEFINITIONS.—Consistent definitions for coverage of the various types of services and benefits provided under such policies, including institutional services, residential services with varying levels of assistance, such as assisted living, home care services, adult day services, and other types of home and community-based care, (as appropriate to describe the range of services and benefits offered under such policies in various States).

(B) CONSISTENT EXPLANATORY LANGUAGE.—Consistent language for use by issuers of such policies, and for agents selling such policies, in explaining the services and benefits covered under the policies and restrictions on the services and benefits.

(C) INFLATION PROTECTION OPTIONS.—A form that describes different inflation level options offered for long-term care insurance policies, including how policies with various levels of inflation protection compare in premium costs and benefits within 5-year time increments from 5 years through 30 years post-purchase.

(D) STANDARDIZED METHODOLOGY FOR CALCULATING INFLATION PROTECTION.—Standardized methodology for use by issuers to use to calculate inflation protection under such policies.

(2) ENFORCE.—To develop recommendations for enforcement of the model marketing disclosures and definitions, including standardized language for States to adopt to prohibit carriers from marketing policies within the State that do not meet the model marketing disclosures and definitions or the rate stability provisions under section 20 of the long-term care insurance model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000 and as of December 2006) and any provisions of such section adopted after December 2006.

(c) PUBLIC COMMENT.—The Secretary shall request the NAIC to allow for public comment on the work of the NAIC in carrying out the activities described in subsection (b).

SEC. 103. LTC INSURANCE COMPARE.

(a) IN GENERAL.—Section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) in clause (ii), by striking ''and'' at the end;

(ii) in clause (iii), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(iv) establish an Internet directory of information regarding long-term care insurance, to be known as 'LTC Insurance Compare', that shall include the following:

''(I) Comparison tools to assist consumers in evaluating long-term care insurance policies (as defined in subparagraph (D)) with different benefits and features.

''(II) State-specific information about the long-term care insurance policies marketed in a State, including the following:

''(aa) Whether a State has promulgated rate stability provisions for all issuers of long-term care insurance policies and how the rate stability standards work.

''(bb) The rating history for issuers selling long-term care insurance policies in the State for at least the most recent preceding 5 years.

''(cc) The policy documents for each such policy marketed in the State.

''(III) Links to State information regarding long-term care under State Medicaid programs (which may be provided, as appropriate, through Internet linkages to the websites of State Medicaid programs) that includes the following:

''(aa) The medical assistance provided under each State's Medicaid program for nursing facility services and other long-term care services (including any functional criteria imposed for receipt of such services, as reported in accordance with section 1902(a)(28)(D) of the Social Security Act) and any differences from benefits and services offered under long-term care insurance policies in the State and the criteria for triggering receipt of such benefits and services.

''(bb) If the State has a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of the Social Security Act, information regarding how and when an individual with a partnership long-term care insurance policy who is receiving benefits under the policy should apply for medical assistance for nursing facility services or other long-term care services under the State Medicaid program and information regarding about how Medicaid asset protection is accumulated over time under such policies.''; and

(B) by adding at the end the following:

''(C) CURRENT INFORMATION.—The Secretary of Health and Human Services shall ensure that, to the greatest extent practicable, the information maintained in the National Clearinghouse for Long-Term Care Information, including the information required for LTC Insurance Compare, is the most recent information available.

''(D) LONG-TERM CARE INSURANCE POLICY DEFINED.—In subparagraph (A)(iv), the term 'long-term care insurance policy' means a qualified long-term care insurance contract (as defined in section 7702B(b) of the Internal Revenue Code of 1986), a qualified long-term care insurance contract that covers an insured who is a resident of a State with a qualified State long-term care insurance partnership under clause (iii) of section 1917(b)(1)(C) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)) or a long-term care insurance policy offered in connection with a State plan amendment described in clause (iv) of such section, and includes any other insurance policy or rider described in the definition of 'long-term care insurance' in section 4 of the model Act promulgated by the National Association of Insurance Commissioners (as adopted December 2006).'';

(2) by redesignating paragraph (3) as paragraph (4)

(3) in paragraph (4), (as so redesignated), by inserting '', and $5,000,000 for each of fiscal years 2011 through 2013'' after ''2010''; and

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

''(3) CONSULTATION ON LTC INSURANCE COMPARE.—The Secretary of Health and Human Services shall consult with the National Association of Insurance Commissioners and the entities and stakeholders specified in

section 101(d) of the Confidence in Long-Term Care Insurance Act of 2009 in designing and implementing the LTC Insurance Compare required under paragraph (2)(A)(iv).''.

(b) MEDICAID STATE PLAN REQUIREMENT TO SUBMIT NURSING FACILITY SERVICES FUNCTIONAL CRITERIA DATA.—Section 1902(a)(28) of the Social Security Act (42 U.S.C. 1396a(a)(28)) is amended—

(1) in subparagraph (C), by striking ''and'' after the semicolon;

(2) in subparagraph (D)(iii), by adding ''and'' after the semicolon; and

(3) by inserting after subparagraph (D)(iii), the following new subparagraph:

''(E) for the annual submission of data relating to functional criteria for the receipt of nursing facility services under the plan (in such form and manner as the Secretary shall specify);''.

(c) EFFECTIVE DATE.—

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

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation or State regulation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

TITLE II—IMPROVED STATE CONSUMER PROTECTIONS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS AND MEDICAID PARTNERSHIP POLICIES

SEC. 201. APPLICATION OF MEDICAID PARTNERSHIP REQUIRED MODEL PROVISIONS TO ALL TAX-QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) IN GENERAL.—Section 7702B(g)(1) of the Internal Revenue Code of 1986 (relating to consumer protection provisions) is amended—

(1) in subparagraph (A), by inserting ''(but only to the extent such requirements do not conflict with requirements applicable under subparagraph (B)),'' after ''paragraph (2)'',

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

(3) by inserting after subparagraph (A), the following new subparagraph:

''(B) the requirements of the model regulation and model Act described in section 1917(b)(5) of the Social Security Act,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contracts issued after the date of enactment of this Act.

SEC. 202. STREAMLINED PROCESS FOR APPLYING NEW OR UPDATED MODEL PROVISIONS.

(a) SECRETARIAL REVIEW.—

(1) TAX-QUALIFIED POLICIES.—

(A) 2000 AND 2006 MODEL PROVISIONS.—Not later than 3 months after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall review the model provisions specified in subsection (c)(1) for purposes of determining whether updating any such provisions for a provision specified in section 7702B(g)(2) of the Internal Revenue Code of 1986, or the inclusion of any such provisions in such section, for purposes of an insurance contract qualifying for treatment as a qualified long-term care insurance contract under such Code, would improve consumer protections for insured individuals under such contracts.

(B) SUBSEQUENT MODEL PROVISIONS.—Not later than 3 months after model provisions described in paragraph (2) or (3) of subsection (c) are adopted by the National Association of Insurance Commissioners, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall review the model provisions to determine whether the application of such provisions to an insurance contract for purposes of qualifying for treatment as a qualified long-term care insurance contract under section 7702B(g)(2) of the Internal Revenue Code of 1986, would improve consumer protections for insured individuals under such contracts.

(2) MEDICAID PARTNERSHIP POLICIES.—

(A) SUBSEQUENT MODEL PROVISIONS.—Not later than 3 months after model provisions described in paragraph (2) or (3) of subsection (c) are adopted by the National Association of Insurance Commissioners, the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury, shall review the model provisions to determine whether the application of such provisions to an insurance contract for purposes of satisfying the requirements for participation in a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act (42 U.S.C. 1396p(b)(1)(C)(iii)) would improve consumer protections for insured individuals under such contracts.

(B) REVIEW OF OTHER PARTNERSHIP REQUIREMENTS.—The Secretary of Health and Human Services, in consultation with the Secretary of the Treasury, shall review clauses (iii) and (iv) of section 1917(b)(1)(C) for purposes of determining whether the requirements specified in such clauses should be modified to provide improved consumer protections or, as appropriate, to resolve any conflicts with the application of the 2006 model provisions under paragraph (5) of section 1917(b) (as amended by section 302(a)) or with the application of any model provisions that the Secretary determines should apply to an insurance contract as a result of a review required under subparagraph (A).

(b) EXPEDITED RULEMAKING.—

(1) TAX-QUALIFIED POLICIES.—Subject to paragraph (3), if the Secretary of the Treasury determines that any model provisions reviewed under subsection (a)(1) should apply for purposes of an insurance contract qualifying for treatment as a qualified long-term care insurance contract under the Internal Revenue Code of 1986, the Secretary, shall promulgate an interim final rule applying such provisions for such purposes not later than 3 months after making such determination.

(2) MEDICAID PARTNERSHIP POLICIES.—Subject to paragraph (3), if the Secretary of Health and Human Services determines that any model provisions or requirements reviewed under subsection (a)(2) should apply for purposes of an insurance contract satisfying the requirements for participation in a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act (42 U.S.C. 1396p(b)(1)(C)(iii)), the Secretary, shall promulgate an interim final rule applying such provisions for such purposes not later than 3 months after making such determination.

(3) CONSULTATION REQUIRED.—The Secretary of the Treasury and the Secretary of Health and Human Services, respectively, shall consult with the National Association of Insurance Commissioners and the entities and stakeholders specified in section 101(d) regarding the extent to which it is appropriate to apply the model provisions described in paragraph (1) or (2) (as applicable) to insurance contracts described in such paragraphs through promulgation of an interim final rule. If, after such consultation—

(A) the Secretary of the Treasury determines it would be appropriate to promulgate an interim final rule, the Secretary of the Treasury shall use notice and comment rulemaking to promulgate a rule applying such provisions to insurance contracts described in paragraph (1); and

(B) the Secretary of Health and Human Services determines it would be appropriate to promulgate an interim final rule, the Secretary of Health and Human Services shall use notice and comment rulemaking to promulgate a rule applying such provisions to insurance contracts described in paragraph (2).

(4) RULE OF CONSTRUCTION RELATING TO APPLICATION OF CONGRESSIONAL REVIEW ACT.—Nothing in paragraphs (1), (2), or (3) shall be construed as affecting the application of the sections 801 through 808 of title 5, United States Code (commonly known as the ''Congressional Review Act'') to any interim final rule issued in accordance with such paragraphs.

(5) TECHNICAL AMENDMENT ELIMINATING PRIOR REVIEW STANDARD MADE OBSOLETE.—Section 1917(b)(5) of the Social Security Act (42 U.S.C. 1396p(b)(5)) is amended by striking subparagraph (C).

(c) MODEL PROVISIONS.—In this section, the term ''model provisions'' means—

(1) each provision of the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000 and as of December 2006);

(2) each provision of the model language relating to marketing disclosures and definitions developed under section 102(b)(1); and

(3) each provision of any long-term care insurance model regulation, or the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners and adopted after December 2006.

TITLE III—IMPROVED CONSUMER PROTECTIONS FOR MEDICAID PARTNERSHIP POLICIES

SEC. 301. BIENNIAL REPORTS ON IMPACT OF MEDICAID LONG-TERM CARE INSURANCE PARTNERSHIPS.

Section 6021(c) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended to read as follows:

''(c) BIENNIAL REPORTS.—

''(1) IN GENERAL.—Not later than January 1, 2010, and biennially thereafter, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall issue a report to States and Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(ii)). Each report shall include (with respect to the period the report addresses) the following information, nationally and on a State-specific basis:

''(A) Analyses of the extent to which such partnerships improve access of individuals to affordable long-term care services and benefits and the impact of such partnerships on Federal and State expenditures on long-term care under the Medicare and Medicaid programs.

''(B) Analyses of the impact of such partnerships on consumer decisionmaking with respect to purchasing, accessing, and retaining coverage under long-term care insurance

policies (as defined in subsection (d)(2)(D)), including a description of the benefits and services offered under such policies, the average premiums for coverage under such policies, the number of policies sold and at what ages, the number of policies retained and for how long, the number of policies for which coverage was exhausted, and the number of insured individuals who were determined eligible for medical assistance under the State Medicaid program.

''(2) DATA.—The reports by issuers of partnership long-term care insurance policies required under section 1917(b)(1)(C)(iii)(VI) of the Social Security Act shall include such data as the Secretary shall specify in order to conduct the analyses required under paragraph (1).

''(3) PUBLIC AVAILABILITY.—The Secretary shall make each report issued under this subsection publicly available through the LTC Insurance Compare website required under subsection (d).

''(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the Secretary to conduct an independent review of each long-term care insurance policy offered under or in connection with such a partnership.

''(5) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this subsection, $1,000,000 for the period of fiscal years 2010 through 2012.''.

SEC. 302. ADDITIONAL CONSUMER PROTECTIONS FOR MEDICAID PARTNERSHIPS.

(a) APPLICATION OF 2006 MODEL PROVISIONS.—

(1) UPDATING OF 2000 REQUIREMENTS.—

(A) IN GENERAL.—Section 1917(b)(5)(B)(i) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(i)) is amended by striking ''October 2000'' and inserting ''December 2006''.

(B) CONFORMING AMENDMENTS.—

(i) Subclause (XVII) of such section is amended by striking ''section 26'' and inserting ''section 28''.

(ii) Subclause (XVIII) of such section is amended by striking ''section 29'' and inserting ''section 31''.

(iii) Subclause (XIX) of such section is amended by striking ''section 30'' and inserting ''section 32''.

(2) APPLICATION TO GRANDFATHERED PARTNERSHIPS.—Section 1917(b)(1)(C)(iv) of such Act (42 U.S.C. 1396p(b)(1)(C)(iv)) is amended by inserting '', and the State satisfies the requirements of paragraph (5)'' after ''2005''.

(b) APPLICATION OF PRODUCER TRAINING MODEL ACT REQUIREMENTS.—Section 1917(b)(1)(C) of such Act (42 U.S.C. 1396p(b)(1)(C)) is amended—

(1) in clause (iii)(V), by inserting ''and satisfies the producer training requirements specified in section 9 of the model Act specified in paragraph (5)'' after ''coverage of long-term care''; and

(2) in clause (iv), as amended by subsection (a)(2), by inserting ''clause (iii)(V) and'' before ''paragraph (5)''.

(c) APPLICATION OF ADDITIONAL REQUIREMENTS FOR ALL PARTNERSHIPS.—Section 1917(b) of the Social Security Act (42 U.S.C. 1396p(b)) is amended—

(1) in paragraph (1)(C)—

(A) in clause (iii)—

(i) by inserting after subclause (VII) the following new subclause:

''(VIII) The State satisfies the requirements of paragraph (6).''; and

(ii) in the flush sentence at the end, by striking ''paragraph (5)'' and inserting ''paragraphs (5) and (6)''; and

(B) in clause (iv), as amended by subsections (a)(2) and (b)(2), by striking ''paragraph (5)'' and inserting ''paragraphs (5) and (6)''; and

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

''(6) For purposes of clauses (iii)(VIII) and (iv) of paragraph (1)(C), the requirements of this paragraph are the following:

''(A) The State requires issuers of long-term care insurance policies to—

''(i) use marketing materials approved by the State for purposes of the partnership verbatim in all sales and marketing activities conducted or supported by the issuers in the State with respect to any long-term care insurance policies marketed by the issuer in the State;

''(ii) provide such materials to all agents selling long-term care insurance policies in the State;

''(iii) ensure that agent training and education courses conducted or supported by the issuers incorporate such materials;

''(iv) make such materials available to any consumer upon request, and to make such materials available to all prospective purchasers of a policy offered under a qualified State long-term care insurance partnership before submission of an application for coverage under that policy.

''(B) The State requires issuers of long-term care insurance policies to require agents to use the inflation protection comparison form developed by the National Association of Insurance Commissioners in accordance with section 102(b)(1)(C) of the Confidence in Long-Term Care Insurance Act of 2009 when selling the policies in the State.

''(C) The State requires issuers of long-term care insurance policies sold in the State to comply with the provisions of section 8 of the model Act specified in paragraph (5) relating to contingent nonforfeiture benefits.

''(D) The State enacts legislation, not later than January 1, 2012, that establishes rate stability standards for all issuers of long-term care insurance policies sold in the State that are no less stringent than the premium rate schedule increase standards specified in section 20 of the model regulation specified in paragraph (5).

''(E) The State develops, updates whenever changes are made under the State plan that relate to eligibility for medical assistance for nursing facility services or other long-term care services or the amount, duration, or scope of such assistance, and provides public, readily accessible materials that describe in clear, simple language the terms of such eligibility, the benefits and services provided as such assistance, and rules relating to adjustment or recovery from the estate of an individual who receives such assistance under the State plan. Such materials shall include a clear disclosure that medical assistance is not guaranteed to partnership policyholders who exhaust benefits under a partnership policy, and that Federal changes to the program under this title or State changes to the State plan may affect an individual's eligibility for, or receipt of, such assistance.

''(F) The State—

''(i) through the State Medicaid agency under section 1902(a)(5) and in consultation with the State insurance department, develops written materials explaining how the benefits and rules of long-term care policies offered by issuers participating in the partnership interact with the benefits and rules under the State plan under this title;

''(ii) requires agents to use such materials when selling or otherwise discussing how long-term care policies offered by issuers participating in the partnership work with potential purchasers and to provide the materials to any such purchasers upon request;

''(iii) informs holders of such policies of any changes in eligibility requirements under the State plan under this title and of any changes in estate recovery rules under the State plan as soon as practicable after such changes are made; and

''(iv) agrees to honor the asset protections of any such policy that were provided under the policy when purchased, regardless of whether the State subsequently terminates a partnership program under the State plan.

''(G) The State Medicaid agency under section 1902(a)(5) and the State insurance department enter into a memorandum of understanding to—

''(i) inform consumers about changes in long-term care policies offered by issuers participating in the partnership, changes in the amount, duration, or scope of medical assistance for nursing facility services or other long-term care services offered under the State plan, changes in consumer protections, and any other issues such agency and department determine appropriate; and

''(ii) jointly maintain a nonpublic database of partnership policyholders for purposes of facilitating coordination in eligibility determinations for medical assistance under the State plan and the provision of benefits or other services under such policies and medical assistance provided under the State plan that includes—

''(I) the number of policyholders applying for medical assistance under the State plan; and

''(II) the number of policyholders deemed eligible (and, if applicable, ineligible) for such assistance.

''(H) The State does not apply any limit to the disregard, for purposes of determining the eligibility of a partnership policyholder for medical assistance under the State plan and for purposes of exemption from the estate recovery requirements under the plan, of benefits provided under a partnership policy, including cash benefits provided for long-term care services, and benefits provided under the policy after the effective date of the policyholder's enrollment in the State plan.

''(I) The State enters into agreements with other States that have established qualified State long-term care insurance partnerships under which such States agree to provide reciprocity for policyholders under such partnerships.

''(J) The State provides guaranteed asset protection to all individuals covered under a policy offered under a qualified State long-term care insurance partnership who bought such a policy in the State or in another State with such a partnership and with which the State has a reciprocity agreement at the time of purchase.

''(K) At the option of the State, notwithstanding any limitation that would otherwise be imposed under subsection (f), the State disregards any amount of the equity interest in the home of an individual covered of policy offered under a qualified State long-term care insurance partnership for purposes of determining the individual's eligibility for medical assistance with respect to nursing facility services or other long-term care services.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section take effect on the date that is 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its

failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 303. REPORT TO CONGRESS REGARDING NEED FOR MINIMUM ANNUAL COMPOUND INFLATION PROTECTION.

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall submit a report to Congress that includes the Secretary's recommendation regarding whether legislative or other administrative action should be taken to require all long-term care insurance policies sold after a date determined by the Secretary in connection with a qualified State long-term care insurance partnership under clause (iii) of section 1917(b)(1)(C) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)) or a long-term care insurance policy offered in connection with a State plan amendment described in clause (iv) of such section, provide, at a minimum, 5 percent annual compound inflation protection, and if so, whether such requirements should be imposed on a basis related to the age of the policyholder at the time of purchase. The Secretary shall include in the report information on the various levels of inflation protection available under such long-term care insurance partnerships and the methodologies used by issuers of such policies to calculate and present various inflation protection options under such policies, including policies with a future purchase option feature.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 167—A BILL COMMENDING THE PEOPLE WHO HAVE SACRIFICED THEIR PERSONAL FREEDOMS TO BRING ABOUT DEMOCRATIC CHANGE IN THE PEOPLE'S REPUBLIC OF CHINA AND EXPRESSING SYMPATHY FOR THE FAMILIES OF THE PEOPLE WHO WERE KILLED, WOUNDED, OR IMPRISONED, ON THE OCCASION OF THE 20TH ANNIVERSARY OF THE TIANANMEN SQUARE MASSACRE IN BEIJING, CHINA FROM JUNE 3 THROUGH 4, 1989

Mr. INHOFE (for himself, Mr. BROWN, Mr. GRAHAM, Mr. KYL, Mr. MENENDEZ, Mr. VITTER, Mr. LIEBERMAN, Mr. COBURN, and Mr. WEBB) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 167

Whereas freedom of expression, assembly, association, and religion are fundamental rights that all people should be able to possess and enjoy;

Whereas, in April 1989, in a demonstration of democratic progress, thousands of students took part in peaceful protests against the communist government of the People's Republic of China in the capital city of Beijing;

Whereas, throughout the month of May 1989, the students, in peaceful demonstrations, drew more people, young and old and from all walks of life, into central Beijing to demand better democracy, basic freedoms of speech and assembly, and an end to corruption;

Whereas, from June 3 through 4, 1989, the Government of China ordered an estimated 300,000 members of the People's Liberation Army to enter Beijing and clear Tiananmen Square (located in central Beijing) by lethal force;

Whereas, by June 7, 1989, the Red Cross of China reported that the People's Liberation Army had killed more than 300 people in Beijing, although foreign journalists who witnessed the events estimate that thousands of people were killed and thousands more wounded;

Whereas more than 20,000 people in China were arrested and detained without trial, due to their suspected involvement in the protests at Tiananmen Square;

Whereas, according to the Department of State, the Government of China has worked to censor information about the massacre at Tiananmen Square by blocking Internet sites and other media outlets, along with other sensitive information that would be damaging to the Government of China;

Whereas the Government of China has continued to oppress the people of China by denying basic human rights, such as freedom of speech and religion, and suppressing minority groups;

Whereas, during the 2008 Olympic Games, the Government of China promised to provide the international media covering the Olympic Games with the same access given the media at all the other Olympic Games, but denied access to certain internet sites and media outlets in attempts to censor free speech;

Whereas the Department of State Human Rights Report for 2008 found that the Government of China had increased already severe cultural and religious suppression of ethnic minorities in Tibetan areas and the Xinjiang Uighur Autonomous Region, increased the persecution of members of Falun Gong, Christians from China, and other religious minorities, increased the detention and harassment of dissidents and journalists, and maintained tight controls on freedom of speech and the Internet;

Whereas the United States Commission on International Religious Freedom in 2009 stated, ''The Chinese government continues to engage in systematic and egregious violations of the freedom of religion or belief, with religious activities tightly controlled and some religious adherents detained, imprisoned, fined, beaten, and harassed.''; and

Whereas the China Aid Association reported that in 2007, there were 693 cases in which Christians from China were detained or arrested and 788 cases in which Christian house church groups were persecuted by the Government of China: Now, therefore, be it

Resolved, That the Senate—

(1) commends the people who have sacrificed their personal freedoms and, in the case of the people who demonstrated at Tiananmen Square in 1989, sacrificed their lives and freedom to—

(A) bring about democratic change in the People's Republic of China; and

(B) gain freedom of expression, assembly, association, and religion for the people of China;

(2) expresses its sympathy for the families of the people who were killed, wounded, or imprisoned due to their involvement in the peaceful protests in Tiananmen Square in Beijing, China from June 3 through 4, 1989;

(3) condemns the ongoing human rights abuses by the Government of China;

(4) calls on the Government of China to—

(A) release all prisoners that are—

(i) still in captivity as a result of their involvement in the events from June 3 through 4, 1989, at Tiananmen Square; and

(ii) imprisoned without cause;

(B) allow freedom of speech and access to information, especially information regarding the events at Tiananmen Square in 1989; and

(C) cease all harassment, intimidation, and imprisonment of—

(i) members of religious and minority groups; and

(ii) people who disagree with policies of the Government of China;

(5) supports efforts by free speech activists in China and elsewhere who are working to overcome censorship (including censorship of the Internet) and the chilling effect of censorship; and

(6) urges the President to support peaceful advocates of free speech around the world.

Mr. INHOFE. Mr. President, I rise today to pay tribute to a true American hero, Army Sergeant Schuyler Patch of Owasso, OK, who died on February 24, 2009 serving our Nation in Kandahar, Afghanistan. Schuyler was assigned to the 2nd Squadron, 106th Cavalry Regiment, 33rd Infantry Brigade Combat Team, in the Illinois National Guard, based out of Kewanee, IL.

Schuyler enlisted in the Oklahoma National Guard in March 2005, and volunteered to deploy in 2006 to Afghanistan. In November 2007, he transferred to the Illinois Army National Guard and volunteered a second time to deploy to Afghanistan in support of Operation Enduring Freedom. He was killed alongside four of his fellow Soldiers, when their vehicle was hit by an IED while on a joint patrol with the Afghan National Security Forces. Schuyler leaves behind his father John Patch of Illinois and mother Colleen Stevens of Owasso, Oklahoma. He also leaves behind a sister, Amber Patch and two brothers, Garrett and Seth Patch.

Schuyler was a selfless and courageous Soldier committed to this country and its freedom. His mother, Colleen, said that he died doing what he loved to do; making a difference in the world. She also expressed his love and care for the Afghan children while he was in Afghanistan. Schuyler's sister, Amber said, ''He loved everything about the Army and he believed in everything he was doing over there.'' His aunt, Julie Morland said, ''We are all very proud of him for even going over the first time and then volunteering to go over. It takes a special person to even join the Guard in the first place. To go there and fight as a volunteer, it takes a special person.''

On Schuyler's online Guest Book, I read through some of the things said about his life and character.

Schuyler's cousin wrote, ''Schuyler was not only brave, he was caring and never afraid to show his love for family and friends. A hello was never complete until he gave those he loved a hug . . . the world will be a sadder place without this fun loving, vibrant, kind, generous young man who always made me smile.''

Another friend wrote, ''He was a great guy and no one that ever knew

him will ever forget him. He is sadly missed and that smile of his will never be forgotten.'' Schuyler's mom Colleen also talked about his incredibly warm smile that will be forever in her mind.

A fellow soldier wrote, ''I was proud to have served with [Patch] in Afghanistan in 2006–2007. He was a good guy and liked to make the best of the situation.''

A friend wrote, ''We will all miss him and we all love him very much. He was the kind of guy who could cheer you up on your worst day and the most outgoing person I'll ever know. Thank you Schuyler for all the great memories we had and thank you so much for serving to protect all of us. I love you.''

Captain Jon Prain, a National Guard chaplain who spoke at his funeral, summed up Schuyler's life well when he said, ''He heard freedom's call. He paid freedom's price, so that we all might enjoy the benefits of freedom . . . He was, and always shall be, an American soldier.''

Schuyler lived a life of love for his family, friends, and country. He will be remembered by many for his contagious smile and warm, affectionate personality. I am honored to pay tribute to this true American hero who volunteered to go into the fight and gave the ultimate sacrifice by giving up his life for our freedom.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1230. Mr. JOHANNS (for himself, Mr. INHOFE, Mr. CHAMBLISS, Mr. ISAKSON, Mr. RISCH, Mr. VITTER, Mr. BARRASSO, Mr. MCCAIN, Mr. COBURN , Mr. MCCONNELL, Mr. BOND, Mr. ROBERTS, Mr. HATCH, Mr. MARTINEZ, Mrs. HUTCHISON, Mr. WICKER, Mr. BUNNING, Mr. KYL, Mr. SESSIONS, Mr. DEMINT, Mr. CORNYN, Mr. THUNE, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table.

SA 1231. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1232. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1233. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1234. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1235. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1236. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1237. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1238. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1239. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1240. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1241. Mr. BROWNBACK (for himself, Mr. KYL, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1242. Mr. BAYH (for himself, Ms. MURKOWSKI, Mr. BURRIS, Mr. LIEBERMAN, Mr. WARNER, Mr. WEBB, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1243. Mr. DEMINT (for himself, Mr. KYL, Mr. BUNNING, Mr. MARTINEZ, Mr. JOHANNS, Mr. RISCH, Mr. CRAPO, Mr. MCCONNELL, Mr. BOND, Mr. CORNYN, Mr. CHAMBLISS, Mr. COBURN, Mr. ROBERTS, Mr. INHOFE, Mr. BENNETT, Mr. BURR, and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1244. Mr. BURR (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed by him to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1245. Ms. STABENOW (for herself and Ms. MURKOWSKI) submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1246. Mr. BURR (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, supra.

SA 1247. Mr. DODD proposed an amendment to the bill H.R. 1256, supra.

SA 1248. Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, and Ms. STABENOW) submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table .

SA 1249. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1250. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1251. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1252. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1253. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1254. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1255. Ms. STABENOW (for herself, Mr. BROWNBACK, Ms. MIKULSKI, Mr. VOINOVICH, Mrs. SHAHEEN, Mr. BOND, Mr. BURRIS, Mr. DURBIN, Mr. LEVIN, and Mr. BROWN) submitted an amendment intended to be proposed by her to the bill H.R. 1256, supra; which was ordered to lie on the table.

SA 1256. Mr. SCHUMER (for Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. AKAKA, and Mr. VOINOVICH)) proposed an amendment to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, supra.

TEXT OF AMENDMENTS

SA 1230. Mr. JOHANNS (for himself, Mr. INHOFE, Mr. CHAMBLISS, Mr. ISAKSON, Mr. RISCH, Mr. VITTER Mr. BARRASSO, Mr. MCCAIN, Mr. COBURN, Mr. MCCONNELL, Mr. BOND, Mr. ROBERTS, Mr. HATCH, Mr. MARTINEZ, Mrs. HUTCHISON, Mr. WICKER, Mr. BUNNING, Mr. KYL, Mr. SESSIONS, Mr. DEMINT, Mr. CORNYN, Mr. THUNE, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. CONGRESSIONAL APPROVAL OF CERTAIN TARP EXPENDITURES.

Notwithstanding any other provision of law, including any provision of the Emergency Economic Stabilization Act of 2008, on and after May 29, 2009, no funds may be disbursed or otherwise obligated under that Act to any entity, if such disbursement would result in the Federal Government acquiring any ownership of the common or preferred stock of the entity receiving such funds, unless the Congress first approves of such disbursement or obligation.

SA 1231. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 2.

SA 1232. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 919 of the Federal Food Drug, and Cosmetic Act (as added by section 101), add at the end the following:

''(d) ADJUSTMENTS.—

''(1) INFLATION ADJUSTMENT.—With respect to fiscal years beginning with fiscal year

2020, the amount provided for in subsection (b)(1)(K) for a fiscal year shall be adjusted by the Secretary by notice, published in the Federal Register, by the greater of—

''(A) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items, United States city average), for the 12 month period ending June 30 preceding the fiscal year for which the amount is being adjusted;

''(B) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia; or

''(C) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions, for the first 5 years of the most recent 6-year period ending on September 30 of the year for which such amount is being adjusted.

The adjustment made with respect to each fiscal year under this subsection shall be added on a compounded basis to the sum of all adjustments made for each such fiscal year after fiscal year 2020.

''(2) WORKLOAD ADJUSTMENT.—Beginning with fiscal year 2020, after the amount provided for in subsection (b)(1)(K) is adjusted for a fiscal year in accordance with paragraph (1), the fee revenues shall be further adjusted for such fiscal year to account for changes in the workload of the Secretary in carrying out the responsibilities provided for under this chapter. With respect to such adjustment, the following shall apply:

''(A) The adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of applications under sections 910 and 911 during the previous 12-month period. The Secretary shall publish in the Federal Register the fee revenues and fees resulting from the adjustment and the supporting methodologies.

''(B) Under no circumstances shall the adjustment result in fee revenues for a fiscal year that are less than the fee revenues for fiscal year 2019 (as established under subsection (b)(1)(K)), as adjusted under paragraph (1).''.

SA 1233. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

On page 199, line 10, insert '', except the term shall not include a member of the uniformed services'' before the period.

On page 199, strike lines 15 through 24.

On page 209, line 12, strike all through page 210, line 12.

SA 1234. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. POINT OF ORDER TO KEEP HEALTH PLAN AND CHOICE OF DOCTOR AND TO LIMIT GOVERNMENT MANAGED, RATIONED HEALTH CARE.

(a) IN GENERAL.—In the Senate, it shall not be in order, to consider any bill, joint resolution, amendment, motion, or conference report that—

(1) eliminates the ability of Americans to keep their health plan or their choice of doctor (as determined by the Congressional Budget Office); or

(2) decreases the number of Americans enrolled in private health insurance plans, while increasing the number of Americans enrolled in government-managed, rationed health care (as determined by the Congressional Budget Office).

(b) WAIVER.—This section may be waived or suspended only by an affirmative vote of three-fifths of the Members of the Senate, dully chosen and sworn.

(c) APPEALS.—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

SA 1235. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 907(a)(1) of the Federal Food, Drug, and Cosmetic Act (as added by section 101(b)), add the following:

''(C) CHARACTERIZING FLAVOR.—For purposes of subparagraph (A), the term 'characterizing flavor' means—

''(i) a distinguishable flavor, taste, or aroma imparted by the tobacco product, or any smoke emanating from that product, prior to or during consumption that predominates over the flavor, taste, or aroma of the tobacco; or

''(ii) a distinguishable flavor, taste, or aroma other than tobacco used to advertise or market the tobacco product.

SA 1236. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 4, strike subsection (b) and insert the following:

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take action with regards to tobacco products shall not be construed to affect any authority of the Secretary of Agriculture regarding the growing, cultivation, curing or processing of raw tobacco. Nothing in this Act (or amendments) shall be construed to provide the Food and Drug Administration with any authority regarding the growing, cultivation, curing or processing of raw tobacco.

SA 1237. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 919 of the Federal Food, Drug, and Cosmetic Act (as added by section 101) add the following:

''(f) TOBACCO GROWER GRANT PROGRAM.—

''(1) IN GENERAL.—The Secretary shall use a portion of the amounts collected under this section to award grants to producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, to enable such producers to offset the costs imposed under this chapter.

''(2) APPLICATION.—To be eligible for a grant under paragraph (1), a producer of tobacco leaf shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(3) USE OF FUNDS.—A producer of tobacco leaf shall use amounts received under this subsection to pay the additional expenses associated with compliance by such producer with the requirements of this chapter.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, such sums as may be necessary to carry out this subsection.''.

SA 1238. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 917 of the Federal Food, Drug, and Cosmetic Act (as added by section 101) strike subsections (a) and (b)(1) and insert the following:

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 14-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the 'Advisory Committee').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified

professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

''(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

''(vi) 3 individuals as representatives of the interests of the tobacco growers, with 1 such individual representing flu tobacco, one such individual representing burley tobacco, and one such individual representing dark tobacco.

''(B) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.''.

SA 1239. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. FARMER FEASIBILITY STUDY.

The Secretary of Health and Human Services, acting through the Food and Drug Administration shall conduct a study of the technical, logistical, and economic viability of any standards imposed under the Act (and the amendments made by this Act) on farmers regarding the growing, cultivation, curing, or processing of raw tobacco. Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report concerning the results of such study to the Committee on Agriculture of the Senate and the Committee on Agriculture of the House of Representatives.

SA 1240. Mr. ENZI submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE ___—TOBACCO BUYOUT

SEC. ___01. ESTABLISHMENT OF TOBACCO BUYOUT PROGRAM.

Chapter IX of the Federal Food, Drug, and Cosmetic Act (as added by section 101 and amended by section 301) is further amended by adding at the end the following:

''SEC. 921. ESTABLISHMENT OF TOBACCO BUYOUT PROGRAM.

''(a) IN GENERAL.—The Secretary shall establish a program to require annual reductions in the sale of cigarettes.

''(b) REQUIREMENT.—

''(1) IN GENERAL.—Under the program under subsection (a), each tobacco product manufacturer shall annually certify to the Secretary that—

''(A) with respect to cigarettes made by such manufacturer, the total number of such cigarettes sold during the year for which the certification is submitted is 1 percent less than the total number of such cigarettes sold during the preceding year; or

''(B) such manufacturer has purchased an additional cigarette sales allotment from another manufacturer as provided for in subsection (c).

''(2) INITIAL CERTIFICATION.—With respect to the first year for which a certification is submitted by a tobacco product manufacturer, the 1 percent reduction required under paragraph (1)(A) with respect to the sale of cigarettes shall be determined using the amount of such manufacturer's cigarettes sold in the highest sales year during the preceding 5-year period (as determined by the Secretary).

''(c) ADDITIONAL CIGARETTE SALES ALLOTMENT.—

''(1) IN GENERAL.—A tobacco product manufacturer (referred to in this subsection as the 'contracting manufacturer') to which this section applies may enter into a contract with one or more additional manufacturers (referred to in this subsection as a 'decreased sales manufacturer') to purchase from such manufacturers an additional sales allotment.

''(2) REQUIREMENT.—A contract entered into under paragraph (1) shall—

''(A) require the decreased sales manufacturer to provide for a further reduction in the total number of cigarettes sold during the year involved (beyond that required under subsection (b)(1)) by an amount equal to the additional sales allotment provided for in the contract; and

''(B) permit the contracting manufacturer to increase the total number of cigarettes sold during the year involved by an amount equal to the additional sales allotment provided for in the contract.

''(3) ADDITIONAL SALES ALLOTMENT.—In this subsection, the term 'additional sales allotment' means the number of cigarettes by which the decreased sales manufacturer agrees to further reduce its sales during the year involved.

''(d) ENFORCEMENT.—

''(1) IN GENERAL.—A tobacco product manufacturer that fails to comply with the requirement of subsection (b) for any year shall be subject to a penalty in an amount equal to $2 multiplied by the number of cigarettes by which such manufacturer has failed to comply with such subsection (b). Amounts collected under this paragraph shall be used to carry out paragraph (2).

''(2) TOBACCO USE COUNTER-ADVERTISING.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall carry out a campaign of counter-advertising with respect to tobacco use. The campaign shall consist of the placement of pro-health advertisements regarding tobacco use on television, on radio, in print, on billboards, on movie trailers, on the Internet, and in other media.

''(e) PROCEDURES.—The Secretary shall develop procedures for—

''(1) the submission and verification of certificates under subsection (a);

''(2) the administration and verification of additional cigarette sales allotment contracts under subsection (c); and

''(3) the imposition of penalties under subsection (d).''.

SA 1241. Mr. BROWNBACK (for himself, Mr. KYL, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

DIVISION C—DESIGNATION OF NORTH KOREA AS STATE SPONSOR OF TERRORISM

SEC. 101. FINDINGS.

Congress makes the following findings:

(1) On October 11, 2008, the Department of State removed North Korea from its list of state sponsors of terrorism, on which it had been placed in 1988.

(2) North Korea was removed from that list despite its refusal to account fully for its abduction of foreign citizens, proliferation of nuclear and other dangerous technologies and weapon systems to other state sponsors of terrorism, or its commission of other past acts of terrorism.

(3) On March 17, 2009, American journalists Euna Lee and Laura Ling were abducted near the Chinese-North Korean border by agents of the North Korean government.

(4) The Government of North Korea has announced that these United States citizens will stand trial on June 4, 2009, where they face imprisonment in a North Korean prison camp.

(5) On April 5, 2009, the Government of North Korea tested a long-range ballistic missile in violation of United Nations Security Council Resolutions 1695 and 1718.

(6) After purportedly disabling its Yongbyon nuclear facility in 2008, the Government of North Korea has since announced its re-commissioning.

(7) On April 15, 2009, the Government of North Korea announced it was expelling international inspectors from its Yongbyon nuclear facility and ending its participation in disarmament talks.

(8) On May 25, 2009, the Government of North Korea conducted a second illegal nuclear test, in addition to conducting tests of its ballistic missile systems.

(9) President Barack Obama stated that actions of the Government of North Korea ''are a matter of grave concern to all nations. North Korea's attempts to develop nuclear weapons, as well as its ballistic missile program, constitute a threat to international peace and security. By acting in blatant defiance of the United Nations Security Council, North Korea is directly and recklessly challenging the international community. North Korea's behavior increases tensions and undermines stability in Northeast Asia. Such provocations will only serve to deepen North Korea's isolation. It will not find international acceptance unless it abandons its

pursuit of weapons of mass destruction and their means of delivery.''

SEC. 102. DESIGNATION AS A COUNTRY THAT HAS REPEATEDLY PROVIDED SUPPORT FOR ACTS OF INTERNATIONAL TERRORISM.

(a) DESIGNATION.—The Secretary of State shall designate the Democratic People's Republic of North Korea as a country that has repeatedly provided support for acts of international terrorism for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 40 of the Arms Export Control Act (22 U.S.C. 2780), and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(b) WAIVER AUTHORITY.—The President may waive the requirements under subsection (a) upon certifying to Congress that the Government of North Korea has—

(1) verifiably dismantled its nuclear weapons programs;

(2) ceased all nuclear and missile proliferation activities;

(3) released United States citizens Euna Lee and Laura Ling;

(4) returned the last remains of United States permanent resident, Reverend Kim Dong-shik;

(5) released, or accounted for, all foreign abductees and prisoners of war; and

(6) released all North Korean prisoners of conscience.

SA 1242. Mr. BAYH (for himself, Ms. MURKOWSKI, Mr. BURRIS, Mr. LIEBERMAN, Mr. WARNER, Mr. WEBB, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

DIVISION __—NURSE FACULTY LOAN REPAYMENT PROGRAM

SEC. 1. SHORT TITLE.

This division may be cited as the ''Nurses' Higher Education and Loan Repayment Act of 2009''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Health Resources and Services Administration estimates there is currently a shortage of more than 200,000 registered nurses nationwide and projects the shortage will grow to more than 1,000,000 nurses by 2020, 36 percent less than needed to meet demand for nursing care.

(2) The shortage of qualified nursing faculty is the primary factor driving the inability of nursing schools to graduate more registered nurses to meet the Nation's growing workforce demand.

(3) There continues to be strong interest on the part of young Americans to enter the nursing field. The National League for Nursing estimates that 88,000 qualified applications, or 1 out of every 3 submitted to basic registered nurse programs in 2006, were rejected due to lack of capacity.

(4) The American Association of Colleges of Nursing (in this section referred to as the ''AACN'') estimates that 49,948 applicants were turned away specifically from baccalaureate and graduate schools of nursing in 2008 and over 70 percent of the schools responding to the AACN survey reported a lack of nurse faculty as the number 1 reason for turning away qualified applicants. Likewise, nearly 70 percent of the associate's degree registered nurse programs responding to the most recent American Association of Community Colleges Nursing Survey reported a lack of faculty to teach as the number 1 reason for turning away qualified applicants.

(5) Large numbers of faculty members at schools of nursing in the United States are nearing retirement. According to the AACN, the average age of a nurse faculty member is 55 years old and the average age at retirement is 62.

(6) The current nationwide nurse faculty vacancy rate is estimated to be as high as 7.6 percent, including 814 vacant positions at schools of nursing offering baccalaureate and advanced degrees and, in 2006, as many as 880 in associate's degree programs.

(7) Market forces have created disincentives for individuals qualified to become nurse educators from pursing this career. The average annual salary for an associate professor of nursing with a master's degree is nearly 20 percent less than the average salary for a nurse practitioner with a master's degree, according to the 2007 salary survey by the journal ADVANCE for Nurse Practitioners.

(8) The most recent Health Resources and Services Administration survey data indicates that from a total of more than 2,000,000 registered nurses, only 143,113 registered nurses with a bachelor's degree and only 51,318 registered nurses with an associate's degree have continued their education to earn a master's degree in the science of nursing, the minimum credential necessary to teach in all types of registered nurse programs. The majority of these graduates do not become nurse educators.

(9) Current Federal incentive programs to encourage nurses to become educators are inadequate and inaccessible for many interested nurses.

(10) A broad incentive program must be available to willing and qualified nurses that will provide financial support and encourage them to pursue and maintain a career in nursing education.

SEC. 3. NURSE FACULTY LOAN REPAYMENT PROGRAM.

Part E of title VIII of the Public Health Service Act (42 U.S.C. 297a et seq.) is amended by inserting after section 846A the following new section:

''SEC. 846B. NURSE FACULTY LOAN REPAYMENT PROGRAM.

''(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with eligible individuals for the repayment of education loans, in accordance with this section, to increase the number of qualified nursing faculty.

''(b) AGREEMENTS.—Each agreement entered into under subsection (a) shall require that the eligible individual shall serve as a full-time member of the faculty of an accredited school of nursing for a total period, in the aggregate, of at least 4 years during the 6-year period beginning on the later of—

''(1) the date on which the individual receives a master's or doctorate nursing degree from an accredited school of nursing; or

''(2) the date on which the individual enters into an agreement under subsection (a).

''(c) AGREEMENT PROVISIONS.—Agreements entered into pursuant to subsection (a) shall be entered into on such terms and conditions as the Secretary may determine, except that—

''(1) not more than 300 days after the date on which the 6-year period described under subsection (b) begins, but in no case before the individual starts as a full-time member of the faculty of an accredited school of nursing, the Secretary shall begin making payments, for and on behalf of that individual, on the outstanding principal of, and interest on, any loan the individual obtained to pay for such degree;

''(2) for an individual who has completed a master's degree in nursing—

''(A) payments may not exceed $10,000 per calendar year; and

''(B) total payments may not exceed $40,000; and

''(3) for an individual who has completed a doctorate degree in nursing—

''(A) payments may not exceed $20,000 per calendar year; and

''(B) total payments may not exceed $80,000.

''(d) BREACH OF AGREEMENT.—

''(1) IN GENERAL.—In the case of any agreement made under subsection (a), the individual is liable to the Federal Government for the total amount paid by the Secretary under such agreement, and for interest on such amount at the maximum legal prevailing rate, if the individual fails to meet the agreement terms required under subsection (b).

''(2) WAIVER OR SUSPENSION OF LIABILITY.—In the case of an individual making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such paragraph if compliance by the individual with the agreement involved is impossible or would involve extreme hardship to the individual or if enforcement of the agreement with respect to the individual would be unconscionable.

''(3) DATE CERTAIN FOR RECOVERY.—Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

''(4) AVAILABILITY.—Amounts recovered under paragraph (1) shall be available to the Secretary for making loan repayments under this section and shall remain available for such purpose until expended.

''(e) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section, the term 'eligible individual' means an individual who—

''(1) is a United States citizen, national, or lawful permanent resident;

''(2) holds an unencumbered license as a registered nurse; and

''(3) has either already completed a master's or doctorate nursing program at an accredited school of nursing or is currently enrolled on a full-time or part-time basis in such a program.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2010 through 2014 to carry out this Act. Such sums shall remain available until expended.

''(g) SUNSET.—The provisions of this section shall terminate on December 31, 2020.''.

SA 1243. Mr. DEMINT (for himself, Mr. KYL, Mr. BUNNING, Mr. MARTINEZ, Mr. JOHANNS, Mr. RISCH, Mr. CRAPO, Mr. MCCONNELL, Mr. BOND, Mr. CORNYN, Mr. CHAMBLISS, Mr. COBURN, Mr. ROBERTS, Mr. INHOFE, Mr. BENNETT, Mr. BURR, and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5,

United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. STATE-SPONSOR OF TERRORISM.

The Secretary of State shall consider the Government of the Democratic People's Republic of Korea to have repeatedly provided support for acts of international terrorism, and the Democratic People's Republic of Korea shall be subject to the provisions set forth in section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), and section 6(j) of the Export Administration Act of 1979 (50 App. U.S.C. 2405(j)).

SA 1244. Mr. BURR (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed by him to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Preventing Disease and Death from Tobacco Use Act''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Cigarette smoking is a leading cause of preventable deaths in the United States. Cigarette smoking significantly increases the risk of developing lung cancer, heart disease, chronic bronchitis, emphysema and other serious diseases with adverse health conditions.

(2) The risk for serious diseases is significantly affected by the type of tobacco product and the frequency, duration and manner of use.

(3) No tobacco product has been shown to be safe and without risks. The health risks associated with cigarettes are significantly greater than those associated with the use of smoke-free tobacco and nicotine products.

(4) Nicotine in tobacco products is addictive but is not considered a significant threat to health.

(5) It is the smoke inhaled from burning tobacco which poses the most significant risk of serious diseases.

(6) Quitting cigarette smoking significantly reduces the risk for serious diseases.

(7) Adult tobacco consumers have a right to be fully and accurately informed about the risks of serious diseases, the significant differences in the comparative risks of different tobacco and nicotine-based products, and the benefits of quitting. This information should be based on sound science.

(8) Governments, public health officials, tobacco manufacturers and others share a responsibility to provide adult tobacco consumers with accurate information about the various health risks and comparative risks associated with the use of different tobacco and nicotine products.

(9) Tobacco products should be regulated in a manner that is designed to achieve significant and measurable reductions in the morbidity and mortality associated with tobacco use. Regulations should enhance the information available to adult consumers to permit them to make informed choices, and encourage the development of tobacco and nicotine products with lower risks than cigarettes currently sold in the United States.

(10) The form of regulation should be based on the risks and comparative risks of tobacco and nicotine products and their respective product categories.

(11) The regulation of marketing of tobacco products should be consistent with constitutional protections and enhance an adult consumer's ability to make an informed choice by providing accurate information on the risks and comparative risks of tobacco products.

(12) Reducing the diseases and deaths associated with the use of cigarettes serves public health goals and is in the best interest of consumers and society. Harm reduction should be the critical element of any comprehensive public policy surrounding the health consequences of tobacco use.

(13) Significant reductions in the harm associated with the use of cigarettes can be achieved by providing accurate information regarding the comparative risks of tobacco products to adult tobacco consumers, thereby encouraging smokers to migrate to the use of smoke-free tobacco and nicotine products, and by developing new smoke-free tobacco and nicotine products and other actions.

(14) Governments, public health officials, manufacturers, tobacco producers and consumers should support the development, production, and commercial introduction of tobacco leaf, and tobacco and nicotine-based products that are scientifically shown to reduce the risks associated with the use of existing tobacco products, particularly cigarettes.

(15) Adult tobacco consumers should have access to a range of commercially viable tobacco and nicotine-based products.

(16) There is substantial scientific evidence that selected smokeless tobacco products can satisfy the nicotine addiction of inveterate smokers while eliminating most, if not all, risk of pulmonary and cardiovascular complications of smoking and while reducing the risk of cancer by more than 95 percent.

(17) Transitioning smokers to selected smokeless tobacco products will eliminate environmental tobacco smoke and fire-related hazards.

(18) Current ''abstain, quit, or die'' tobacco control policies in the United States may have reached their maximum possible public health benefit because of the large number of cigarette smokers either unwilling or unable to discontinue their addiction to nicotine.

(19) There is evidence that harm reduction works and can be accomplished in a way that will not increase initiation or impede smoking cessation.

(20) Health-related agencies and organizations, both within the United States and abroad have already gone on record endorsing Harm Reduction as an approach to further reducing tobacco related illness and death.

(21) Current Federal policy requires tobacco product labeling that leaves the incorrect impression that all tobacco product present equal risk.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Tobacco Harm Reduction Center by recognizing it as the primary Federal regulatory authority with respect to tobacco products as provided for in this Act;

(2) to ensure that the Center has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Center to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Center with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) to ensure that consumers are better informed regarding the relative risks for death and disease between categories of tobacco products;

(7) to continue to allow the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote prevention, cessation, and harm reduction policies and regulations to reduce disease risk and the social costs associated with tobacco-related diseases;

(10) to provide authority to the Department of Health and Human Services to regulate tobacco products;

(11) to establish national policies that effectively reduce disease and death associated with cigarette smoking and other tobacco use;

(12) to establish national policies that encourage prevention, cessation, and harm reduction measures regarding the use of tobacco products;

(13) to encourage current cigarette smokers who will not quit to use noncombustible tobacco or nicotine products that have significantly less risk than cigarettes;

(14) to establish national policies that accurately and consistently inform adult tobacco consumers of significant differences in risk between respective tobacco products;

(15) to establish national policies that encourage and assist the development and awareness of noncombustible tobacco and nicotine products;

(16) to coordinate national and State prevention, cessation, and harm reduction programs;

(17) to impose measures to ensure tobacco products are not sold or accessible to underage purchasers; and

(18) to strengthen Federal and State legislation to prevent illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action;

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind; or

(3) be applicable to tobacco products or component parts manufactured in the United States for export.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Administrator to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Administrator to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

SEC. 6. EFFECTIVE DATE.

Except as otherwise specifically provided, the effective date of this Act shall be the date of its enactment.

TITLE I—AUTHORITY OF THE TOBACCO HARM REDUCTION CENTER

SEC. 100. DEFINITIONS.

In this Act:

(1) The term ''Administrator'' means the chief executive of the Tobacco Regulatory Agency (the Agency responsible for administering and enforcing this Act and regulations promulgated pursuant to this Act).

(2) The term ''adult'' means any individual who has attained the minimum age under applicable State law to be an individual to whom tobacco products may lawfully be sold.

(3) The term ''adult-only facility'' means a facility or restricted area, whether open-air or enclosed, where the operator ensures, or has a reasonable basis to believe, that no youth is present. A facility or restricted area need not be permanently restricted to adults in order to constitute an adult-only facility, if the operator ensures, or has a reasonable basis to believe, that no youth is present during any period of operation as an adult-only facility.

(4) The term ''advertising'' means a communication to the general public by a tobacco product manufacturer, distributor, retailer, or its agents, which identifies a tobacco product by brand name and is intended by such manufacturer, distributor, retailer, or its agents to promote purchases of such tobacco product. Such term shall not include—

(A) any advertising or other communication in any tobacco trade publication or tobacco trade promotional material;

(B) the content of any scientific publication or presentation, or any patent application or other communication to the United States Patent and Trademark Office or any similar office in any other country;

(C) any corporate or financial report or financial communication;

(D) any communication to a lending institution or to securities holders;

(E) any communication not intended for public display or public exposure, except that a direct mailing or direct electronic communication of what otherwise is advertising shall be deemed to be advertising;

(F) any communication in, on, or within a factory, office, plant, warehouse, or other facility related to or associated with the development, manufacture, or storage of tobacco products;

(G) any communication to any governmental agency, body, official, or employee;

(H) any communication to any journalist, editor, Internet blogger, or other author;

(I) any communication in connection with litigation, including arbitration and like proceedings; or

(J) any editorial advertisement that addresses a public issue.

(5) The term ''affiliate'' means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. The terms ''owns,'' ''is owned'', and ''ownership'' refer to ownership of an equity interest, or the equivalent thereof, of 50 percent or more.

(6) The term ''Agency'' means the Tobacco Regulatory Agency.

(7) The term ''age-verified adult'' means any individual who is an adult and—

(A) who has stated or acknowledged, after being asked, that he or she is an adult and a tobacco product user, and has presented proof of age identifying the individual and verifying that the individual is an adult; or

(B) whose status as an adult has been verified by a commercially available database of such information.

(8) The term ''annual report'' means a tobacco product manufacturer's annual report to the Agency, which provides ingredient information and nicotine yield ratings for each brand style that tobacco product manufacturer manufactures for commercial distribution domestically.

(9) The term ''brand name'' means a brand name of a tobacco product distributed or sold domestically, alone, or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicium of product identification identical or similar to, or identifiable with, those used for any domestic brand of tobacco product. The term shall not include the corporate name of any tobacco product manufacturer that does not, after the effective date of this Act, sell a brand style of tobacco product in the United States that includes such corporate name.

(10) The term ''brand name sponsorship'' means an athletic, musical, artistic, or other social or cultural event, series, or tour, with respect to which payment is made, or other consideration is provided, in exchange for use of a brand name or names—

(A) as part of the name of the event; or

(B) to identify, advertise, or promote such event or an entrant, participant, or team in such event in any other way.

(11) The term ''brand style'' means a tobacco product having a brand name, and distinguished by the selection of the tobacco, ingredients, structural materials, format, configuration, size, package, product descriptor, amount of tobacco, or yield of ''tar'' or nicotine.

(12) The term ''carton'' means a container into which packages of tobacco products are directly placed for distribution or sale, but does not include cases intended for shipping. Such term includes a carton containing 10 packages of cigarettes.

(13) The term ''cartoon'' means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(A) The use of comically exaggerated features.

(B) The attribution of human characteristics to animals, plants or other objects, or

the similar use of anthropomorphic technique.

(C) The attribution of unnatural or extrahuman abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

The term does not include any drawing or other depiction that, on the effective date of this Act, was in use in the United States in any tobacco product manufacturer's corporate logo or in any tobacco product manufacturer's tobacco product packaging.

(14) The term ''cigar'' has the meaning assigned that term by the Alcohol and Tobacco Tax and Trade Bureau in section 40.11 of title 27, Code of Federal Regulations.

(15) The term ''cigarette'' means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of the appearance of the roll of tobacco, the type of tobacco used in the filler, or its package or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(16) The term ''competent and reliable scientific evidence'' means evidence based on tests, analyses, research, or studies, conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the relevant scientific disciplines to yield accurate and reliable results.

(17) The term ''distributor'' means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the tobacco product to individuals for personal consumption. Common carriers, retailers, and those engaged solely in advertising are not considered distributors for purposes of this Act.

(18) The terms ''domestic'' and ''domestically'' mean within the United States, including activities within the United States involving advertising, marketing, distribution, or sale of tobacco products that are intended for consumption within the United States.

(19) The term ''human image'' means any photograph, drawing, silhouette, statue, model, video, likeness, or depiction of the appearance of a human being, or the appearance of any portion of the body of a human being.

(20) The term ''illicit tobacco product'' means any tobacco product intended for use by consumers in the United States—

(A) as to which not all applicable duties or taxes have been paid in full;

(B) that has been stolen, smuggled, or is otherwise contraband;

(C) that is counterfeit; or

(D) that has or had a label, labeling, or packaging stating, or that stated, that the product is or was for export only, or that it is or was at any time restricted by section 5704 of title 26, United States Code.

(21) The term ''illicit trade'' means any transfer, distribution, or sale in interstate commerce of any illicit tobacco product.

(22) The term ''immediate container'' does not include package liners.

(23) The term ''Indian tribe'' has the meaning assigned that term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(24) The term ''ingredient'' means tobacco and any substance added to tobacco to have an effect in the final tobacco product or when the final tobacco product is used by a consumer.

(25) The term ''International Organization for Standardization (ISO) testing regimen'' means the methods for measuring cigarette smoke yields, as set forth in the most recent version of ISO 3308, entitled ''Routine analytical cigarette-smoking machine—Definition of standard conditions''; ISO 4387, entitled ''Cigarettes—Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine''; ISO 10315, entitled ''Cigarettes—Determination of nicotine in smoke condensates—Gas-chromatographic method''; ISO 10362–1, entitled ''Cigarettes—Determination of water in smoke condensates—Part 1: Gas-chromatographic method''; and ISO 8454, entitled ''Cigarettes—Determination of carbon monoxide in the vapour phase of cigarette smoke—NDIR method''. A cigarette that does not burn down in accordance with the testing regimen standards may be measured under the same puff regimen using the number of puffs that such a cigarette delivers before it extinguishes, plus an additional three puffs, or with such other modifications as the Administrator may approve.

(26) The term ''interstate commerce'' means all trade, traffic, or other commerce—

(A) within the District of Columbia, or any territory or possession of the United States;

(B) between any point in a State and any point outside thereof;

(C) between points within the same State through any place outside such State; or

(D) over which the United States has jurisdiction.

(27) The term ''label'' means a display of written, printed, or graphic matter upon or applied securely to the immediate container of a tobacco product.

(28) The term ''labeling'' means all labels and other written, printed, or graphic matter (1) upon or applied securely to any tobacco product or any of its containers or wrappers, or (2) accompanying a tobacco product.

(29) The term ''little cigar'' has the meaning assigned that term by the Alcohol and Tobacco Tax and Trade Bureau in section 40.11 of title 27, Code of Federal Regulations.

(30) The term ''loose tobacco'' means any form of tobacco, alone or in combination with any other ingredient or material, that, because of its appearance, form, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making or assembling cigarettes, incorporation into pipes, or otherwise used by consumers to make any smoking article.

(31) The term ''manufacture'' means to design, manufacture, fabricate, assemble, process, package, or repackage, label, or relabel, import, or hold or store in a commercial quantity, but does not include—

(A) the growing, curing, de-stemming, or aging of tobacco; or

(B) the holding, storing or transporting of a tobacco product by a common carrier for hire, a public warehouse, a testing laboratory, a distributor, or a retailer.

(32) The term ''nicotine-containing product'' means a product intended for human consumption, other than a tobacco product, that contains added nicotine, whether or not in the form of a salt or solvate, that has been—

(A) synthetically produced, or

(B) obtained from tobacco or other source of nicotine.

(33) The term ''outdoor advertising''—

(A) except as provided in subparagraph (B), means—

(i) billboards;

(ii) signs and placards in arenas, stadiums, shopping malls, and video game arcades (whether any of such are open air or enclosed), but not including any such sign or placard located in an adult-only facility; and

(iii) any other advertisements placed outdoors; and

(B) does not include—

(i) an advertisement on the outside of a tobacco product manufacturing facility; or

(ii) an advertisement that—

(I) is inside a retail establishment that sells tobacco products (other than solely through a vending machine or vending machines);

(II) is placed on the inside surface of a window facing outward; and

(III) is no larger than 14 square feet.

(34) The term ''package'' means a pack, box, carton, pouch, or container of any kind in which a tobacco product or tobacco products are offered for sale, sold, or otherwise distributed to consumers. The term ''package'' does not include an outer container used solely for shipping one or more packages of a tobacco product or tobacco products.

(35) The term ''person'' means any individual, partnership, corporation, committee, association, organization or group of persons, or other legal or business entity.

(36) The term ''proof of age'' means a driver's license or other form of identification that is issued by a governmental authority and includes a photograph and a date of birth of the individual.

(37) The term ''raw tobacco'' means tobacco in a form that is received by a tobacco product manufacturer as an agricultural commodity, whether in a form that is—

(A) natural, stem or leaf;

(B) cured or aged; or (3)

(C) as parts or pieces, but not in a reconstituted form, extracted pulp form, or extract form.

(38) The term ''reduced-exposure claim'' means a statement in advertising or labeling intended for one or more consumers of tobacco products, that a tobacco product provides a reduced exposure of users of that tobacco product to one or more toxicants, as compared to an appropriate reference tobacco product or category of tobacco products. A statement or representation that a tobacco product or the tobacco in a tobacco product contains ''no additives'' or is ''natural'' or that uses a substantially similar term is not a reduced-exposure claim if the advertising or labeling that contains such statement or representation also contains the disclosure required by section 108(h) of this Act.

(39) The term ''reduced-risk claim'' means a statement in advertising or labeling intended for one or more consumers of tobacco products, that a tobacco product provides to users of that product a reduced risk of morbidity or mortality resulting from one or more chronic diseases or serious adverse health conditions associated with tobacco use, as compared to an appropriate reference tobacco product or category of tobacco products, even if it is not stated, represented, or implied that all health risks associated with using that tobacco product have been reduced or eliminated. A statement or representation that a tobacco product or the tobacco in a tobacco product contains ''no additives,'' or is ''natural,'' or that uses a substantially similar term is not a reduced-risk claim if the advertising or labeling that contains such statement or representation also contains the disclosure required by section 108(h).

(40) The term ''retailer'' means any person that—

(A) sells tobacco products to individuals for personal consumption; or

(B) operates a facility where the sale of tobacco products to individuals for personal consumption is permitted.

(41) The term ''sample'' means a tobacco product distributed to members of the public at no cost for the purpose of promoting the

product, but excludes tobacco products distributed—

(A) in conjunction with the sale of other tobacco products;

(B) for market research, medical or scientific study or testing, or teaching;

(C) to persons employed in the trade;

(D) to adult consumers in response to consumer complaints; or

(E) to employees of the manufacturer of the tobacco product.

(42) The term ''small business'' means a tobacco product manufacturer that—

(A) has 150 or fewer employees; and

(B) during the 3-year period prior to the current calendar year, had an average annual gross revenue from tobacco products that did not exceed $40,000,000.

(43) The term ''smokeless tobacco product'' means any form of finely cut, ground, powdered, reconstituted, processed or shaped tobacco, leaf tobacco, or stem tobacco, whether or not combined with any other ingredient, whether or not in extract or extracted form, and whether or not incorporated within any carrier or construct, that is intended to be placed in the oral or nasal cavity, including dry snuff, moist snuff, and chewing tobacco.

(44) The term ''smoking article'' means any tobacco-containing article that is intended, when used by a consumer, to be burned or otherwise to employ heat to produce a vapor, aerosol or smoke that—

(A) incorporates components of tobacco or derived from tobacco; and

(B) is intended to be inhaled by the user.

(45) The term ''State'' means any State of the United States and, except as otherwise specifically provided, includes any Indian tribe or tribal organization, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Atoll, the Northern Marianas, and any other trust territory or possession of the United States.

(46) The term ''tar'' means nicotine-free dry particulate matter as defined in ISO 4387, entitled ''Cigarettes—Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine''.

(47) The term ''tobacco'' means a tobacco plant or any part of a harvested tobacco plant intended for use in the production of a tobacco product, including leaf, lamina, stem, or stalk, whether in green, cured, or aged form, whether in raw, treated, or processed form, and whether or not combined with other materials, including any by-product, extract, extracted pulp material, or any other material (other than purified nicotine) derived from a tobacco plant or any component thereof, and including strip, filler, stem, powder, and granulated, blended, or reconstituted forms of tobacco.

(48) The term ''tobacco product'' means—

(A) the singular of ''tobacco products'' as defined in section 5702(c) of the Internal Revenue Code of 1986;

(B) any other product that contains tobacco as a principal ingredient and that, because of its appearance, type, or the tobacco used in the product, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a tobacco product as described in subparagraph (A); and

(C) any form of tobacco or any construct incorporating tobacco, intended for human consumption, whether by—

(i) placement in the oral or nasal cavity;

(ii) inhalation of vapor, aerosol, or smoke; or

(iii) any other means.

(49) The term ''tobacco product category'' means a type of tobacco product characterized by its composition, components, and intended use, and includes tobacco products classified as cigarettes, loose tobacco for roll-your-own tobacco products, little cigars, cigars, pipe tobacco, moist snuff, dry snuff, chewing tobacco, and other forms of tobacco products (which are treated in this Act collectively as a single category).

(50) The term ''tobacco product communication'' means any means, medium, or manner for providing information relating to any tobacco product, including face-to-face interaction, mailings by postal service or courier to an individual who is an addressee, and electronic mail to an individual who is an addressee.

(51) The term ''tobacco product manufacturer'' means an entity that directly—

(A) manufactures anywhere a tobacco product that is intended to be distributed commercially in the United States, including a tobacco product intended to be distributed commercially in the United States through an importer;

(B) is the first purchaser for resale in the United States of tobacco products manufactured outside the United States for distribution commercially in the United States; or

(C) is a successor or assign of any of the foregoing.

(52) The term ''toxicant'' means a chemical or physical agent that produces an adverse biological effect.

(53) The term ''transit advertisements'' means advertising on or within private or public vehicles and all advertisements placed at, on, or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar location.

(54) The term ''tribal organization'' has the meaning assigned that term in section 4(1) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(1)).

(55) The term ''United States'' means the several States, as defined in this Act.

(56) The term ''vending machine'' means any mechanical, electric, or electronic self-service device that, upon insertion of money, tokens, or any other form of payment, automatically dispenses tobacco products.

(57) The term ''video game arcade'' means an entertainment establishment primarily consisting of video games (other than video games intended primarily for use by adults) or pinball machines.

(58) The term ''youth'' means any individual who in not an adult.

SEC. 101. CENTER AUTHORITY OVER TOBACCO PRODUCTS.

(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 117, shall be regulated by the Administrator under this Act.

(b) APPLICABILITY.—This Act shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Administrator by regulation deems to be subject to this Act.

(c) CENTER.—The Secretary of Health and Human Services shall establish within the Department of Health and Human Services the Tobacco Harm Reduction Center. The head of the Center shall be an Administrator, who shall assume the statutory authority conferred by this Act, perform the functions that relate to the subject matter of this Act, and have the authority to promulgate regulations for the efficient enforcement of this Act. In promulgating any regulations under such authority, in whole or in part or any regulation that is likely to have an annual effect on the economy of $50,000,000 or more or have a material adverse effect on adult users of tobacco products, tobacco product manufacturers, distributors, or retailers, the Administrator shall—

(1) determine the technological and economic ability of parties that would be required to comply with the regulation to comply with it;

(2) consider experience gained under any relevantly similar regulations at the Federal or State level;

(3) determine the reasonableness of the relationship between the costs of complying with such regulation and the public health benefits to be achieved by such regulation;

(4) determine the reasonable likelihood of measurable and substantial reductions in morbidity and mortality among individual tobacco users;

(5) determine the impact to United States tobacco producers and farm operations;

(6) determine the impact on the availability and use of tobacco products by minors; and

(7) determine the impact on illicit trade of tobacco products.

(d) LIMITATION OF AUTHORITY.—

(1) IN GENERAL.—The provisions of this Act shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Center have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

(2) EXCEPTION.—Notwithstanding paragraph (1), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this Act in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to grant the Administrator authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof.

(e) RULEMAKING PROCEDURES.—Each rulemaking under this Act shall be in accordance with chapter 5 of title 5, United States Code.

(f) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this Act, the Administrator shall endeavor to consult with other Federal agencies as appropriate.

SEC. 102. EXCLUSION OF OTHER REGULATORY PROGRAMS.

(a) EXCLUSION OF TOBACCO PRODUCTS AND NICOTINE-CONTAINING PRODUCTS FROM THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.—No tobacco product and no nicotine-containing product shall be regulated as a food, drug, or device in accordance with section 201 (f), (g) or (h) or Chapter IV or V of the Federal Food, Drug, and Cosmetic Act, except that any tobacco product commercially distributed domestically and any nicotine-containing product commercially distributed domestically shall be subject to Chapter V of the Federal Food, Drug, and Cosmetic Act if the manufacturer or a distributor of such product markets it with an explicit claim that the product is intended for use in the cure, mitigation, treatment, or prevention of disease in man or other animals, within the meaning of section 201(g)(1)(C) or section 201(h)(2) of that Act.

(b) LIMITATION ON EFFECT OF THIS ACT.—Nothing in this Act shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in any Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(c) EXCLUSIONS FROM AUTHORITY OF ADMINISTRATOR.—The authority granted to the Administrator under this Act shall not apply to—

(1) raw tobacco that is not in the possession or control of a tobacco product manufacturer;

(2) raw tobacco that is grown for a tobacco product manufacturer by a grower, and that is in the possession of that grower or of a person that is not a tobacco product manufacturer and is within the scope of subparagraphs (A) through(F) of paragraph (3); or

(3) the activities, materials, facilities, or practices of persons that are not tobacco product manufacturers and that are—

(A) producers of raw tobacco, including tobacco growers;

(B) tobacco warehouses, and other persons that receive raw tobacco from growers;

(C) tobacco grower cooperatives;

(D) persons that cure raw tobacco;

(E) persons that process raw tobacco; and

(F) persons that store raw tobacco for aging.

If a producer of raw tobacco is also a tobacco product manufacturer, an affiliate of a tobacco product manufacturer, or a person producing raw tobacco for a tobacco product manufacturer, then that producer shall be subject to this Act only to the extent of that producer's capacity as a tobacco product manufacturer.

SEC. 103. EXISTING FEDERAL STATUTES MAINTAINED.

Except as amended or repealed by this Act, all Federal statutes in effect as of the effective date of this Act that regulate tobacco, tobacco products, or tobacco product manufacturers shall remain in full force and effect. Such statutes include, without limitation—

(1) the Federal Cigarette Labeling and Advertising Act, sections 1331–1340 of title 15, United States Code, except that section 1335 of title 15, United States Code, is repealed;

(2) the Comprehensive Smokeless Tobacco Health Education Act of 1986, sections 4401–4408 of title 15, United States Code, except that section 4402(f) of title 15, United States Code, is repealed;

(3) section 300x–26 of title 42, United States Code; and

(4) those statutes authorizing regulation of tobacco, tobacco products, or tobacco product manufacturers by the Federal Trade Commission, the Department of Agriculture, the Environmental Protection Agency, the Internal Revenue Service, and the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

SEC. 104. PROCEEDINGS IN THE NAME OF THE UNITED STATES; SUBPOENAS; PREEMPTION OF STATE AND LOCAL LAW; NO PRIVATE RIGHT OF ACTION.

In furtherance of this Act:

(1) All proceedings for the enforcement, or to restrain violations, of this Act shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any proceeding under this section. No State, or political subdivision thereof, may proceed or intervene in any Federal or State court under this Act or under any regulation promulgated under it, or allege any violation thereof except a violation by the Administrator. Nothing in this Act shall be construed to create a right of action by any private person for any violation of any provision of this Act or of any regulation promulgated under it.

(2) With respect to any subject matter addressed by this Act or by any regulation promulgated under it, no requirement or prohibition shall be imposed under State or local law upon any tobacco product manufacturer or distributor.

(3) Paragraph (2) shall not apply to any requirement or prohibition imposed under State or local law before the date of introduction of the bill that was enacted as this Act.

SEC. 105. ADULTERATED TOBACCO PRODUCTS.

A tobacco product shall be deemed to be adulterated—

(1) if it bears or contains any poisonous or deleterious substance other than—

(A) tobacco;

(B) a substance naturally present in tobacco;

(C) a pesticide or fungicide chemical residue in or on tobacco if such pesticide or fungicide chemical is registered by the Environmental Protection Agency for use on tobacco in the United States; or

(D) in the case of imported tobacco, a residue of a pesticide or fungicide chemical that—

(i) is approved for use in the country of origin of the tobacco; and

(ii) has not been banned, and the registration of which has not been canceled, by the Environmental Protection Agency for use on tobacco in the United States) that may render it injurious to health; but, in case the substance is not an added substance, such tobacco product shall not be considered adulterated under this subsection if the quantity of such substance in such tobacco product does not ordinarily render it injurious to health;

(2) if there is significant scientific agreement that, as a result of the tobacco it contains, the tobacco product presents a risk to human health that is materially higher than the risk presented by—

(A) such product on the effective date of this Act; or

(B) if such product was not distributed commercially domestically on that date, by comparable tobacco products of the same style and within the same category that were commercially distributed domestically on that date;

(3) if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth;

(4) if its package is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health; or

(5) if its ''tar'' yield is in violation of section 111.

SEC. 106. MISBRANDED TOBACCO PRODUCTS.

A tobacco product shall be deemed to be misbranded—

(1) if its labeling is false or misleading in any particular;

(2) if in package form unless it bears a label containing—

(A) an identification of the type of product it is, by the common or usual name of such type of product;

(B) an accurate statement of the quantity of the contents in the package in terms of weight, measure, or numerical count, except that reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations promulgated by the Administrator;

(C) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

(D) the information required by section 201(c) and (e) or section 202(c) and (e), as applicable;

(3) if any word, statement, or other information required by or under authority of this Act to appear on the label, labeling, or advertising is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs on the label, labeling, or advertising, as applicable) and in such terms as to render it reasonably likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) if any word, statement, or other information is required by or under this Act to appear on the label, unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such tobacco product, or is easily legible through the outside container or wrapper;

(5) if it was manufactured, prepared, or processed in an establishment not duly registered under section 109, if it was not included in a list required by section 109, or if a notice or other information respecting it was not provided as required by section 109;

(6) if its packaging, labeling, or advertising is in violation of this Act or of an applicable regulation promulgated in accordance with this Act;

(7) if it contains tobacco or another ingredient as to which a required disclosure under this Act was not made;

(8) if it is labeled or advertised, or the tobacco contained in it is advertised, as—

(A) containing ''no additives,'' or any substantially similar term, unless the labeling or advertising, as applicable, also contains, clearly and prominently, the following disclosure: ''No additives in our tobacco does NOT mean safer.''; or

(B) being ''natural,'' or any substantially similar term, unless the labeling or advertising, as applicable, also contains, clearly and prominently, the following disclosure: ''Natural does NOT mean safer.'';

(9) if in its labeling or advertising a term descriptive of the tobacco in the tobacco product is used otherwise than in accordance with a sanction or approval granted by a Federal agency;

(10) if with respect to such tobacco product a disclosure required by section 603 was not made;

(11) if with respect to such tobacco product a certification required by section 803 was not submitted or is materially false or misleading; or

(12) if its manufacturer or distributor made with respect to it a claim prohibited by section 115.

SEC. 107. SUBMISSION OF HEALTH INFORMATION TO THE ADMINISTRATOR.

(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Administrator the following information:

(1) Not later than 18 months after the date of enactment of the Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and brand style.

(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Administrator in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

(3) Beginning 4 years after the date of enactment of this Act, a listing of all constituents, including smoke constituents as applicable, identified by the Administrator as harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand.

(b) DATA SUBMISSION.—At the request of the Administrator, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a significant reduction in risk to health from tobacco products can occur upon the employment of technology available to the manufacturer.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

(c) DATA LIST.—

(1) IN GENERAL.—Not later than 4 years after the date of enactment of the Act, and annually thereafter, the Administrator shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Administrator) the list established under subsection (d).

(2) CONSUMER RESEARCH.—The Administrator shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Act, the Administrator shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

(d) DATA COLLECTION.—Not later than 36 months after the date of enactment of this Act, the Administrator shall establish, and periodically revise as appropriate, a list of harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand.

SEC. 108. REGISTRATION AND LISTING.

(a) DEFINITIONS.—As used in this section:

(1) The term ''manufacture, preparation, or processing'' shall include repackaging or otherwise changing the container, wrapper, or label of any tobacco product package other than the carton in furtherance of the distribution of the tobacco product from the original place of manufacture to the person that makes final delivery or sale to the ultimate consumer or user, but shall not include the addition of a tax marking or other marking required by law to an already packaged tobacco product.

(2) The term ''name'' shall include in the case of a partnership the name of the general partner and, in the case of a privately held corporation, the name of the chief executive officer of the corporation and the State of incorporation.

(b) ANNUAL REGISTRATION.—Commencing one year after enactment, on or before December 31 of each year, every person that owns or operates any establishment in any State engaged in the manufacture, preparation, or processing of a tobacco product or products for commercial distribution domestically shall register with the Administrator its name, places of business, and all such establishments.

(c) NEW PRODUCERS.—Every person upon first engaging, for commercial distribution domestically, in the manufacture, preparation, or processing of a tobacco product or products in any establishment that it owns or operates in any State shall immediately register with the Administrator its name, places of business, and such establishment.

(d) REGISTRATION OF FOREIGN ESTABLISHMENTS.—

(1) Commencing one year after enactment of this Act, on or before December 31 of each year, the person that, within any foreign country, owns or operates any establishment engaged in the manufacture, preparation, or processing of a tobacco product that is imported or offered for import into the United States shall, through electronic means or other means permitted by the Administrator, register with the Administrator the name and place of business of each such establishment, the name of the United States agent for the establishment, and the name of each importer of such tobacco product in the United States that is known to such person.

(2) Such person also shall provide the information required by subsection (j), including sales made by mail, or through the Internet, or other electronic means.

(3) The Administrator is authorized to enter into cooperative arrangements with officials of foreign countries to ensure that adequate and effective means are available for purposes of determining, from time to time, whether tobacco products manufactured, prepared, or processed by an establishment described in paragraph (1), if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 708.

(e) ADDITIONAL ESTABLISHMENTS.—Every person duly registered in accordance with the foregoing subsections of this section shall immediately register with the Administrator any additional establishment that it owns or operates and in which it begins the manufacture, preparation, or processing of a tobacco product or products for commercial distribution domestically or for import into the United States.

(f) EXCLUSIONS FROM APPLICATION OF THIS SECTION.—The foregoing subsections of this section shall not apply to—

(1) persons that manufacture, prepare, or process tobacco products solely for use in research, teaching, chemical or biological analysis, or export; or

(2) such other classes of persons as the Administrator may by regulation exempt from the application of this section upon a finding that registration by such classes of persons in accordance with this section is not necessary for the protection of the public health.

(g) INSPECTION OF PREMISES.—Every establishment registered with the Administrator pursuant to this section shall be subject to inspection pursuant to section 706; and every such establishment engaged in the manufacture, preparation, or processing of a tobacco product or products shall be so inspected by one or more officers or employees duly designated by the Administrator at least once in the two-year period beginning with the date of registration of such establishment pursuant to this section and at least once in every successive two-year period thereafter, except that inspection of establishments outside the United States may be conducted by other personnel pursuant to a cooperative arrangement under subsection (d)(3).

(h) FILING OF LISTS OF TOBACCO PRODUCTS MANUFACTURED, PREPARED, OR PROCESSED BY REGISTRANTS; STATEMENTS; ACCOMPANYING DISCLOSURES.—

(1) Every person that registers with the Administrator under subsection (b), (c), (d), or (e) shall, at the time of registration under any such subsection, file with the Administrator a list of all brand styles (with each brand style in each list listed by the common or usual name of the tobacco product category to which it belongs and by any proprietary name) that are being manufactured, prepared, or processed by such person for commercial distribution domestically or for import into the United States, and that such person has not included in any list of tobacco products filed by such person with the Administrator under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Administrator may prescribe, and shall be accompanied by the label for each such brand style and a representative sampling of any other labeling and advertising for each;

(2) Each person that registers with the Administrator under this section shall report to the Administrator each August for the preceding six-month period from January through June, and each February for the preceding six-month period form July through December, following information:

(A) A list of each brand style introduced by the registrant for commercial distribution domestically or for import into the United States that has not been included in any list previously filed by such registrant with the Administrator under this subparagraph or paragraph (1). A list under this subparagraph shall list a brand style by the common or usual name of the tobacco product category to which it belongs and by any proprietary name, and shall be accompanied by the other information required by paragraph (1).

(B) If since the date the registrant last made a report under this paragraph (or if such registrant has not previously made a report under this paragraph, since the effective date of this Act) such registrant has discontinued the manufacture, preparation, or processing for commercial distribution domestically or for import into the United States of a brand style included in a list filed by such registrant under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity (by the common or usual name of the tobacco product category to which it belongs and by any proprietary name) of such tobacco product.

(C) If, since the date the registrant reported pursuant to subparagraph (B) a notice of discontinuance of a tobacco product, the registrant has resumed the manufacture, preparation, or processing for commercial distribution domestically or for import into the United States of that brand style, notice of such resumption, the date of such resumption, the identity of such brand style (by the common or usual name of the tobacco product category to which it belongs and by any proprietary name), and the other information required by paragraph (1), unless the registrant has previously reported such resumption to the Administrator pursuant to this subparagraph.

(D) Any material change in any information previously submitted pursuant to this paragraph (2) or paragraph (1).

(i) ELECTRONIC REGISTRATION.—Registrations under subsections (b), (c), (d), and (e) (including the submission of updated information) shall be submitted to the Administrator by electronic means, unless the Administrator grants a request for waiver of such requirement because use of electronic means is not reasonable for the person requesting such waiver.

SEC. 109. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

(a) IN GENERAL.—Any requirement established by or under section 106, 107, or 113 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 111, section 114, section 115, or subsection (d) of this section, and any requirement established by or under section 106, 107, or 113 which is inconsistent with a requirement imposed on such tobacco product under

section 111, section 114, section 115, or subsection (d) of this section shall not apply to such tobacco product.

(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 111, 112, 113, 114, or 115 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Administrator by a notice published in the Federal Register stating good cause therefore.

(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Administrator or the Administrator's representative under section 107, 108, 111, 112, 113, 114, 115, or 504, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(d) RESTRICTIONS.—

(1) IN GENERAL.—The Administrator may issue regulations, consistent with this Act, regarding tobacco products if the Administrator determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the users of the tobacco product, and taking into account that the standard is reasonably likely to result in measurable and substantial reductions in morbidly and mortality among individual tobacco users.

(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Administrator may in such regulation prescribe.

(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Administrator shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this Act. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues after a tolerance for such chemical residues has been established.

(B) REQUIREMENTS.—The Administrator shall—

(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices but no earlier than four years from date of enactment.

(C) ADDITIONAL SPECIAL RULE.—A tobacco product manufactured in or imported into the United States shall not contain foreign-grown flue-cured or burley tobacco that—

(i) was knowingly grown or processed using a pesticide chemical that is not approved under applicable Federal law for use in domestic tobacco farming and processing; or

(ii) in the case of a pesticide chemical that is so approved, was grown or processed using the pesticide chemical in a manner inconsistent with the approved labeling for use of the pesticide chemical in domestic tobacco farming and processing.

(D) EXCLUSION.—Subparagraph (C)(ii) shall not apply to tobacco products manufactured with foreign-grown flue-cured or burley tobacco so long as that foreign grown tobacco was either—

(i) in the inventory of a manufacturer prior to the effective date, or

(ii) planted by the farmer prior to the effective date of this Act and utilized by the manufacturer no later than 3 years after the effective date.

(E) SETTING OF MAXIMUM RESIDUE LIMITS.—The Administrator shall adopt the following pesticide residue standards:

Pesticide residue standards

The maximum concentration of residues of the following pesticides allowed in flue-cured or burley tobacco, expressed as parts by weight of the residue per one million parts by weight of the tobacco (PPM) are:

CHLORDANE.....3.0

DIBROMOCHLOROPROPANE (DBCP).....1.0

DICAMBA (Temporary).... 5.0

ENDRIN....0.1

ETHYLENE DIBROMIDE (EDB)....0.1

FORMOTHION.....0.5

HEXACHLOROBENZENE (HCB)....0.1

METHOXYCHLOR.....0.1

TOXAPHENE.....0.3

2,4-D (Temporary).....5.0

2,4,5-T.....0.1

Sum of ALDRIN and DIELDRIN.....0.1

Sum of CYPERMETHRIN and PERMETHRIN (Temporary).....3.0

Sum of DDT, TDE (DDD), and DDE 0.4

Sum of HEPTACHLOR and HEPTACHLOR EPOXIDE.....0.1

(F) MAXIMUM RESIDUE LIMITS.—The Administrator shall adopt regulations within one year of the effective date of this Act to establish maximum residue limits for pesticides identified under subparagraph (E) but not included in the table of such subparagraph to account for the fact that weather and agronomic conditions will cause pesticides identified in subparagraph (E) to be detected in foreign-grown tobacco even where the farmer has not knowingly added such pesticide.

(2) EXEMPTIONS; VARIANCES.—

(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Administrator for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Administrator in such form and manner as the Administrator shall prescribe and shall—

(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this Act;

(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

(iii) contain such other information as the Administrator shall prescribe.

(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Administrator may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Administrator with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

(i) the date the petition was submitted to the Administrator under subparagraph (A); or

(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Administrator shall by order either deny the petition or approve it.

(C) APPROVAL.—The Administrator may approve—

(i) a petition for an exemption for a tobacco product from a requirement if the Administrator determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this Act; and

(ii) a petition for a variance for a tobacco product from a requirement if the Administrator determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this Act.

(D) CONDITIONS.—An order of the Administrator approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this Act.

(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of this Act.

(f) RESEARCH AND DEVELOPMENT.—The Administrator may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

SEC. 110. SMOKING ARTICLE STANDARDS.

(a) IN GENERAL.—

(1) RESTRICTIONS ON DESCRIPTORS USED IN MARKETING OF CIGARETTES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall use, with respect to any cigarette brand style commercially distributed domestically, on the portion of the package of such cigarette brand style that customarily is visible to consumers before purchase, or in advertising of such cigarette brand style any of the following as a descriptor of any cigarette brand style—

(i) the name of any candy or fruit;

(ii) the word ''candy,'' ''citrus,'' ''cream,'' ''fruit,'' ''sugar,'' ''sweet,'' ''tangy,'' or ''tart,''; or

(iii) any extension or variation of any of the words ''candy,'' ''citrus,'' ''cream,'' ''fruit,'' ''sugar,'' ''sweet,'' ''tangy,'' or ''tart,'' including but not limited to ''creamy,'' or ''fruity.''

(B) LIMITATION.—Subparagraph (A) shall not apply to the use of the following words or to any extension or variation of any of them: ''clove'' and ''menthol''.

(C) SCENTED MATERIALS.—No person shall use, in the advertising or labeling of any cigarette commercially distributed domestically, any scented materials, except in an adult-only facility.

(D) DEFINITIONS.—In this section:

(i) The term ''candy'' means a confection made from sugar or sugar substitute, including any confection identified generically or by brand, and shall include the words ''cacao,'' ''chocolate,'' ''cinnamon,'' ''cocoa,'' ''honey,'' ''licorice,'' ''maple,'' ''mocha,'' and ''vanilla.''

(ii) The term ''fruit'' means any fruit identified by generic name, type, or variety, including but not limited to ''apple,'' ''banana,'' ''cherry,'' and ''orange.'' The term ''fruit'' does not include words that identify seeds, nuts or peppers, or types or varieties thereof or words that are extensions or variations of such words.

(2) SMOKING ARTICLE STANDARDS.—

(A) IN GENERAL.—The Administrator may adopt smoking article standards in addition to those in paragraph (1) if the Administrator finds that a smoking article standard is appropriate for the protection of the public health.

(B) DETERMINATIONS.—

(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Administrator shall consider scientific evidence concerning—

(I) the risks and benefits to the users of smoking articles of the proposed standard; and

(II) that the standard is reasonably likely to result in measurable and substantial reductions in morbidity and mortality among individual tobacco users.

(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Administrator makes a determination, set forth in a proposed smoking article standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a smoking article because the Administrator has found that the additive, constituent, or other component is harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Administrator's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

(3) CONTENT OF SMOKING ARTICLE STANDARDS.—A smoking article standard established under this section for a smoking article—

(A) may include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

(i) for ''tar'' and nicotine yields of the product;

(ii) for the reduction of other constituents, including smoke constituents, or harmful components of the product; or

(iii) relating to any other requirement under subparagraph (B); and

(B) may, where appropriate for the protection of the public health, include—

(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the smoking article;

(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the smoking article;

(iii) provisions for the measurement of the smoking article characteristics of the smoking article; and

(iv) provisions requiring that the results of each or of certain of the tests of the smoking article required to be made under clause (ii) show that the smoking article is in conformity with the portions of the standard for which the test or tests were required.

(4) PERIODIC REEVALUATION OF SMOKING ARTICLE STANDARDS.—The Administrator may provide for periodic evaluation of smoking article standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data.

(5) CIGARETTE ''TAR'' LIMITS.—

(A) NO INCREASE IN ''TAR'' YIELDS.—No cigarette manufacturer shall distribute for sale domestically a brand style of cigarettes that generates a ''tar'' yield greater than the ''tar'' yield of that brand style of cigarettes on the date of introduction of this Act, as determined by the ISO smoking regimen and its associated tolerances. The ''tar'' tolerances for cigarettes with ISO ''tar'' yields in the range of 1 to 20 milligrams per cigarette, based on variations arising from sampling procedure, test method, and sampled product, itself, are the greater of plus or minus—

(i) 15 percent; or

(ii) 1 milligram per cigarette.

(B) LIMIT ON NEW CIGARETTES.—After the effective date of this Act, no cigarette manufacturer shall manufacture for commercial distribution domestically a brand style of cigarettes that both—

(i) was not in commercial distribution domestically on the effective date of this Act, and

(ii) generates a ''tar'' yield of greater than 20 milligrams per cigarette as determined by the ISO smoking regimen and its associated tolerances.

(C) LIMIT ON ALL CIGARETTES.—After December 31, 2010, no cigarette manufacturer shall manufacture for commercial distribution domestically a brand style of cigarettes that generates a ''tar'' yield greater than 20 milligrams per cigarette as determined by the ISO smoking regimen and its associated tolerances.

(D) REVIEW BY ADMINISTRATOR.—After the effective date of this Act, the Administrator shall evaluate the available scientific evidence addressing the potential relationship between historical ''tar'' yield values and risk of harm to smokers. If upon a review of that evidence, and after consultation with technical experts of the Tobacco Harm Reduction Center and the Centers for Disease Control and Prevention and notice and an opportunity for public comment, the Administrator determines, that a reduction in ''tar'' yield may reasonably be expected to provide a meaningful reduction of the risk or risks of harm to smokers, the Administrator shall issue an order that—

(i) provides that no cigarette manufacturer shall manufacture for commercial distribution domestically a cigarette that generates a ''tar'' yield that exceeds 14 milligrams as determined by the ISO smoking regimen and its associated tolerances; and

(ii) provides a reasonable time for manufacturers to come into compliance with such prohibition.

(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Administrator shall endeavor to—

(A) use personnel, facilities, and other technical support available in other Federal agencies;

(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Administrator's judgment can make a significant contribution.

(b) CONSIDERATIONS BY ADMINISTRATOR.—

(1) TECHNICAL ACHIEVABILITY.—The Administrator shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

(2) OTHER CONSIDERATIONS.—The Administrator shall consider all other information submitted in connection with a proposed standard, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this Act and the significance of such demand.

(c) PROPOSED STANDARDS.—

(1) IN GENERAL.—The Administrator shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any smoking article standard.

(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a smoking article standard shall—

(A) set forth a finding with supporting justification that the smoking article standard is appropriate for the protection of the public health;

(B) invite interested persons to submit a draft or proposed smoking article standard for consideration by the Administrator;

(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed smoking article standard.

(3) FINDING.—A notice of proposed rulemaking for the revocation of a smoking article standard shall set forth a finding with supporting justification that the smoking article standard is no longer appropriate for the protection of the public health.

(4) COMMENT.—The Administrator shall provide for a comment period of not less than 90 days.

(d) PROMULGATION.—

(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, if the Administrator determines that the standard would be appropriate for the

protection of the public health, the Administrator shall—

(A) promulgate a regulation establishing a smoking article standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

(2) EFFECTIVE DATE.—A regulation establishing a smoking article standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Administrator determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Administrator shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard.

(3) LIMITATION ON POWER GRANTED.—Because of the importance of a decision of the Administrator to issue a regulation—

(A) banning cigarettes, smokeless smoking articles, little cigars, cigars other than little cigars, pipe tobacco, or roll-your-own smoking articles;

(B) requiring the reduction of ''tar'' or nicotine yields of a smoking article to zero;

(C) prohibiting the sale of any smoking article in face-to-face transactions by a specific category of retail outlets;

(D) establishing a minimum age of sale of smoking articles to any person older than 18 years of age; or

(E) requiring that the sale or distribution of a smoking article be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products,

the Administrator is prohibited from taking such actions under this Act.

(4) MATCHBOOKS.—For purposes of any regulations issued by the Administrator under this Act, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of smoking articles, shall be considered as adult-written publications which shall be permitted to contain advertising.

(5) AMENDMENT; REVOCATION.—

(A) AUTHORITY.—The Administrator, upon the Administrator's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a smoking article standard.

(B) EFFECTIVE DATE.—The Administrator may declare a proposed amendment of a smoking article standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Administrator determines that making it so effective is in the public interest.

(6) REFERRAL TO ADVISORY COMMITTEE.—

(A) IN GENERAL.—The Administrator shall refer a proposed regulation for the establishment, amendment, or revocation of a smoking article standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

(B) INITIATION OF REFERRAL.—The Administrator shall make a referral under this paragraph—

(i) on the Administrator's own initiative; or

(ii) upon the request of an interested person that—

(I) demonstrates good cause for the referral; and

(II) is made before the expiration of the period for submission of comments on the proposed regulation.

(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Administrator shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 90 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Administrator and other data and information before it, submit to the Administrator a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

(E) PUBLIC AVAILABILITY.—The Administrator shall make a copy of each report and recommendation under subparagraph (D) publicly available.

SEC. 111. NOTIFICATION AND OTHER REMEDIES.

(a) NOTIFICATION.—If the Administrator determines that—

(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm materially above the risk for death and disease of tobacco products currently in interstate commerce, to the public health; and

(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this Act (other than this section) to eliminate such risk,

the Administrator may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Administrator may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Administrator shall consult with the persons who are to give notice under the order.

(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

(c) RECALL AUTHORITY.—

(1) IN GENERAL.—If the Administrator finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, acute adverse health consequences or death, the Administrator shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Administrator determines that inadequate grounds exist to support the actions required by the order, the Administrator shall vacate the order.

(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Administrator determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Administrator shall, except as provided in subparagraph (B), amend the order to require a recall. The Administrator shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Administrator describing the progress of the recall.

(B) NOTICE.—An amended order under subparagraph (A)—

(i) shall not include recall of a tobacco product from individuals; and

(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Administrator may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Administrator shall notify such persons under section 705(b).

(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

SEC. 112. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Administrator may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded.

SEC. 113. APPLICATION FOR REVIEW OF CERTAIN SMOKING ARTICLES.

(a) IN GENERAL.—

(1) NEW SMOKING ARTICLE DEFINED.—For purposes of this section the term ''new smoking article'' means—

(A) any smoking article that was not commercially marketed in the United States as of the date of enactment of this Act; and

(B) any smoking article that incorporates a significant modification (including changes in design, component, part, or constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or other additive or ingredient) of a smoking article where the modified product was commercially marketed in the United States after the date of enactment of this Act.

(2) PREMARKET REVIEW REQUIRED.—

(A) NEW PRODUCTS.—An order under subsection (c)(1)(A) for a new smoking article is required unless the product—

(i) is substantially equivalent to a smoking article commercially marketed in the United States as of date of enactment of this Act; and

(ii) is in compliance with the requirements of this Act.

(B) CONSUMER TESTING.—This section shall not apply to smoking articles that are provided to adult tobacco consumers for purposes of consumer testing. For purposes of

this section, the term ''consumer testing'' means an assessment of smoking articles that is conducted by or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of such smoking articles, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment

(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

(A) IN GENERAL.—In this section, the term ''substantially equivalent'' or ''substantial equivalence'' means, with respect to the smoking article being compared to the predicate smoking article, that the Administrator by order has found that the smoking article—

(i) has the same general characteristics as the predicate smoking article; or

(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Administrator, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health for the consumer of the product.

(B) CHARACTERISTICS.—In subparagraph (A), the term ''characteristics'' means the materials, ingredients, design, composition, heating source, or other features of a smoking article.

(C) LIMITATION.—A smoking article may not be found to be substantially equivalent to a predicate smoking article that has been removed from the market at the initiative of the Administrator or that has been determined by a judicial order to be misbranded or adulterated.

(4) HEALTH INFORMATION.—As part of a submission respecting a smoking article, the person required to file a premarket notification shall provide an adequate summary of any health information related to the smoking article or state that such information will be made available upon request by any person.

(b) APPLICATION.—

(1) CONTENTS.—An application under this section shall contain—

(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such smoking article and whether such smoking article presents less risk than other smoking articles;

(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such smoking article;

(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such smoking article;

(D) an identifying reference to any smoking article standard under section 111 which would be applicable to any aspect of such smoking article, and either adequate information to show that such aspect of such smoking article fully meets such smoking article standard or adequate information to justify any deviation from such standard;

(E) such samples of such smoking article and of components thereof as the Administrator may reasonably require;

(F) specimens of the labeling proposed to be used for such smoking article; and

(G) such other information relevant to the subject matter of the application as the Administrator may require.

(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Administrator—

(A) may, on the Administrator's own initiative; or

(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Administrator may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

(c) ACTION ON APPLICATION.—

(1) DEADLINE.—As promptly as possible, but in no event later than 90 days after the receipt of an application under subsection (b), the Administrator, after considering the report and recommendation submitted under subsection (b)(2), shall—

(A) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Administrator finds that none of the grounds specified in paragraph (2) of this subsection applies; or

(B) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Administrator finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

(2) DENIAL OF APPLICATION.—The Administrator shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Administrator as part of the application and any other information before the Administrator with respect to such smoking article, the Administrator finds that—

(A) there is a lack of a showing that permitting such smoking article to be marketed would be appropriate for the protection of the public health;

(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such smoking article do not conform to the requirements of section 110(e);

(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

(D) such smoking article is not shown to conform to a smoking article standard in effect under section 111, and there is a lack of adequate information to justify the deviation from such standard.

(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Administrator determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Administrator).

(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the commercial introduction of a smoking article for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the users of the smoking article, and taking into account whether such commercial introduction is reasonably likely to increase the morbidly and mortality among individual tobacco users.

(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

(1) IN GENERAL.—The Administrator shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a smoking article for which an order was issued under subsection (c)(1)(A), issue an order withdrawing the order if the Administrator finds—

(A) that the continued marketing of such smoking article no longer is appropriate for the protection of the public health;

(B) that the application contained or was accompanied by an untrue statement of a material fact;

(C) that the applicant—

(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 113; or

(ii) has refused to permit access to, or copying or verification of, such records as required by section 110; or

(D) on the basis of new information before the Administrator with respect to such smoking article, evaluated together with the evidence before the Administrator when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such smoking article do not conform with the requirements of section 110(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Administrator of nonconformity;

(E) on the basis of new information before the Administrator, evaluated together with the evidence before the Administrator when the application was reviewed, that the labeling of such smoking article, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Administrator of such fact; or

(F) on the basis of new information before the Administrator, evaluated together with the evidence before the Administrator when such order was issued, that such smoking article is not shown to conform in all respects to a smoking article standard which is in effect under section 111, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 116.

(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Administrator determines there is reasonable probability that the continuation of distribution of a smoking article under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by smoking articles on the market, the Administrator shall by order temporarily suspend the authority of the manufacturer to market the product. If the Administrator issues such an order, the Administrator shall proceed expeditiously under paragraph (1) to withdraw such application.

(e) SERVICE OF ORDER.—An order issued by the Administrator under this section shall be served—

(1) in person by any officer or employee of the department designated by the Administrator; or

(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Administrator.

(f) RECORDS.—

(1) ADDITIONAL INFORMATION.—In the case of any smoking article for which an order issued pursuant to subsection (c)(1)(A) for an

application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Administrator, as the Administrator may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Administrator to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Administrator, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(g) INVESTIGATIONAL SMOKING ARTICLE EXEMPTION FOR INVESTIGATIONAL USE.—The Administrator may exempt smoking articles intended for investigational use from the provisions of this Act under such conditions as the Administrator may by regulation prescribe.

SEC. 114. MODIFIED RISK TOBACCO PRODUCTS.

(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

(b) DEFINITIONS.—In this section:

(1) MODIFIED RISK TOBACCO PRODUCT.—The term ''modified risk tobacco product'' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

(2) SOLD OR DISTRIBUTED.—

(A) IN GENERAL.—With respect to a tobacco product, the term ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'' means a tobacco product—

(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

(III) the tobacco product or its smoke does not contain or is free of a substance;

(ii) the label, labeling, or advertising of which uses the descriptors ''light'', ''mild'', ''low'', ''medium'', ''ultra light'', ''low tar'' or ''ultra low tar''; or

(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

(B) LIMITATION.—No tobacco product shall be considered to be ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'', except as described in subparagraph (A).

(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products''.

(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Act.

(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Center and is subject to the requirements of chapter V.

(d) FILING.—Any person may file with the Administrator an application for a modified risk tobacco product. Such application shall include—

(1) a description of the proposed product and any proposed advertising and labeling;

(2) the conditions for using the product;

(3) the formulation of the product;

(4) sample product labels and labeling;

(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

(6) data and information on how consumers actually use the tobacco product; and

(7) such other information as the Administrator may require.

(e) PUBLIC AVAILABILITY.—The Administrator shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

(f) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Administrator shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Administrator.

(g) MARKETING.—

(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Administrator shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Administrator determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

(B) is reasonably likely to result in measurable and substantial reductions in morbidity and mortality among individual tobacco users.

(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

(A) IN GENERAL.—The Administrator may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

(i) such order would be appropriate to promote the public health;

(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Administrator must also find that the applicant has demonstrated that—

(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

(I) is or has been demonstrated to be significantly less harmful; or

(II) presents or has been demonstrated to present significant less of a risk of disease than other commercially marketed tobacco products; and

(iv) issuance of an order with respect to the application is expected to benefit the health of users of tobacco products.

(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

(A) the scientific evidence submitted by the applicant; and

(B) scientific evidence and other information that is made available to the Administrator.

(h) ADDITIONAL CONDITIONS FOR MARKETING.—

(1) MODIFIED RISK PRODUCTS.—The Administrator shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

(2) COMPARATIVE CLAIMS.—

(A) IN GENERAL.—The Administrator may require for the marketing of a product under this subsection that a claim comparing a tobacco product to other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3

brands of an established regular tobacco product).

(B) QUANTITATIVE COMPARISONS.—The Administrator may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

(i) POSTMARKET SURVEILLANCE AND STUDIES.—

(1) IN GENERAL.—The Administrator shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Administrator to review the accuracy of the determinations upon which the order was based, and to provide information that the Administrator determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Administrator on an annual basis.

(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Administrator, a protocol for the required surveillance. The Administrator, within 30 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Administrator as necessary to protect the public health.

(j) WITHDRAWAL OF AUTHORIZATION.—The Administrator, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Administrator determines that—

(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Administrator can no longer make the determinations required under subsection (g);

(2) the application failed to include material information or included any untrue statement of material fact;

(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

(A) a tobacco product standard is established pursuant to section 111;

(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

(5) the applicant failed to meet a condition imposed under subsection (h).

(k) CHAPTER IV OR V.—A product for which the Administrator has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V of the Federal Food, Drug, and Cosmetic Act.

(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Act, the Administrator shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show a reasonable likelihood that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

(E) establish a reasonable timetable for the Administrator to review an application under this section.

(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) may be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Act, the Administrator shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 114 and which the applicant seeks to commercially market under this section.

SEC. 115. JUDICIAL REVIEW.

(a) RIGHT TO REVIEW.—

(1) IN GENERAL.—Not later than 60 days after—

(A) the promulgation of a regulation under section 111 establishing, amending, or revoking a tobacco product standard; or

(B) a denial of an application under section 114(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

(2) REQUIREMENTS.—

(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Administrator.

(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Administrator shall file in the court in which such petition was filed—

(i) the record of the proceedings on which the regulation or order was based; and

(ii) a statement of the reasons for the issuance of such a regulation or order.

(C) DEFINITION OF RECORD.—In this section, the term ''record'' means—

(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

(ii) all information submitted to the Administrator with respect to such regulation or order;

(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

(iv) any hearing held with respect to such regulation or order; and

(v) any other information identified by the Administrator, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 110, 111, 112, 113, 114, or 119 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

SEC. 116. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

SEC. 117. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Act, the Administrator shall promulgate regulations under this Act that meet the requirements of subsection (b).

(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

(1) shall require annual testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand style that the Administrator determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand style; and

(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising.

(c) AUTHORITY.—The Administrator shall have the authority under this Act to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

(d) JOINT LABORATORY TESTING SERVICES.—The Administrator shall allow any 2 or more tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis

in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a tobacco product manufacturer shall not be considered to be in violation of this section before the applicable deadline, if—

(A) the tobacco products of such manufacturer are in compliance with all other requirements of this Act; and

(B) the conditions described in paragraph (2) are met.

(2) CONDITIONS.—Notwithstanding the requirements of this section, the Administrator may delay the date by which a tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a tobacco product manufacturer provides evidence to the Administrator demonstrating that—

(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

(B) the products currently are awaiting testing by the laboratory; and

(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

(3) EXTENSION.—The Administrator, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a tobacco product manufacturer in accordance with paragraph (2). If the Administrator finds that the conditions described in such paragraph are met, the Administrator shall notify the tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Administrator has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Administrator finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Administrator may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Administrator determines, based on evidence properly and timely submitted by a tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act other than this section.

SEC. 118. PRESERVATION OF STATE AND LOCAL AUTHORITY.

(a) IN GENERAL.—

(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this Act, or rules promulgated under this Act, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to requirements established under this Act, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, or use of tobacco products by individuals of any age, information reporting to the State. No provision of this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this Act relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, use of, tobacco product by individuals of any age. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this Act relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

SEC. 119. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, the Administrator shall establish a 16-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—

(A) MEMBERS.—The Administrator shall appoint as members of the Tobacco Harm Reduction Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

(i) 6 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

(ii) 2 individuals who are an officer or employee of a State or local government or of the Federal Government;

(iii) 2 representatives of the general public;

(iv) 2 representatives of the interests of the tobacco manufacturing industry;

(v) 1 representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee;

(vi) 1 individual as a representative of the interests of the tobacco growers; and

(vii) 1 individual who is an expert in illicit trade of tobacco products.

(B) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products or government agency with any form of jurisdiction over tobacco products.

(2) LIMITATION.—The Administrator may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Tobacco Harm Reduction Center or any agency responsible for the enforcement of this Act. The Administrator may appoint Federal officials as ex officio members.

(3) CHAIRPERSON.—The Administrator shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Administrator—

(1) as provided in this Act;

(2) on the implementation of prevention, cessation, and harm reduction policies;

(3) on implementation of policies and programs to fully inform consumers of the respective risks of tobacco products; and

(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Administrator.

(d) COMPENSATION; SUPPORT; FACA.—

(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Administrator, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) ADMINISTRATIVE SUPPORT.—The Administrator shall furnish the Advisory Committee clerical and other assistance.

(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

SEC. 120. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

(a) REPORT ON INNOVATIVE PRODUCTS.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Administrator, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to promote, and encourage the development and use by current tobacco users of innovative

tobacco and nicotine products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

(A) total abstinence from tobacco use;

(B) reductions in consumption of tobacco; and

(C) reductions in the harm associated with continued tobacco use by moving current users to noncombustible tobacco products.

(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Administrator on how the Tobacco Harm and Reduction Center should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Center and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant Federal and State agencies.

TITLE II—TOBACCO PRODUCTS WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the lower portion of the front panel of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise at least the bottom 25 percent of the front panel of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a licensee or permit-holding smoking article manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the bottom of each advertisement within the trim area. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of smokeless tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the smokeless tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 24 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

"SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer.

''WARNING: This product can cause gum disease and tooth loss.

''WARNING: This product has significantly lower risks for diseases associated with cigarettes.

''WARNING: Smokeless tobacco is addictive.

''(2) The label statements required by paragraph (1) shall be introduced by each smokeless tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(3) The provisions of this subsection do not apply to a smokeless tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(4) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a licensee or permit-holding smokeless tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any smokeless tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the smokeless tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 24 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a).

TITLE III—PUBIC DISCLOSURES BY TOBACCO PRODUCTS MANUFACTURERS

SEC. 301. DISCLOSURES ON PACKAGES OF TOBACCO PRODUCTS.

(a) BACK FACE FOR REQUIRED DISCLOSURES.—For purposes of this section—

(1) the principal face of a package of a tobacco product is the face that has the largest surface area or, for faces with identical surface areas, any of the faces that have the largest surface area; a package shall not be characterized as having more than 2 principal faces;

(2) the front face shall be the principal face of the package;

(3) if the front and back faces are of different sizes in terms of area, then the larger face shall be the front face;

(4) the back face shall be the principal face of a package that is opposite the front face of the package;

(5) the bottom 50 percent of the back face of the package shall be allocated for required package disclosures in accordance with this section; and

(6) if a package of a tobacco product is cylindrical, a contiguous area constituting 30 percent of the total surface area of the cylinder shall be deemed the back face.

(b) REQUIRED INFORMATION ON BACK FACE.—Not later than 24 months after the effective date of this Act, the bottom 50 percent of the back face of a package of a tobacco product shall be available solely for disclosures required by or under this Act, the Federal Cigarette Labeling and Advertising Act, sections 1331–1340 of title 15, United States Code, and any other Federal statute. Such disclosures shall include—

(1) the printed name and address of the manufacturer, packer, or distributor, and any other identification associated with the manufacturer, packer, or distributor or with the tobacco product that the Administrator may require;

(2) a list of ingredients as required by subsection (e); and

(3) the appropriate tax registration number.

(c) PACKAGE DISCLOSURE OF INGREDIENTS.—Not later than 24 months after the effective date of this Act, the package of a tobacco product shall bear a list of the common or usual names of the ingredients present in the tobacco product in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients), that shall comply with the following:

(1) Such listing of ingredients shall appear under, or be conspicuously accompanied by, the heading ''Tobacco and principal tobacco ingredients''.

(2) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(3) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(4) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(5) Preservatives may be listed as ''preservatives'' without naming each.

(6) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(7) The package say state ''Not for sale to minors''.

(8) In the case of a package of cigarettes, the package shall state that smokeless tobacco has significantly lower risks for disease and death than cigarettes.

SEC. 302. DISCLOSURES ON PACKAGES OF SMOKELESS TOBACCO.

(a) BACK FACE FOR REQUIRED DISCLOSURES.—For purposes of this section—

(1) the principal face of a package of smokeless tobacco is the face that has the largest surface area or, for faces with identical surface areas, any of the faces that have the largest surface area; a package shall not be characterized as having more than two principal faces;

(2) the front or top face shall be the principal face of the package;

(3) if the front or top and back or bottom faces are of different sizes in terms of area, then the larger face shall be the front or top face;

(4) the back or bottom face of the package shall be the principal face of a package that is opposite the front or top face of the package;

(5) beginning 24 months after the effective date of this Act, 50 percent of the back or bottom face of the package shall be allocated for required package disclosures in accordance with this section; and

(6) if the package is cylindrical, a contiguous area constituting 30 percent of the total surface area of the cylinder shall be deemed the back face.

(b) REQUIRED INFORMATION ON BACK OR BOTTOM FACE.—50 percent of the back or bottom face of a package of smokeless tobacco shall be available solely for disclosures required by or under this Act, the Comprehensive Smokeless Tobacco Health Education Act of 1986, sections 4401–4408 of title 15, United States Code, and any other Federal statute. Such disclosures shall include a list of ingredients as required by subsection (e).

(c) PACKAGE DISCLOSURE OF INGREDIENTS.—Commencing 24 months after the effective date of this Act, a package of smokeless tobacco shall bear a list of the common or usual names of the ingredients present in the smokeless tobacco in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients).

(1) Such listing of ingredients shall appears under, or be conspicuously accompanied by, the heading ''Tobacco and principal tobacco ingredients''.

(2) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(3) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(4) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and

''natural and artificial flavors'' without naming each.

(5) Preservatives may be listed as ''preservatives'' without naming each.

(6) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(7) Not for sale to minors.

SEC. 303. PUBLIC DISCLOSURE OF INGREDIENTS.

(a) REGULATIONS.—Not later than 24 months after the effective date of this Act, the Administrator shall, by regulation, establish standards under which each tobacco product manufacturer shall disclose publicly, and update at least annually—

(1) a list of the ingredients it uses in each brand style it manufactures for commercial distribution domestically, as provided in subsection (b); and

(2) a composite list of all the ingredients it uses in any of the brand styles it manufactures for commercial distribution domestically, as provided in subsection (c).

(b) INGREDIENTS TO BE DISCLOSED AS TO EACH BRAND STYLE.—

(1) IN GENERAL.—With respect to the public disclosure required by subsection (a)(1), as to each brand style, the tobacco product manufacture shall disclose the common or usual name of each ingredient present in the brand style in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients).

(2) REQUIREMENTS.—Disclosure under paragraph (1) shall comply with the following:

(A) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(B) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(C) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(D) Preservatives may be listed as ''preservatives'' without naming each.

(E) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(c) AGGREGATE DISCLOSURE OF INGREDIENTS.—

(1) IN GENERAL.—The public disclosure required of a tobacco product manufacturer by subsection (a)(2) shall consist of a single list of all ingredients used in any brand style a tobacco product manufacturer manufactures for commercial distribution domestically, without regard to the quantity used, and including, separately, each spice, each natural or artificial flavoring, and each preservative.

(2) LISTING.—The ingredients shall be listed by their respective common or usual names in descending order of predominance by the total weight used annually by the tobacco product manufacturer in manufacturing tobacco products for commercial distribution domestically.

(d) NO REQUIRED DISCLOSURE OF QUANTITIES.—The Administrator shall not require any public disclosure of quantitative information about any ingredient in a tobacco product.

(e) DISCLOSURE ON WEBSITE.—The public disclosures required by subsection (a) of this section may be by posting on an Internet-accessible website, or other location electronically accessible to the public, which is identified on all packages of a tobacco product manufacturer's tobacco products.

(f) TIMING OF INITIAL REQUIRED DISCLOSURES.—No disclosure pursuant to this section shall be required to commence until the regulations under subsection (a) have been in effect for not less than 1 year.

TITLE IV—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 401. STUDY AND REPORT ON ILLICIT TRADE.

(a) The Administrator shall, after consultation with other relevant agencies including Customs and Tobacco Tax Bureau, conduct a study of trade in tobacco products that involves passage of tobacco products either between the States or from or to any other country across any border of the United States to—

(1) collect data on such trade in tobacco products, including illicit trade involving tobacco products, and make recommendations on the monitoring and enforcement of such trade;

(2) collect data on any advertising intended to be broadcast, transmitted, or distributed from or to the United States from or to another country and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, such advertising; and

(3) collect data on such trade in tobacco products by person that is not—

(A) a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement of November 23, 1998, between certain of the States and certain tobacco product manufacturers); or

(B) an affiliate or subsidiary of a participating manufacturer.

(b) Not later than 18 months after the effective date of this Act, the Administrator shall submit to the Secretary, and committees of relevant jurisdiction in Congress, a report the recommendations of the study conducted under subsection (a).

SEC. 402. AMENDMENT TO SECTION 1926 OF THE PUBLIC HEALTH SERVICE ACT.

Section 1926 of the Public Health Service Act (42 U.S.C. § 300x–26) is amended by adding at the end thereof the following:

''(e)(1) Subject to paragraphs (2) and (3), for the first fiscal year after enactment and each subsequent fiscal year, the Secretary shall reduce, as provided in subsection (h), the amount of any grant under section 300x–21 of this title for any State that does not have in effect a statute with substantially the following provisions:

''SEC. 1. DISTRIBUTION TO MINORS.

''(a) No person shall distribute a tobacco product to an individual under 18 years of age or a different minimum age established under State law. A person who violates this subsection is liable for a civil money penalty of not less than $25 nor more than $125 for each violation of this subsection;

''(b) The employer of an employee who has violated subsection (a) twice while in the employ of such employer is liable for a civil money penalty of $125 for each subsequent violation by such employee.

''(c) It shall be a defense to a charge brought under subsection (a) that—

''(1) the defendant—

''(A) relied upon proof of age that appeared on its face to be valid in accordance with the Federal Tobacco Act of 2007;

''(B) had complied with the requirements of section 5 and, if applicable, section 7; or

''(C) relied upon a commercially available electronic age verification service to confirm that the person was an age-verified adult; or

''(2) the individual to whom the tobacco product was distributed was at the time of the distribution used in violation of subsection 8(b).

''SEC. 2. PURCHASE, RECEIPT, OR POSSESSION BY MINORS PROHIBITED.

''(a) An individual under 18 years of age or a different minimum age established under State law shall not purchase or attempt to purchase, receive or attempt to receive, possess or attempt to possess, a tobacco product. An individual who violates this subsection is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation, and shall be required to perform not less than four hours nor more than ten hours of community service. Upon the second or each subsequent violation of this subsection, such individual shall be required to perform not less than eight hours nor more than twenty hours of community service.

''(b) A law enforcement agency, upon determining that an individual under 18 years of age or a different minimum age established under State law allegedly purchased, received, possessed, or attempted to purchase, receive, or possess, a tobacco product in violation of subsection (a) shall notify the individual's parent or parents, custodian, or guardian as to the nature of the alleged violation if the name and address of a parent or parents, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the individual who allegedly violated subsection (a) is cited by such agency for the violation. The notice may be made by any means reasonably calculated to give prompt actual notice, including notice in person, by telephone, or by first-class mail.

''(c) Subsection (a) does not prohibit an individual under 18 years of age or a different minimum age established under State law from possessing a tobacco product during regular working hours and in the course of such individual's employment if the tobacco product is not possessed for such individual's consumption.

''SEC. 3. OUT-OF-PACKAGE DISTRIBUTION.

''It shall be unlawful for any person to distribute cigarettes or a smokeless tobacco product other than in an unopened package that complies in full with section 108 of the Federal Tobacco Act of 2007. A person who distributes a cigarette or a smokeless tobacco product in violation of this section is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''SEC. 4. SIGNAGE.

''It shall be unlawful for any person who sells tobacco products over-the-counter to fail to post conspicuously on the premises where such person sells tobacco products over-the-counter a sign communicating that—

''(1) the sale of tobacco products to individuals under 18 years of age or a different minimum age established under State law is prohibited by law;

''(2) the purchase of tobacco products by individuals under 18 years of age or a different minimum age established under State law is prohibited by law; and

''(3) proof of age may be demanded before tobacco products are sold.

A person who fails to post a sign that complies fully with this section is liable for a civil money penalty of not less than $25 nor more than $125.

''SEC. 5. NOTIFICATION OF EMPLOYEES.

''(a) Within 180 days of the effective date of the Preventing Disease and Death from Tobacco Use Act, every person engaged in the business of selling tobacco products at retail shall implement a program to notify each employee employed by that person who sells tobacco products at retail that—

''(1) the sale or other distribution of tobacco products to any individual under 18 years of age or a different minimum age established under State law, and the purchase, receipt, or possession of tobacco products in a place open to the public by any individual under 18 years of age or a different minimum age established under State law, is prohibited; and

''(2) out-of-package distribution of cigarettes and smokeless tobacco products is prohibited.

Any employer failing to provide the required notice to any employee shall be liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''(b) It shall be a defense to a charge that an employer violated subsection (a) of this section that the employee acknowledged receipt, either in writing or by electronic means, prior to the alleged violation, of a statement in substantially the following form:

''I understand that State law prohibits the distribution of tobacco products to individuals under 18 years of age or a different minimum age established under State law and out-of-package distribution of cigarettes and smokeless tobacco products, and permits a defense based on evidence that a prospective purchaser's proof of age was reasonably relied upon and appeared on its face to be valid. I understand that if I sell, give, or voluntarily provide a tobacco product to an individual under 18 years of age or a different minimum age established under State law, I may be found responsible for a civil money penalty of not less than $25 nor more than $125 for each violation. I promise to comply with this law.'''''

''(c) If an employer is charged with a violation of subsection (a) and the employer uses as a defense to such charge the defense provided by subsection (b), the employer shall be deemed to be liable for such violation if such employer pays the penalty imposed on the employee involved in such violation or in any way reimburses the employee for such penalty.

''SEC. 6. SELF-SERVICE DISPLAYS.

''(a) It shall be unlawful for any person who sells tobacco products over-the-counter at retail to maintain packages of such products in any location accessible to customers that is not under the control of a cashier or other employee during regular business hours. This subsection does not apply to any adult-only facility.

''(b) Any person who violates subsection (a) is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation, except that no person shall be responsible for more than one violation per day at any one retail store.

''SEC. 7. DISTRIBUTION BY MAIL OR COURIER.

''(a) It shall be unlawful to distribute or sell tobacco products directly to consumers by mail or courier, unless the person receiving purchase requests for tobacco products takes reasonable action to prevent delivery to individuals who are not adults by—

''(1) requiring that addressees of the tobacco products be age-verified adults;

''(2) making good faith efforts to verify that such addressees have attained the minimum age for purchase of tobacco products established by the respective States wherein the addresses of the addressees are located; and

''(3) addressing the tobacco products delivered by mail or courier to a physical addresses and not to post office boxes.

''(b) Any person who violates subsection (a) is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''SEC. 8. RANDOM UNANNOUNCED INSPECTIONS; REPORTING; AND COMPLIANCE.

''(a) The State Police, or a local law enforcement authority duly designated by the State Police, shall enforce this Act in a manner that can reasonably be expected to reduce the extent to which tobacco products are distributed to individuals under 18 years of age or a different minimum age established under State law and shall conduct random, unannounced inspections in accordance with the procedures set forth in this Act and in regulations issued under section 1926 of the Federal Public Health Service Act (42 U.S.C. § 300x–26).

''(b) The State may engage an individual under 18 years of age or a different minimum age established under State law to test compliance with this Act, except that such an individual may be used to test compliance with this Act only if the testing is conducted under the following conditions:

''(1) Prior to use of any individual under 18 years of age or a different minimum age established under State law in a random, unannounced inspection, written consent shall be obtained from a parent, custodian, or guardian of such individual;

''(2) An individual under 18 years of age or a different minimum age established under State law shall act solely under the supervision and direction of the State Police or a local law enforcement authority duly designated by the State Police during a random, unannounced inspection;

''(3) An individual under 18 years of age or a different minimum age established under State law used in random, unannounced inspections shall not be used in any such inspection at a store in which such individual is a regular customer; and

''(4) If an individual under 18 years of age or a different minimum age established under State law participating in random, unannounced inspections is questioned during such an inspection about such individual's age, such individual shall state his or her actual age and shall present a true and correct proof of age if requested at any time during the inspection to present it.

''(c) Any person who uses any individual under 18 years of age or a different minimum age established under State law, other than as permitted by subsection (b), to test compliance with this Act, is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''(d) Civil money penalties collected for violations of this Act and fees collected under section 9 shall be used only to defray the costs of administration and enforcement of this Act.

''SEC. 9. LICENSURE.

''(a) Each person engaged in the over-the-counter distribution at retail of tobacco products shall hold a license issued under this section. A separate license shall be required for each place of business where tobacco products are distributed at retail. A license issued under this section is not assignable and is valid only for the person in whose name it is issued and for the place of business designated in the license.

''(b) The annual license fee is $25 for each place of business where tobacco products are distributed at retail.

''(c) Every application for a license, including renewal of a license, under this section shall be made upon a form provided by the appropriate State agency or department, and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as ''notice address''), and any other identifying information that the appropriate State agency or department may require.

''(d) The appropriate State agency or department shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the license fee. The appropriate State agency or department shall provide notice to an applicant of action on an application denying the issuance of a license or refusing to renew a license.

''(e) Every license issued by the appropriate State agency or department pursuant to this section shall be valid for 1 year from the date of issuance and shall be renewed upon application except as otherwise provided in this Act.

''(f) Upon notification of a change of address for a place of business for which a license has been issued, a license shall be reissued for the new address without the filing of a new application.

''(g) The appropriate State agency or department shall notify every person in the State who is engaged in the distribution at retail of tobacco products of the license requirements of this section and of the date by which such person should have obtained a license.

''(h)(1) Except as provided in paragraph (2), any person who engages in the distribution at retail of tobacco products without a license required by this section is liable for a civil money penalty in an amount equal to (i) two times the applicable license fee, and (ii) $50 for each day that such distribution continues without a license.

''(2) Any person who engages in the distribution at retail of tobacco products after a license issued under this section has been suspended or revoked is liable for a civil money penalty of $100 per day for each day on which such distribution continues after the date such person received notice of such suspension or revocation.

''(i) No person shall engage in the distribution at retail of tobacco products on or after 180 days after the date of enactment this Act unless such person is authorized to do so by a license issued pursuant to this section or is an employee or agent of a person that has been issued such a license.

''SEC. 10. SUSPENSION, REVOCATION, DENIAL, AND NONRENEWAL OF LICENSES.

''(a) Upon a finding that a licensee has been determined by a court of competent jurisdiction to have violated this Act during the license term, the State shall notify the licensee in writing, served personally or by registered mail at the notice address, that any subsequent violation of this Act at the same place of business may result in an administrative action to suspend the license for a period determined by the specify the appropriate State agency or department.

''(b) Upon finding that a further violation by this Act has occurred involving the same place of business for which the license was issued and the licensee has been served notice once under subsection (a), the appropriate State agency or department may initiate an administrative action to suspend the license for a period to be determined by the appropriate State agency or department but not to exceed six months. If an administrative action to suspend a license is initiated, the appropriate State agency or department shall immediately notify the licensee in writing at the notice address of the initiation of the action and the reasons therefor and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why suspension of the license would be unwarranted or unjust.

''(c) The appropriate State agency or department may initiate an administrative action to revoke a license that previously has been suspended under subsection (b) if, after the suspension and during the one-year period for which the license was issued, the licensee committed a further violation of this Act, at the same place of business for which the license was issued. If an administrative action to revoke a license is initiated, the appropriate State agency or department shall immediately notify the licensee in

writing at the notice address of the initiation of the action and the reasons therefor and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why revocation of the license would be unwarranted or unjust.

''(d) A person whose license has been suspended or revoked with respect to a place of business pursuant to this section shall pay a fee of $50 for the renewal or reissuance of the license at that same place of business, in addition to any applicable annual license fees.

''(e) Revocation of a license under subsection (c) with respect to a place of business shall not be grounds to deny an application by any person for a new license with respect to such place of business for more than 12 months subsequent to the date of such revocation. Revocation or suspension of a license with respect to a particular place of business shall not be grounds to deny an application for a new license, to refuse to renew a license, or to revoke or suspend an existing license at any other place of business.

''(f) A licensee may seek judicial review of an action of the appropriate State agency or department suspending, revoking, denying, or refusing to renew a license under this section by filing a complaint in a court of competent jurisdiction. Any such complaint shall be filed within 30 days after the date on which notice of the action is received by the licensee. The court shall review the evidence de novo.

''(g) The State shall not report any action suspending, revoking, denying, or refusing to renew a license under this section to the Federal Secretary of Health and Human Services, unless the opportunity for judicial review of the action pursuant to subsection (f), if any, has been exhausted or the time for seeking such judicial review has expired.

''SEC. 11. NO PRIVATE RIGHT OF ACTION.

''Nothing in this Act shall be construed to create a right of action by any private person for any violation of any provision of this Act.

''SEC. 12. JURISDICTION AND VENUE.

''Any action alleging a violation of this Act may be brought only in a court of general jurisdiction in the city or county where the violation is alleged to have occurred.

''SEC. 13. REPORT.

''The appropriate State agency or department shall prepare for submission annually to the Federal Secretary of Health and Human Services the report required by section 1926 of the Federal Public Health Service Act (42 U.S.C. 300x–26).''.

''(2) In the case of a State whose legislature does not convene a regular session in fiscal year 2007, and in the case of a State whose legislature does not convene a regular session in fiscal year 2008, the requirement described in subsection (e)(1) as a condition of a receipt of a grant under section 300x–21 of this title shall apply only for fiscal year 2009 and subsequent fiscal years.

''(3) Subsection (e)(1) shall not affect any State or local law that (A) was in effect on the date of introduction of the Federal Tobacco Act of 2007, and (B) covers the same subject matter as the law described in subsection (e)(1). Any State law that meets the conditions of this paragraph shall also be deemed to meet the requirement described in subsection (e)(1) as a condition of a receipt of a grant under section 300x–21 of this title, if such State law is at least as stringent as the law described in subsection (e)(1).

''(f)(1) For the first applicable fiscal year and for each subsequent fiscal year, a funding agreement for a grant under section 300x–21 of this title is a funding agreement under which the State involved will enforce the law described in subsection (e)(1) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18 or a different minimum age established under State law for the purchase of tobacco products.

''(2) For the first applicable fiscal year and for each subsequent fiscal year, a funding agreement for a grant under section 300x–21 of this title is a funding agreement under which the State involved will—

''(A) conduct random, unannounced inspections to ensure compliance with the law described in subsection (e)(1); and

''(B) annually submit to the Secretary a report describing—

''(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

''(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under 18 years of age or a different minimum age established under State law, including the results of the inspections conducted under subparagraph (A); and

''(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

''(g) The law specified in subsection (e)(1) may be administered and enforced by a State using—

''(1) any amounts made available to the State through a grant under section 300x–21 of this title;

''(2) any amounts made available to the State under section 300w of this title;

''(3) any fees collected for licenses issued pursuant to the law described in subsection (e)(1);

''(4) any fines or penalties assessed for violations of the law specified in subsection (e)(1); or

''(5) any other funding source that the legislature of the State may prescribe by statute.

''(h) Before making a grant under section 300x–21 of this title to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (e) and (f) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under section 300x–21 of this title for the State for the fiscal year involved by an amount equal to—

''(1) In the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 for the State for the fiscal year;

''(2) In the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 for the State for the fiscal year;

''(3) In the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 for the State for the fiscal year; and

''(4) In the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 for the State for the fiscal year.

The Secretary shall not have authority or discretion to grant to any State a waiver of the terms and requirements of this subsection or subsection (e) or (f).

''(i) For the purposes of subsections (e) through (h) of this section the term 'first applicable fiscal year' means—

''(1) fiscal year 2009, in the case of any State described in subsection (e)(2) of this section; and

''(2) fiscal year 2008, in the case of any other State.

''(j) For purposes of subsections (e) through (h) of this section, references to section 300x–21 shall include any successor grant programs.''

''(k) As required by paragraph (1), and subject to paragraph (4), an Indian tribe shall satisfy the requirements of subsection (e)(1) of this section by enacting a law or ordinance with substantially the same provisions as the law described in subsection (e)(1).

''(1) An Indian tribe shall comply with subsection (e)(1) of this section within 180 days after the Administrator finds, in accordance with this paragraph, that—

''(A) the Indian tribe has a governing body carrying out substantial governmental powers and duties;

''(B) the functions to be exercised by the Indian tribe under this Act pertain to activities on trust land within the jurisdiction of the tribe; and

''(C) the Indian tribe is reasonably expected to be capable of carrying out the functions required under this section.

Within 2 years of the date of enactment of the Federal Tobacco Act of 2007, as to each Indian tribe in the United States, the Administrator shall make the findings contemplated by this paragraph or determine that such findings cannot be made, in accordance with the procedures specified in paragraph (4).

''(2) As to Indian tribes subject to subsection (e)(1) of this section, the Administrator shall promulgate regulations that—

''(A) provide whether and to what extent, if any, the law described in subsection (e)(1) may be modified as adopted by Indian tribes; and

''(B) ensure, to the extent possible, that each Indian tribe's retailer licensing program under subsection (e)(1) is no less stringent than the program of the State or States in which the Indian tribe is located.

''(3) If with respect to any Indian tribe the Administrator determines that compliance with the requirements of subsection (e)(1) is inappropriate or administratively infeasible, the Administrator shall specify other means for the Indian tribe to achieve the purposes of the law described in subsection (e)(1) with respect to persons who engage in the distribution at retail of tobacco products on tribal lands.

''(4) The findings and regulations promulgated under paragraphs (1) and (2) shall be promulgated in conformance with section 553 of title 5, United States Code, and shall comply with the following provisions:

''(A) In making findings as provided in paragraph (1), and in drafting and promulgating regulations as provided in paragraph (2) (including drafting and promulgating any revised regulations), the Administrator shall confer with, and allow for active participation by, representatives and members of Indian tribes, and tribal organizations.

''(B) In carrying out rulemaking processes under this subsection, the Administrator shall follow the guidance of subchapter III of chapter 5 of title 5, United States Code, commonly known as the 'Negotiated Rulemaking Act of 1990.'

''(C) The tribal participants in the negotiation process referred to in subparagraph (B) shall be nominated by and shall represent the groups described in this subsection and shall include tribal representatives from all geographic regions.

''(D) The negotiations conducted under this paragraph (4) shall be conducted in a timely manner.

''(E) If the Administrator determines that an extension of the deadlines under subsection (k)(1) of this section is appropriate,

the Secretary may submit proposed legislation to Congress for the extension of such deadlines.

''(5) This subsection shall not affect any law or ordinance that (A) was in effect on tribal lands on the date of introduction of the Preventing Disease and Death from Tobacco Use Act, and (B) covers the same subject matter as the law described in subsection (e)(1). Any law or ordinance that meets the conditions of this paragraph shall also be deemed to meet the requirement described in subsection (k)(1), if such law or ordinance is at least as stringent as the law described in subsection (e)(1).

''(6) For purposes of this subsection—

''(A) 'Administrator' means the Administrator of the Tobacco Harm Reduction Center.

''(B) 'Indian tribe' has the meaning assigned that term in section 4(e) of the Indian Self Determination and Education Assistance Act, section 450b(e) of title 25, United States Code.

''(C) 'Tribal lands' means all lands within the exterior boundaries of any Indian reservation, all lands the title to which is held by the United States in trust for an Indian tribe, or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation, and all dependent Indian communities.

''(D) 'tribal organization' has the meaning assigned that term in section 4(l) of the Indian Self Determination and Education Assistance Act, section 450b(l) of title 25, United States Code.''.

SEC. 403. ESTABLISHMENT OF RANKINGS.

(a) STANDARDS AND PROCEDURES FOR RANKINGS.—Within 24 months after the effective date of this Act, the Administrator shall, by regulation, after consultation with an Advisory Committee established for such purpose, establish the standards and procedures for promulgating rankings, comprehensible to consumers of tobacco products, of the following categories of tobacco products and also nicotine-containing products on the basis of the relative risks of serious or chronic tobacco-related diseases and adverse health conditions those categories of tobacco products and also nicotine-containing products respectively present—

(1) cigarettes;

(2) loose tobacco for roll-your-own tobacco products;

(3) little cigars;

(4) cigars;

(5) pipe tobacco;

(6) moist snuff;

(7) dry snuff;

(8) chewing tobacco;

(9) other forms of tobacco products, including pelletized tobacco and compressed tobacco, treated collectively as a single category; and

(10) other nicotine-containing products, treated collectively as a single category.

The Administrator shall not have authority or discretion to establish a relative-risk ranking of any category or subcategory of tobacco products or any category or subcategory of nicotine-containing products other than the ten categories specified in this subsection.

(b) CONSIDERATIONS IN PROMULGATING REGULATIONS.—In promulgating regulations under this section, the Administrator—

(1) shall take into account relevant epidemiologic studies and other relevant competent and reliable scientific evidence; and

(2) in assessing the risks of serious or chronic tobacco-related diseases and adverse health conditions presented by a particular category, shall consider the range of tobacco products or nicotine-containing products within the category, and shall give appropriate weight to the market shares of the respective products in the category.

(c) PROMULGATION OF RANKINGS OF CATEGORIES.—Once the initial regulations required by subsection (a) are in effect, the Administrator shall promptly, by order, after notice and an opportunity for comment, promulgate to the general public rankings of the categories of tobacco products and nicotine-containing products in accordance with those regulations. The Administrator shall promulgate the initial rankings of those categories of tobacco products and nicotine-containing products to the general public not later than January 1, 2010. Thereafter, on an annual basis, the Administrator shall, by order, promulgate to the general public updated rankings that are (1) in accordance with those regulations, and (2) reflect the scientific evidence available at the time of promulgation. The Administrator shall open and maintain an ongoing public docket for receipt of data and other information submitted by any person with respect to such annual promulgation of rankings.

TITLE V—ENFORCEMENT PROVISIONS

SEC. 501. PROHIBITED ACTS.

The following acts and the causing thereof are hereby prohibited—

(1) the introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded;

(2) the adulteration or misbranding of any tobacco product in interstate commerce;

(3) the receipt in interstate commerce of any tobacco product that is known to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) the failure to establish or maintain any record, or make any report or other submission, or to provide any notice required by or under this Act; or the refusal to permit access to, verification of, or copying of any record as required by this Act;

(5) the refusal to permit entry or inspection as authorized by this Act;

(6) the making to the Administrator of a statement, report, certification or other submission required by this Act, with knowledge that such statement, report, certification, or other submission is false in a material aspect;

(7) the manufacturing, shipping, receiving, storing, selling, distributing, possession, or use of any tobacco product with knowledge that it is an illicit tobacco product;

(8) the forging, simulating without proper permission, falsely representing, or without proper authority using any brand name;

(9) the using by any person to his or her own advantage, or revealing, other than to the Administrator or officers or employees of the Agency, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of this Act concerning any item which as a trade secret is entitled to protection; except that the foregoing does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee;

(10) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a tobacco product, if such act is done while such tobacco product is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in such tobacco product being adulterated or misbranded;

(11) the importation of any tobacco product that is adulterated, misbranded, or otherwise not in compliance with this Act; and

(12) the commission of any act prohibited by section 201 of this Act.

SEC. 502. INJUNCTION PROCEEDINGS.

(a) The district courts of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act, except for violations of section 701(k).

(b) In case of an alleged violation of an injunction or restraining order issued under this section, which also constitutes a violation of this Act, trial shall be by the court, or upon demand of the defendant, by a jury.

SEC. 503. PENALTIES.

(a) CRIMINAL PENALTIES.—Any person who willfully violates a provision of section 501 of this Act shall be imprisoned for not more than one year or fined not more than $25,000, or both.

(b) CIVIL PENALTIES FOR VIOLATION OF SECTION 803.—

(1) Any person who knowingly distributes or sells, other than through retail sale or retail offer for sale, any cigarette brand style in violation of section 803(a)—

(A) for a first offense shall be liable for a civil penalty not to exceed $10,000 for each distribution or sale, or

(B) for a second offense shall be liable for a civil penalty not to exceed $25,000 for each distribution or sale,

except that the penalty imposed against any person with respect to violations during any 30-day period shall not exceed $100,000.

(2) Any retailer who knowingly distributes, sells or offers for sale any cigarette brand style in violation of section 803(a) shall—

(A) for a first offense for each sale or offer for sale of cigarettes, if the total number of packages of cigarettes sold or offered for sale—

(i) does not exceed 50 packages of cigarettes, be liable for a civil penalty not to exceed $500 for each sale or offer for sale, and

(ii) exceeds 50 packages of cigarettes, be liable for a civil penalty not to exceed $1,000 for each sale or offer for sale;

(B) for each subsequent offense for each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale—

(i) does not exceed 50 packages of cigarettes, be liable for a civil penalty not to exceed $2,000 for each sale or offer for sale, and

(ii) exceeds 50 packages of cigarettes, be liable for a civil penalty not to exceed $5,000 for each sale or offer for sale;

except that the penalty imposed against any person during any 30-day period shall not exceed $25,000.

SEC. 504. SEIZURE.

(a) ARTICLES SUBJECT TO SEIZURE.—

(1) Any tobacco product that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of this Act, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States within the jurisdiction of which the tobacco product is found. No libel for condemnation shall be instituted under this Act for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this Act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply—

(A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this Act, or

(B) when the Administrator has probable cause to believe from facts found, without hearing, by the Administrator or any officer or employee of the Agency that the misbranded tobacco product is dangerous to health beyond the inherent danger to health posed by tobacco, or that the labeling of the misbranded tobacco product is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States within the jurisdiction of which they are found—

(A) any tobacco product that is an illicit tobacco product;

(B) any container of an illicit tobacco product;

(C) any equipment or thing used in making an illicit tobacco product; and

(D) any adulterated or misbranded tobacco product.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any tobacco product which—

(i) is misbranded under this Act because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the tobacco product.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a tobacco product described in subparagraph (A) if the tobacco product's advertising which resulted in the tobacco product being misbranded was disseminated in the establishment in which the tobacco product is being held for sale to the ultimate consumer—

(i) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(ii) all or part of the cost of such advertising was paid by such owner or operator.

(b) PROCEDURES.—The tobacco product, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) SAMPLES AND ANALYSES.—The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, the party's attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) DISPOSITION OF CONDEMNED TOBACCO PRODUCTS.—(1) Any tobacco product condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such tobacco product shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold. After entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State in which sold, the court may by order direct that such tobacco product be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act, under the supervision of an officer or employee duly designated by the Administrator; and the expenses of such supervision shall be paid by the person obtaining release of the tobacco product under bond. If the tobacco product was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the tobacco product was imported, and (B) that the person seeking the release of the tobacco product had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the tobacco product to be delivered to the owner for exportation under section 709 in lieu of destruction upon a showing by the owner that there is a reasonable certainty that the tobacco product will not be re-imported into the United States.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a).

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a), the condemnation of any equipment or thing (other than a tobacco product) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (A) that such claimant has not caused the equipment or thing to be within one of the categories referred to in such paragraph (2) and has no interest in any tobacco product referred to therein, (B) that such claimant has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by such claimant in good faith, and (C) that such claimant at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to any illicit tobacco product.

(e) COSTS AND FEES.—When a decree of condemnation is entered against the tobacco product or other article, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the tobacco product or other article.

(f) REMOVAL FOR TRIAL.—In the case of removal for trial of any case as provided by subsection (a) or (b)—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g) ADMINISTRATIVE DETENTION OF TOBACCO PRODUCTS.—

(1) DETENTION AUTHORITY.—

(A) IN GENERAL.—An officer or qualified employee of the Agency may order the detention, in accordance with this subsection, of any tobacco product that is found during an inspection, examination, or investigation under this Act conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that such article presents a threat of serious adverse health consequences beyond those normally inherent in the use of tobacco products.

(B) ADMINISTRATOR'S APPROVAL.—A tobacco product or component thereof may be ordered detained under subparagraph (A) if, but only if, the Administrator or an official designated by the Administrator approves the order. An official may not be so designated unless the official is an officer with supervisory responsibility for the inspection, examination, or investigation that led to the order.

(2) PERIOD OF DETENTION.—A tobacco product may be detained under paragraph (1) for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary, to institute an action under subsection (a) or section 702.

(3) SECURITY OF DETAINED TOBACCO PRODUCT.—An order under paragraph (1) may require that the tobacco product to be detained be labeled or marked as detained, and shall require that the tobacco product be maintained in or removed to a secure facility, as appropriate. A tobacco product subject to such an order shall not be transferred by any person from the place at which the tobacco product is ordered detained, or from the place to which the tobacco product is so removed, as the case may be, until released by the Administrator or until the expiration of the detention period applicable under such order, whichever occurs first. This subsection may not be construed as authorizing the delivery of the tobacco product pursuant to the execution of a bond while the tobacco product is subject to the order, and section 709 does not authorize the delivery of the tobacco product pursuant to the execution of a bond while the article is subject to the order.

(4) APPEAL OF DETENTION ORDER.—

(A) IN GENERAL.—With respect to a tobacco product ordered detained under paragraph (1), any person who would be entitled to be a

claimant of such tobacco product if the tobacco product were seized under subsection (a) may appeal the order to the Administrator. Within five days after such an appeal is filed, the Administrator, after providing opportunity for an informal hearing, shall confirm or terminate the order involved, and such confirmation by the Administrator shall be considered a final agency action for purposes of section 702 of title 5, United States Code. If during such five-day period the Administrator fails to provide such an opportunity, or to confirm or terminate such order, the order is deemed to be terminated.

(B) EFFECT OF INSTITUTING COURT ACTION.—The process under subparagraph (A) for the appeal of an order under paragraph (1) terminates if the Administrator institutes an action under subsection (a) or section 702 regarding the tobacco product involved.

SEC. 505. REPORT OF MINOR VIOLATIONS.

Nothing in this Act shall be construed as requiring the Administrator to report for prosecution, or for institution of libel or injunction proceedings, minor violations of this Act whenever the Administrator believes that the public interest will be adequately served by a suitable written notice or warning.

SEC. 506. INSPECTION.

(a) AUTHORITY TO INSPECT.—The Administrator shall have the power to inspect the premises of a tobacco product manufacturer for purposes of determining compliance with this Act, or the regulations promulgated under it. Officers of the Agency designated by the Administrator, upon presenting appropriate credentials and a written notice to the person in charge of the premises, are authorized to enter, at reasonable times, without a search warrant, any factory, warehouse, or other establishment in which tobacco products are manufactured, processed, packaged, or held for domestic distribution. Any such inspection shall be conducted within reasonable limits and in a reasonable manner, and shall be limited to examining only those things, including but not limited to records, relevant to determining whether violations of this Act, or regulations under it, have occurred. No inspection authorized by this section shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Act), or research data. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(b) REPORT OF OBSERVATIONS.—Before leaving the premises, the officer of the Agency who has supervised or conducted the inspection shall give to the person in charge of the premises a report in writing setting forth any conditions or practices that appear to manifest a violation of this Act, or the regulations under it.

(c) SAMPLES.—If the officer has obtained any sample in the course of inspection, prior to leaving the premises that officer shall give to the person in charge of the premises a receipt describing the samples obtained. As to each sample obtained, the officer shall furnish promptly to the person in charge of the premises a copy of the sample and of any analysis made upon the sample.

SEC. 507. EFFECT OF COMPLIANCE.

Compliance with the provisions of this Act and the regulations promulgated under it shall constitute a complete defense to any civil action, including but not limited to any products liability action, that seeks to recover damages, whether compensatory or punitive, based upon an alleged defect in the labeling or advertising of any tobacco product distributed for sale domestically.

SEC. 508. IMPORTS.

(a) IMPORTS; LIST OF REGISTERED FOREIGN ESTABLISHMENTS; SAMPLES FROM UNREGISTERED FOREIGN ESTABLISHMENTS; EXAMINATION AND REFUSAL OF ADMISSION.—The Secretary of Homeland Security shall deliver to the Administrator, upon request by the Administrator, samples of tobacco products that are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. The Administrator shall furnish to the Secretary of Homeland Security a list of establishments registered pursuant to subsection (d) of section 109 of this Act, and shall request that, if any tobacco products manufactured, prepared, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such tobacco products be delivered to the Administrator, with notice of such delivery to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such tobacco product is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (2) such tobacco product is adulterated, misbranded, or otherwise in violation of this Act, then such tobacco product shall be refused admission, except as provided in subsection (b) of this section. The Secretary of Homeland Security shall cause the destruction of any such tobacco product refused admission unless such tobacco product is exported, under regulations prescribed by the Secretary of Homeland Security, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) DISPOSITION OF REFUSED TOBACCO PRODUCTS.—Pending decision as to the admission of a tobacco product being imported or offered for import, the Secretary of Homeland Security may authorize delivery of such tobacco product to the owner or consignee upon the execution by such consignee of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of Homeland Security. If it appears to the Administrator that a tobacco product included within the provisions of clause (3) of subsection (a) of this section can, by relabeling or other action, be brought into compliance with this Act or rendered other than a tobacco product, final determination as to admission of such tobacco product may be deferred and, upon filing of timely written application by the owner or consignee and the execution by such consignee of a bond as provided in the preceding provisions of this subsection, the Administrator may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected tobacco products or portions thereof, as may be specified in the Administrator's authorization). All such relabeling or other action pursuant to such authorization shall in accordance with regulations be under the supervision of an officer or employee of the Agency designated by the Administrator, or an officer or employee of the Department of Homeland Security designated by the Secretary of Homeland Security.

(c) CHARGES CONCERNING REFUSED TOBACCO PRODUCTS.—All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any tobacco product refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

SEC. 509. TOBACCO PRODUCTS FOR EXPORT.

(a) EXEMPTION FOR TOBACCO PRODUCTS EXPORTED.—Except as provided in subsection (b), a tobacco product intended for export shall be exempt from this Act if—

(1) it is not in conflict with the laws of the country to which it is intended fore export, as shown by either (A) a document issued by the government of that country or (B) a document provided by a person knowledgeable with respect to the relevant laws of that country and qualified by training and experience to opine on whether the tobacco product is or is not in conflict with such laws;

(2) it is labeled on the outside of the shipping package that it is intended for export; and

(3) the particular units of tobacco product intended for export have not been sold or offered for sale in domestic commerce.

(b) PRODUCTS FOR U.S. ARMED FORCES OVERSEAS.—A tobacco product intended for export shall not be exempt from this Act if it is intended for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(c) This Act shall not apply to a person that manufactures and/or distributes tobacco products solely for export under subsection (a), except to the extent such tobacco products are subject to subsection (b).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. USE OF PAYMENTS UNDER THE MASTER SETTLEMENT AGREEMENT AND INDIVIDUAL STATE SETTLEMENT AGREEMENTS.

(a) REDUCTION OF GRANT AMOUNTS.—(1) For fiscal year 2010 and each subsequent fiscal year, the Secretary shall reduce, as provided in subsection (b), the amount of any grant under section 1921 of the Public Health Service Act (42 U.S.C. § 300x–21) for any State that spends on tobacco control programs from the funds received by such State pursuant to the Master Settlement Agreement, the Florida Settlement Agreement, the Minnesota Settlement Agreement, the Mississippi Memorandum of Understanding, or the Texas Settlement Agreement, as applicable, less than 20 percent of the amounts received by that State from settlement payments.

(2) In the case of a State whose legislature does not convene a regular session in fiscal year 2009 or 2010, and in the case of a State whose legislature does not convene a regular session in fiscal year 2010, the requirement described in subsection (a)(1) as a condition of receipt of a grant under section 1921 of the Public Health Service Act shall apply only for fiscal year 2009 and subsequent fiscal years.

(b) DETERMINATION OF STATE SPENDING.—Before making a grant under section 1921 of the Public Health Service Act, section 300x–21 of title 42, United States Code, to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether, during the immediately preceding fiscal year, the State has spent on tobacco control programs, from

the funds received by such State pursuant to the Master Settlement Agreement, the Florida Settlement Agreement, the Minnesota Settlement Agreement, the Mississippi Memorandum of Understanding, or the Texas Settlement Agreement, as applicable, at least the amount referenced in (a)(1). If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State has spent less than such amount, the Secretary shall reduce the amount of the allotment under section 300x–21 of title 42, United States Code, for the State for the fiscal year involved by an amount equal to—

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year.

The Secretary shall not have authority or discretion to grant to any State a waiver of the terms and requirements of this subsection or subsection (a).

(c) DEFINITIONS.—For the purposes of this section—

(1) The term ''first applicable fiscal year'' means—

(A) fiscal year 2011, in the case of any State described in subsection (a)(2) of this section; and

(B) fiscal year 2010, in the case of any other State.

(2) The term ''Florida Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on August 25, 1997, between the State of Florida and signatory tobacco product manufacturers, as specified therein.

(3) The term ''Master Settlement Agreement'' means the Master Settlement Agreement, together with the exhibits thereto, entered into on November 23, 1998, between the signatory States and signatory tobacco product manufacturers, as specified therein.

(4) The term ''Minnesota Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on May 8, 1998, between the State of Minnesota and signatory tobacco product manufacturers, as specified therein.

(5) The term ''Mississippi Memorandum of Understanding'' means the Memorandum of Understanding, together with the exhibits thereto and Settlement Agreement contemplated therein, entered into on July 2, 1997, between the State of Mississippi and signatory tobacco product manufacturers, as specified therein.

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

(7) The term ''Texas Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on January 16, 1998, between the State of Texas and signatory tobacco product manufacturers, as specified therein.

SEC. 602. PREEMPTION OF STATE LAWS IMPLEMENTING FIRE SAFETY STANDARD FOR CIGARETTES.

(a) IN GENERAL.—With respect to fire safety standards for cigarettes, no State or political subdivision shall—

(1) require testing of cigarettes that would be in addition to, or different from, the testing prescribed in subsection (b); or

(2) require a performance standard that is in addition to, or different from, the performance standard set forth in subsection (b).

(b) TEST METHOD AND PERFORMANCE STANDARD.—

(1) To the extent a State or political subdivision enacts or has enacted legislation or a regulation setting a fire safety standard for cigarettes, the test method employed shall be—

(A) the American Society of Testing and Materials (''ASTM'') standard E2187–4, entitled ''Standard Test Method for Measuring the Ignition Strength of Cigarettes'';

(B) for each cigarette on 10 layers of filter paper;

(C) so that a replicate test of 40 cigarettes for each brand style of cigarettes comprises a complete test trial for that brand style; and

(D) in a laboratory that has been accredited in accordance with ISO/IEC 17205 of the International Organization for Standardization (''ISO'') and that has an implemented quality control and quality assurance program that includes a procedure capable of determining the repeatability of the testing results to a repeatability value that is no greater than 0.19.

(2) To the extent a State or political subdivision enacts or has enacted legislation or a regulation setting a fire safety standard for cigarettes, the performance standard employed shall be that no more than 25 percent of the cigarettes of that brand style tested in a complete test in accordance with paragraph (1) exhibit full-length burns

(c) EXCEPTION TO SUBSECTION (b).—In the event that a manufacturer of a cigarette that a State or political subdivision or its respective delegated agency determines cannot be tested in accordance with the test method prescribed in subsection (b)(1)(A), the manufacturer shall propose a test method and performance standard for the cigarette to the State or political subdivision. Upon approval of the proposed test method and a determination by the State or political division that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (b)(2), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to this subsection notwithstanding subsection (b).

SEC. 603. INSPECTION BY THE ALCOHOL AND TOBACCO TAX TRADE BUREAU OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of the Alcohol and Tobacco Tax Trade Bureau may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (d); or

(2) any cigarettes or smokeless tobacco kept or stored by such person at such premises.

(b) COVERED PERSONS.—Subsection (a) applies to any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—

(1) IN GENERAL.—The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

(2) VIOLATIONS.—Whoever violates subsection (a) or an order issued pursuant to paragraph (1) shall be subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(d) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are—

(1) the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act'');

(2) chapter 114 of title 18, United States Code; and

(3) this Act.

(e) DELIVERY SALE DEFINED.—In this section, the term ''delivery sale'' has the meaning given that term in 2343(e) of title 18, United States Code, as amended by this Act.

SEC. 604. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected, and shall continue to be enforced to the fullest extent possible.

TITLE VII—TOBACCO GROWER PROTECTION

SEC. 701. TOBACCO GROWER PROTECTION.

No provision in this Act shall allow the Administrator or any other person to require changes to traditional farming practices, including standard cultivation practices, curing processes, seed composition, tobacco type, fertilization, soil, record keeping, or any other requirement affecting farming practices.

TITLE VIII—RESTRICTIONS ON YOUTH ACCESS TO TOBACCO PRODUCTS AND EXPOSURE OF YOUTHS TO TOBACCO PRODUCT MARKETING AND ADVERTISING

SEC. 801. PROHIBITIONS ON YOUTH TARGETING.

Effective beginning on the date that is 18 months after the effective date of this Act, no person shall engage in any of the following activities or practices in the advertising, promotion, or marketing of any tobacco product:

(1) The use, or causing the use, of any cartoon in the advertising, promoting, packaging, or labeling of any tobacco product.

(2) The use, or causing the use, of any human image in the advertising, promoting, packaging, or labeling of any tobacco product, except for the following:

(A) The use, or continued use, in advertising, promoting, marketing, packaging, or labeling of any human image appearing on a tobacco product package before December 31, 2009.

(B) The use, or continued use, of a human image in the advertising, promoting, or marketing of a tobacco product, if conducted solely in an adult-only facility or facilities.

(C) The use, or continued use, of a human image in a tobacco product communication means directed solely to persons that the tobacco product manufacturer has a good-faith belief are age-verified adults.

(3) The advertising of tobacco products in any magazine or newspaper intended for distribution to the general public.

(4) The engaging in any brand name sponsorship in the United States, other than a brand name sponsorship occurring solely in an adult-only facility or facilities.

(5) The engaging in any brand name sponsorship of any event in the United States in which any paid participants or contestants are youths.

(6) The sponsoring of any athletic event between opposing teams in any football, basketball, baseball, soccer, or hockey league.

(7)(A) The securing of a right, by agreement, to name any stadium or arena located within the United States with a brand name; or

(B) otherwise causing a stadium or arena located within the United States to be named with a brand name.

(8) The securing of a right by agreement pursuant to which payment is made or other consideration is provided to use a brand name in association with any football, basketball, baseball, soccer, or hockey league, or any team involved in any such league.

(9) The use of, or causing the use of, by agreement requiring the payment of money or other consideration, a brand name with any nationally recognized or nationally established trade name or brand designation of any non-tobacco item or service, or any nationally recognized or nationally established sports team, entertainment group or individual celebrity for purposes of advertising, except for an agreement between or among persons that enter into such agreement for the sole purpose of avoiding infringement claims.

(10) The license, express authorization, or otherwise causing of any person to use or advertise within the United States any brand name in a manner that—

(A) does not pertain to a tobacco product; or

(B) causes that person to use the brand name to advertise, promote, package or label, distribute, or sell any product or service that is not a tobacco product.

(11) The marketing, distribution, offering, selling, licensing, or authorizing of, or the causing to be marketed, distributed, offered, sold, licensed, or authorized, any apparel or other merchandise (other than a tobacco product) bearing a brand name, except—

(A) apparel or other merchandise that is used by individuals representing a tobacco product manufacturer within an adult-only facility and that is not distributed, by sale or otherwise, to any member of the general public;

(B) apparel or merchandise provided to an adult employee of a tobacco product manufacturer for use by such employee;

(C) items or materials used to hold or display tobacco products at retail;

(D) items or materials the sole function of which is to advertise tobacco products;

(E) written or electronic publications;

(F) coupons or other items used by adults solely in connection with the purchase of tobacco products;

(G) that the composition, structure, form, or appearance of any tobacco product, package, label, or labeling shall not be affected by the prohibitions of this paragraph; and

(H) that no person shall be required to retrieve, collect or otherwise recover any item or material that was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold, or licensed by such person.

(12) The distribution, or causing the distribution, of any free sample domestically, except in an adult-only facility or facilities to individuals who are age-verified adults.

(13) The making of, or causing to be made, any payment or the payment of, or causing to be paid, any other consideration to any other person to use, display, make reference to, or use as a prop in any performance medium (for the purposes of this paragraph, the terms ''performance medium'' and ''performance media'' mean any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game), any tobacco product, tobacco product package, advertisement for a tobacco product, or any other item bearing a brand name; except for the following:

(A) Performance media for which the audience or viewers are within one or more adult-only facilities, if such performance media are not audible or visible to persons outside such adult-only facility or facilities.

(B) Performance media not intended to be heard or viewed by the general public.

(A) Instructional performance media that concern tobacco products and their use, and that are intended to be heard or viewed only by, or provided only to, age-verified adults.

(A) Performance media used in tobacco product communications to age-verified adults.

(14) Engaging in outdoor advertising or transit advertisements of tobacco products within the United States, except for the following:

(A) Advertising that is within an adult-only facility.

(B) The use of outdoor advertising for purposes of identification of an adult-only facility, to the extent that such outdoor advertising is placed at the site, premises, or location of the adult-only facility.

(C) The use of outdoor advertising in identifying a brand name sponsorship at an adult-only facility, if such outdoor advertising—

(i) is placed at the site, premises, or location of the adult-only facility where such brand name sponsorship will occur no more than 30 days before the start of the initial sponsored event; and

(ii) is removed within 10 days after the end of the last sponsored event.

(15) The distribution or sale domestically of any package or other container of cigarettes containing fewer than 20 cigarettes.

(16) The advertising of tobacco products on any broadcast, cable, or satellite transmission to a television or radio receiver, or other medium of electronic communication subject to the jurisdiction of the Federal Communications Commission, except electronic communications—

(A) contained on log-in or home pages containing no tobacco product advertising other than brand name identification;

(B) in an adult-only facility or facilities; or

(C) through the Internet or other individual user-accessible electronic communication means, including websites accessible using the Internet, if the advertiser takes reasonable action to restrict access to individuals who are adults by—

(i) requiring individuals accessing such electronic communications to be age-verified adults, and

(ii) making good faith efforts to verify that such individuals are adults.

(18) The distribution or sale of tobacco products directly to consumers by mail or courier, unless the person receiving purchase requests for tobacco products takes reasonable action to prevent delivery to individuals who are not adults by—

(A) requiring that the addressees of the tobacco products be age-verified adults;

(B) making good faith efforts to verify that such addressees are adults; and

(C) addressing the tobacco products delivered by mail, courier or common carrier to a physical address and not a post office box.

(19) The providing of any gift of a non-tobacco product, except matches, in connection with the purchase of a tobacco product.

(20) The engaging in the sponsorship or promotion, or causing the sponsorship or promotion, of any consumer sweepstakes, contest, drawing, or similar activity resulting in the award of a prize in connection with advertising.

(21) The offering, promoting, conducting, or authorizing, or causing to be offered, promoted, conducted, or authorized, any consumer sweepstakes, drawing, contest, or other activity resulting in the award of a prize, based on redemption of a proof-of-purchase, coupon, or other item awarded as a result of the purchase or use of a tobacco product.

(22) The making of, or causing to be made, any payment or the payment of, or causing to be paid, any other consideration, to any other person with regard to the display or placement of any cigarettes, or any advertising for cigarettes, in any retail establishment that is not an adult-only facility.

TITLE IX—USER FEES

SEC. 901. USER FEES.

(a) ASSESSMENT OF USER FEES.—The Administrator shall assess an annual user fee for each fiscal year beginning in fiscal year 2010, in an amount calculated in accordance with this section, upon each tobacco product manufacturer (including each importer) that is subject to this Act.

(b) USE OF FEE.—The Administrator shall utilize an amount equal to the amount of user fees collected under this section in each fiscal year to pay for the costs of the activities of the Tobacco Regulatory Agency related to the regulation of tobacco products under this Act.

(c) AMOUNT OF FEE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the total amount of user fees assessed for each fiscal year pursuant to this section shall be sufficient, and shall not exceed the amount necessary, to pay for the costs of the activities described in subsection (b) for that fiscal year.

(2) TOTAL.—The total assessment under this section—

(A) for fiscal year 2010 shall be $100,000,000; and

(B) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Administrator (after notice, published in the Federal Register) to reflect the greater of—

(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 preceding the fiscal year for which fees are being established; or

(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

(3) NOTIFICATION.—The Administrator shall notify each tobacco product manufacturer subject to this section of the amount of the annual assessment imposed on such tobacco product manufacturer under subsection (d). Such notifications shall occur not later than the July 31 prior to the beginning of the fiscal year for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification. Such notification shall contain a complete list of the assessments imposed on tobacco product manufacturers for that fiscal year.

(d) LIABILITY OF TOBACCO PRODUCT MANUFACTURERS FOR USER FEES.—

(1) IN GENERAL.—The user fee to be paid by each tobacco product manufacturer shall be determined in each fiscal year by multiplying—

(A) such tobacco product manufacturer's market share of tobacco products, as determined under regulations issued pursuant to subsection (e); by

(B) the total user fee assessment for such fiscal year, as determined under subsection (c).

(2) LIMITATION.—Except as provided in paragraph (3), no tobacco product manufacturer shall be required to pay a percentage of a total annual user fee for all tobacco product manufacturers that exceeds the market share of such manufacturer.

(3) FAILURE TO PAY.—If—

(A) a tobacco product manufacturer fails to pay its user fee share in full by the due date;

(B) the Administrator, after diligent inquiry, concludes that such manufacturer is unlikely to pay its user fee share in full by the time such payment will be needed by the Administrator; and

(C) the Administrator and the Department of Justice make diligent efforts to obtain payment in full from such tobacco product manufacturer;

the Administrator may re-allocate the unpaid amount owed by that tobacco product manufacturer to the other tobacco product manufacturers on the basis of their respective market shares. If the Administrator takes such action, the Administrator shall set a reasonable time, not less than 60 days from the date of the notice of the amount due, for payment of that amount. If and to the extent that the Administrator ultimately receives from that tobacco product manufacturer or any successor to such tobacco product manufacturer any payment in respect of the previously unpaid obligation, the Administrator shall credit such payment to the tobacco product manufacturers that paid portions of the re-allocated amount, in proportion to their respective payments of such amount.

(e) REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Administrator shall, by regulation, establish a system for determining the market shares of tobacco products for each tobacco product manufacturer subject to this section. In promulgating regulations under this subsection, the Administrator shall—

(1) take into account the differences between categories and subcategories of tobacco products in terms of sales, manner of unit packaging, and any other factors relevant to the calculation of market share for a tobacco product manufacturer;

(2) take into account that different tobacco product manufacturers rely to varying degrees on the sales of different categories and subcategories of tobacco products; and

(3) provide that the market share of tobacco products for each tobacco product manufacturer shall be recalculated on an annual basis.

SA 1245. Ms. STABENOW (for herself and Ms. MURKOWSKI) submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. REPORTING OF DATA IN APPLICATIONS FOR DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES.

(a) DRUGS.—

(1) NEW DRUG APPLICATIONS.—Section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) is amended—

(A) in paragraph (1), in the second sentence—

(i) by striking ''drug, and (G)'' and inserting ''drug; (G)''; and

(ii) by inserting before the period the following: ''; and (H) the information required under paragraph (7)''; and

(B) by adding at the end the following:

''(7)(A) With respect to clinical data in an application under this subsection, the Secretary may deny such an application if the application fails to meet the requirements of sections 314.50(d)(5)(v) and 314.50(d)(5)(vi)(a) of title 21, Code of Federal Regulations.

''(B) The Secretary shall modify the sections referred to in subparagraph (A) to require that an application under this subsection include any clinical data possessed by the applicant that relates to the safety or effectiveness of the drug involved by gender, age, and racial subgroup.

''(C) Promptly after approving an application under this subsection, the Secretary shall, through an Internet site of the Department of Health and Human Services, make available to the public the information submitted to the Secretary pursuant to subparagraphs (A) and (B), subject to sections 301(j) and 520(h)(1) of this Act, subsection (b)(4) of section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act'), and other provisions of law that relate to trade secrets or confidential commercial information.

''(D) The Secretary shall develop guidance for staff of the Food and Drug Administration to ensure that applications under this subsection are adequately reviewed to determine whether the applications include the information required pursuant to subparagraphs (A) and (B).''.

(2) INVESTIGATIONAL NEW DRUG APPLICATIONS.—Section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) is amended—

(A) in paragraph (2), by striking ''Subject to paragraph (3),'' and inserting ''Subject to paragraphs (3) and (5),'' ; and

(B) by adding at the end the following:

''(5)(A) The Secretary may place a clinical hold (as described in paragraph (3)) on an investigation if the sponsor of the investigation fails to meet the requirements of section 312.33(a) of title 21, Code of Federal Regulations.

''(B) The Secretary shall modify the section referred to in subparagraph (A) to require that reports under such section include any clinical data possessed by the sponsor of the investigation that relates to the safety or effectiveness of the drug involved by gender, age, and racial subgroup.''.

(b) BIOLOGICAL PRODUCT LICENSE APPLICATIONS.—Section 351 of the Public Health Service Act (42 U.S.C. 262) is amended by adding at the end the following:

''(k) The provisions of section 505(b)(7) of the Federal Food, Drug, and Cosmetic Act (relating to clinical data submission) apply with respect to an application under subsection (a) of this section to the same extent and in the same manner as such provisions apply with respect to an application under section 505(b) of such Act.''.

(c) DEVICES.—

(1) PREMARKET APPROVAL.—Section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e) is amended—

(A) in subsection (c)(1)—

(i) in subparagraph (G)—

(I) by moving the margin 2 ems to the left; and

(II) by striking ''and'' after the semicolon at the end;

(ii) by redesignating subparagraph (H) as subparagraph (I); and

(iii) by inserting after subparagraph (G) the following subparagraph:

''(H) the information required under subsection (d)(7); and''; and

(B) in subsection (d), by adding at the end the following paragraph:

''(7) To the extent consistent with the regulation of devices, the provisions of section 505(b)(7) (relating to clinical data submission) apply with respect to an application for premarket approval of a device under subsection (c) of this section to the same extent and in the same manner as such provisions apply with respect to an application for premarket approval of a drug under section 505(b).''.

(2) INVESTIGATIONAL DEVICES.—Section 520(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)(2)) is amended by adding at the end the following subparagraph:

''(D) To the extent consistent with the regulation of devices, the provisions of section 505(i)(5) (relating to individual study information) apply with respect to an application for an exemption pursuant to subparagraph (A) of this paragraph to the same extent and in the same manner as such provisions apply with respect to an application for an exemption under section 505(i).''.

(d) RULES OF CONSTRUCTION.—This Act and the amendments made by this Act may not be construed—

(1) as establishing new requirements under the Federal Food, Drug, and Cosmetic Act relating to the design of clinical investigations that were not otherwise in effect on the day before the date of the enactment of this Act; or

(2) as having any effect on the authority of the Secretary of Health and Human Services to enforce regulations under the Federal Food, Drug, and Cosmetic Act that are not expressly referenced in this Act or the amendments made by this Act.

(e) APPLICATION.—This section and the amendments made by this section apply only with respect to applications received under section 505 or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) on or after the date of the enactment of this Act.

SA 1246. Mr. BURR (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Preventing Disease and Death from Tobacco Use Act''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Cigarette smoking is a leading cause of preventable deaths in the United States. Cigarette smoking significantly increases the risk of developing lung cancer, heart disease, chronic bronchitis, emphysema and other serious diseases with adverse health conditions.

(2) The risk for serious diseases is significantly affected by the type of tobacco product and the frequency, duration and manner of use.

(3) No tobacco product has been shown to be safe and without risks. The health risks associated with cigarettes are significantly greater than those associated with the use of smoke-free tobacco and nicotine products.

(4) Nicotine in tobacco products is addictive but is not considered a significant threat to health.

(5) It is the smoke inhaled from burning tobacco which poses the most significant risk of serious diseases.

(6) Quitting cigarette smoking significantly reduces the risk for serious diseases.

(7) Adult tobacco consumers have a right to be fully and accurately informed about the risks of serious diseases, the significant differences in the comparative risks of different tobacco and nicotine-based products, and the benefits of quitting. This information should be based on sound science.

(8) Governments, public health officials, tobacco manufacturers and others share a responsibility to provide adult tobacco consumers with accurate information about the various health risks and comparative risks associated with the use of different tobacco and nicotine products.

(9) Tobacco products should be regulated in a manner that is designed to achieve significant and measurable reductions in the morbidity and mortality associated with tobacco use. Regulations should enhance the information available to adult consumers to permit them to make informed choices, and encourage the development of tobacco and nicotine products with lower risks than cigarettes currently sold in the United States.

(10) The form of regulation should be based on the risks and comparative risks of tobacco and nicotine products and their respective product categories.

(11) The regulation of marketing of tobacco products should be consistent with constitutional protections and enhance an adult consumer's ability to make an informed choice by providing accurate information on the risks and comparative risks of tobacco products.

(12) Reducing the diseases and deaths associated with the use of cigarettes serves public health goals and is in the best interest of consumers and society. Harm reduction should be the critical element of any comprehensive public policy surrounding the health consequences of tobacco use.

(13) Significant reductions in the harm associated with the use of cigarettes can be achieved by providing accurate information regarding the comparative risks of tobacco products to adult tobacco consumers, thereby encouraging smokers to migrate to the use of smoke-free tobacco and nicotine products, and by developing new smoke-free tobacco and nicotine products and other actions.

(14) Governments, public health officials, manufacturers, tobacco producers and consumers should support the development, production, and commercial introduction of tobacco leaf, and tobacco and nicotine-based products that are scientifically shown to reduce the risks associated with the use of existing tobacco products, particularly cigarettes.

(15) Adult tobacco consumers should have access to a range of commercially viable tobacco and nicotine-based products.

(16) There is substantial scientific evidence that selected smokeless tobacco products can satisfy the nicotine addiction of inveterate smokers while eliminating most, if not all, risk of pulmonary and cardiovascular complications of smoking and while reducing the risk of cancer by more than 95 percent.

(17) Transitioning smokers to selected smokeless tobacco products will eliminate environmental tobacco smoke and fire-related hazards.

(18) Current ''abstain, quit, or die'' tobacco control policies in the United States may have reached their maximum possible public health benefit because of the large number of cigarette smokers either unwilling or unable to discontinue their addiction to nicotine.

(19) There is evidence that harm reduction works and can be accomplished in a way that will not increase initiation or impede smoking cessation.

(20) Health-related agencies and organizations, both within the United States and abroad have already gone on record endorsing Harm Reduction as an approach to further reducing tobacco related illness and death.

(21) Current Federal policy requires tobacco product labeling that leaves the incorrect impression that all tobacco product present equal risk.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Tobacco Harm Reduction Center by recognizing it as the primary Federal regulatory authority with respect to tobacco products as provided for in this Act;

(2) to ensure that the Center has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Center to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Center with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) to ensure that consumers are better informed regarding the relative risks for death and disease between categories of tobacco products;

(7) to continue to allow the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote prevention, cessation, and harm reduction policies and regulations to reduce disease risk and the social costs associated with tobacco-related diseases;

(10) to provide authority to the Department of Health and Human Services to regulate tobacco products;

(11) to establish national policies that effectively reduce disease and death associated with cigarette smoking and other tobacco use;

(12) to establish national policies that encourage prevention, cessation, and harm reduction measures regarding the use of tobacco products;

(13) to encourage current cigarette smokers who will not quit to use noncombustible tobacco or nicotine products that have significantly less risk than cigarettes;

(14) to establish national policies that accurately and consistently inform adult tobacco consumers of significant differences in risk between respective tobacco products;

(15) to establish national policies that encourage and assist the development and awareness of noncombustible tobacco and nicotine products;

(16) to coordinate national and State prevention, cessation, and harm reduction programs;

(17) to impose measures to ensure tobacco products are not sold or accessible to underage purchasers; and

(18) to strengthen Federal and State legislation to prevent illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action;

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind; or

(3) be applicable to tobacco products or component parts manufactured in the United States for export.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Administrator to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Administrator to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

SEC. 6. EFFECTIVE DATE.

Except as otherwise specifically provided, the effective date of this Act shall be the date of its enactment.

TITLE I—AUTHORITY OF THE TOBACCO HARM REDUCTION CENTER

SEC. 100. DEFINITIONS.

In this Act:

(1) The term ''Administrator'' means the chief executive of the Tobacco Regulatory Agency (the Agency responsible for administering and enforcing this Act and regulations promulgated pursuant to this Act).

(2) The term ''adult'' means any individual who has attained the minimum age under applicable State law to be an individual to whom tobacco products may lawfully be sold.

(3) The term ''adult-only facility'' means a facility or restricted area, whether open-air or enclosed, where the operator ensures, or has a reasonable basis to believe, that no youth is present. A facility or restricted area need not be permanently restricted to adults in order to constitute an adult-only facility, if the operator ensures, or has a reasonable basis to believe, that no youth is present during any period of operation as an adult-only facility.

(4) The term ''advertising'' means a communication to the general public by a tobacco product manufacturer, distributor, retailer, or its agents, which identifies a tobacco product by brand name and is intended by such manufacturer, distributor, retailer, or its agents to promote purchases of such tobacco product. Such term shall not include—

(A) any advertising or other communication in any tobacco trade publication or tobacco trade promotional material;

(B) the content of any scientific publication or presentation, or any patent application or other communication to the United States Patent and Trademark Office or any similar office in any other country;

(C) any corporate or financial report or financial communication;

(D) any communication to a lending institution or to securities holders;

(E) any communication not intended for public display or public exposure, except that a direct mailing or direct electronic communication of what otherwise is advertising shall be deemed to be advertising;

(F) any communication in, on, or within a factory, office, plant, warehouse, or other facility related to or associated with the development, manufacture, or storage of tobacco products;

(G) any communication to any governmental agency, body, official, or employee;

(H) any communication to any journalist, editor, Internet blogger, or other author;

(I) any communication in connection with litigation, including arbitration and like proceedings; or

(J) any editorial advertisement that addresses a public issue.

(5) The term ''affiliate'' means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. The terms ''owns,'' ''is owned'', and ''ownership'' refer to ownership of an equity interest, or the equivalent thereof, of 50 percent or more.

(6) The term ''Agency'' means the Tobacco Regulatory Agency.

(7) The term ''age-verified adult'' means any individual who is an adult and—

(A) who has stated or acknowledged, after being asked, that he or she is an adult and a tobacco product user, and has presented proof of age identifying the individual and verifying that the individual is an adult; or

(B) whose status as an adult has been verified by a commercially available database of such information.

(8) The term ''annual report'' means a tobacco product manufacturer's annual report to the Agency, which provides ingredient information and nicotine yield ratings for each brand style that tobacco product manufacturer manufactures for commercial distribution domestically.

(9) The term ''brand name'' means a brand name of a tobacco product distributed or sold domestically, alone, or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicium of product identification identical or similar to, or identifiable with, those used for any domestic brand of tobacco product. The term shall not include the corporate name of any tobacco product manufacturer that does not, after the effective date of this Act, sell a brand style of tobacco product in the United States that includes such corporate name.

(10) The term ''brand name sponsorship'' means an athletic, musical, artistic, or other social or cultural event, series, or tour, with respect to which payment is made, or other consideration is provided, in exchange for use of a brand name or names—

(A) as part of the name of the event; or

(B) to identify, advertise, or promote such event or an entrant, participant, or team in such event in any other way.

(11) The term ''brand style'' means a tobacco product having a brand name, and distinguished by the selection of the tobacco, ingredients, structural materials, format, configuration, size, package, product descriptor, amount of tobacco, or yield of ''tar'' or nicotine.

(12) The term ''carton'' means a container into which packages of tobacco products are directly placed for distribution or sale, but does not include cases intended for shipping. Such term includes a carton containing 10 packages of cigarettes.

(13) The term ''cartoon'' means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(A) The use of comically exaggerated features.

(B) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique.

(C) The attribution of unnatural or extrahuman abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

The term does not include any drawing or other depiction that, on the effective date of this Act, was in use in the United States in any tobacco product manufacturer's corporate logo or in any tobacco product manufacturer's tobacco product packaging.

(14) The term ''cigar'' has the meaning assigned that term by the Alcohol and Tobacco Tax and Trade Bureau in section 40.11 of title 27, Code of Federal Regulations.

(15) The term ''cigarette'' means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of the appearance of the roll of tobacco, the type of tobacco used in the filler, or its package or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(16) The term ''competent and reliable scientific evidence'' means evidence based on tests, analyses, research, or studies, conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the relevant scientific disciplines to yield accurate and reliable results.

(17) The term ''distributor'' means any person who furthers the distribution of tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the tobacco product to individuals for personal consumption. Common carriers, retailers, and those engaged solely in advertising are not considered distributors for purposes of this Act.

(18) The terms ''domestic'' and ''domestically'' mean within the United States, including activities within the United States involving advertising, marketing, distribution, or sale of tobacco products that are intended for consumption within the United States.

(19) The term ''human image'' means any photograph, drawing, silhouette, statue, model, video, likeness, or depiction of the appearance of a human being, or the appearance of any portion of the body of a human being.

(20) The term ''illicit tobacco product'' means any tobacco product intended for use by consumers in the United States—

(A) as to which not all applicable duties or taxes have been paid in full;

(B) that has been stolen, smuggled, or is otherwise contraband;

(C) that is counterfeit; or

(D) that has or had a label, labeling, or packaging stating, or that stated, that the product is or was for export only, or that it is or was at any time restricted by section 5704 of title 26, United States Code.

(21) The term ''illicit trade'' means any transfer, distribution, or sale in interstate commerce of any illicit tobacco product.

(22) The term ''immediate container'' does not include package liners.

(23) The term ''Indian tribe'' has the meaning assigned that term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(24) The term ''ingredient'' means tobacco and any substance added to tobacco to have an effect in the final tobacco product or when the final tobacco product is used by a consumer.

(25) The term ''International Organization for Standardization (ISO) testing regimen'' means the methods for measuring cigarette smoke yields, as set forth in the most recent version of ISO 3308, entitled ''Routine analytical cigarette-smoking machine—Definition of standard conditions''; ISO 4387, entitled ''Cigarettes—Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine''; ISO 10315, entitled ''Cigarettes—Determination of nicotine in smoke condensates—Gas-chromatographic method''; ISO 10362–1, entitled ''Cigarettes—Determination of water in smoke condensates—Part 1: Gas-chromatographic method''; and ISO 8454, entitled ''Cigarettes—Determination of carbon monoxide in the vapour phase of cigarette smoke—NDIR method''. A cigarette that does not burn down in accordance with the testing regimen standards may be measured under the same puff regimen using the number of puffs that such a cigarette delivers before it extinguishes, plus an additional three puffs, or with such other modifications as the Administrator may approve.

(26) The term ''interstate commerce'' means all trade, traffic, or other commerce—

(A) within the District of Columbia, or any territory or possession of the United States;

(B) between any point in a State and any point outside thereof;

(C) between points within the same State through any place outside such State; or

(D) over which the United States has jurisdiction.

(27) The term ''label'' means a display of written, printed, or graphic matter upon or applied securely to the immediate container of a tobacco product.

(28) The term ''labeling'' means all labels and other written, printed, or graphic matter (1) upon or applied securely to any tobacco product or any of its containers or wrappers, or (2) accompanying a tobacco product.

(29) The term ''little cigar'' has the meaning assigned that term by the Alcohol and Tobacco Tax and Trade Bureau in section 40.11 of title 27, Code of Federal Regulations.

(30) The term ''loose tobacco'' means any form of tobacco, alone or in combination with any other ingredient or material, that, because of its appearance, form, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making or assembling cigarettes, incorporation into pipes, or otherwise used by consumers to make any smoking article.

(31) The term ''manufacture'' means to design, manufacture, fabricate, assemble, process, package, or repackage, label, or relabel, import, or hold or store in a commercial quantity, but does not include—

(A) the growing, curing, de-stemming, or aging of tobacco; or

(B) the holding, storing or transporting of a tobacco product by a common carrier for hire, a public warehouse, a testing laboratory, a distributor, or a retailer.

(32) The term ''nicotine-containing product'' means a product intended for human consumption, other than a tobacco product, that contains added nicotine, produced and intended to be absorbed from the skin, mouth, or nose, or inhaled as a vapor or aerosol.

(33) The term ''outdoor advertising''—

(A) except as provided in subparagraph (B), means—

(i) billboards;

(ii) signs and placards in arenas, stadiums, shopping malls, and video game arcades (whether any of such are open air or enclosed), but not including any such sign or placard located in an adult-only facility; and

(iii) any other advertisements placed outdoors; and

(B) does not include—

(i) an advertisement on the outside of a tobacco product manufacturing facility; or

(ii) an advertisement that—

(I) is inside a retail establishment that sells tobacco products (other than solely through a vending machine or vending machines);

(II) is placed on the inside surface of a window facing outward; and

(III) is no larger than 14 square feet.

(34) The term ''package'' means a pack, box, carton, pouch, or container of any kind in which a tobacco product or tobacco products are offered for sale, sold, or otherwise distributed to consumers. The term ''package'' does not include an outer container used solely for shipping one or more packages of a tobacco product or tobacco products.

(35) The term ''person'' means any individual, partnership, corporation, committee, association, organization or group of persons, or other legal or business entity.

(36) The term ''proof of age'' means a driver's license or other form of identification that is issued by a governmental authority and includes a photograph and a date of birth of the individual.

(37) The term ''raw tobacco'' means tobacco in a form that is received by a tobacco product manufacturer as an agricultural commodity, whether in a form that is—

(A) natural, stem or leaf;

(B) cured or aged; or (3)

(C) as parts or pieces, but not in a reconstituted form, extracted pulp form, or extract form.

(38) The term ''reduced-exposure claim'' means a statement in advertising or labeling that a tobacco product provides a reduced exposure to one or more toxicants, as compared to an appropriate reference tobacco product within the same category of tobacco products. Such a statement must include the wording ''reduction in risk has not been demonstrated for this reduction in exposure''. A statement or representation that a tobacco product or the tobacco in a tobacco product contains ''no additives'' or is ''natural'' or that uses a substantially similar term is not a reduced-exposure claim if the advertising or labeling that contains such statement or representation also contains the disclosure required by section 108(h) of this Act.

(39) The term ''reduced-risk claim'' means a statement in advertising or labeling that a tobacco product provides a reduced risk of illness and death compared to cigarettes. A statement or representation that a tobacco product or the tobacco in a tobacco product contains ''no additives,'' or is ''natural,'' or that uses a substantially similar term is not a reduced-risk claim if the advertising or labeling that contains such statement or representation also contains the disclosure required by section 108(h).

(40) The term ''retailer'' means any person that—

(A) sells tobacco products to individuals for personal consumption; or

(B) operates a facility where the sale of tobacco products to individuals for personal consumption is permitted.

(41) The term ''sample'' means a tobacco product distributed to members of the public at no cost for the purpose of promoting the product, but excludes tobacco products distributed—

(A) in conjunction with the sale of other tobacco products;

(B) for market research, medical or scientific study or testing, or teaching;

(C) to persons employed in the trade;

(D) to adult consumers in response to consumer complaints; or

(E) to employees of the manufacturer of the tobacco product.

(42) The term ''small business'' means a tobacco product manufacturer that—

(A) has 150 or fewer employees; and

(B) during the 3-year period prior to the current calendar year, had an average annual gross revenue from tobacco products that did not exceed $40,000,000.

(43) The term ''smokeless tobacco product'' means any form of finely cut, ground, powdered, reconstituted, processed or shaped tobacco, leaf tobacco, or stem tobacco, whether or not combined with any other ingredient, whether or not in extract or extracted form, and whether or not incorporated within any carrier or construct, that is intended to be placed in the oral or nasal cavity, including dry snuff, moist snuff, and chewing tobacco.

(44) The term ''smoking article'' means any tobacco-containing article that is intended, when used by a consumer, to be burned or otherwise to employ heat to produce a vapor, aerosol or smoke that—

(A) incorporates components of tobacco or derived from tobacco; and

(B) is intended to be inhaled by the user.

(45) The term ''State'' means any State of the United States and, except as otherwise specifically provided, includes any Indian tribe or tribal organization, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Atoll, the Northern Marianas, and any other trust territory or possession of the United States.

(46) The term ''tar'' means nicotine-free dry particulate matter as defined in ISO 4387, entitled ''Cigarettes—Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine''.

(47) The term ''tobacco'' means a tobacco plant or any part of a harvested tobacco plant intended for use in the production of a tobacco product, including leaf, lamina, stem, or stalk, whether in green, cured, or aged form, whether in raw, treated, or processed form, and whether or not combined with other materials, including any by-product, extract, extracted pulp material, or any other material (other than purified nicotine) derived from a tobacco plant or any component thereof, and including strip, filler, stem, powder, and granulated, blended, or reconstituted forms of tobacco.

(48) The term ''tobacco product'' means—

(A) the singular of ''tobacco products'' as defined in section 5702(c) of the Internal Revenue Code of 1986;

(B) any other product that contains tobacco as a principal ingredient and that, because of its appearance, type, or the tobacco

used in the product, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a tobacco product as described in subparagraph (A); and

(C) any form of tobacco or any construct incorporating tobacco, intended for human consumption, whether by—

(i) placement in the oral or nasal cavity;

(ii) inhalation of vapor, aerosol, or smoke; or

(iii) any other means.

(49) The term ''tobacco product category'' means a type of tobacco product characterized by its composition, components, and intended use, and includes tobacco products classified as cigarettes, loose tobacco for roll-your-own tobacco products, little cigars, cigars, pipe tobacco, moist snuff, dry snuff, chewing tobacco, and other forms of tobacco products (which are treated in this Act collectively as a single category).

(50) The term ''tobacco product communication'' means any means, medium, or manner for providing information relating to any tobacco product, including face-to-face interaction, mailings by postal service or courier to an individual who is an addressee, and electronic mail to an individual who is an addressee.

(51) The term ''tobacco product manufacturer'' means an entity that directly—

(A) manufactures anywhere a tobacco product that is intended to be distributed commercially in the United States, including a tobacco product intended to be distributed commercially in the United States through an importer;

(B) is the first purchaser for resale in the United States of tobacco products manufactured outside the United States for distribution commercially in the United States; or

(C) is a successor or assign of any of the foregoing.

(52) The term ''toxicant'' means a chemical or physical agent that produces an adverse biological effect.

(53) The term ''transit advertisements'' means advertising on or within private or public vehicles and all advertisements placed at, on, or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar location.

(54) The term ''tribal organization'' has the meaning assigned that term in section 4(1) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(1)).

(55) The term ''United States'' means the several States, as defined in this Act.

(56) The term ''vending machine'' means any mechanical, electric, or electronic self-service device that, upon insertion of money, tokens, or any other form of payment, automatically dispenses tobacco products.

(57) The term ''video game arcade'' means an entertainment establishment primarily consisting of video games (other than video games intended primarily for use by adults) or pinball machines.

(58) The term ''youth'' means any individual who in not an adult.

SEC. 101. CENTER AUTHORITY OVER TOBACCO PRODUCTS.

(a) IN GENERAL.—Tobacco products, including reduced risk tobacco products for which an order has been issued in accordance with section 117, shall be regulated by the Administrator under this Act.

(b) APPLICABILITY.—This Act shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Administrator by regulation deems to be subject to this Act.

(c) CENTER.—The Secretary of Health and Human Services shall establish within the Department of Health and Human Services the Tobacco Harm Reduction Center. The head of the Center shall be an Administrator, who shall assume the statutory authority conferred by this Act, perform the functions that relate to the subject matter of this Act, to conduct postmarket surveillance, research, and public education activities and have the authority to promulgate regulations for the efficient enforcement of this Act. In promulgating any regulations under such authority, in whole or in part or any regulation that is likely to have an annual effect on the economy of $50,000,000 or more or have a material adverse effect on adult users of tobacco products, tobacco product manufacturers, distributors, or retailers, the Administrator shall—

(1) determine the technological and economic ability of parties that would be required to comply with the regulation to comply with it;

(2) consider experience gained under any relevantly similar regulations at the Federal or State level;

(3) determine the reasonableness of the relationship between the costs of complying with such regulation and the public health benefits to be achieved by such regulation;

(4) determine the reasonable likelihood of measurable and substantial reductions in morbidity and mortality among individual tobacco users;

(5) determine the impact to United States tobacco producers and farm operations;

(6) determine the impact on the availability and use of tobacco products by minors; and

(7) determine the impact on illicit trade of tobacco products.

(d) LIMITATION OF AUTHORITY.—

(1) IN GENERAL.—The provisions of this Act shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Center have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

(2) EXCEPTION.—Notwithstanding paragraph (1), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this Act in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to grant the Administrator authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof.

(e) RULEMAKING PROCEDURES.—Each rulemaking under this Act shall be in accordance with chapter 5 of title 5, United States Code.

(f) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this Act, the Administrator shall endeavor to consult with other Federal agencies as appropriate.

SEC. 102. EXCLUSION OF OTHER REGULATORY PROGRAMS.

(a) EXCLUSION OF TOBACCO PRODUCTS AND NICOTINE-CONTAINING PRODUCTS FROM THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.—No tobacco product and no nicotine-containing product shall be regulated as a food, drug, or device in accordance with section 201 (f), (g) or (h) or Chapter IV or V of the Federal Food, Drug, and Cosmetic Act, except that any tobacco product commercially distributed domestically and any nicotine-containing product commercially distributed domestically shall be subject to Chapter V of the Federal Food, Drug, and Cosmetic Act if the manufacturer or a distributor of such product markets it with an explicit claim that the product is intended for use in the cure, mitigation, treatment, or prevention of disease in man or other animals, within the meaning of section 201(g)(1)(C) or section 201(h)(2) of that Act.

(b) LIMITATION ON EFFECT OF THIS ACT.—Nothing in this Act shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in any Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(c) EXCLUSIONS FROM AUTHORITY OF ADMINISTRATOR.—The authority granted to the Administrator under this Act shall not apply to—

(1) raw tobacco that is not in the possession or control of a tobacco product manufacturer;

(2) raw tobacco that is grown for a tobacco product manufacturer by a grower, and that is in the possession of that grower or of a person that is not a tobacco product manufacturer and is within the scope of subparagraphs (A) through(F) of paragraph (3); or

(3) the activities, materials, facilities, or practices of persons that are not tobacco product manufacturers and that are—

(A) producers of raw tobacco, including tobacco growers;

(B) tobacco warehouses, and other persons that receive raw tobacco from growers;

(C) tobacco grower cooperatives;

(D) persons that cure raw tobacco;

(E) persons that process raw tobacco; and

(F) persons that store raw tobacco for aging.

If a producer of raw tobacco is also a tobacco product manufacturer, an affiliate of a tobacco product manufacturer, or a person producing raw tobacco for a tobacco product manufacturer, then that producer shall be subject to this Act only to the extent of that producer's capacity as a tobacco product manufacturer.

SEC. 103. EXISTING FEDERAL STATUTES MAINTAINED.

Except as amended or repealed by this Act, all Federal statutes in effect as of the effective date of this Act that regulate tobacco, tobacco products, or tobacco product manufacturers shall remain in full force and effect. Such statutes include, without limitation—

(1) the Federal Cigarette Labeling and Advertising Act, sections 1331–1340 of title 15, United States Code, except that section 1335 of title 15, United States Code, is repealed;

(2) the Comprehensive Smokeless Tobacco Health Education Act of 1986, sections 4401–4408 of title 15, United States Code, except that section 4402(f) of title 15, United States Code, is repealed;

(3) section 300x–26 of title 42, United States Code; and

(4) those statutes authorizing regulation of tobacco, tobacco products, or tobacco product manufacturers by the Federal Trade Commission, the Department of Agriculture, the Environmental Protection Agency, the Internal Revenue Service, and the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

SEC. 104. PROCEEDINGS IN THE NAME OF THE UNITED STATES; SUBPOENAS; PREEMPTION OF STATE AND LOCAL LAW; NO PRIVATE RIGHT OF ACTION.

In furtherance of this Act:

(1) All proceedings for the enforcement, or to restrain violations, of this Act shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any

proceeding under this section. No State, or political subdivision thereof, may proceed or intervene in any Federal or State court under this Act or under any regulation promulgated under it, or allege any violation thereof except a violation by the Administrator. Nothing in this Act shall be construed to create a right of action by any private person for any violation of any provision of this Act or of any regulation promulgated under it.

(2) With respect to any subject matter addressed by this Act or by any regulation promulgated under it, no requirement or prohibition shall be imposed under State or local law upon any tobacco product manufacturer or distributor.

(3) Paragraph (2) shall not apply to any requirement or prohibition imposed under State or local law before the date of introduction of the bill that was enacted as this Act.

SEC. 105. ADULTERATED TOBACCO PRODUCTS.

A tobacco product shall be deemed to be adulterated—

(1) if it bears or contains any poisonous or deleterious substance other than—

(A) tobacco;

(B) a substance naturally present in tobacco;

(C) a pesticide or fungicide chemical residue in or on tobacco if such pesticide or fungicide chemical is registered by the Environmental Protection Agency for use on tobacco in the United States; or

(D) in the case of imported tobacco, a residue of a pesticide or fungicide chemical that—

(i) is approved for use in the country of origin of the tobacco; and

(ii) has not been banned, and the registration of which has not been canceled, by the Environmental Protection Agency for use on tobacco in the United States) that may render it injurious to health; but, in case the substance is not an added substance, such tobacco product shall not be considered adulterated under this subsection if the quantity of such substance in such tobacco product does not ordinarily render it injurious to health;

(2) if there is significant scientific agreement that, as a result of the tobacco it contains, the tobacco product presents a risk to human health that is materially higher than the risk presented by—

(A) such product on the effective date of this Act; or

(B) if such product was not distributed commercially domestically on that date, by comparable tobacco products of the same style and within the same category that were commercially distributed domestically on that date;

(3) if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth;

(4) if its package is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health; or

(5) if its ''tar'' yield is in violation of section 111.

SEC. 106. MISBRANDED TOBACCO PRODUCTS.

A tobacco product shall be deemed to be misbranded—

(1) if its labeling is false or misleading in any particular;

(2) if in package form unless it bears a label containing—

(A) an identification of the type of product it is, by the common or usual name of such type of product;

(B) an accurate statement of the quantity of the contents in the package in terms of weight, measure, or numerical count, except that reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations promulgated by the Administrator;

(C) the name and place of business of the tobacco product manufacturer, packer, or distributor; and

(D) the information required by section 201(c) and (e) or section 202(c) and (e), as applicable;

(3) if any word, statement, or other information required by or under authority of this Act to appear on the label, labeling, or advertising is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs on the label, labeling, or advertising, as applicable) and in such terms as to render it reasonably likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) if any word, statement, or other information is required by or under this Act to appear on the label, unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such tobacco product, or is easily legible through the outside container or wrapper;

(5) if it was manufactured, prepared, or processed in an establishment not duly registered under section 109, if it was not included in a list required by section 109, or if a notice or other information respecting it was not provided as required by section 109;

(6) if its packaging, labeling, or advertising is in violation of this Act or of an applicable regulation promulgated in accordance with this Act;

(7) if it contains tobacco or another ingredient as to which a required disclosure under this Act was not made;

(8) if it is labeled or advertised, or the tobacco contained in it is advertised, as—

(A) containing ''no additives,'' or any substantially similar term, unless the labeling or advertising, as applicable, also contains, clearly and prominently, the following disclosure: ''No additives in our tobacco does NOT mean safer.''; or

(B) being ''natural,'' or any substantially similar term, unless the labeling or advertising, as applicable, also contains, clearly and prominently, the following disclosure: ''Natural does NOT mean safer.'';

(9) if in its labeling or advertising a term descriptive of the tobacco in the tobacco product is used otherwise than in accordance with a sanction or approval granted by a Federal agency;

(10) if with respect to such tobacco product a disclosure required by section 603 was not made;

(11) if with respect to such tobacco product a certification required by section 803 was not submitted or is materially false or misleading; or

(12) if its manufacturer or distributor made with respect to it a claim prohibited by section 115.

SEC. 107. SUBMISSION OF HEALTH INFORMATION TO THE ADMINISTRATOR.

(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Administrator the following information:

(1) Not later than 18 months after the date of enactment of the Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and brand style.

(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Administrator in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

(3) Beginning 4 years after the date of enactment of this Act, a listing of all constituents, including smoke constituents as applicable, identified by the Administrator as harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand.

(b) DATA SUBMISSION.—At the request of the Administrator, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a significant reduction in risk to health from tobacco products can occur upon the employment of technology available to the manufacturer.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

(c) DATA LIST.—

(1) IN GENERAL.—Not later than 4 years after the date of enactment of the Act, and annually thereafter, the Administrator shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Administrator) the list established under subsection (d).

(2) CONSUMER RESEARCH.—The Administrator shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Act, the Administrator shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

(d) DATA COLLECTION.—Not later than 36 months after the date of enactment of this Act, the Administrator shall establish, and periodically revise as appropriate, a list of harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand.

SEC. 108. REGISTRATION AND LISTING.

(a) DEFINITIONS.—As used in this section:

(1) The term ''manufacture, preparation, or processing'' shall include repackaging or otherwise changing the container, wrapper, or label of any tobacco product package other than the carton in furtherance of the distribution of the tobacco product from the original place of manufacture to the person that makes final delivery or sale to the ultimate consumer or user, but shall not include the addition of a tax marking or other marking required by law to an already packaged tobacco product.

(2) The term ''name'' shall include in the case of a partnership the name of the general partner and, in the case of a privately held corporation, the name of the chief executive officer of the corporation and the State of incorporation.

(b) ANNUAL REGISTRATION.—Commencing one year after enactment, on or before December 31 of each year, every person that

owns or operates any establishment in any State engaged in the manufacture, preparation, or processing of a tobacco product or products for commercial distribution domestically shall register with the Administrator its name, places of business, and all such establishments.

(c) NEW PRODUCERS.—Every person upon first engaging, for commercial distribution domestically, in the manufacture, preparation, or processing of a tobacco product or products in any establishment that it owns or operates in any State shall immediately register with the Administrator its name, places of business, and such establishment.

(d) REGISTRATION OF FOREIGN ESTABLISHMENTS.—

(1) Commencing one year after enactment of this Act, on or before December 31 of each year, the person that, within any foreign country, owns or operates any establishment engaged in the manufacture, preparation, or processing of a tobacco product that is imported or offered for import into the United States shall, through electronic means or other means permitted by the Administrator, register with the Administrator the name and place of business of each such establishment, the name of the United States agent for the establishment, and the name of each importer of such tobacco product in the United States that is known to such person.

(2) Such person also shall provide the information required by subsection (j), including sales made by mail, or through the Internet, or other electronic means.

(3) The Administrator is authorized to enter into cooperative arrangements with officials of foreign countries to ensure that adequate and effective means are available for purposes of determining, from time to time, whether tobacco products manufactured, prepared, or processed by an establishment described in paragraph (1), if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 708.

(e) ADDITIONAL ESTABLISHMENTS.—Every person duly registered in accordance with the foregoing subsections of this section shall immediately register with the Administrator any additional establishment that it owns or operates and in which it begins the manufacture, preparation, or processing of a tobacco product or products for commercial distribution domestically or for import into the United States.

(f) EXCLUSIONS FROM APPLICATION OF THIS SECTION.—The foregoing subsections of this section shall not apply to—

(1) persons that manufacture, prepare, or process tobacco products solely for use in research, teaching, chemical or biological analysis, or export; or

(2) such other classes of persons as the Administrator may by regulation exempt from the application of this section upon a finding that registration by such classes of persons in accordance with this section is not necessary for the protection of the public health.

(g) INSPECTION OF PREMISES.—Every establishment registered with the Administrator pursuant to this section shall be subject to inspection pursuant to section 706; and every such establishment engaged in the manufacture, preparation, or processing of a tobacco product or products shall be so inspected by one or more officers or employees duly designated by the Administrator at least once in the two-year period beginning with the date of registration of such establishment pursuant to this section and at least once in every successive two-year period thereafter, except that inspection of establishments outside the United States may be conducted by other personnel pursuant to a cooperative arrangement under subsection (d)(3).

(h) FILING OF LISTS OF TOBACCO PRODUCTS MANUFACTURED, PREPARED, OR PROCESSED BY REGISTRANTS; STATEMENTS; ACCOMPANYING DISCLOSURES.—

(1) Every person that registers with the Administrator under subsection (b), (c), (d), or (e) shall, at the time of registration under any such subsection, file with the Administrator a list of all brand styles (with each brand style in each list listed by the common or usual name of the tobacco product category to which it belongs and by any proprietary name) that are being manufactured, prepared, or processed by such person for commercial distribution domestically or for import into the United States, and that such person has not included in any list of tobacco products filed by such person with the Administrator under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Administrator may prescribe, and shall be accompanied by the label for each such brand style and a representative sampling of any other labeling and advertising for each;

(2) Each person that registers with the Administrator under this section shall report to the Administrator each August for the preceding six-month period from January through June, and each February for the preceding six-month period form July through December, following information:

(A) A list of each brand style introduced by the registrant for commercial distribution domestically or for import into the United States that has not been included in any list previously filed by such registrant with the Administrator under this subparagraph or paragraph (1). A list under this subparagraph shall list a brand style by the common or usual name of the tobacco product category to which it belongs and by any proprietary name, and shall be accompanied by the other information required by paragraph (1).

(B) If since the date the registrant last made a report under this paragraph (or if such registrant has not previously made a report under this paragraph, since the effective date of this Act) such registrant has discontinued the manufacture, preparation, or processing for commercial distribution domestically or for import into the United States of a brand style included in a list filed by such registrant under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity (by the common or usual name of the tobacco product category to which it belongs and by any proprietary name) of such tobacco product.

(C) If, since the date the registrant reported pursuant to subparagraph (B) a notice of discontinuance of a tobacco product, the registrant has resumed the manufacture, preparation, or processing for commercial distribution domestically or for import into the United States of that brand style, notice of such resumption, the date of such resumption, the identity of such brand style (by the common or usual name of the tobacco product category to which it belongs and by any proprietary name), and the other information required by paragraph (1), unless the registrant has previously reported such resumption to the Administrator pursuant to this subparagraph.

(D) Any material change in any information previously submitted pursuant to this paragraph (2) or paragraph (1).

(i) ELECTRONIC REGISTRATION.—Registrations under subsections (b), (c), (d), and (e) (including the submission of updated information) shall be submitted to the Administrator by electronic means, unless the Administrator grants a request for waiver of such requirement because use of electronic means is not reasonable for the person requesting such waiver.

SEC. 109. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

(a) IN GENERAL.—Any requirement established by or under section 106, 107, or 113 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 111, section 114, section 115, or subsection (d) of this section, and any requirement established by or under section 106, 107, or 113 which is inconsistent with a requirement imposed on such tobacco product under section 111, section 114, section 115, or subsection (d) of this section shall not apply to such tobacco product.

(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 111, 112, 113, 114, or 115 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Administrator by a notice published in the Federal Register stating good cause therefore.

(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Administrator or the Administrator's representative under section 107, 108, 111, 112, 113, 114, 115, or 504, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this Act, or when relevant in any proceeding under this Act.

(d) RESTRICTIONS.—

(1) IN GENERAL.—The Administrator may issue regulations, consistent with this Act, regarding tobacco products if the Administrator determines that such regulation would be appropriate for the protection of the public health. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the users of the tobacco product, and taking into account that the standard is reasonably likely to result in measurable and substantial reductions in morbidly and mortality among individual tobacco users.

(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Administrator may in such regulation prescribe.

(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Administrator shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the

manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this Act. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues after a tolerance for such chemical residues has been established.

(B) REQUIREMENTS.—The Administrator shall—

(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices but no earlier than four years from date of enactment.

(C) ADDITIONAL SPECIAL RULE.—A tobacco product manufactured in or imported into the United States shall not contain foreign-grown flue-cured or burley tobacco that—

(i) was knowingly grown or processed using a pesticide chemical that is not approved under applicable Federal law for use in domestic tobacco farming and processing; or

(ii) in the case of a pesticide chemical that is so approved, was grown or processed using the pesticide chemical in a manner inconsistent with the approved labeling for use of the pesticide chemical in domestic tobacco farming and processing.

(D) EXCLUSION.—Subparagraph (C)(ii) shall not apply to tobacco products manufactured with foreign-grown flue-cured or burley tobacco so long as that foreign grown tobacco was either—

(i) in the inventory of a manufacturer prior to the effective date, or

(ii) planted by the farmer prior to the effective date of this Act and utilized by the manufacturer no later than 3 years after the effective date.

(E) SETTING OF MAXIMUM RESIDUE LIMITS.—The Administrator shall adopt the following pesticide residue standards:

Pesticide residue standards

The maximum concentration of residues of the following pesticides allowed in flue-cured or burley tobacco, expressed as parts by weight of the residue per one million parts by weight of the tobacco (PPM) are:

CHLORDANE.....3.0

DIBROMOCHLOROPROPANE (DBCP).....1.0

DICAMBA (Temporary).... 5.0

ENDRIN....0.1

ETHYLENE DIBROMIDE (EDB)....0.1

FORMOTHION.....0.5

HEXACHLOROBENZENE (HCB)....0.1

METHOXYCHLOR.....0.1

TOXAPHENE.....0.3

2,4-D (Temporary).....5.0

2,4,5-T.....0.1

Sum of ALDRIN and DIELDRIN.....0.1

Sum of CYPERMETHRIN and PERMETHRIN (Temporary).....3.0

Sum of DDT, TDE (DDD), and DDE 0.4

Sum of HEPTACHLOR and HEPTACHLOR EPOXIDE.....0.1

(F) MAXIMUM RESIDUE LIMITS.—The Administrator shall adopt regulations within one year of the effective date of this Act to establish maximum residue limits for pesticides identified under subparagraph (E) but not included in the table of such subparagraph to account for the fact that weather and agronomic conditions will cause pesticides identified in subparagraph (E) to be detected in foreign-grown tobacco even where the farmer has not knowingly added such pesticide.

(2) EXEMPTIONS; VARIANCES.—

(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Administrator for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Administrator in such form and manner as the Administrator shall prescribe and shall—

(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this Act;

(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

(iii) contain such other information as the Administrator shall prescribe.

(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Administrator may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Administrator with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

(i) the date the petition was submitted to the Administrator under subparagraph (A); or

(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Administrator shall by order either deny the petition or approve it.

(C) APPROVAL.—The Administrator may approve—

(i) a petition for an exemption for a tobacco product from a requirement if the Administrator determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this Act; and

(ii) a petition for a variance for a tobacco product from a requirement if the Administrator determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this Act.

(D) CONDITIONS.—An order of the Administrator approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this Act.

(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of this Act.

(f) RESEARCH AND DEVELOPMENT.—The Administrator may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

SEC. 110. SMOKING ARTICLE STANDARDS.

(a) IN GENERAL.—

(1) RESTRICTIONS ON DESCRIPTORS USED IN MARKETING OF CIGARETTES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall use, with respect to any cigarette brand style commercially distributed domestically, on the portion of the package of such cigarette brand style that customarily is visible to consumers before purchase, or in advertising of such cigarette brand style any of the following as a descriptor of any cigarette brand style—

(i) the name of any candy or fruit;

(ii) the word ''candy,'' ''citrus,'' ''cream,'' ''fruit,'' ''sugar,'' ''sweet,'' ''tangy,'' or ''tart,''; or

(iii) any extension or variation of any of the words ''candy,'' ''citrus,'' ''cream,'' ''fruit,'' ''sugar,'' ''sweet,'' ''tangy,'' or ''tart,'' including but not limited to ''creamy,'' or ''fruity.''

(B) LIMITATION.—Subparagraph (A) shall not apply to the use of the following words or to any extension or variation of any of them: ''clove'' and ''menthol''.

(C) SCENTED MATERIALS.—No person shall use, in the advertising or labeling of any cigarette commercially distributed domestically, any scented materials, except in an adult-only facility.

(D) DEFINITIONS.—In this section:

(i) The term ''candy'' means a confection made from sugar or sugar substitute, including any confection identified generically or by brand, and shall include the words ''cacao,'' ''chocolate,'' ''cinnamon,'' ''cocoa,'' ''honey,'' ''licorice,'' ''maple,'' ''mocha,'' and ''vanilla.''

(ii) The term ''fruit'' means any fruit identified by generic name, type, or variety, including but not limited to ''apple,'' ''banana,'' ''cherry,'' and ''orange.'' The term ''fruit'' does not include words that identify seeds, nuts or peppers, or types or varieties thereof or words that are extensions or variations of such words.

(2) SMOKING ARTICLE STANDARDS.—

(A) IN GENERAL.—The Administrator may adopt smoking article standards in addition to those in paragraph (1) if the Administrator finds that a smoking article standard is appropriate for the protection of the public health.

(B) DETERMINATIONS.—

(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Administrator shall consider scientific evidence concerning—

(I) the risks and benefits to the users of smoking articles of the proposed standard; and

(II) that the standard is reasonably likely to result in measurable and substantial reductions in morbidity and mortality among individual tobacco users.

(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Administrator makes a determination, set forth in a proposed smoking article standard in a proposed rule, that it is

appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a smoking article because the Administrator has found that the additive, constituent, or other component is harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Administrator's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

(3) CONTENT OF SMOKING ARTICLE STANDARDS.—A smoking article standard established under this section for a smoking article—

(A) may include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

(i) for ''tar'' and nicotine yields of the product;

(ii) for the reduction of other constituents, including smoke constituents, or harmful components of the product; or

(iii) relating to any other requirement under subparagraph (B); and

(B) may, where appropriate for the protection of the public health, include—

(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the smoking article;

(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the smoking article;

(iii) provisions for the measurement of the smoking article characteristics of the smoking article; and

(iv) provisions requiring that the results of each or of certain of the tests of the smoking article required to be made under clause (ii) show that the smoking article is in conformity with the portions of the standard for which the test or tests were required.

(4) PERIODIC REEVALUATION OF SMOKING ARTICLE STANDARDS.—The Administrator may provide for periodic evaluation of smoking article standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data.

(5) CIGARETTE ''TAR'' LIMITS.—

(A) NO INCREASE IN ''TAR'' YIELDS.—No cigarette manufacturer shall distribute for sale domestically a brand style of cigarettes that generates a ''tar'' yield greater than the ''tar'' yield of that brand style of cigarettes on the date of introduction of this Act, as determined by the ISO smoking regimen and its associated tolerances. The ''tar'' tolerances for cigarettes with ISO ''tar'' yields in the range of 1 to 20 milligrams per cigarette, based on variations arising from sampling procedure, test method, and sampled product, itself, are the greater of plus or minus—

(i) 15 percent; or

(ii) 1 milligram per cigarette.

(B) LIMIT ON NEW CIGARETTES.—After the effective date of this Act, no cigarette manufacturer shall manufacture for commercial distribution domestically a brand style of cigarettes that both—

(i) was not in commercial distribution domestically on the effective date of this Act, and

(ii) generates a ''tar'' yield of greater than 20 milligrams per cigarette as determined by the ISO smoking regimen and its associated tolerances.

(C) LIMIT ON ALL CIGARETTES.—After December 31, 2010, no cigarette manufacturer shall manufacture for commercial distribution domestically a brand style of cigarettes that generates a ''tar'' yield greater than 20 milligrams per cigarette as determined by the ISO smoking regimen and its associated tolerances.

(D) REVIEW BY ADMINISTRATOR.—After the effective date of this Act, the Administrator shall evaluate the available scientific evidence addressing the potential relationship between historical ''tar'' yield values and risk of harm to smokers. If upon a review of that evidence, and after consultation with technical experts of the Tobacco Harm Reduction Center and the Centers for Disease Control and Prevention and notice and an opportunity for public comment, the Administrator determines, that a reduction in ''tar'' yield may reasonably be expected to provide a meaningful reduction of the risk or risks of harm to smokers, the Administrator shall issue an order that—

(i) provides that no cigarette manufacturer shall manufacture for commercial distribution domestically a cigarette that generates a ''tar'' yield that exceeds 14 milligrams as determined by the ISO smoking regimen and its associated tolerances; and

(ii) provides a reasonable time for manufacturers to come into compliance with such prohibition.

(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Administrator shall endeavor to—

(A) use personnel, facilities, and other technical support available in other Federal agencies;

(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Administrator's judgment can make a significant contribution.

(b) CONSIDERATIONS BY ADMINISTRATOR.—

(1) TECHNICAL ACHIEVABILITY.—The Administrator shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

(2) OTHER CONSIDERATIONS.—The Administrator shall consider all other information submitted in connection with a proposed standard, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this Act and the significance of such demand.

(c) PROPOSED STANDARDS.—

(1) IN GENERAL.—The Administrator shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any smoking article standard.

(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a smoking article standard shall—

(A) set forth a finding with supporting justification that the smoking article standard is appropriate for the protection of the public health;

(B) invite interested persons to submit a draft or proposed smoking article standard for consideration by the Administrator;

(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed smoking article standard.

(3) FINDING.—A notice of proposed rulemaking for the revocation of a smoking article standard shall set forth a finding with supporting justification that the smoking article standard is no longer appropriate for the protection of the public health.

(4) COMMENT.—The Administrator shall provide for a comment period of not less than 90 days.

(d) PROMULGATION.—

(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, if the Administrator determines that the standard would be appropriate for the protection of the public health, the Administrator shall—

(A) promulgate a regulation establishing a smoking article standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

(2) EFFECTIVE DATE.—A regulation establishing a smoking article standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Administrator determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Administrator shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard.

(3) LIMITATION ON POWER GRANTED.—Because of the importance of a decision of the Administrator to issue a regulation—

(A) banning cigarettes, smokeless smoking articles, little cigars, cigars other than little cigars, pipe tobacco, or roll-your-own smoking articles;

(B) requiring the reduction of ''tar'' or nicotine yields of a smoking article to zero;

(C) prohibiting the sale of any smoking article in face-to-face transactions by a specific category of retail outlets;

(D) establishing a minimum age of sale of smoking articles to any person older than 18 years of age; or

(E) requiring that the sale or distribution of a smoking article be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products, the Administrator is prohibited from taking such actions under this Act.

(4) MATCHBOOKS.—For purposes of any regulations issued by the Administrator under this Act, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of smoking articles, shall be considered as adult-written publications which shall be permitted to contain advertising.

(5) AMENDMENT; REVOCATION.—

(A) AUTHORITY.—The Administrator, upon the Administrator's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a smoking article standard.

(B) EFFECTIVE DATE.—The Administrator may declare a proposed amendment of a smoking article standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Administrator determines that making it so effective is in the public interest.

(6) REFERRAL TO ADVISORY COMMITTEE.—

(A) IN GENERAL.—The Administrator shall refer a proposed regulation for the establishment, amendment, or revocation of a smoking article standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

(B) INITIATION OF REFERRAL.—The Administrator shall make a referral under this paragraph—

(i) on the Administrator's own initiative; or

(ii) upon the request of an interested person that—

(I) demonstrates good cause for the referral; and

(II) is made before the expiration of the period for submission of comments on the proposed regulation.

(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Administrator shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 90 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Administrator and other data and information before it, submit to the Administrator a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

(E) PUBLIC AVAILABILITY.—The Administrator shall make a copy of each report and recommendation under subparagraph (D) publicly available.

SEC. 111. NOTIFICATION AND OTHER REMEDIES.

(a) NOTIFICATION.—If the Administrator determines that—

(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm materially above the risk for death and disease of tobacco products currently in interstate commerce, to the public health; and

(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this Act (other than this section) to eliminate such risk,

the Administrator may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Administrator may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Administrator shall consult with the persons who are to give notice under the order.

(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

(c) RECALL AUTHORITY.—

(1) IN GENERAL.—If the Administrator finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, acute adverse health consequences or death, the Administrator shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Administrator determines that inadequate grounds exist to support the actions required by the order, the Administrator shall vacate the order.

(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Administrator determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Administrator shall, except as provided in subparagraph (B), amend the order to require a recall. The Administrator shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Administrator describing the progress of the recall.

(B) NOTICE.—An amended order under subparagraph (A)—

(i) shall not include recall of a tobacco product from individuals; and

(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Administrator may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Administrator shall notify such persons under section 705(b).

(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

SEC. 112. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Administrator may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded.

SEC. 113. APPLICATION FOR REVIEW OF CERTAIN SMOKING ARTICLES.

(a) IN GENERAL.—

(1) NEW SMOKING ARTICLE DEFINED.—For purposes of this section the term ''new smoking article'' means—

(A) any smoking article that was not commercially marketed in the United States as of the date of enactment of this Act; and

(B) any smoking article that incorporates a significant modification (including changes in design, component, part, or constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or other additive or ingredient) of a smoking article where the reduced product was commercially marketed in the United States after the date of enactment of this Act.

(2) PREMARKET REVIEW REQUIRED.—

(A) NEW PRODUCTS.—An order under subsection (c)(1)(A) for a new smoking article is required unless the product—

(i) is substantially equivalent to a smoking article commercially marketed in the United States as of date of enactment of this Act; and

(ii) is in compliance with the requirements of this Act.

(B) CONSUMER TESTING.—This section shall not apply to smoking articles that are provided to adult tobacco consumers for purposes of consumer testing. For purposes of this section, the term ''consumer testing'' means an assessment of smoking articles that is conducted by or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of such smoking articles, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment

(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

(A) IN GENERAL.—In this section, the term ''substantially equivalent'' or ''substantial equivalence'' means, with respect to the smoking article being compared to the predicate smoking article, that the Administrator by order has found that the smoking article—

(i) has the same general characteristics as the predicate smoking article; or

(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Administrator, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health for the consumer of the product.

(B) CHARACTERISTICS.—In subparagraph (A), the term ''characteristics'' means the materials, ingredients, design, composition, heating source, or other features of a smoking article.

(C) LIMITATION.—A smoking article may not be found to be substantially equivalent to a predicate smoking article that has been removed from the market at the initiative of the Administrator or that has been determined by a judicial order to be misbranded or adulterated.

(4) HEALTH INFORMATION.—As part of a submission respecting a smoking article, the person required to file a premarket notification shall provide an adequate summary of any health information related to the smoking article or state that such information will be made available upon request by any person.

(b) APPLICATION.—

(1) CONTENTS.—An application under this section shall contain—

(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such smoking article and whether such smoking article presents less risk than other smoking articles;

(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such smoking article;

(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such smoking article;

(D) an identifying reference to any smoking article standard under section 111 which would be applicable to any aspect of such smoking article, and either adequate information to show that such aspect of such smoking article fully meets such smoking

article standard or adequate information to justify any deviation from such standard;

(E) such samples of such smoking article and of components thereof as the Administrator may reasonably require;

(F) specimens of the labeling proposed to be used for such smoking article; and

(G) such other information relevant to the subject matter of the application as the Administrator may require.

(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Administrator—

(A) may, on the Administrator's own initiative; or

(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Administrator may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

(c) ACTION ON APPLICATION.—

(1) DEADLINE.—As promptly as possible, but in no event later than 90 days after the receipt of an application under subsection (b), the Administrator, after considering the report and recommendation submitted under subsection (b)(2), shall—

(A) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Administrator finds that none of the grounds specified in paragraph (2) of this subsection applies; or

(B) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Administrator finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

(2) DENIAL OF APPLICATION.—The Administrator shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Administrator as part of the application and any other information before the Administrator with respect to such smoking article, the Administrator finds that—

(A) there is a lack of a showing that permitting such smoking article to be marketed would be appropriate for the protection of the public health;

(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such smoking article do not conform to the requirements of section 110(e);

(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

(D) such smoking article is not shown to conform to a smoking article standard in effect under section 111, and there is a lack of adequate information to justify the deviation from such standard.

(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Administrator determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Administrator).

(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the commercial introduction of a smoking article for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the users of the smoking article, and taking into account whether such commercial introduction is reasonably likely to increase the morbidly and mortality among individual tobacco users.

(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

(1) IN GENERAL.—The Administrator shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a smoking article for which an order was issued under subsection (c)(1)(A), issue an order withdrawing the order if the Administrator finds—

(A) that the continued marketing of such smoking article no longer is appropriate for the protection of the public health;

(B) that the application contained or was accompanied by an untrue statement of a material fact;

(C) that the applicant—

(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 113; or

(ii) has refused to permit access to, or copying or verification of, such records as required by section 110; or

(D) on the basis of new information before the Administrator with respect to such smoking article, evaluated together with the evidence before the Administrator when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such smoking article do not conform with the requirements of section 110(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Administrator of nonconformity;

(E) on the basis of new information before the Administrator, evaluated together with the evidence before the Administrator when the application was reviewed, that the labeling of such smoking article, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Administrator of such fact; or

(F) on the basis of new information before the Administrator, evaluated together with the evidence before the Administrator when such order was issued, that such smoking article is not shown to conform in all respects to a smoking article standard which is in effect under section 111, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 116.

(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Administrator determines there is reasonable probability that the continuation of distribution of a smoking article under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by smoking articles on the market, the Administrator shall by order temporarily suspend the authority of the manufacturer to market the product. If the Administrator issues such an order, the Administrator shall proceed expeditiously under paragraph (1) to withdraw such application.

(e) SERVICE OF ORDER.—An order issued by the Administrator under this section shall be served—

(1) in person by any officer or employee of the department designated by the Administrator; or

(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Administrator.

(f) RECORDS.—

(1) ADDITIONAL INFORMATION.—In the case of any smoking article for which an order issued pursuant to subsection (c)(1)(A) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Administrator, as the Administrator may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Administrator to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Administrator, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(g) INVESTIGATIONAL SMOKING ARTICLE EXEMPTION FOR INVESTIGATIONAL USE.—The Administrator may exempt smoking articles intended for investigational use from the provisions of this Act under such conditions as the Administrator may by regulation prescribe.

SEC. 114. REDUCED RISK TOBACCO PRODUCTS.

(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any reduced risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

(b) DEFINITIONS.—In this section:

(1) REDUCED RISK TOBACCO PRODUCT.—The term ''reduced risk tobacco product'' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

(2) SOLD OR DISTRIBUTED.—

(A) IN GENERAL.—With respect to a tobacco product, the term ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'' means a tobacco product—

(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

(III) the tobacco product or its smoke does not contain or is free of a substance;

(ii) the label, labeling, or advertising of which uses the descriptors ''light'', ''mild'', ''low'', ''medium'', ''ultra light'', ''low tar'' or ''ultra low tar''; or

(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower

risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

(B) LIMITATION.—No tobacco product shall be considered to be ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'', except as described in subparagraph (A).

(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products''.

(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Act.

(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a reduced risk tobacco product under this section if it has been approved as a drug or device by the Center and is subject to the requirements of chapter V.

(d) FILING.—Any person may file with the Administrator an application for a reduced risk tobacco product. Such application shall include—

(1) a description of the proposed product and any proposed advertising and labeling;

(2) the conditions for using the product;

(3) the formulation of the product;

(4) sample product labels and labeling;

(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

(6) data and information on how consumers actually use the tobacco product; and

(7) such other information as the Administrator may require.

(e) PUBLIC AVAILABILITY.—The Administrator shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

(f) ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Administrator shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Administrator.

(g) MARKETING.—

(1) REDUCED RISK PRODUCTS.—Except as provided in paragraph (2), the Administrator shall, with respect to an application submitted under this section, issue an order that a reduced risk product may be commercially marketed only if the Administrator determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

(B) is reasonably likely to result in measurable and substantial reductions in morbidity and mortality among individual tobacco users.

(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—The Administrator may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

(A) such order would be appropriate to promote the public health; and

(B) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

(A) the scientific evidence submitted by the applicant; and

(B) scientific evidence and other information that is made available to the Administrator.

(h) ADDITIONAL CONDITIONS FOR MARKETING.—

(1) REDUCED RISK PRODUCTS.—The Administrator shall require for the marketing of a product under this section that any advertising or labeling concerning reduced risk products enable the public to comprehend the information concerning reduced risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of cigarettes and other tobacco products.

(2) COMPARATIVE CLAIMS.—The Administrator may require for the marketing of a product under this subsection that a claim comparing a tobacco product to other commercially marketed tobacco products shall compare the tobacco product to the known risk of cigarettes.

(i) POSTMARKET SURVEILLANCE AND STUDIES.—Under the guidance of the Scientific Advisory Committee, the Tobacco Harm Reduction Center shall engage in postmarket surveillance studies and other research as needed to ascertain the health impact of each of the major classes of tobacco and other nicotine containing products in the United States, ascertain the possible presence of unusual levels of harm from specific tobacco products, and determine the steps that should be taken to further reduce illness, death and other social harms from tobacco products.

(j) WITHDRAWAL OF AUTHORIZATION.—The Administrator, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Administrator determines that—

(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Administrator can no longer make the determinations required under subsection (g);

(2) the application failed to include material information or included any untrue statement of material fact;

(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

(A) a tobacco product standard is established pursuant to section 111;

(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

(5) the applicant failed to meet a condition imposed under subsection (h).

(k) CHAPTER IV OR V.—A product for which the Administrator has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V of the Federal Food, Drug, and Cosmetic Act.

(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Act, the Administrator shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of reduced risk tobacco products. Such regulations or guidance shall—

(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show a reasonable likelihood that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

(E) establish a reasonable timetable for the Administrator to review an application under this section.

(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) may be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Act, the Administrator shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 114 and which the applicant seeks to commercially market under this section.

SEC. 115. JUDICIAL REVIEW.

(a) RIGHT TO REVIEW.—

(1) IN GENERAL.—Not later than 60 days after—

(A) the promulgation of a regulation under section 111 establishing, amending, or revoking a tobacco product standard; or

(B) a denial of an application under section 114(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

(2) REQUIREMENTS.—

(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Administrator.

(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Administrator shall file in the court in which such petition was filed—

(i) the record of the proceedings on which the regulation or order was based; and

(ii) a statement of the reasons for the issuance of such a regulation or order.

(C) DEFINITION OF RECORD.—In this section, the term ''record'' means—

(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

(ii) all information submitted to the Administrator with respect to such regulation or order;

(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

(iv) any hearing held with respect to such regulation or order; and

(v) any other information identified by the Administrator, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 110, 111, 112, 113, 114, or 119 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

SEC. 116. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

Except where expressly provided in this Act, nothing in this Act shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

SEC. 117. REGULATION REQUIREMENT.

(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Act, the Administrator shall promulgate regulations under this Act that meet the requirements of subsection (b).

(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

(1) shall require annual testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand style that the Administrator determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand style; and

(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising.

(c) AUTHORITY.—The Administrator shall have the authority under this Act to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

(d) JOINT LABORATORY TESTING SERVICES.—The Administrator shall allow any 2 or more tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a tobacco product manufacturer shall not be considered to be in violation of this section before the applicable deadline, if—

(A) the tobacco products of such manufacturer are in compliance with all other requirements of this Act; and

(B) the conditions described in paragraph (2) are met.

(2) CONDITIONS.—Notwithstanding the requirements of this section, the Administrator may delay the date by which a tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a tobacco product manufacturer provides evidence to the Administrator demonstrating that—

(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

(B) the products currently are awaiting testing by the laboratory; and

(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

(3) EXTENSION.—The Administrator, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a tobacco product manufacturer in accordance with paragraph (2). If the Administrator finds that the conditions described in such paragraph are met, the Administrator shall notify the tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Administrator has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Administrator finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Administrator may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Administrator determines, based on evidence properly and timely submitted by a tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act other than this section.

SEC. 118. PRESERVATION OF STATE AND LOCAL AUTHORITY.

(a) IN GENERAL.—

(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this Act, or rules promulgated under this Act, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to requirements established under this Act, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, or use of tobacco products by individuals of any age, information reporting to the State. No provision of this Act shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this Act relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk tobacco products.

(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, use of, tobacco product by individuals of any age. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this Act relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

SEC. 119. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, the Administrator shall establish a 19-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—

(A) MEMBERS.—The Administrator shall appoint as members of the Tobacco Harm Reduction Advisory Committee individuals who are technically qualified by training and experience in medicine, public health, medical ethics or other science or technology involving the means by which cigarettes and other tobacco products cause illness, death and other societal harms, and the steps that can be taken by government and the private sector to most rapidly and substantially reduce said illness, death and other societal harms. The committee shall be composed of—

(i) 10 individuals who are physicians, dentists, other scientists or other public health or healthcare professionals;

(ii) 4 individuals representing the general public;

(iii) 2 representatives of the interests of the tobacco manufacturing industry;

(iv) 1 representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee;

(v) 1 individual as a representative of the interests of the tobacco growers; and

(vi) 1 individual who is an expert in illicit trade of tobacco products.

(B) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products or government agency with any form of jurisdiction over tobacco products.

(2) LIMITATION.—The Administrator may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Tobacco Harm Reduction Center or any agency responsible for the enforcement of this Act. The Administrator may appoint Federal officials as ex officio members.

(3) CHAIRPERSON.—The Administrator shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Administrator—

(1) as provided in this Act;

(2) on the implementation of prevention, cessation, and harm reduction policies;

(3) on implementation of policies and programs to fully inform consumers of the respective risks of tobacco products; and

(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Administrator.

(d) COMPENSATION; SUPPORT; FACA.—

(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Administrator, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) ADMINISTRATIVE SUPPORT.—The Administrator shall furnish the Advisory Committee clerical and other assistance.

(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

SEC. 120. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

(a) REPORT ON INNOVATIVE PRODUCTS.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Administrator, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to promote, and encourage the development and use by current tobacco users of innovative tobacco and nicotine products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

(A) total abstinence from tobacco use;

(B) reductions in consumption of tobacco; and

(C) reductions in the harm associated with continued tobacco use by moving current users to noncombustible tobacco products.

(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Administrator on how the Tobacco Harm and Reduction Center should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Center and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant Federal and State agencies.

TITLE II—TOBACCO PRODUCTS WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the lower portion of the front panel of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise at least the bottom 25 percent of the front panel of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c). The Secretary shall by regulation adjust the format and type size of the warnings required under this Act to include color graphics depicting the negative health consequences of smoking on the bottom portion of the front and rear panels.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding smoking article manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the bottom of each advertisement within the trim area. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall

appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of smokeless tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the smokeless tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 24 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, the following labels:

''WARNING: Smokeless tobacco is addictive.

''(2) Rotating warnings for all smokeless products shall consist of 'lower risk than cigarettes' and 'addictive' and the Secretary shall have the discretion to add warnings relating to mouth cancer, gum disease, and tooth loss to those smokeless products that have a demonstrated risk of such hazards.

''(3) The two main rotating warnings should be extended to the 'nicotine containing products.'

''(4) The label statements required by paragraph (1) shall be introduced by each smokeless tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(5) The provisions of this subsection do not apply to a smokeless tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(6) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding smokeless tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any smokeless tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the smokeless tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the smokeless tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 24 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a).

TITLE III—PUBIC DISCLOSURES BY TOBACCO PRODUCTS MANUFACTURERS

SEC. 301. DISCLOSURES ON PACKAGES OF TOBACCO PRODUCTS.

(a) BACK FACE FOR REQUIRED DISCLOSURES.—For purposes of this section—

(1) the principal face of a package of a tobacco product is the face that has the largest surface area or, for faces with identical surface areas, any of the faces that have the largest surface area; a package shall not be characterized as having more than 2 principal faces;

(2) the front face shall be the principal face of the package;

(3) if the front and back faces are of different sizes in terms of area, then the larger face shall be the front face;

(4) the back face shall be the principal face of a package that is opposite the front face of the package;

(5) the bottom 50 percent of the back face of the package shall be allocated for required package disclosures in accordance with this section; and

(6) if a package of a tobacco product is cylindrical, a contiguous area constituting 30 percent of the total surface area of the cylinder shall be deemed the back face.

(b) REQUIRED INFORMATION ON BACK FACE.—Not later than 24 months after the effective date of this Act, the bottom 50 percent of the back face of a package of a tobacco product shall be available solely for disclosures required by or under this Act, the Federal Cigarette Labeling and Advertising Act, sections 1331–1340 of title 15, United States Code, and any other Federal statute. Such disclosures shall include—

(1) the printed name and address of the manufacturer, packer, or distributor, and any other identification associated with the manufacturer, packer, or distributor or with the tobacco product that the Administrator may require;

(2) a list of ingredients as required by subsection (e); and

(3) the appropriate tax registration number.

(c) PACKAGE DISCLOSURE OF INGREDIENTS.—Not later than 24 months after the effective date of this Act, the package of a tobacco product shall bear a list of the common or usual names of the ingredients present in the tobacco product in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients), that shall comply with the following:

(1) Such listing of ingredients shall appear under, or be conspicuously accompanied by, the heading ''Tobacco and principal tobacco ingredients''.

(2) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(3) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(4) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(5) Preservatives may be listed as ''preservatives'' without naming each.

(6) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(7) The package say state ''Not for sale to minors''.

(8) In the case of a package of cigarettes, the package shall state that smokeless tobacco has significantly lower risks for disease and death than cigarettes.

SEC. 302. DISCLOSURES ON PACKAGES OF SMOKELESS TOBACCO.

(a) BACK FACE FOR REQUIRED DISCLOSURES.—For purposes of this section—

(1) the principal face of a package of smokeless tobacco is the face that has the largest surface area or, for faces with identical surface areas, any of the faces that have the largest surface area; a package shall not be characterized as having more than two principal faces;

(2) the front or top face shall be the principal face of the package;

(3) if the front or top and back or bottom faces are of different sizes in terms of area, then the larger face shall be the front or top face;

(4) the back or bottom face of the package shall be the principal face of a package that is opposite the front or top face of the package;

(5) beginning 24 months after the effective date of this Act, 50 percent of the back or bottom face of the package shall be allocated for required package disclosures in accordance with this section; and

(6) if the package is cylindrical, a contiguous area constituting 30 percent of the total surface area of the cylinder shall be deemed the back face.

(b) REQUIRED INFORMATION ON BACK OR BOTTOM FACE.—50 percent of the back or bottom face of a package of smokeless tobacco shall be available solely for disclosures required by or under this Act, the Comprehensive Smokeless Tobacco Health Education Act of 1986, sections 4401–4408 of title 15, United States Code, and any other Federal statute. Such disclosures shall include a list of ingredients as required by subsection (e).

(c) PACKAGE DISCLOSURE OF INGREDIENTS.—Commencing 24 months after the effective date of this Act, a package of smokeless tobacco shall bear a list of the common or usual names of the ingredients present in the smokeless tobacco in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients).

(1) Such listing of ingredients shall appears under, or be conspicuously accompanied by, the heading ''Tobacco and principal tobacco ingredients''.

(2) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(3) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(4) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(5) Preservatives may be listed as ''preservatives'' without naming each.

(6) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(7) Not for sale to minors.

SEC. 303. PUBLIC DISCLOSURE OF INGREDIENTS.

(a) REGULATIONS.—Not later than 24 months after the effective date of this Act, the Administrator shall, by regulation, establish standards under which each tobacco product manufacturer shall disclose publicly, and update at least annually—

(1) a list of the ingredients it uses in each brand style it manufactures for commercial distribution domestically, as provided in subsection (b); and

(2) a composite list of all the ingredients it uses in any of the brand styles it manufactures for commercial distribution domestically, as provided in subsection (c).

(b) INGREDIENTS TO BE DISCLOSED AS TO EACH BRAND STYLE.—

(1) IN GENERAL.—With respect to the public disclosure required by subsection (a)(1), as to each brand style, the tobacco product manufacture shall disclose the common or usual name of each ingredient present in the brand style in an amount greater than 0.1 percent of the total dry weight of the tobacco (including all ingredients).

(2) REQUIREMENTS.—Disclosure under paragraph (1) shall comply with the following:

(A) Tobacco may be listed as ''tobacco,'' and shall be the first listed ingredient.

(B) After tobacco, the ingredients shall be listed in descending order of predominance, by weight.

(C) Spices and natural and artificial flavors may be listed, respectively, as ''spices'' and ''natural and artificial flavors'' without naming each.

(D) Preservatives may be listed as ''preservatives'' without naming each.

(E) The disclosure of any ingredient in accordance with this section may, at the option of the tobacco product manufacturer, designate the functionality or purpose of that ingredient.

(c) AGGREGATE DISCLOSURE OF INGREDIENTS.—

(1) IN GENERAL.—The public disclosure required of a tobacco product manufacturer by subsection (a)(2) shall consist of a single list of all ingredients used in any brand style a tobacco product manufacturer manufactures for commercial distribution domestically, without regard to the quantity used, and including, separately, each spice, each natural or artificial flavoring, and each preservative.

(2) LISTING.—The ingredients shall be listed by their respective common or usual names in descending order of predominance by the total weight used annually by the tobacco product manufacturer in manufacturing tobacco products for commercial distribution domestically.

(d) NO REQUIRED DISCLOSURE OF QUANTITIES.—The Administrator shall not require any public disclosure of quantitative information about any ingredient in a tobacco product.

(e) DISCLOSURE ON WEBSITE.—The public disclosures required by subsection (a) of this section may be by posting on an Internet-accessible website, or other location electronically accessible to the public, which is identified on all packages of a tobacco product manufacturer's tobacco products.

(f) TIMING OF INITIAL REQUIRED DISCLOSURES.—No disclosure pursuant to this section shall be required to commence until the regulations under subsection (a) have been in effect for not less than 1 year.

TITLE IV—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 401. STUDY AND REPORT ON ILLICIT TRADE.

(a) The Administrator shall, after consultation with other relevant agencies including Customs and Tobacco Tax Bureau, conduct a study of trade in tobacco products that involves passage of tobacco products either between the States or from or to any other country across any border of the United States to—

(1) collect data on such trade in tobacco products, including illicit trade involving tobacco products, and make recommendations on the monitoring and enforcement of such trade;

(2) collect data on any advertising intended to be broadcast, transmitted, or distributed from or to the United States from or to another country and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, such advertising; and

(3) collect data on such trade in tobacco products by person that is not—

(A) a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement of November 23, 1998, between certain of the States and certain tobacco product manufacturers); or

(B) an affiliate or subsidiary of a participating manufacturer.

(b) Not later than 18 months after the effective date of this Act, the Administrator shall submit to the Secretary, and committees of relevant jurisdiction in Congress, a report the recommendations of the study conducted under subsection (a).

SEC. 402. AMENDMENT TO SECTION 1926 OF THE PUBLIC HEALTH SERVICE ACT.

Section 1926 of the Public Health Service Act (42 U.S.C. § 300x–26) is amended by adding at the end thereof the following:

''(e)(1) Subject to paragraphs (2) and (3), for the first fiscal year after enactment and each subsequent fiscal year, the Secretary shall reduce, as provided in subsection (h), the amount of any grant under section 300x–21 of this title for any State that does not have in effect a statute with substantially the following provisions:

''''SEC. 1. DISTRIBUTION TO MINORS.

'''(a) No person shall distribute a tobacco product to an individual under 18 years of age or a different minimum age established under State law. A person who violates this subsection is liable for a civil money penalty of not less than $25 nor more than $125 for each violation of this subsection;

'''(b) The employer of an employee who has violated subsection (a) twice while in the

employ of such employer is liable for a civil money penalty of $125 for each subsequent violation by such employee.

''(c) It shall be a defense to a charge brought under subsection (a) that—

''(1) the defendant—

''(A) relied upon proof of age that appeared on its face to be valid in accordance with the Preventing Disease and Death from Tobacco Use Act;

''(B) had complied with the requirements of section 5 and, if applicable, section 7; or

''(C) relied upon a commercially available electronic age verification service to confirm that the person was an age-verified adult; or

''(2) the individual to whom the tobacco product was distributed was at the time of the distribution used in violation of subsection 7(b).

''SEC. 2. OUT-OF-PACKAGE DISTRIBUTION.

''It shall be unlawful for any person to distribute cigarettes or a smokeless tobacco product other than in an unopened package that complies in full with section 108 of the Preventing Disease and Death from Tobacco Use Act. A person who distributes a cigarette or a smokeless tobacco product in violation of this section is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''SEC. 3. SIGNAGE.

''It shall be unlawful for any person who sells tobacco products over-the-counter to fail to post conspicuously on the premises where such person sells tobacco products over-the-counter a sign communicating that—

''(1) the sale of tobacco products to individuals under 18 years of age or a different minimum age established under State law is prohibited by law;

''(2) the purchase of tobacco products by individuals under 18 years of age or a different minimum age established under State law is prohibited by law; and

''(3) proof of age may be demanded before tobacco products are sold.

A person who fails to post a sign that complies fully with this section is liable for a civil money penalty of not less than $25 nor more than $125.

''SEC. 4. NOTIFICATION OF EMPLOYEES.

''(a) Within 180 days of the effective date of the Preventing Disease and Death from Tobacco Use Act, every person engaged in the business of selling tobacco products at retail shall implement a program to notify each employee employed by that person who sells tobacco products at retail that—

''(1) the sale or other distribution of tobacco products to any individual under 18 years of age or a different minimum age established under State law, and the purchase, receipt, or possession of tobacco products in a place open to the public by any individual under 18 years of age or a different minimum age established under State law, is prohibited; and

''(2) out-of-package distribution of cigarettes and smokeless tobacco products is prohibited.

Any employer failing to provide the required notice to any employee shall be liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''(b) It shall be a defense to a charge that an employer violated subsection (a) of this section that the employee acknowledged receipt, either in writing or by electronic means, prior to the alleged violation, of a statement in substantially the following form:

''I understand that State law prohibits the distribution of tobacco products to individuals under 18 years of age or a different minimum age established under State law and out-of-package distribution of cigarettes and smokeless tobacco products, and permits a defense based on evidence that a prospective purchaser's proof of age was reasonably relied upon and appeared on its face to be valid. I understand that if I sell, give, or voluntarily provide a tobacco product to an individual under 18 years of age or a different minimum age established under State law, I may be found responsible for a civil money penalty of not less than $25 nor more than $125 for each violation. I promise to comply with this law.'''

''(c) If an employer is charged with a violation of subsection (a) and the employer uses as a defense to such charge the defense provided by subsection (b), the employer shall be deemed to be liable for such violation if such employer pays the penalty imposed on the employee involved in such violation or in any way reimburses the employee for such penalty.

''SEC. 5. SELF-SERVICE DISPLAYS.

''(a) It shall be unlawful for any person who sells tobacco products over-the-counter at retail to maintain packages of such products in any location accessible to customers that is not under the control of a cashier or other employee during regular business hours. This subsection does not apply to any adult-only facility.

''(b) Any person who violates subsection (a) is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation, except that no person shall be responsible for more than one violation per day at any one retail store.

''SEC. 6. DISTRIBUTION BY MAIL OR COURIER.

''(a) It shall be unlawful to distribute or sell tobacco products directly to consumers by mail or courier, unless the person receiving purchase requests for tobacco products takes reasonable action to prevent delivery to individuals who are not adults by—

''(1) requiring that addressees of the tobacco products be age-verified adults;

''(2) making good faith efforts to verify that such addressees have attained the minimum age for purchase of tobacco products established by the respective States wherein the addresses of the addressees are located; and

''(3) addressing the tobacco products delivered by mail or courier to a physical addresses and not to post office boxes.

''(b) Any person who violates subsection (a) is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''SEC. 7. RANDOM UNANNOUNCED INSPECTIONS; REPORTING; AND COMPLIANCE.

''(a) The State Police, or a local law enforcement authority duly designated by the State Police, or a public health authority shall enforce this Act in a manner that can reasonably be expected to reduce the extent to which tobacco products are distributed to individuals under 18 years of age or a different minimum age established under State law and shall conduct random, unannounced inspections in accordance with the procedures set forth in this Act and in regulations issued under section 1926 of the Federal Public Health Service Act (42 U.S.C. § 300x–26).

''(b) The State may engage an individual under 18 years of age or a different minimum age established under State law to test compliance with this Act, except that such an individual may be used to test compliance with this Act only if the testing is conducted under the following conditions:

''(1) Prior to use of any individual under 18 years of age or a different minimum age established under State law in a random, unannounced inspection, written consent shall be obtained from a parent, custodian, or guardian of such individual;

''(2) An individual under 18 years of age or a different minimum age established under State law shall act solely under the supervision and direction of the State Police or a local law enforcement authority, or public health authority duly designated by the State Police during a random, unannounced inspection;

''(3) An individual under 18 years of age or a different minimum age established under State law used in random, unannounced inspections shall not be used in any such inspection at a store in which such individual is a regular customer; and

''(4) If an individual under 18 years of age or a different minimum age established under State law participating in random, unannounced inspections is questioned during such an inspection about such individual's age, such individual shall state his or her actual age and shall present a true and correct proof of age if requested at any time during the inspection to present it.

''(c) Any person who uses any individual under 18 years of age or a different minimum age established under State law, other than as permitted by subsection (b), to test compliance with this Act, is liable for a civil money penalty of not less than $25 nor more than $125 for each such violation.

''(d) Civil money penalties collected for violations of this Act and fees collected under section 9 shall be used only to defray the costs of administration and enforcement of this Act.

''SEC. 8. LICENSURE.

''(a) Each person engaged in the over-the-counter distribution at retail of tobacco products shall hold a license issued under this section. A separate license shall be required for each place of business where tobacco products are distributed at retail. A license issued under this section is not assignable and is valid only for the person in whose name it is issued and for the place of business designated in the license.

''(b) The annual license fee is $25 for each place of business where tobacco products are distributed at retail.

''(c) Every application for a license, including renewal of a license, under this section shall be made upon a form provided by the appropriate State agency or department, and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as ''notice address''), and any other identifying information that the appropriate State agency or department may require.

''(d) The appropriate State agency or department shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the license fee. The appropriate State agency or department shall provide notice to an applicant of action on an application denying the issuance of a license or refusing to renew a license.

''(e) Every license issued by the appropriate State agency or department pursuant to this section shall be valid for 1 year from the date of issuance and shall be renewed upon application except as otherwise provided in this Act.

''(f) Upon notification of a change of address for a place of business for which a license has been issued, a license shall be reissued for the new address without the filing of a new application.

''(g) The appropriate State agency or department shall notify every person in the State who is engaged in the distribution at retail of tobacco products of the license requirements of this section and of the date by

which such person should have obtained a license.

''(h)(1) Except as provided in paragraph (2), any person who engages in the distribution at retail of tobacco products without a license required by this section is liable for a civil money penalty in an amount equal to (i) two times the applicable license fee, and (ii) $50 for each day that such distribution continues without a license.

''(2) Any person who engages in the distribution at retail of tobacco products after a license issued under this section has been suspended or revoked is liable for a civil money penalty of $100 per day for each day on which such distribution continues after the date such person received notice of such suspension or revocation.

''(i) No person shall engage in the distribution at retail of tobacco products on or after 180 days after the date of enactment this Act unless such person is authorized to do so by a license issued pursuant to this section or is an employee or agent of a person that has been issued such a license.

''SEC. 9. SUSPENSION, REVOCATION, DENIAL, AND NONRENEWAL OF LICENSES.

''(a) Upon a finding that a licensee has been determined by a court of competent jurisdiction to have violated this Act during the license term, the State shall notify the licensee in writing, served personally or by registered mail at the notice address, that any subsequent violation of this Act at the same place of business may result in an administrative action to suspend the license for a period determined by the specify the appropriate State agency or department.

''(b) Upon finding that a further violation by this Act has occurred involving the same place of business for which the license was issued and the licensee has been served notice once under subsection (a), the appropriate State agency or department may initiate an administrative action to suspend the license for a period to be determined by the appropriate State agency or department but not to exceed six months. If an administrative action to suspend a license is initiated, the appropriate State agency or department shall immediately notify the licensee in writing at the notice address of the initiation of the action and the reasons therefor and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why suspension of the license would be unwarranted or unjust.

''(c) The appropriate State agency or department may initiate an administrative action to revoke a license that previously has been suspended under subsection (b) if, after the suspension and during the one-year period for which the license was issued, the licensee committed a further violation of this Act, at the same place of business for which the license was issued. If an administrative action to revoke a license is initiated, the appropriate State agency or department shall immediately notify the licensee in writing at the notice address of the initiation of the action and the reasons therefor and permit the licensee an opportunity, at least 30 days after written notice is served personally or by registered mail upon the licensee, to show why revocation of the license would be unwarranted or unjust.

''(d) A person whose license has been suspended or revoked with respect to a place of business pursuant to this section shall pay a fee of $50 for the renewal or reissuance of the license at that same place of business, in addition to any applicable annual license fees.

''(e) Revocation of a license under subsection (c) with respect to a place of business shall not be grounds to deny an application by any person for a new license with respect to such place of business for more than 12 months subsequent to the date of such revocation. Revocation or suspension of a license with respect to a particular place of business shall not be grounds to deny an application for a new license, to refuse to renew a license, or to revoke or suspend an existing license at any other place of business.

''(f) A licensee may seek judicial review of an action of the appropriate State agency or department suspending, revoking, denying, or refusing to renew a license under this section by filing a complaint in a court of competent jurisdiction. Any such complaint shall be filed within 30 days after the date on which notice of the action is received by the licensee. The court shall review the evidence de novo.

''(g) The State shall not report any action suspending, revoking, denying, or refusing to renew a license under this section to the Federal Secretary of Health and Human Services, unless the opportunity for judicial review of the action pursuant to subsection (f), if any, has been exhausted or the time for seeking such judicial review has expired.

''SEC. 10. NO PRIVATE RIGHT OF ACTION.

''Nothing in this Act shall be construed to create a right of action by any private person for any violation of any provision of this Act.

''SEC. 11. JURISDICTION AND VENUE.

''Any action alleging a violation of this Act may be brought only in a court of general jurisdiction in the city or county where the violation is alleged to have occurred.

''SEC. 12. REPORT.

''The appropriate State agency or department shall prepare for submission annually to the Federal Secretary of Health and Human Services the report required by section 1926 of the Federal Public Health Service Act (42 U.S.C. 300x–26).''.

''(2) In the case of a State whose legislature does not convene a regular session in fiscal year 2007, and in the case of a State whose legislature does not convene a regular session in fiscal year 2008, the requirement described in subsection (e)(1) as a condition of a receipt of a grant under section 300x–21 of this title shall apply only for fiscal year 2009 and subsequent fiscal years.

''(3) Subsection (e)(1) shall not affect any State or local law that (A) was in effect on the date of introduction of the Federal Tobacco Act of 2007, and (B) covers the same subject matter as the law described in subsection (e)(1). Any State law that meets the conditions of this paragraph shall also be deemed to meet the requirement described in subsection (e)(1) as a condition of a receipt of a grant under section 300x–21 of this title, if such State law is at least as stringent as the law described in subsection (e)(1).

''(f)(1) For the first applicable fiscal year and for each subsequent fiscal year, a funding agreement for a grant under section 300x–21 of this title is a funding agreement under which the State involved will enforce the law described in subsection (e)(1) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18 or a different minimum age established under State law for the purchase of tobacco products.

''(2) For the first applicable fiscal year and for each subsequent fiscal year, a funding agreement for a grant under section 300x–21 of this title is a funding agreement under which the State involved will—

''(A) conduct random, unannounced inspections to ensure compliance with the law described in subsection (e)(1); and

''(B) annually submit to the Secretary a report describing—

''(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

''(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under 18 years of age or a different minimum age established under State law, including the results of the inspections conducted under subparagraph (A); and

''(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

''(g) The law specified in subsection (e)(1) may be administered and enforced by a State using—

''(1) any amounts made available to the State through a grant under section 300x–21 of this title;

''(2) any amounts made available to the State under section 300w of this title;

''(3) any fees collected for licenses issued pursuant to the law described in subsection (e)(1);

''(4) any fines or penalties assessed for violations of the law specified in subsection (e)(1); or

''(5) any other funding source that the legislature of the State may prescribe by statute.

''(h) Before making a grant under section 300x–21 of this title to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (e) and (f) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under section 300x–21 of this title for the State for the fiscal year involved by an amount equal to—

''(1) In the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 for the State for the fiscal year;

''(2) In the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 for the State for the fiscal year;

''(3) In the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 for the State for the fiscal year; and

''(4) In the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 for the State for the fiscal year.

The Secretary shall not have authority or discretion to grant to any State a waiver of the terms and requirements of this subsection or subsection (e) or (f).

''(i) For the purposes of subsections (e) through (h) of this section the term 'first applicable fiscal year' means—

''(1) fiscal year 2009, in the case of any State described in subsection (e)(2) of this section; and

''(2) fiscal year 2008, in the case of any other State.

''(j) For purposes of subsections (e) through (h) of this section, references to section 300x–21 shall include any successor grant programs.''

''(k) As required by paragraph (1), and subject to paragraph (4), an Indian tribe shall satisfy the requirements of subsection (e)(1) of this section by enacting a law or ordinance with substantially the same provisions as the law described in subsection (e)(1).

''(1) An Indian tribe shall comply with subsection (e)(1) of this section within 180 days after the Administrator finds, in accordance with this paragraph, that—

''(A) the Indian tribe has a governing body carrying out substantial governmental powers and duties;

''(B) the functions to be exercised by the Indian tribe under this Act pertain to activities on trust land within the jurisdiction of the tribe; and

''(C) the Indian tribe is reasonably expected to be capable of carrying out the functions required under this section.

Within 2 years of the date of enactment of the Federal Tobacco Act of 2007, as to each Indian tribe in the United States, the Administrator shall make the findings contemplated by this paragraph or determine that such findings cannot be made, in accordance with the procedures specified in paragraph (4).

''(2) As to Indian tribes subject to subsection (e)(1) of this section, the Administrator shall promulgate regulations that—

''(A) provide whether and to what extent, if any, the law described in subsection (e)(1) may be modified as adopted by Indian tribes; and

''(B) ensure, to the extent possible, that each Indian tribe's retailer licensing program under subsection (e)(1) is no less stringent than the program of the State or States in which the Indian tribe is located.

''(3) If with respect to any Indian tribe the Administrator determines that compliance with the requirements of subsection (e)(1) is inappropriate or administratively infeasible, the Administrator shall specify other means for the Indian tribe to achieve the purposes of the law described in subsection (e)(1) with respect to persons who engage in the distribution at retail of tobacco products on tribal lands.

''(4) The findings and regulations promulgated under paragraphs (1) and (2) shall be promulgated in conformance with section 553 of title 5, United States Code, and shall comply with the following provisions:

''(A) In making findings as provided in paragraph (1), and in drafting and promulgating regulations as provided in paragraph (2) (including drafting and promulgating any revised regulations), the Administrator shall confer with, and allow for active participation by, representatives and members of Indian tribes, and tribal organizations.

''(B) In carrying out rulemaking processes under this subsection, the Administrator shall follow the guidance of subchapter III of chapter 5 of title 5, United States Code, commonly known as the 'Negotiated Rulemaking Act of 1990.'

''(C) The tribal participants in the negotiation process referred to in subparagraph (B) shall be nominated by and shall represent the groups described in this subsection and shall include tribal representatives from all geographic regions.

''(D) The negotiations conducted under this paragraph (4) shall be conducted in a timely manner.

''(E) If the Administrator determines that an extension of the deadlines under subsection (k)(1) of this section is appropriate, the Secretary may submit proposed legislation to Congress for the extension of such deadlines.

''(5) This subsection shall not affect any law or ordinance that (A) was in effect on tribal lands on the date of introduction of the Preventing Disease and Death from Tobacco Use Act, and (B) covers the same subject matter as the law described in subsection (e)(1). Any law or ordinance that meets the conditions of this paragraph shall also be deemed to meet the requirement described in subsection (k)(1), if such law or ordinance is at least as stringent as the law described in subsection (e)(1).

''(6) For purposes of this subsection—

''(A) 'Administrator' means the Administrator of the Tobacco Harm Reduction Center.

''(B) 'Indian tribe' has the meaning assigned that term in section 4(e) of the Indian Self Determination and Education Assistance Act, section 450b(e) of title 25, United States Code.

''(C) 'Tribal lands' means all lands within the exterior boundaries of any Indian reservation, all lands the title to which is held by the United States in trust for an Indian tribe, or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation, and all dependent Indian communities.

''(D) 'tribal organization' has the meaning assigned that term in section 4(l) of the Indian Self Determination and Education Assistance Act, section 450b(l) of title 25, United States Code.''.

SEC. 403. ESTABLISHMENT OF RANKINGS.

(a) STANDARDS AND PROCEDURES FOR RANKINGS.—Within 24 months after the effective date of this Act, the Administrator shall, by regulation, after consultation with an Advisory Committee established for such purpose, establish the standards and procedures for promulgating rankings, comprehensible to consumers of tobacco products, of the following categories of tobacco products and also nicotine-containing products on the basis of the relative risks of serious or chronic tobacco-related diseases and adverse health conditions those categories of tobacco products and also nicotine-containing products respectively present—

(1) smoking articles, including—

(A) cigarettes;

(B) cigars;

(C) little cigars;

(D) loose tobacco for roll-your own tobacco products;

(E) loose tobacco for pipes, hookas, and other pipe-like devices; and

(F) other smoking articles;

(2) smokeless products, including—

(A) chewing tobacco;

(B) dry snuff;

(C) snus (a type of moist snuff);

(D) other forms of moist snuff; and

(E) dissolvable tobacco products (such as sticks, orbs, or lozenges); and

(3) nicotine containing non-tobacco or tobacco extract products, including—

(A) nicotine gum;

(B) nicotine patches;

(C) electronic cigarettes; and

(D) other forms of such products.

The Administrator shall not have authority or discretion to establish a relative-risk ranking of any category or subcategory of tobacco products or any category or subcategory of nicotine-containing products other than the ten categories specified in this subsection.

(b) CONSIDERATIONS IN PROMULGATING REGULATIONS.—In promulgating regulations under this section, the Administrator—

(1) shall take into account relevant epidemiologic studies and other relevant competent and reliable scientific evidence; and

(2) in assessing the risks of serious or chronic tobacco-related diseases and adverse health conditions presented by a particular category, shall consider the range of tobacco products or nicotine-containing products within the category, and shall give appropriate weight to the market shares of the respective products in the category.

(c) PROMULGATION OF RANKINGS OF CATEGORIES.—Once the initial regulations required by subsection (a) are in effect, the Administrator shall promptly, by order, after notice and an opportunity for comment, promulgate to the general public rankings of the categories of tobacco products and nicotine-containing products in accordance with those regulations. The Administrator shall promulgate the initial rankings of those categories of tobacco products and nicotine-containing products to the general public not later than January 1, 2010. Thereafter, on an annual basis, the Administrator shall, by order, promulgate to the general public updated rankings that are (1) in accordance with those regulations, and (2) reflect the scientific evidence available at the time of promulgation. The Administrator shall open and maintain an ongoing public docket for receipt of data and other information submitted by any person with respect to such annual promulgation of rankings.

TITLE V—ENFORCEMENT PROVISIONS

SEC. 501. PROHIBITED ACTS.

The following acts and the causing thereof are hereby prohibited—

(1) the introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded;

(2) the adulteration or misbranding of any tobacco product in interstate commerce;

(3) the receipt in interstate commerce of any tobacco product that is known to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) the failure to establish or maintain any record, or make any report or other submission, or to provide any notice required by or under this Act; or the refusal to permit access to, verification of, or copying of any record as required by this Act;

(5) the refusal to permit entry or inspection as authorized by this Act;

(6) the making to the Administrator of a statement, report, certification or other submission required by this Act, with knowledge that such statement, report, certification, or other submission is false in a material aspect;

(7) the manufacturing, shipping, receiving, storing, selling, distributing, possession, or use of any tobacco product with knowledge that it is an illicit tobacco product;

(8) the forging, simulating without proper permission, falsely representing, or without proper authority using any brand name;

(9) the using by any person to his or her own advantage, or revealing, other than to the Administrator or officers or employees of the Agency, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of this Act concerning any item which as a trade secret is entitled to protection; except that the foregoing does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee;

(10) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a tobacco product, if such act is done while such tobacco product is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in such tobacco product being adulterated or misbranded;

(11) the importation of any tobacco product that is adulterated, misbranded, or otherwise not in compliance with this Act; and

(12) the commission of any act prohibited by section 201 of this Act.

SEC. 502. INJUNCTION PROCEEDINGS.

(a) The district courts of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act, except for violations of section 701(k).

(b) In case of an alleged violation of an injunction or restraining order issued under this section, which also constitutes a violation of this Act, trial shall be by the court, or upon demand of the defendant, by a jury.

SEC. 503. PENALTIES.

(a) CRIMINAL PENALTIES.—Any person who willfully violates a provision of section 501 of this Act shall be imprisoned for not more than one year or fined not more than $25,000, or both.

(b) CIVIL PENALTIES FOR VIOLATION OF SECTION 803.—

(1) Any person who knowingly distributes or sells, other than through retail sale or retail offer for sale, any cigarette brand style in violation of section 803(a)—

(A) for a first offense shall be liable for a civil penalty not to exceed $10,000 for each distribution or sale, or

(B) for a second offense shall be liable for a civil penalty not to exceed $25,000 for each distribution or sale,

except that the penalty imposed against any person with respect to violations during any 30-day period shall not exceed $100,000.

(2) Any retailer who knowingly distributes, sells or offers for sale any cigarette brand style in violation of section 803(a) shall—

(A) for a first offense for each sale or offer for sale of cigarettes, if the total number of packages of cigarettes sold or offered for sale—

(i) does not exceed 50 packages of cigarettes, be liable for a civil penalty not to exceed $500 for each sale or offer for sale, and

(ii) exceeds 50 packages of cigarettes, be liable for a civil penalty not to exceed $1,000 for each sale or offer for sale;

(B) for each subsequent offense for each sale or offer for sale of cigarettes, if the total number of cigarettes sold or offered for sale—

(i) does not exceed 50 packages of cigarettes, be liable for a civil penalty not to exceed $2,000 for each sale or offer for sale, and

(ii) exceeds 50 packages of cigarettes, be liable for a civil penalty not to exceed $5,000 for each sale or offer for sale;

except that the penalty imposed against any person during any 30-day period shall not exceed $25,000.

SEC. 504. SEIZURE.

(a) ARTICLES SUBJECT TO SEIZURE.—

(1) Any tobacco product that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of this Act, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States within the jurisdiction of which the tobacco product is found. No libel for condemnation shall be instituted under this Act for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this Act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply—

(A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this Act, or

(B) when the Administrator has probable cause to believe from facts found, without hearing, by the Administrator or any officer or employee of the Agency that the misbranded tobacco product is dangerous to health beyond the inherent danger to health posed by tobacco, or that the labeling of the misbranded tobacco product is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States within the jurisdiction of which they are found—

(A) any tobacco product that is an illicit tobacco product;

(B) any container of an illicit tobacco product;

(C) any equipment or thing used in making an illicit tobacco product; and

(D) any adulterated or misbranded tobacco product.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any tobacco product which—

(i) is misbranded under this Act because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the tobacco product.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a tobacco product described in subparagraph (A) if the tobacco product's advertising which resulted in the tobacco product being misbranded was disseminated in the establishment in which the tobacco product is being held for sale to the ultimate consumer—

(i) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(ii) all or part of the cost of such advertising was paid by such owner or operator.

(b) PROCEDURES.—The tobacco product, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) SAMPLES AND ANALYSES.—The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, the party's attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) DISPOSITION OF CONDEMNED TOBACCO PRODUCTS.—(1) Any tobacco product condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such tobacco product shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold. After entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State in which sold, the court may by order direct that such tobacco product be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act, under the supervision of an officer or employee duly designated by the Administrator; and the expenses of such supervision shall be paid by the person obtaining release of the tobacco product under bond. If the tobacco product was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the tobacco product was imported, and (B) that the person seeking the release of the tobacco product had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the tobacco product to be delivered to the owner for exportation under section 709 in lieu of destruction upon a showing by the owner that there is a reasonable certainty that the tobacco product will not be re-imported into the United States.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a).

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a), the condemnation of any equipment or thing (other than a tobacco product) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (A) that such claimant has not caused the equipment or thing to be within one of the categories referred to in such paragraph (2) and has no interest in any tobacco product referred to therein, (B) that such claimant has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by such claimant in good faith, and (C) that such claimant at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to any illicit tobacco product.

(e) COSTS AND FEES.—When a decree of condemnation is entered against the tobacco product or other article, court costs and fees, and storage and other proper expenses shall

be awarded against the person, if any, intervening as claimant of the tobacco product or other article.

(f) REMOVAL FOR TRIAL.—In the case of removal for trial of any case as provided by subsection (a) or (b)—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g) ADMINISTRATIVE DETENTION OF TOBACCO PRODUCTS.—

(1) DETENTION AUTHORITY.—

(A) IN GENERAL.—An officer or qualified employee of the Agency may order the detention, in accordance with this subsection, of any tobacco product that is found during an inspection, examination, or investigation under this Act conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that such article presents a threat of serious adverse health consequences beyond those normally inherent in the use of tobacco products.

(B) ADMINISTRATOR'S APPROVAL.—A tobacco product or component thereof may be ordered detained under subparagraph (A) if, but only if, the Administrator or an official designated by the Administrator approves the order. An official may not be so designated unless the official is an officer with supervisory responsibility for the inspection, examination, or investigation that led to the order.

(2) PERIOD OF DETENTION.—A tobacco product may be detained under paragraph (1) for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary, to institute an action under subsection (a) or section 702.

(3) SECURITY OF DETAINED TOBACCO PRODUCT.—An order under paragraph (1) may require that the tobacco product to be detained be labeled or marked as detained, and shall require that the tobacco product be maintained in or removed to a secure facility, as appropriate. A tobacco product subject to such an order shall not be transferred by any person from the place at which the tobacco product is ordered detained, or from the place to which the tobacco product is so removed, as the case may be, until released by the Administrator or until the expiration of the detention period applicable under such order, whichever occurs first. This subsection may not be construed as authorizing the delivery of the tobacco product pursuant to the execution of a bond while the tobacco product is subject to the order, and section 709 does not authorize the delivery of the tobacco product pursuant to the execution of a bond while the article is subject to the order.

(4) APPEAL OF DETENTION ORDER.—

(A) IN GENERAL.—With respect to a tobacco product ordered detained under paragraph (1), any person who would be entitled to be a claimant of such tobacco product if the tobacco product were seized under subsection (a) may appeal the order to the Administrator. Within five days after such an appeal is filed, the Administrator, after providing opportunity for an informal hearing, shall confirm or terminate the order involved, and such confirmation by the Administrator shall be considered a final agency action for purposes of section 702 of title 5, United States Code. If during such five-day period the Administrator fails to provide such an opportunity, or to confirm or terminate such order, the order is deemed to be terminated.

(B) EFFECT OF INSTITUTING COURT ACTION.—The process under subparagraph (A) for the appeal of an order under paragraph (1) terminates if the Administrator institutes an action under subsection (a) or section 702 regarding the tobacco product involved.

SEC. 505. REPORT OF MINOR VIOLATIONS.

Nothing in this Act shall be construed as requiring the Administrator to report for prosecution, or for institution of libel or injunction proceedings, minor violations of this Act whenever the Administrator believes that the public interest will be adequately served by a suitable written notice or warning.

SEC. 506. INSPECTION.

(a) AUTHORITY TO INSPECT.—The Administrator shall have the power to inspect the premises of a tobacco product manufacturer for purposes of determining compliance with this Act, or the regulations promulgated under it. Officers of the Agency designated by the Administrator, upon presenting appropriate credentials and a written notice to the person in charge of the premises, are authorized to enter, at reasonable times, without a search warrant, any factory, warehouse, or other establishment in which tobacco products are manufactured, processed, packaged, or held for domestic distribution. Any such inspection shall be conducted within reasonable limits and in a reasonable manner, and shall be limited to examining only those things, including but not limited to records, relevant to determining whether violations of this Act, or regulations under it, have occurred. No inspection authorized by this section shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Act), or research data. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(b) REPORT OF OBSERVATIONS.—Before leaving the premises, the officer of the Agency who has supervised or conducted the inspection shall give to the person in charge of the premises a report in writing setting forth any conditions or practices that appear to manifest a violation of this Act, or the regulations under it.

(c) SAMPLES.—If the officer has obtained any sample in the course of inspection, prior to leaving the premises that officer shall give to the person in charge of the premises a receipt describing the samples obtained. As to each sample obtained, the officer shall furnish promptly to the person in charge of the premises a copy of the sample and of any analysis made upon the sample.

SEC. 507. EFFECT OF COMPLIANCE.

Compliance with the provisions of this Act and the regulations promulgated under it shall constitute a complete defense to any civil action, including but not limited to any products liability action, that seeks to recover damages, whether compensatory or punitive, based upon an alleged defect in the labeling or advertising of any tobacco product distributed for sale domestically.

SEC. 508. IMPORTS.

(a) IMPORTS; LIST OF REGISTERED FOREIGN ESTABLISHMENTS; SAMPLES FROM UNREGISTERED FOREIGN ESTABLISHMENTS; EXAMINATION AND REFUSAL OF ADMISSION.—The Secretary of Homeland Security shall deliver to the Administrator, upon request by the Administrator, samples of tobacco products that are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. The Administrator shall furnish to the Secretary of Homeland Security a list of establishments registered pursuant to subsection (d) of section 109 of this Act, and shall request that, if any tobacco products manufactured, prepared, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such tobacco products be delivered to the Administrator, with notice of such delivery to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that (1) such tobacco product is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (2) such tobacco product is adulterated, misbranded, or otherwise in violation of this Act, then such tobacco product shall be refused admission, except as provided in subsection (b) of this section. The Secretary of Homeland Security shall cause the destruction of any such tobacco product refused admission unless such tobacco product is exported, under regulations prescribed by the Secretary of Homeland Security, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) DISPOSITION OF REFUSED TOBACCO PRODUCTS.—Pending decision as to the admission of a tobacco product being imported or offered for import, the Secretary of Homeland Security may authorize delivery of such tobacco product to the owner or consignee upon the execution by such consignee of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of Homeland Security. If it appears to the Administrator that a tobacco product included within the provisions of clause (3) of subsection (a) of this section can, by relabeling or other action, be brought into compliance with this Act or rendered other than a tobacco product, final determination as to admission of such tobacco product may be deferred and, upon filing of timely written application by the owner or consignee and the execution by such consignee of a bond as provided in the preceding provisions of this subsection, the Administrator may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected tobacco products or portions thereof, as may be specified in the Administrator's authorization). All such relabeling or other action pursuant to such authorization shall in accordance with regulations be under the supervision of an officer or employee of the Agency designated by the Administrator, or an officer or employee of the Department of Homeland Security designated by the Secretary of Homeland Security.

(c) CHARGES CONCERNING REFUSED TOBACCO PRODUCTS.—All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any tobacco product refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall

constitute a lien against any future importations made by such owner or consignee.

SEC. 509. TOBACCO PRODUCTS FOR EXPORT.

(a) EXEMPTION FOR TOBACCO PRODUCTS EXPORTED.—Except as provided in subsection (b), a tobacco product intended for export shall be exempt from this Act if—

(1) it is not in conflict with the laws of the country to which it is intended fore export, as shown by either (A) a document issued by the government of that country or (B) a document provided by a person knowledgeable with respect to the relevant laws of that country and qualified by training and experience to opine on whether the tobacco product is or is not in conflict with such laws;

(2) it is labeled on the outside of the shipping package that it is intended for export; and

(3) the particular units of tobacco product intended for export have not been sold or offered for sale in domestic commerce.

(b) PRODUCTS FOR U.S. ARMED FORCES OVERSEAS.—A tobacco product intended for export shall not be exempt from this Act if it is intended for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(c) This Act shall not apply to a person that manufactures and/or distributes tobacco products solely for export under subsection (a), except to the extent such tobacco products are subject to subsection (b).

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. USE OF PAYMENTS UNDER THE MASTER SETTLEMENT AGREEMENT AND INDIVIDUAL STATE SETTLEMENT AGREEMENTS.

(a) REDUCTION OF GRANT AMOUNTS.—(1) For fiscal year 2010 and each subsequent fiscal year, the Secretary shall reduce, as provided in subsection (b), the amount of any grant under section 1921 of the Public Health Service Act (42 U.S.C. § 300x–21) for any State that spends on tobacco control programs from the funds received by such State pursuant to the Master Settlement Agreement, the Florida Settlement Agreement, the Minnesota Settlement Agreement, the Mississippi Memorandum of Understanding, or the Texas Settlement Agreement, as applicable, less than 20 percent of the amounts received by that State from settlement payments.

(2) In the case of a State whose legislature does not convene a regular session in fiscal year 2009 or 2010, and in the case of a State whose legislature does not convene a regular session in fiscal year 2010, the requirement described in subsection (a)(1) as a condition of receipt of a grant under section 1921 of the Public Health Service Act shall apply only for fiscal year 2009 and subsequent fiscal years.

(b) DETERMINATION OF STATE SPENDING.—Before making a grant under section 1921 of the Public Health Service Act, section 300x–21 of title 42, United States Code, to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether, during the immediately preceding fiscal year, the State has spent on tobacco control programs, from the funds received by such State pursuant to the Master Settlement Agreement, the Florida Settlement Agreement, the Minnesota Settlement Agreement, the Mississippi Memorandum of Understanding, or the Texas Settlement Agreement, as applicable, at least the amount referenced in (a)(1). If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State has spent less than such amount, the Secretary shall reduce the amount of the allotment under section 300x–21 of title 42, United States Code, for the State for the fiscal year involved by an amount equal to—

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 of title 42, United States Code, for the State for the fiscal year.

The Secretary shall not have authority or discretion to grant to any State a waiver of the terms and requirements of this subsection or subsection (a).

(c) DEFINITIONS.—For the purposes of this section—

(1) The term ''first applicable fiscal year'' means—

(A) fiscal year 2011, in the case of any State described in subsection (a)(2) of this section; and

(B) fiscal year 2010, in the case of any other State.

(2) The term ''Florida Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on August 25, 1997, between the State of Florida and signatory tobacco product manufacturers, as specified therein.

(3) The term ''Master Settlement Agreement'' means the Master Settlement Agreement, together with the exhibits thereto, entered into on November 23, 1998, between the signatory States and signatory tobacco product manufacturers, as specified therein.

(4) The term ''Minnesota Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on May 8, 1998, between the State of Minnesota and signatory tobacco product manufacturers, as specified therein.

(5) The term ''Mississippi Memorandum of Understanding'' means the Memorandum of Understanding, together with the exhibits thereto and Settlement Agreement contemplated therein, entered into on July 2, 1997, between the State of Mississippi and signatory tobacco product manufacturers, as specified therein.

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

(7) The term ''Texas Settlement Agreement'' means the Settlement Agreement, together with the exhibits thereto, entered into on January 16, 1998, between the State of Texas and signatory tobacco product manufacturers, as specified therein.

SEC. 602. INSPECTION BY THE ALCOHOL AND TOBACCO TAX TRADE BUREAU OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of the Alcohol and Tobacco Tax Trade Bureau may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (d); or

(2) any cigarettes or smokeless tobacco kept or stored by such person at such premises.

(b) COVERED PERSONS.—Subsection (a) applies to any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—

(1) IN GENERAL.—The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

(2) VIOLATIONS.—Whoever violates subsection (a) or an order issued pursuant to paragraph (1) shall be subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(d) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are—

(1) the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act'');

(2) chapter 114 of title 18, United States Code; and

(3) this Act.

(e) DELIVERY SALE DEFINED.—In this section, the term ''delivery sale'' has the meaning given that term in 2343(e) of title 18, United States Code, as amended by this Act.

SEC. 603. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected, and shall continue to be enforced to the fullest extent possible.

TITLE VII—TOBACCO GROWER PROTECTION

SEC. 701. TOBACCO GROWER PROTECTION.

No provision in this Act shall allow the Administrator or any other person to require changes to traditional farming practices, including standard cultivation practices, curing processes, seed composition, tobacco type, fertilization, soil, record keeping, or any other requirement affecting farming practices.

TITLE VIII—RESTRICTIONS ON YOUTH ACCESS TO TOBACCO PRODUCTS AND EXPOSURE OF YOUTHS TO TOBACCO PRODUCT MARKETING AND ADVERTISING

SEC. 801. PROHIBITIONS ON YOUTH TARGETING.

Effective beginning on the date that is 18 months after the effective date of this Act, no person shall engage in any of the following activities or practices in the advertising, promotion, or marketing of any tobacco product:

(1) The use, or causing the use, of any cartoon in the advertising, promoting, packaging, or labeling of any tobacco product.

(2) The use, or causing the use, of any human image in the advertising, promoting, packaging, or labeling of any tobacco product, except for the following:

(A) The use, or continued use, in advertising, promoting, marketing, packaging, or labeling of any human image appearing on a tobacco product package before December 31, 2009.

(B) The use, or continued use, of a human image in the advertising, promoting, or marketing of a tobacco product, if conducted solely in an adult-only facility or facilities.

(C) The use, or continued use, of a human image in a tobacco product communication means directed solely to persons that the tobacco product manufacturer has a good-faith belief are age-verified adults.

(3) The advertising of tobacco products in any magazine or newspaper intended for distribution to the general public.

(4) The engaging in any brand name sponsorship in the United States, other than a brand name sponsorship occurring solely in an adult-only facility or facilities.

(5) The engaging in any brand name sponsorship of any event in the United States in which any paid participants or contestants are youths.

(6) The sponsoring of any athletic event between opposing teams in any football, basketball, baseball, soccer, or hockey league.

(7)(A) The securing of a right, by agreement, to name any stadium or arena located within the United States with a brand name; or

(B) otherwise causing a stadium or arena located within the United States to be named with a brand name.

(8) The securing of a right by agreement pursuant to which payment is made or other consideration is provided to use a brand name in association with any football, basketball, baseball, soccer, or hockey league, or any team involved in any such league.

(9) The use of, or causing the use of, by agreement requiring the payment of money or other consideration, a brand name with any nationally recognized or nationally established trade name or brand designation of any non-tobacco item or service, or any nationally recognized or nationally established sports team, entertainment group or individual celebrity for purposes of advertising, except for an agreement between or among persons that enter into such agreement for the sole purpose of avoiding infringement claims.

(10) The license, express authorization, or otherwise causing of any person to use or advertise within the United States any brand name in a manner that—

(A) does not pertain to a tobacco product; or

(B) causes that person to use the brand name to advertise, promote, package or label, distribute, or sell any product or service that is not a tobacco product.

(11) The marketing, distribution, offering, selling, licensing, or authorizing of, or the causing to be marketed, distributed, offered, sold, licensed, or authorized, any apparel or other merchandise (other than a tobacco product) bearing a brand name, except—

(A) apparel or other merchandise that is used by individuals representing a tobacco product manufacturer within an adult-only facility and that is not distributed, by sale or otherwise, to any member of the general public;

(B) apparel or merchandise provided to an adult employee of a tobacco product manufacturer for use by such employee;

(C) items or materials used to hold or display tobacco products at retail;

(D) items or materials the sole function of which is to advertise tobacco products;

(E) written or electronic publications;

(F) coupons or other items used by adults solely in connection with the purchase of tobacco products;

(G) that the composition, structure, form, or appearance of any tobacco product, package, label, or labeling shall not be affected by the prohibitions of this paragraph; and

(H) that no person shall be required to retrieve, collect or otherwise recover any item or material that was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold, or licensed by such person.

(12) The distribution, or causing the distribution, of any free sample domestically, except in an adult-only facility or facilities to individuals who are age-verified adults.

(13) The making of, or causing to be made, any payment or the payment of, or causing to be paid, any other consideration to any other person to use, display, make reference to, or use as a prop in any performance medium (for the purposes of this paragraph, the terms ''performance medium'' and ''performance media'' mean any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game), any tobacco product, tobacco product package, advertisement for a tobacco product, or any other item bearing a brand name; except for the following:

(A) Performance media for which the audience or viewers are within one or more adult-only facilities, if such performance media are not audible or visible to persons outside such adult-only facility or facilities.

(B) Performance media not intended to be heard or viewed by the general public.

(C) Instructional performance media that concern tobacco products and their use, and that are intended to be heard or viewed only by, or provided only to, age-verified adults.

(D) Performance media used in tobacco product communications to age-verified adults.

(14) Engaging in outdoor advertising or transit advertisements of tobacco products within the United States, except for the following:

(A) Advertising that is within an adult-only facility.

(B) The use of outdoor advertising for purposes of identification of an adult-only facility, to the extent that such outdoor advertising is placed at the site, premises, or location of the adult-only facility.

(C) The use of outdoor advertising in identifying a brand name sponsorship at an adult-only facility, if such outdoor advertising—

(i) is placed at the site, premises, or location of the adult-only facility where such brand name sponsorship will occur no more than 30 days before the start of the initial sponsored event; and

(ii) is removed within 10 days after the end of the last sponsored event.

(15) The distribution or sale domestically of any package or other container of cigarettes containing fewer than 20 cigarettes.

(16) The advertising of tobacco products on any broadcast, cable, or satellite transmission to a television or radio receiver, or other medium of electronic communication subject to the jurisdiction of the Federal Communications Commission, except electronic communications—

(A) contained on log-in or home pages containing no tobacco product advertising other than brand name identification;

(B) in an adult-only facility or facilities; or

(C) through the Internet or other individual user-accessible electronic communication means, including websites accessible using the Internet, if the advertiser takes reasonable action to restrict access to individuals who are adults by—

(i) requiring individuals accessing such electronic communications to be age-verified adults, and

(ii) making good faith efforts to verify that such individuals are adults.

(17) The distribution or sale of tobacco products directly to consumers by mail or courier, unless the person receiving purchase requests for tobacco products takes reasonable action to prevent delivery to individuals who are not adults by—

(A) requiring that the addressees of the tobacco products be age-verified adults;

(B) making good faith efforts to verify that such addressees are adults; and

(C) addressing the tobacco products delivered by mail, courier or common carrier to a physical address and not a post office box.

(18) The providing of any gift of a non-tobacco product, except matches, in connection with the purchase of a tobacco product.

(19) The engaging in the sponsorship or promotion, or causing the sponsorship or promotion, of any consumer sweepstakes, contest, drawing, or similar activity resulting in the award of a prize in connection with advertising.

(20) The offering, promoting, conducting, or authorizing, or causing to be offered, promoted, conducted, or authorized, any consumer sweepstakes, drawing, contest, or other activity resulting in the award of a prize, based on redemption of a proof-of-purchase, coupon, or other item awarded as a result of the purchase or use of a tobacco product.

(21) The making of, or causing to be made, any payment or the payment of, or causing to be paid, any other consideration, to any other person with regard to the display or placement of any cigarettes, or any advertising for cigarettes, in any retail establishment that is not an adult-only facility.

TITLE IX—USER FEES

SEC. 901. USER FEES.

(a) ASSESSMENT OF USER FEES.—The Administrator shall assess an annual user fee for each fiscal year beginning in fiscal year 2010, in an amount calculated in accordance with this section, upon each tobacco product manufacturer (including each importer) that is subject to this Act.

(b) USE OF FEE.—The Administrator shall utilize an amount equal to the amount of user fees collected under this section in each fiscal year to pay for the costs of the activities of the Tobacco Regulatory Agency related to the regulation of tobacco products under this Act.

(c) AMOUNT OF FEE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the total amount of user fees assessed for each fiscal year pursuant to this section shall be sufficient, and shall not exceed the amount necessary, to pay for the costs of the activities described in subsection (b) for that fiscal year.

(2) TOTAL.—The total assessment under this section—

(A) for fiscal years 2010, 2011, and 2012 shall be $100,000,000; and

(B) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Administrator (after notice, published in the Federal Register) to be determined on the basis of both inflationary increases and guidance from the Scientific Advisory Committee—

(3) NOTIFICATION.—The Administrator shall notify each tobacco product manufacturer subject to this section of the amount of the annual assessment imposed on such tobacco product manufacturer under subsection (d). Such notifications shall occur not later than the July 31 prior to the beginning of the fiscal year for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification. Such notification shall contain a complete list of the assessments imposed on tobacco product manufacturers for that fiscal year.

(d) LIABILITY OF TOBACCO PRODUCT MANUFACTURERS FOR USER FEES.—

(1) IN GENERAL.—The user fee to be paid by each tobacco product manufacturer shall be determined in each fiscal year by multiplying—

(A) such tobacco product manufacturer's market share of tobacco products, as determined under regulations issued pursuant to subsection (e); by

(B) the total user fee assessment for such fiscal year, as determined under subsection (c).

(2) LIMITATION.—Except as provided in paragraph (3), no tobacco product manufacturer shall be required to pay a percentage of a total annual user fee for all tobacco product manufacturers that exceeds the market share of such manufacturer.

(3) FAILURE TO PAY.—If—

(A) a tobacco product manufacturer fails to pay its user fee share in full by the due date;

(B) the Administrator, after diligent inquiry, concludes that such manufacturer is unlikely to pay its user fee share in full by the time such payment will be needed by the Administrator; and

(C) the Administrator and the Department of Justice make diligent efforts to obtain payment in full from such tobacco product manufacturer;

the Administrator may re-allocate the unpaid amount owed by that tobacco product manufacturer to the other tobacco product manufacturers on the basis of their respective market shares. If the Administrator takes such action, the Administrator shall set a reasonable time, not less than 60 days from the date of the notice of the amount due, for payment of that amount. If and to the extent that the Administrator ultimately receives from that tobacco product manufacturer or any successor to such tobacco product manufacturer any payment in respect of the previously unpaid obligation, the Administrator shall credit such payment to the tobacco product manufacturers that paid portions of the re-allocated amount, in proportion to their respective payments of such amount.

(e) REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Administrator shall, by regulation, establish a system for determining the market shares of tobacco products for each tobacco product manufacturer subject to this section. In promulgating regulations under this subsection, the Administrator shall—

(1) take into account the differences between categories and subcategories of tobacco products in terms of sales, manner of unit packaging, and any other factors relevant to the calculation of market share for a tobacco product manufacturer;

(2) take into account that different tobacco product manufacturers rely to varying degrees on the sales of different categories and subcategories of tobacco products; and

(3) provide that the market share of tobacco products for each tobacco product manufacturer shall be recalculated on an annual basis.

SA 1247. Mr. DODD proposed an amendment to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

DIVISION A—FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year, and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco-induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2005, the cigarette manufacturers spent more than $13,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco marketing than adults: more than 80 percent of youth smoke three heavily marketed brands, while only 54 percent of adults, 26 and older, smoke these same brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the first amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration, and the restriction on the sale and distribution of, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this division.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion play a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes, and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in ensuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be reviewed in advance of marketing, and to require that the evidence relied on to support claims be fully verified.

(44) The Food and Drug Administration is a regulatory agency with the scientific expertise to identify harmful substances in products to which consumers are exposed, to design standards to limit exposure to those substances, to evaluate scientific studies supporting claims about the safety of products, and to evaluate the impact of labels, labeling, and advertising on consumer behavior in order to reduce the risk of harm and promote understanding of the impact of the product on health. In connection with its mandate to promote health and reduce the risk of harm, the Food and Drug Administration routinely makes decisions about whether and how products may be marketed in the United States.

(45) The Federal Trade Commission was created to protect consumers from unfair or deceptive acts or practices, and to regulate unfair methods of competition. Its focus is on those marketplace practices that deceive or mislead consumers, and those that give some competitors an unfair advantage. Its mission is to regulate activities in the marketplace. Neither the Federal Trade Commission nor any other Federal agency except the Food and Drug Administration possesses the scientific expertise needed to implement effectively all provisions of the Family Smoking Prevention and Tobacco Control Act.

(46) If manufacturers state or imply in communications directed to consumers through the media or through a label, labeling, or advertising, that a tobacco product is approved or inspected by the Food and Drug Administration or complies with Food and Drug Administration standards, consumers are likely to be confused and misled. Depending upon the particular language used and its context, such a statement could result in consumers being misled into believing that the product is endorsed by the Food and Drug Administration for use or in consumers being misled about the harmfulness of the product because of such regulation, inspection, approval, or compliance.

(47) In August 2006 a United States district court judge found that the major United States cigarette companies continue to target and market to youth. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(48) In August 2006 a United States district court judge found that the major United States cigarette companies dramatically increased their advertising and promotional spending in ways that encourage youth to start smoking subsequent to the signing of the Master Settlement Agreement in 1998. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(49) In August 2006 a United States district court judge found that the major United States cigarette companies have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction while also concealing much of their nicotine-related research. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

SEC. 3. PURPOSE.

The purposes of this division are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products as provided for in this division;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco-related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this division (or an amendment made by this division) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this division (or an amendment made by this division) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this division (or an amendment made by this division) which authorize the Secretary to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this division, of the amendments made by this division, or of the regulations promulgated under this division (or under such amendments), or the application of any such provision to any person or circumstance is held to be invalid, the remainder of this division, such amendments and such regulations, and the application of such provisions to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

SEC. 6. MODIFICATION OF DEADLINES FOR SECRETARIAL ACTION.

(a) DELAYED COMMENCEMENT OF DATES FOR SECRETARIAL ACTION.—

(1) IN GENERAL.—Except as provided in subsection (c), with respect to any time periods specified in this division (or in an amendment made by this division) that begin on the date of enactment of this Act, within which the Secretary of Health and Human Services is required to carry out and complete specified activities, the calculation of such time periods shall commence on the date described in subsection (b).

(2) LIMITATION.—Subsection (a) shall only apply with respect to obligations of the Secretary of Health and Human Services that must be completed within a specified time period and shall not apply to the obligations of any other person or to any other provision of this division (including the amendments made by this division) that do not create such obligations of the Secretary and are not contingent on actions by the Secretary.

(b) DATE DESCRIBED.—The date described in this subsection is the first day of the first fiscal quarter following the initial 2 consecutive fiscal quarters of fiscal year 2010 for which the Secretary of Health and Human Services has collected fees under section 919 of the Federal Food, Drug, and Cosmetic Act (as added by section 101).

(c) EXCEPTION.—Subsection (a) shall not apply to any time period (or date) contained—

(1) in section 102, except that the reference to ''180 days'' in subsection (a)(1) of such section shall be deemed to be ''270 days''; and

(2) in sections 201 through 204 (or the amendments made by any such sections).

(d) ADJUSTMENT.—The Secretary of Health and Human Services may extend or reduce the duration of one or more time periods to which subsection (a) applies if the Secretary determines appropriate, except that no such period shall be extended for more than 90 days.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(rr)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean an article that is a drug under subsection (g)(1), a device under subsection (h), or a combination product described in section 503(g).

''(3) The products described in paragraph (2) shall be subject to chapter V of this Act.

''(4) A tobacco product shall not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 910 as sections 1001 through 1010; and

(3) by inserting after chapter VIII the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, packaging, logo, registered trademark, brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette'—

''(A) means a product that—

''(i) is a tobacco product; and

''(ii) meets the definition of the term 'cigarette' in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

''(B) includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act.

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN COUNTRY.—The term 'Indian country' has the meaning given such term in section 1151 of title 18, United States Code.

''(10) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

''(11) LITTLE CIGAR.—The term 'little cigar' means a product that—

''(A) is a tobacco product; and

''(B) meets the definition of the term 'little cigar' in section 3(7) of the Federal Cigarette Labeling and Advertising Act.

''(12) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(13) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(14) RETAILER.—The term 'retailer' means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(15) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(16) SMALL TOBACCO PRODUCT MANUFACTURER.—The term 'small tobacco product manufacturer' means a tobacco product manufacturer that employs fewer than 350 employees. For purposes of determining the number of employees of a manufacturer under the preceding sentence, the employees of a manufacturer are deemed to include the

employees of each entity that controls, is controlled by, or is under common control with such manufacturer.

''(17) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(18) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(19) STATE; TERRITORY.—The terms 'State' and 'Territory' shall have the meanings given to such terms in section 201.

''(20) TOBACCO PRODUCT MANUFACTURER.—The term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished tobacco product for sale or distribution in the United States.

''(21) TOBACCO WAREHOUSE.—

''(A) Subject to subparagraphs (B) and (C), the term 'tobacco warehouse' includes any person—

''(i) who—

''(I) removes foreign material from tobacco leaf through nothing other than a mechanical process;

''(II) humidifies tobacco leaf with nothing other than potable water in the form of steam or mist; or

''(III) de-stems, dries, and packs tobacco leaf for storage and shipment;

''(ii) who performs no other actions with respect to tobacco leaf; and

''(iii) who provides to any manufacturer to whom the person sells tobacco all information related to the person's actions described in clause (i) that is necessary for compliance with this Act.

''(B) The term 'tobacco warehouse' excludes any person who—

''(i) reconstitutes tobacco leaf;

''(ii) is a manufacturer, distributor, or retailer of a tobacco product; or

''(iii) applies any chemical, additive, or substance to the tobacco leaf other than potable water in the form of steam or mist.

''(C) The definition of the term 'tobacco warehouse' in subparagraph (A) shall not apply to the extent to which the Secretary determines, through rulemaking, that regulation under this chapter of the actions described in such subparagraph is appropriate for the protection of the public health.

''(22) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 911, shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V.

''(b) APPLICABILITY.—This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or in sections 101(a), 102, or 103 of title I, title II, or title III of the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect, expand, or limit the Secretary's authority over (including the authority to determine whether products may be regulated), or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

''(d) RULEMAKING PROCEDURES.—Each rulemaking under this chapter shall be in accordance with chapter 5 of title 5, United States Code. This subsection shall not be construed to affect the rulemaking provisions of section 102(a) of the Family Smoking Prevention and Tobacco Control Act.

''(e) CENTER FOR TOBACCO PRODUCTS.—Not later than 90 days after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish within the Food and Drug Administration the Center for Tobacco Products, which shall report to the Commissioner of Food and Drugs in the same manner as the other agency centers within the Food and Drug Administration. The Center shall be responsible for the implementation of this chapter and related matters assigned by the Commissioner.

''(f) OFFICE TO ASSIST SMALL TOBACCO PRODUCT MANUFACTURERS.—The Secretary shall establish within the Food and Drug Administration an identifiable office to provide technical and other nonfinancial assistance to small tobacco product manufacturers to assist them in complying with the requirements of this Act.

''(g) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this chapter, the Secretary shall endeavor to consult with other Federal agencies as appropriate.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) the manufacturer or importer of the tobacco product fails to pay a user fee assessed to such manufacturer or importer pursuant to section 919 by the date specified in section 919 or by the 30th day after final agency action on a resolution of any dispute as to the amount of such fee;

''(5) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(6)(A) it is required by section 910(a) to have premarket review and does not have an order in effect under section 910(c)(1)(A)(i); or

''(B) it is in violation of an order under section 910(c)(1)(A);

''(7) the methods used in, or the facilities or controls used for, its manufacture, packing, or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(8) it is in violation of section 911.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 920(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product to ensure that such statements do not violate the misbranding provisions of subsection (a) and that such statements comply with other provisions of the Family Smoking Prevention and Tobacco Control Act (including the amendments made by such Act). No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act.

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

''(3) Beginning 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 3 years after such date of enactment, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) Beginning 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, all documents developed after such date of enactment that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish, and periodically revise as appropriate, a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year, every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person. If enactment of the Family Smoking Prevention and Tobacco Control Act occurs in the second half of the calendar year, the Secretary shall designate a date no later than 6 months into the subsequent calendar year by which registration pursuant to this subsection shall occur.

''(c) REGISTRATION BY NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment registered with the Secretary under this section shall be subject to inspection under section 704 or subsection (h), and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) REGISTRATION BY FOREIGN ESTABLISHMENTS.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which have not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) CONSULTATION WITH RESPECT TO FORMS.—The Secretary shall consult with the Secretary of the Treasury in developing the forms to be used for registration under this section to minimize the burden on those persons required to register with both the Secretary and the Tax and Trade Bureau of the Department of the Treasury.

''(3) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of February 15, 2007, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that—

''(i) the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007, or to a tobacco product that the Secretary has previously determined, pursuant to subsection (a)(3) of section 910, is substantially equivalent and that is in compliance with the requirements of this Act; or

''(ii) the tobacco product is modified within the meaning of paragraph (3), the modifications are to a product that is commercially marketed and in compliance with the requirements of this Act, and all of the modifications are covered by exemptions granted by the Secretary pursuant to paragraph (3); and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 21 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may exempt from the requirements of this subsection relating to the demonstration that a tobacco product is substantially equivalent within the meaning of section 910, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product that can be sold under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information

may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products, shall be considered as adult-written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult-written publications.

''(4) REMOTE SALES.—

''(A) IN GENERAL.—The Secretary shall—

''(i) within 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, promulgate regulations regarding the sale and distribution of tobacco products that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification; and

''(ii) within 2 years after such date of enactment, issue regulations to address the promotion and marketing of tobacco products that are sold or distributed through means other than a direct, face-to-face exchange between a retailer and a consumer in order to protect individuals who have not attained the minimum age established by applicable law for the purchase of such products.

''(B) RELATION TO OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to take additional actions under the other paragraphs of this subsection.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Secretary shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A);

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices; and

''(v) not require any small tobacco product manufacturer to comply with a regulation under subparagraph (A) for at least 4 years following the effective date established by the Secretary for such regulation.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULES.—

''(A) SPECIAL RULE FOR CIGARETTES.—Beginning 3 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.

''(B) ADDITIONAL SPECIAL RULE.—Beginning 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a tobacco product manufacturer shall not use tobacco, including foreign grown tobacco, that contains a pesticide chemical residue that is at a level greater than is specified by any tolerance applicable under Federal law to domestically grown tobacco.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (c).

''(3) TOBACCO PRODUCT STANDARDS.—

''(A) IN GENERAL.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health.

''(B) DETERMINATIONS.—

''(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Secretary shall consider scientific evidence concerning—

''(I) the risks and benefits to the population as a whole, including users and nonusers of tobacco products, of the proposed standard;

''(II) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(III) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Secretary makes a determination, set forth in a proposed tobacco product standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a tobacco product because the Secretary has found that the additive, constituent, or other component is or may be harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Secretary's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under subparagraph (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d);

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product; and

''(D) shall require tobacco products containing foreign-grown tobacco to meet the same standards applicable to tobacco products containing domestically grown tobacco.

''(5) PERIODIC REEVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) CONSIDERATIONS BY SECRETARY.—

''(1) TECHNICAL ACHIEVABILITY.—The Secretary shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

''(2) OTHER CONSIDERATIONS.—The Secretary shall consider all other information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or nontobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand.

''(c) PROPOSED STANDARDS.—

''(1) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(A) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(B) invite interested persons to submit a draft or proposed tobacco product standard for consideration by the Secretary;

''(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

''(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed tobacco product standard.

''(3) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(4) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(d) PROMULGATION.—

''(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a tobacco product standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(A) if the Secretary determines that the standard would be appropriate for the protection of the public health, promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

''(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(2) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Secretary shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard. If the Secretary determines, based on the Secretary's evaluation of submitted comments, that a product standard can be met only by manufacturers requiring substantial changes to the methods of farming the domestically grown tobacco used by the manufacturer, the effective date of that product standard shall be not less than 2 years after the date of publication of the final regulation establishing the standard.

''(3) LIMITATION ON POWER GRANTED TO THE FOOD AND DRUG ADMINISTRATION.—Because of the importance of a decision of the Secretary to issue a regulation—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll-your-own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

the Secretary is prohibited from taking such actions under this Act.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary

determines that making it so effective is in the public interest.

''(5) REFERRAL TO ADVISORY COMMITTEE.—

''(A) IN GENERAL.—The Secretary may refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

''(B) INITIATION OF REFERRAL.—The Secretary may make a referral under this paragraph—

''(i) on the Secretary's own initiative; or

''(ii) upon the request of an interested person that—

''(I) demonstrates good cause for the referral; and

''(II) is made before the expiration of the period for submission of comments on the proposed regulation.

''(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

''(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

''(E) PUBLIC AVAILABILITY.—The Secretary shall make a copy of each report and recommendation under subparagraph (D) publicly available.

''(e) MENTHOL CIGARETTES.—

''(1) REFERRAL; CONSIDERATIONS.—Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee under section 917(a), the Secretary shall refer to the Committee for report and recommendation, under section 917(c)(4), the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African-Americans, Hispanics, and other racial and ethnic minorities. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsections (a)(3)(B)(i) and (b).

''(2) REPORT AND RECOMMENDATION.—Not later than 1 year after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol.

''(f) DISSOLVABLE TOBACCO PRODUCTS.—

''(1) REFERRAL; CONSIDERATIONS.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee for report and recommendation, under section 917(c)(4), the issue of the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsection (a)(3)(B)(i).

''(2) REPORT AND RECOMMENDATION.—Not later than 2 years after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act at any time applicable to any dissolvable tobacco product.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a

tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.

''(2) PREMARKET REVIEW REQUIRED.—

''(A) NEW PRODUCTS.—An order under subsection (c)(1)(A)(i) for a new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007; and

''(II) is in compliance with the requirements of this Act; or

''(ii) the tobacco product is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 21-month period,

except that subparagraph (A) shall apply to the tobacco product if the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' means, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application under this section shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under subsection (b)(2), shall—

''(i) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Secretary finds that none of the grounds specified in paragraph (2) of this subsection applies; or

''(ii) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order under subparagraph (A)(i) may require that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPLICATION.—The Secretary shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the marketing of a tobacco product for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product, the Secretary may authorize

that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a tobacco product for which an order was issued under subsection (c)(1)(A)(i), issue an order withdrawing the order if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was reviewed, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when such order was issued, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A)(i) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 912.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the authority of the manufacturer to market the product. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an order issued pursuant to subsection (c)(1)(A)(i) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' solely because its label, labeling, or advertising uses the following phrases to describe such product and its use: 'smokeless tobacco', 'smokeless tobacco product', 'not consumed by smoking', 'does not produce smoke', 'smokefree', 'smoke-free', 'without smoke', 'no smoke', or 'not smoke'.

''(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act for those products whose label, labeling, or advertising contains the terms described in such paragraph on such date of enactment. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with paragraph (2)(A)(ii).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Food and Drug Administration and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory

Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Secretary.

''(g) MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) such order would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) issuance of an order with respect to the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF MARKETING.—

''(i) IN GENERAL.—Applications subject to an order under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—An order under this paragraph shall be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the order on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the order was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such postmarket surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is made available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the marketing of a product under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—An order issued under subsection (g)(1) shall be effective for a specified period of time.

''(5) ADVERTISING.—The Secretary may require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the product comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the order was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF AUTHORIZATION.—The Secretary, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product for which the Secretary has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception;

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product; and

''(F) establish a reasonable timetable for the Secretary to review an application under this section.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and which the applicant seeks to commercially market under this section.

''(m) DISTRIBUTORS.—Except as provided in this section, no distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act and shall be considered a violation of a rule promulgated under section 18 of that Act.

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

''(1) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and subbrand that the Secretary determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand; and

''(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco-related disease.

''(c) AUTHORITY.—The Secretary shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''(d) SMALL TOBACCO PRODUCT MANUFACTURERS.—

''(1) FIRST COMPLIANCE DATE.—The initial regulations promulgated under subsection (a) shall not impose requirements on small tobacco product manufacturers before the later of—

''(A) the end of the 2-year period following the final promulgation of such regulations; and

''(B) the initial date set by the Secretary for compliance with such regulations by

manufacturers that are not small tobacco product manufacturers.

''(2) TESTING AND REPORTING INITIAL COMPLIANCE PERIOD.—

''(A) 4-YEAR PERIOD.—The initial regulations promulgated under subsection (a) shall give each small tobacco product manufacturer a 4-year period over which to conduct testing and reporting for all of its tobacco products. Subject to paragraph (1), the end of the first year of such 4-year period shall coincide with the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers or the end of the 2-year period following the final promulgation of such regulations, as described in paragraph (1)(A). A small tobacco product manufacturer shall be required—

''(i) to conduct such testing and reporting for 25 percent of its tobacco products during each year of such 4-year period; and

''(ii) to conduct such testing and reporting for its largest-selling tobacco products (as determined by the Secretary) before its other tobacco products, or in such other order of priority as determined by the Secretary.

''(B) CASE-BY-CASE DELAY.—Notwithstanding subparagraph (A), the Secretary may, on a case-by-case basis, delay the date by which an individual small tobacco product manufacturer must conduct testing and reporting for its tobacco products under this section based upon a showing of undue hardship to such manufacturer. Notwithstanding the preceding sentence, the Secretary shall not extend the deadline for a small tobacco product manufacturer to conduct testing and reporting for all of its tobacco products beyond a total of 5 years after the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers.

''(3) SUBSEQUENT AND ADDITIONAL TESTING AND REPORTING.—The regulations promulgated under subsection (a) shall provide that, with respect to any subsequent or additional testing and reporting of tobacco products required under this section, such testing and reporting by a small tobacco product manufacturer shall be conducted in accordance with the timeframes described in paragraph (2)(A), except that, in the case of a new product, or if there has been a modification described in section 910(a)(1)(B) of any product of a small tobacco product manufacturer since the last testing and reporting required under this section, the Secretary shall require that any subsequent or additional testing and reporting be conducted in accordance with the same timeframe applicable to manufacturers that are not small tobacco product manufacturers.

''(4) JOINT LABORATORY TESTING SERVICES.—The Secretary shall allow any 2 or more small tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

''(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

''(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a small tobacco product manufacturer shall not be considered to be in violation of this section before the deadline applicable under paragraphs (3) and (4), if—

''(A) the tobacco products of such manufacturer are in compliance with all other requirements of this chapter; and

''(B) the conditions described in paragraph (2) are met.

''(2) CONDITIONS.—Notwithstanding the requirements of this section, the Secretary may delay the date by which a small tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a small tobacco product manufacturer provides evidence to the Secretary demonstrating that—

''(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

''(B) the products currently are awaiting testing by the laboratory; and

''(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

''(3) EXTENSION.—The Secretary, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a small tobacco product manufacturer in accordance with paragraph (2). If the Secretary finds that the conditions described in such paragraph are met, the Secretary shall notify the small tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Secretary has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Secretary finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

''(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Secretary may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Secretary determines, based on evidence properly and timely submitted by a small tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from completing the required testing during the period described in paragraph (3).

''(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act or the Family Smoking Prevention and Tobacco Control Act other than this section.

''SEC. 916. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 917. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 12-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the 'Advisory Committee').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

''(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

''(vi) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv), (v), and (vi) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(C) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-

month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 918. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''(a) IN GENERAL.—The Secretary shall—

''(1) at the request of the applicant, consider designating products for smoking cessation, including nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence; and

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention.

''(b) REPORT ON INNOVATIVE PRODUCTS.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to regulate, promote, and encourage the development of innovative products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

''(A) total abstinence from tobacco use;

''(B) reductions in consumption of tobacco; and

''(C) reductions in the harm associated with continued tobacco use.

''(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Secretary on how the Food and Drug Administration should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Administration and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant agencies.

''SEC. 919. USER FEES.

''(a) ESTABLISHMENT OF QUARTERLY FEE.—Beginning on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall in accordance with this section assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products subject to this chapter. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

''(b) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

''(A) For fiscal year 2009, $85,000,000 (subject to subsection (e)).

''(B) For fiscal year 2010, $235,000,000.

''(C) For fiscal year 2011, $450,000,000.

''(D) For fiscal year 2012, $477,000,000.

''(E) For fiscal year 2013, $505,000,000.

''(F) For fiscal year 2014, $534,000,000.

''(G) For fiscal year 2015, $566,000,000.

''(H) For fiscal year 2016, $599,000,000.

''(I) For fiscal year 2017, $635,000,000.

''(J) For fiscal year 2018, $672,000,000.

''(K) For fiscal year 2019 and each subsequent fiscal year, $712,000,000.

''(2) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—The total user fees assessed and collected under subsection (a) each fiscal year with respect to each class of tobacco products shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

''(B) APPLICABLE PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each of the following classes of tobacco products shall be determined in accordance with clause (ii):

''(I) Cigarettes.

''(II) Cigars, including small cigars and cigars other than small cigars.

''(III) Snuff.

''(IV) Chewing tobacco.

''(V) Pipe tobacco.

''(VI) Roll-your-own tobacco.

''(ii) ALLOCATIONS.—The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 625(c) of Public Law 108–357 for each such class of product for such fiscal year.

''(iii) REQUIREMENT OF REGULATIONS.—Notwithstanding clause (ii), no user fees shall be assessed on a class of tobacco products unless such class of tobacco products is listed in section 901(b) or is deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter.

''(iv) REALLOCATIONS.—In the case of a class of tobacco products that is not listed in section 901(b) or deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter, the amount of user fees that would otherwise be assessed to such class of tobacco products shall be reallocated to the classes of tobacco products that are subject to this chapter in the same manner and based on the same relative percentages otherwise determined under clause (ii).

''(3) DETERMINATION OF USER FEE BY COMPANY.—

''(A) IN GENERAL.—The total user fee to be paid by each manufacturer or importer of a particular class of tobacco products shall be determined for each quarter by multiplying—

''(i) such manufacturer's or importer's percentage share as determined under paragraph (4); by

''(ii) the portion of the user fee amount for the current quarter to be assessed on all manufacturers and importers of such class of tobacco products as determined under paragraph (2).

''(B) NO FEE IN EXCESS OF PERCENTAGE SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.

''(4) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108–357.

''(5) ALLOCATION FOR CIGARS.—Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.

''(6) TIMING OF ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

''(7) MEMORANDUM OF UNDERSTANDING.—

''(A) IN GENERAL.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

''(B) ASSURANCES.—Beginning not later than fiscal year 2015, and for each subsequent

fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage shares described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, subject to paragraph (2)(D). Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) AVAILABILITY.—

''(A) IN GENERAL.—Fees appropriated under paragraph (3) are available only for the purpose of paying the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter and the Family Smoking Prevention and Tobacco Control Act (referred to in this subsection as 'tobacco regulation activities'), except that such fees may be used for the reimbursement specified in subparagraph (C).

''(B) PROHIBITION AGAINST USE OF OTHER FUNDS.—

''(i) IN GENERAL.—Except as provided in clause (ii), fees collected under subsection (a) are the only funds authorized to be made available for tobacco regulation activities.

''(ii) STARTUP COSTS.—Clause (i) does not apply until October 1, 2009. Until such date, any amounts available to the Food and Drug Administration (excluding user fees) shall be available and allocated as needed to pay the costs of tobacco regulation activities.

''(C) REIMBURSEMENT OF START-UP AMOUNTS.—

''(i) IN GENERAL.—Any amounts allocated for the start-up period pursuant to subparagraph (B)(ii) shall be reimbursed through any appropriated fees collected under subsection (a), in such manner as the Secretary determines appropriate to ensure that such allocation results in no net change in the total amount of funds otherwise available, for the period from October 1, 2008, through September 30, 2010, for Food and Drug Administration programs and activities (other than tobacco regulation activities) for such period.

''(ii) TREATMENT OF REIMBURSED AMOUNTS.—Amounts reimbursed under clause (i) shall be available for the programs and activities for which funds allocated for the start-up period were available, prior to such allocation, until September 30, 2010, notwithstanding any otherwise applicable limits on amounts for such programs or activities for a fiscal year.

''(D) FEE COLLECTED DURING START-UP PERIOD.—Notwithstanding the first sentence of paragraph (1), fees under subsection (a) may be collected through September 30, 2009 under subparagraph (B)(ii) and shall be available for obligation and remain available until expended. Such offsetting collections shall be credited to the salaries and expenses account of the Food and Drug Administration.

''(E) OBLIGATION OF START-UP COSTS IN ANTICIPATION OF AVAILABLE FEE COLLECTIONS.—Notwithstanding any other provision of law, following the enactment of an appropriation for fees under this section for fiscal year 2010, or any portion thereof, obligations for costs of tobacco regulation activities during the start-up period may be incurred in anticipation of the receipt of offsetting fee collections through procedures specified in section 1534 of title 31, United States Code.

''(3) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

''(d) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(e) APPLICABILITY TO FISCAL YEAR 2009.—If the date of enactment of the Family Smoking Prevention and Tobacco Control Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

''(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the 'quarterly fee amounts').

''(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

''(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).''.

(c) CONFORMING AMENDMENT.—Section 9(1) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408(i)) is amended to read as follows:

''(1) The term 'smokeless tobacco' has the meaning given such term by section 900(18) of the Federal Food, Drug, and Cosmetic Act.''.

SEC. 102. FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—On the first day of publication of the Federal Register that is 180 days or more after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register a final rule regarding cigarettes and smokeless tobacco, which—

(A) is deemed to be issued under chapter 9 of the Federal Food, Drug, and Cosmetic Act, as added by section 101 of this division; and

(B) shall be deemed to be in compliance with all applicable provisions of chapter 5 of title 5, United States Code, and all other provisions of law relating to rulemaking procedures.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection in accordance with this division and the amendments made by this division;

(B) strike Subpart C—Labels and section 897.32(c);

(C) strike paragraphs (a), (b), and (i) of section 897.3 and insert definitions of the terms ''cigarette'', ''cigarette tobacco'', and ''smokeless tobacco'' as defined in section 900 of the Federal Food, Drug, and Cosmetic Act;

(D) insert ''or roll-your-own paper'' in section 897.34(a) after ''other than cigarettes or smokeless tobacco'';

(E) include such modifications to section 897.30(b), if any, that the Secretary determines are appropriate in light of governing First Amendment case law, including the decision of the Supreme Court of the United States in Lorillard Tobacco Co. v. Reilly (533 U.S. 525 (2001));

(F) become effective on the date that is 1 year after the date of enactment of this Act; and

(G) amend paragraph (d) of section 897.16 to read as follows:

''(d)(1) Except as provided in subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes, smokeless tobacco, or other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

''(2)(A) Subparagraph (1) does not prohibit a manufacturer, distributor, or retailer from distributing or causing to be distributed free samples of smokeless tobacco in a qualified adult-only facility.

''(B) This subparagraph does not affect the authority of a State or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

''(C) For purposes of this paragraph, the term 'qualified adult-only facility' means a facility or restricted area that—

''(i) requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

''(ii) does not sell, serve, or distribute alcohol;

''(iii) is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

''(iv) is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this subparagraph;

''(v) is enclosed by a barrier that—

''(I) is constructed of, or covered with, an opaque material (except for entrances and exits);

''(II) extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

''(III) prevents persons outside the qualified adult-only facility from seeing into the qualified adult-only facility, unless they make unreasonable efforts to do so; and

''(vi) does not display on its exterior—

''(I) any tobacco product advertising;

''(II) a brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or

''(III) any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate section 897.34(c).

''(D) Distribution of samples of smokeless tobacco under this subparagraph permitted to be taken out of the qualified adult-only facility shall be limited to 1 package per adult consumer containing no more than 0.53 ounces (15 grams) of smokeless tobacco. If such package of smokeless tobacco contains individual portions of smokeless tobacco, the

individual portions of smokeless tobacco shall not exceed 8 individual portions and the collective weight of such individual portions shall not exceed 0.53 ounces (15 grams). Any manufacturer, distributor, or retailer who distributes or causes to be distributed free samples also shall take reasonable steps to ensure that the above amounts are limited to one such package per adult consumer per day.

''(3) Notwithstanding subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of smokeless tobacco—

''(A) to a sports team or entertainment group; or

''(B) at any football, basketball, baseball, soccer, or hockey event or any other sporting or entertainment event determined by the Secretary to be covered by this subparagraph.

''(4) The Secretary shall implement a program to ensure compliance with this paragraph and submit a report to the Congress on such compliance not later than 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(5) Nothing in this paragraph shall be construed to authorize any person to distribute or cause to be distributed any sample of a tobacco product to any individual who has not attained the minimum age established by applicable law for the purchase of such product.''.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with chapter 5 of title 5, United States Code.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with chapter 5 of title 5, United States Code, the regulation promulgated pursuant to this section, including the provisions of such regulation relating to distribution of free samples.

(5) ENFORCEMENT OF RETAIL SALE PROVISIONS.—The Secretary of Health and Human Services shall ensure that the provisions of this division, the amendments made by this division, and the implementing regulations (including such provisions, amendments, and regulations relating to the retail sale of tobacco products) are enforced with respect to the United States and Indian tribes.

(6) QUALIFIED ADULT-ONLY FACILITY.—A qualified adult-only facility (as such term is defined in section 897.16(d) of the final rule published under paragraph (1)) that is also a retailer and that commits a violation as a retailer shall not be subject to the limitations in section 103(q) and shall be subject to penalties applicable to a qualified adult-only facility.

(7) CONGRESSIONAL REVIEW PROVISIONS.—Section 801 of title 5, United States Code, shall not apply to the final rule published under paragraph (1).

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e)—

(A) by striking the period after ''572(i)''; and

(B) by striking ''or 761 or the refusal to permit access to'' and inserting ''761, 909, or 920 or the refusal to permit access to'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j)—

(A) by striking the period after ''573''; and

(B) by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or 920(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(3).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b), 907, 908, or 915;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or 920; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after the term ''device'' each time that such term appears; and

(13) by adding at the end the following:

''(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(rr) The charitable distribution of tobacco products.

''(ss) The failure of a manufacturer or distributor to notify the Attorney General and the Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

''(tt) Making any express or implied statement or representation directed to consumers with respect to a tobacco product, in a label or labeling or through the media or advertising, that either conveys, or misleads or would mislead consumers into believing, that—

''(1) the product is approved by the Food and Drug Administration;

''(2) the Food and Drug Administration deems the product to be safe for use by consumers;

''(3) the product is endorsed by the Food and Drug Administration for use by consumers; or

''(4) the product is safe or less harmful by virtue of—

''(A) its regulation or inspection by the Food and Drug Administration; or

''(B) its compliance with regulatory requirements set by the Food and Drug Administration;

including any such statement or representation rendering the product misbranded under section 903.''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) in paragraph (5)—

(A) by striking ''paragraph (1), (2), (3), or (4)'' each place such appears and inserting ''paragraph (1), (2), (3), (4), or (9)'';

(B) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' the second time it appears and inserting ''penalty, or upon whom a no-tobacco-sale order is to be imposed,'';

(C) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(D) by adding at the end the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(2) in paragraph (6)—

(A) by inserting ''or the imposition of a no-tobacco-sale order'' after the term ''penalty'' each place such term appears; and

(B) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(3) by adding at the end the following:

''(8) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1). Prior to the entry of a no-sale order under this paragraph, a person shall be entitled to a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone, or at the nearest regional or field office of the Food and Drug Administration, or at a Federal, State, or county facility within 100 miles from the location of the retail outlet, if such a facility is available.

''(9) CIVIL MONETARY PENALTIES FOR VIOLATION OF TOBACCO PRODUCT REQUIREMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), any person who violates a requirement of this Act which relates to tobacco products shall be liable to the United States for a civil penalty in an amount not to exceed $15,000 for each such violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding.

''(B) ENHANCED PENALTIES.—

''(i) Any person who intentionally violates a requirement of section 902(5), 902(6), 904, 908(c), or 911(a), shall be subject to a civil monetary penalty of—

''(I) not to exceed $250,000 per violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding; or

''(II) in the case of a violation that continues after the Secretary provides written notice to such person, $250,000 for the first 30-day period (or any portion thereof) that the person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed $1,000,000 for any 30-day period, and not to exceed $10,000,000 for all such violations adjudicated in a single proceeding.

''(ii) Any person who violates a requirement of section 911(g)(2)(C)(ii) or 911(i)(1), shall be subject to a civil monetary penalty of—

''(I) not to exceed $250,000 per violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding; or

''(II) in the case of a violation that continues after the Secretary provides written notice to such person, $250,000 for the first 30-day period (or any portion thereof) that the person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed $1,000,000 for any 30-day period, and not to exceed $10,000,000 for all such violations adjudicated in a single proceeding.

''(iii) In determining the amount of a civil penalty under clause (i)(II) or (ii)(II), the Secretary shall take into consideration whether the person is making efforts toward correcting the violation of the requirements of the section for which such person is subject to such civil penalty.''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: ''device, and (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after the term ''device'' each place such term appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device''.

(e) SECTION 505.—Section 505(n)(2) (21 U.S.C. 355(n)(2)) is amended by striking ''section 904'' and inserting ''section 1004''.

(f) SECTION 523.—Section 523(b)(2)(D) (21 U.S.C. 360m(b)(2)(D)) is amended by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(g) SECTION 702.—Section 702(a)(1) (U.S.C. 372(a)(1)) is amended—

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

(2) by adding at the end the following:

''(B)(i) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

''(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian country without the express written consent of the Indian tribe involved.''.

(h) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after the term ''device,'' each place such term appears; and

(2) by inserting ''tobacco products,'' after the term ''devices,'' each place such term appears.

(i) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)—

(A) by striking ''devices, or cosmetics'' each place it appears and inserting ''devices, tobacco products, or cosmetics'';

(B) by striking ''or restricted devices'' each place it appears and inserting ''restricted devices, or tobacco products''; and

(C) by striking ''and devices and subject to'' and all that follows through ''other drugs or devices'' and inserting ''devices, and tobacco products and subject to reporting and inspection under regulations lawfully issued pursuant to section 505 (i) or (k), section 519, section 520(g), or chapter IX and data relating to other drugs, devices, or tobacco products'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,''; and

(3) in subsection (g)(13), by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(j) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(k) SECTION 709.—Section 709 (21 U.S.C. 379a) is amended by inserting ''tobacco product,'' after ''device,''.

(l) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after the term ''devices,'';

(B) by inserting ''or section 905(h)'' after ''section 510''; and

(C) by striking the term ''drugs or devices'' each time such term appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1)—

(A) by inserting ''tobacco product'' after ''drug, device,''; and

(B) by inserting '', and a tobacco product intended for export shall not be deemed to be in violation of section 906(e), 907, 911, or 920(a),'' before ''if it—''; and

(3) by adding at the end the following:

''(p)(1) Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the executive branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(m) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(b)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting '', and tobacco products'' after ''devices''.

(n) SECTION 1009.—Section 1009(b) (as redesignated by section 101(b)) is amended by striking ''section 908'' and inserting ''section 1008''.

(o) SECTION 409 OF THE FEDERAL MEAT INSPECTION ACT.—Section 409(a) of the Federal Meat Inspection Act (21 U.S.C. 679(a)) is amended by striking ''section 902(b)'' and inserting ''section 1002(b)''.

(p) RULE OF CONSTRUCTION.—Nothing in this section is intended or shall be construed to expand, contract, or otherwise modify or amend the existing limitations on State government authority over tribal restricted fee or trust lands.

(q) GUIDANCE AND EFFECTIVE DATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance—

(A) defining the term ''repeated violation'', as used in section 303(f)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)(8)) as amended by subsection (c), as including at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation and providing for civil penalties in accordance with paragraph (2);

(B) providing for timely and effective notice by certified or registered mail or personal delivery to the retailer of each alleged violation at a particular retail outlet prior to conducting a followup compliance check, such notice to be sent to the location specified on the retailer's registration or to the retailer's registered agent if the retailer has provider such agent information to the Food and Drug Administration prior to the violation;

(C) providing for a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone or at the nearest regional or field office of the Food and Drug Administration, and providing for an expedited procedure for the administrative appeal of an alleged violation;

(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(E) establishing that civil money penalties for multiple violations shall increase from one violation to the next violation pursuant to paragraph (2) within the time periods provided for in such paragraph;

(F) providing that good faith reliance on the presentation of a false government-issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(i) adopting and enforcing a written policy against sales to minors;

(ii) informing its employees of all applicable laws;

(iii) establishing disciplinary sanctions for employee noncompliance; and

(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device; and

(G) providing for the Secretary, in determining whether to impose a no-tobacco-sale order and in determining whether to compromise, modify, or terminate such an order, to consider whether the retailer has taken effective steps to prevent violations of the minimum age requirements for the sale of tobacco products, including the steps listed in subparagraph (F).

(2) PENALTIES FOR VIOLATIONS.—

(A) IN GENERAL.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $0.00 together with the issuance of a warning letter to the retailer;

(II) in the case of a second violation within a 12-month period, $250;

(III) in the case of a third violation within a 24-month period, $500;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $250;

(II) in the case of a second violation within a 12-month period, $500;

(III) in the case of a third violation within a 24-month period, $1,000;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(B) TRAINING PROGRAM.—For purposes of subparagraph (A), the term ''approved training program'' means a training program that complies with standards developed by the Food and Drug Administration for such programs.

(C) CONSIDERATION OF STATE PENALTIES.—The Secretary shall coordinate with the States in enforcing the provisions of this Act and, for purposes of mitigating a civil penalty to be applied for a violation by a retailer of any restriction promulgated under section 906(d), shall consider the amount of any penalties paid by the retailer to a State for the same violation.

(3) GENERAL EFFECTIVE DATE.—The amendments made by paragraphs (2), (3), and (4) of subsection (c) shall take effect upon the issuance of guidance described in paragraph (1) of this subsection.

(4) SPECIAL EFFECTIVE DATE.—The amendment made by subsection (c)(1) shall take effect on the date of enactment of this Act.

(5) PACKAGE LABEL REQUIREMENTS.—The package label requirements of paragraphs (3) and (4) of section 903(a) of the Federal Food, Drug, and Cosmetic Act (as amended by this division) shall take effect on the date that is 12 months after the date of enactment of this Act. The package label requirements of paragraph (2) of such section 903(a) for cigarettes shall take effect on the date that is 15 months after the issuance of the regulations required by section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201 of this division. The package label requirements of paragraph (2) of such section 903(a) for tobacco products other than cigarettes shall take effect on the date that is 12 months after the date of enactment of this Act. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 903(a) (2), (3), and (4) and section 920(a) of the Federal Food, Drug, and Cosmetic Act.

(6) ADVERTISING REQUIREMENTS.—The advertising requirements of section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act (as amended by this division) shall take effect on the date that is 12 months after the date of enactment of this Act.

SEC. 104. STUDY ON RAISING THE MINIMUM AGE TO PURCHASE TOBACCO PRODUCTS.

The Secretary of Health and Human Services shall—

(1) convene an expert panel to conduct a study on the public health implications of raising the minimum age to purchase tobacco products; and

(2) not later than 5 years after the date of enactment of this Act, submit a report to the Congress on the results of such study.

SEC. 105. ENFORCEMENT ACTION PLAN FOR ADVERTISING AND PROMOTION RESTRICTIONS.

(a) ACTION PLAN.—

(1) DEVELOPMENT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop and publish an action plan to enforce restrictions adopted pursuant to section 906 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this division, or pursuant to section 102(a) of this division, on promotion and advertising of menthol and other cigarettes to youth.

(2) CONSULTATION.—The action plan required by paragraph (1) shall be developed in consultation with public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities.

(3) PRIORITY.—The action plan required by paragraph (1) shall include provisions designed to ensure enforcement of the restrictions described in paragraph (1) in minority communities.

(b) STATE AND LOCAL ACTIVITIES.—

(1) INFORMATION ON AUTHORITY.—Not later than 3 months after the date of enactment of this Act, the Secretary shall inform State, local, and tribal governments of the authority provided to such entities under section 5(c) of the Federal Cigarette Labeling and Advertising Act, as added by section 203 of this division, or preserved by such entities under section 916 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this division.

(2) COMMUNITY ASSISTANCE.—At the request of communities seeking assistance to prevent underage tobacco use, the Secretary shall provide such assistance, including assistance with strategies to address the prevention of underage tobacco use in communities with a disproportionate use of menthol cigarettes by minors.

SEC. 106. STUDIES OF PROGRESS AND EFFECTIVENESS.

(a) FDA REPORT.—Not later than 3 years after the date of enactment of this Act, and not less than every 2 years thereafter, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report concerning—

(1) the progress of the Food and Drug Administration in implementing this division, including major accomplishments, objective measurements of progress, and the identification of any areas that have not been fully implemented;

(2) impediments identified by the Food and Drug Administration to progress in implementing this division and to meeting statutory timeframes;

(3) data on the number of new product applications received under section 910 of the Federal Food, Drug, and Cosmetic Act and modified risk product applications received under section 911 of such Act, and the number of applications acted on under each category; and

(4) data on the number of full time equivalents engaged in implementing this division.

(b) GAO REPORT.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of, and submit to the Committees described in subsection (a) a report concerning—

(1) the adequacy of the authority and resources provided to the Secretary of Health and Human Services for this division to carry out its goals and purposes; and

(2) any recommendations for strengthening that authority to more effectively protect the public health with respect to the manufacture, marketing, and distribution of tobacco products.

(c) PUBLIC AVAILABILITY.—The Secretary of Health and Human Services and the Comptroller General of the United States, respectively, shall make the reports required under subsection (a) and (b) available to the public, including by posting such reports on the respective Internet websites of the Food and Drug Administration and the Government Accountability Office.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word

'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).

''(d) GRAPHIC LABEL STATEMENTS.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1). The Secretary may adjust the type size, text and format of the label statements specified in subsections (a)(2) and (b)(2) as the Secretary determines appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 15 months after the issuance of the regulations required by subsection (a). Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

(a) PREEMPTION.—Section 5(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334(a)) is amended by striking ''No'' and inserting ''Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 903(a)(2) or section 920(a) of the Federal Food, Drug, and Cosmetic Act, no''.

(b) CHANGE IN REQUIRED STATEMENTS.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(d) CHANGE IN REQUIRED STATEMENTS.—The Secretary through a rulemaking conducted under section 553 of title 5, United States Code, may adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer.

''WARNING: This product can cause gum disease and tooth loss.

''WARNING: This product is not a safe alternative to cigarettes.

''WARNING: Smokeless tobacco is addictive.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(4) The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a).

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

(a) IN GENERAL.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 204, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

(b) PREEMPTION.—Section 7(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(a)) is amended by striking ''No'' and inserting ''Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by sections 201 and 202, is further amended by adding at the end the following:

''(e) TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE.—

''(1) IN GENERAL.—The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(2) RESOLUTION OF DIFFERENCES.—Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(3) CIGARETTE AND OTHER TOBACCO PRODUCT CONSTITUENTS.—In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

''(4) RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

''SEC. 920. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—

''(1) REQUIREMENT.—Beginning 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of tobacco products other than cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'sale only allowed in the United States'. Beginning 15 months after the issuance of the regulations required by section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201 of Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'Sale only allowed in the United States'.

''(2) EFFECTIVE DATE.—The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products. The Secretary shall not authorize an officer or employee of the government of any of the several States to exercise authority under the preceding sentence on Indian country without the express written consent of the Indian tribe involved.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—

''(1) NOTIFICATION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed, or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed, or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General and the Secretary of the Treasury of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

''(e) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Attorney General of the United States and the Secretary of the Treasury, as appropriate.''.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising; and

(3) collect data on the health effects (particularly with respect to individuals under 18 years of age) resulting from cross-border trade in tobacco products, including the health effects resulting from—

(A) the illicit trade of tobacco products and the trade of counterfeit tobacco products; and

(B) the differing tax rates applicable to tobacco products.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

(c) DEFINITION.—In this section:

(1) The term ''cross-border trade'' means trade across a border of the United States, a State or Territory, or Indian country.

(2) The term ''Indian country'' has the meaning given to such term in section 1151 of title 18, United States Code.

(3) The terms ''State'' and ''Territory'' have the meanings given to those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

DIVISION B—FEDERAL RETIREMENT REFORM ACT

SEC. 100. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Federal Retirement Reform Act of 2009''.

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

TITLE I—PROVISIONS RELATING TO FEDERAL EMPLOYEES RETIREMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Thrift Savings Plan Enhancement Act of 2009''.

SEC. 102. AUTOMATIC ENROLLMENTS AND IMMEDIATE EMPLOYING AGENCY CONTRIBUTIONS.

(a) IN GENERAL.—Section 8432(b) of title 5, United States Code, is amended by striking paragraphs (2) through (4) and inserting the following:

''(2)(A) The Executive Director shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

''(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may prescribe.

''(C) The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—

''(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective not later than the first full pay period following receipt of the election by the appropriate processing entity; or

''(ii) decline automatic enrollment altogether.

''(D)(i) Except as provided in clause (ii), for purposes of this paragraph, the term 'eligible individual' means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to a position in which that individual becomes eligible to contribute to the Thrift Savings Fund.

''(ii) Members of the uniformed services shall not be eligible individuals for purposes of this paragraph.

''(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied in a manner consistent with the purposes of this paragraph.''.

(b) TECHNICAL AMENDMENT.—Section 8432(b)(1) of title 5, United States Code, is amended by striking the parenthetical matter in subparagraph (B).

SEC. 103. QUALIFIED ROTH CONTRIBUTION PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting after section 8432c the following:

''§ 8432d. Qualified Roth contribution program

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

''(1) the term 'qualified Roth contribution program' means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

''(2) the terms 'designated Roth contribution' and 'elective deferral' have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

''(b) AUTHORITY TO ESTABLISH.—The Executive Director shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

''(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

''(1) provisions under which an election to make designated Roth contributions may be made—

''(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

''(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

''(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an 'account' made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

''(3) any other provisions which may be necessary to carry out this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432c the following:

''8432d. Qualified Roth contribution program.''.

SEC. 104. AUTHORITY TO ESTABLISH MUTUAL FUND WINDOW.

(a) IN GENERAL.—Section 8438(b)(1) of title 5, United States Code, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period and inserting ''; and''; and

(3) by adding after subparagraph (E) the following:

''(F) a service that enables participants to invest in mutual funds, if the Board authorizes the mutual fund window under paragraph (5).''.

(b) REQUIREMENTS.—Section 8438(b) of title 5, United States Code, is amended by adding at the end the following:

''(5)(A) The Board may authorize the addition of a mutual fund window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

''(B) The Board shall ensure that any expenses charged for use of the mutual fund window are borne solely by the participants who use such window.

''(C) The Board may establish such other terms and conditions for the mutual fund window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

''(D) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before authorizing the addition of a mutual fund window or establishing a service that enables participants to invest in mutual funds.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 8438(d)(1) of title 5, United States Code, is amended by inserting ''and options'' after ''investment funds''.

SEC. 105. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants' accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the mutual fund window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

(b) REPORTING OF FEES AND OTHER INFORMATION.—

(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) of title 5, United States Code, the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Board may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year's experience.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''Board'' has the meaning given such term by 8401(5) of title 5, United States Code;

(2) the term ''participant'' has the meaning given such term by section 8471(3) of title 5, United States Code; and

(3) the term ''account'' means an account established under section 8439 of title 5, United States Code.

SEC. 106. ACKNOWLEDGMENT OF RISK.

(a) IN GENERAL.—Section 8439(d) of title 5, United States Code, is amended—

(1) by striking the matter after ''who elects to invest in'' and before ''shall sign an acknowledgment'' and inserting ''any investment fund or option under this chapter, other than the Government Securities Investment Fund,''; and

(2) by striking ''either such Fund'' and inserting ''any such fund or option''.

(b) COORDINATION WITH PROVISIONS RELATING TO FIDUCIARY RESPONSIBILITIES, LIABILITIES, AND PENALTIES.—Section 8477(e)(1)(C) of title 5, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (C)(i); and

(2) by adding at the end the following:

''(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

''(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

''(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2); or

''(III) for allowing a participant to invest through the mutual fund window or for establishing restrictions applicable to participants' ability to invest through the mutual fund window.''.

SEC. 107. SUBPOENA AUTHORITY.

(a) IN GENERAL.—Chapter 84 of title 5, United States Code, is amended by inserting after section 8479 the following:

''§ 8480. Subpoena authority

''(a) In order to carry out the responsibilities specified in this subchapter and subchapter III of this chapter, the Executive Director may issue subpoenas commanding each person to whom the subpoena is directed to produce designated books, documents, records, electronically stored information, or tangible materials in the possession or control of that individual.

''(b) Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any individual, domestic or foreign corporation or upon a partnership or other unincorporated association for such production.

''(c) When a person fails to obey a subpoena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpoena. The court may punish as contempt any disobedience of its order.

''(d) The Executive Director shall prescribe regulations to carry out subsection (a).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8479 the following:

''8480. Subpoena authority.''.

SEC. 108. AMOUNTS IN THRIFT SAVINGS FUNDS SUBJECT TO LEGAL PROCEEDINGS.

Section 8437(e)(3) of title 5, United States Code, is amended in the first sentence by striking ''or relating to the enforcement of a judgment for the physically, sexually, or emotionally abusing a child as provided under section 8467(a)'' and inserting ''the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title''.

SEC. 109. ACCOUNTS FOR SURVIVING SPOUSES.

Section 8433(e) of title 5, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding section 8424(d), if an employee, Member, former employee, or former Member dies and has designated as sole or partial beneficiary his or her spouse at the time of death, or, if an employee, Member, former employee, or former Member, dies with no designated beneficiary and

is survived by a spouse, the spouse may maintain the portion of the employee's or Member's account to which the spouse is entitled in accordance with the following terms:

''(A) Subject to the limitations of subparagraph (B), the spouse shall have the same withdrawal options under subsection (b) as the employee or Member were the employee or Member living.

''(B) The spouse may not make withdrawals under subsection (g) or (h).

''(C) The spouse may not make contributions or transfers to the account.

''(D) The account shall be disbursed upon the death of the surviving spouse. A beneficiary or surviving spouse of a deceased spouse who has inherited an account is ineligible to maintain the inherited spousal account.

''(3) The Executive Director shall prescribe regulations to carry out this subsection.''.

SEC. 110. TREATMENT OF MEMBERS OF THE UNIFORMED SERVICES UNDER THE THRIFT SAVINGS PLAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) members of the uniformed services should have a retirement system that is at least as generous as the one which is available to Federal civilian employees; and

(2) Federal civilian employees receive matching contributions from their employing agencies for their contributions to the Thrift Savings Fund, but the costs of requiring such a matching contribution from the Department of Defense could be significant.

(b) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall report to Congress on—

(1) the cost to the Department of Defense of providing a matching payment with respect to contributions made to the Thrift Savings Fund by members of the Armed Forces;

(2) the effect that requiring such a matching payment would have on recruitment and retention; and

(3) any other information that the Secretary of Defense considers appropriate.

TITLE II—SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR SURVIVING SPOUSES OF ARMED FORCES MEMBERS

SEC. 201. INCREASE IN MONTHLY AMOUNT OF SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR WIDOWS AND WIDOWERS OF DECEASED MEMBERS OF THE ARMED FORCES AFFECTED BY REQUIRED SURVIVOR BENEFIT PLAN ANNUITY OFFSET FOR DEPENDENCY AND INDEMNITY COMPENSATION.

(a) PAYMENT AMOUNT PER FISCAL YEAR.—Paragraph (2) of section 1450(m) of title 10, United States Code, is amended—

(1) in subparagraph (E), by striking ''and'' after the semicolon; and

(2) by striking subparagraph (F) and inserting the following new subparagraphs:

''(F) for months during fiscal year 2014, $150;

''(G) for months during fiscal year 2015, $200;

''(H) for months during fiscal year 2016, $275; and

''(I) for months during fiscal year 2017, $310.''.

(b) DURATION.—Paragraph (6) of such section is amended—

(1) by striking ''February 28, 2016'' and inserting ''September 30, 2017''; and

(2) by striking ''March 1, 2016'' both places it appears and inserting ''October 1, 2017''.

SA 1248. Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, and Ms. STABENOW) submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in division A, insert the following:

TITLE ____—REDUCING LUNG CANCER

SEC. ___1. SHORT TITLE.

This title may be cited as the ''Lung Cancer Mortality Reduction Act of 2009''.

SEC. ___2. SENSE OF THE SENATE CONCERNING INVESTMENT IN LUNG CANCER RESEARCH.

It is the sense of the Senate that—

(1) lung cancer mortality reduction should be made a national public health priority; and

(2) a comprehensive mortality reduction program coordinated by the Secretary of Health and Human Services is justified and necessary to adequately address and reduce lung cancer mortality.

SEC. ___3. LUNG CANCER MORTALITY REDUCTION PROGRAM.

(a) IN GENERAL.—Subpart 1 of part C of title IV of the Public Health Service Act (42 U.S.C. 285 et seq.) is amended by adding at the end the following:

''SEC. 417G. LUNG CANCER MORTALITY REDUCTION PROGRAM.

''(a) IN GENERAL.—Not later than 6 months after the date of enactment of the Lung Cancer Mortality Reduction Act of 2009, the Secretary, in consultation with the Secretary of Defense, the Secretary of Veterans Affairs, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, the Commissioner of the Food and Drug Administration, the Administrator of the Centers for Medicare & Medicaid Services, the Director of the National Center on Minority Health and Health Disparities, and other members of the Lung Cancer Advisory Board established under section ___6 of the Lung Cancer Mortality Reduction Act of 2009, shall implement a comprehensive program to achieve a 50 percent reduction in the mortality rate of lung cancer by 2016.

''(b) REQUIREMENTS.—The program implemented under subsection (a) shall include at least the following:

''(1) With respect to the National Institutes of Health—

''(A) a strategic review and prioritization by the National Cancer Institute of research grants to achieve the goal of the program in reducing lung cancer mortality;

''(B) the provision of funds to enable the Airway Biology and Disease Branch of the National Heart, Lung, and Blood Institute to expand its research programs to include predispositions to lung cancer, the interrelationship between lung cancer and other pulmonary and cardiac disease, and the diagnosis and treatment of these interrelationships;

''(C) the provision of funds to enable the National Institute of Biomedical Imaging and Bioengineering to expand its Quantum Grant Program and Image-Guided Interventions programs to expedite the development of computer assisted diagnostic, surgical, treatment, and drug testing innovations to reduce lung cancer mortality; and

''(D) the provision of funds to enable the National Institute of Environmental Health Sciences to implement research programs relative to lung cancer incidence.

''(2) With respect to the Food and Drug Administration—

''(A) the establishment of a lung cancer mortality reduction drug program under subchapter G of chapter V of the Federal Food, Drug, and Cosmetic Act; and

''(B) compassionate access activities under section 561 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb).

''(3) With respect to the Centers for Disease Control and Prevention, the establishment of a lung cancer mortality reduction program under section 1511.

''(4) With respect to the Agency for Healthcare Research and Quality, the conduct of a biannual review of lung cancer screening, diagnostic and treatment protocols, and the issuance of updated guidelines.

''(5) The cooperation and coordination of all minority and health disparity programs within the Department of Health and Human Services to ensure that all aspects of the Lung Cancer Mortality Reduction Program adequately address the burden of lung cancer on minority and rural populations.

''(6) The cooperation and coordination of all tobacco control and cessation programs within agencies of the Department of Health and Human Services to achieve the goals of the Lung Cancer Mortality Reduction Program with particular emphasis on the coordination of drug and other cessation treatments with early detection protocols.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

''(1) $25,000,000 for fiscal year 2010 for the activities described in subsection (b)(1)(B), and such sums as may be necessary for each of fiscal years 2011 through 2014;

''(2) $25,000,000 for fiscal year 2010 for the activities described in subsection (b)(1)(C), and such sums as may be necessary for each of fiscal years 2011 through 2014;

''(3) $10,000,000 for fiscal year 2010 for the activities described in subsection (b)(1)(D), and such sums as may be necessary for each of fiscal years 2011 through 2014; and

''(4) $15,000,000 for fiscal year 2010 for the activities described in subsection (b)(3), and such sums as may be necessary for each of fiscal years 2011 through 2014.''.

(b) FOOD, DRUG, AND COSMETIC ACT.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

''Subchapter G—Lung Cancer Mortality Reduction Programs

''SEC. 581. LUNG CANCER MORTALITY REDUCTION PROGRAM.

''(a) IN GENERAL.—The Secretary shall implement a program to provide incentives of the type provided for in subchapter B of this chapter for the development of chemoprevention drugs for precancerous conditions of the lung, drugs for targeted therapeutic treatments and vaccines for lung cancer, and new agents to curtail or prevent nicotine addiction. The Secretary shall model the program implemented under this section on the program provided for under subchapter B of this chapter with respect to certain drugs.

''(b) APPLICATION OF PROVISIONS.—The Secretary shall apply the provisions of subchapter B of this chapter to drugs, biological products, and devices for the prevention or treatment of lung cancer, including drugs, biological products, and devices for chemoprevention of precancerous conditions of the lungs, vaccination against the development of lung cancer, and therapeutic treatment for lung cancer.

''(c) BOARD.—The Board established under section ___6 of the Lung Cancer Mortality

Reduction Act of 2009 shall monitor the program implemented under this section.''.

(c) ACCESS TO UNAPPROVED THERAPIES.—Section 561(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb(e)) is amended by inserting before the period the following: ''and shall include providing compassionate access to drugs, biological products, and devices under the program under section 581, with substantial consideration being given to whether the totality of information available to the Secretary regarding the safety and effectiveness of an investigational drug, as compared to the risk of morbidity and death from the disease, indicates that a patient may obtain more benefit than risk if treated with the drug, biological product, or device.''.

(d) CDC.—Title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) is amended by adding at the end the following:

''SEC. 1511. LUNG CANCER MORTALITY REDUCTION PROGRAM.

''(a) IN GENERAL.—The Secretary shall establish and implement an early disease research and management program targeted at the high incidence and mortality rates among minority and low-income populations.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, such sums as may be necessary to carry out this section.''.

SEC. ___4. DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF VETERANS AFFAIRS.

The Secretary of Defense and the Secretary of Veterans Affairs shall coordinate with the Secretary of Health and Human Services—

(1) in the development of the Lung Cancer Mortality Reduction Program under section 417E of part C of title IV of the Public Health Service Act, as amended by section ___4;

(2) in the implementation within the Department of Defense and the Department of Veterans Affairs of an early detection and disease management research program for military personnel and veterans whose smoking history and exposure to carcinogens during active duty service has increased their risk for lung cancer; and

(3) in the implementation of coordinated care programs for military personnel and veterans diagnosed with lung cancer.

SEC. ___5. LUNG CANCER ADVISORY BOARD.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a Lung Cancer Advisory Board (referred to in this section as the ''Board'') to monitor the programs established under this title (and the amendments made by this title), and provide annual reports to Congress concerning benchmarks, expenditures, lung cancer statistics, and the public health impact of such programs.

(b) COMPOSITION.—The Board shall be composed of—

(1) the Secretary of Health and Human Services;

(2) the Secretary of Defense;

(3) the Secretary of Veterans Affairs; and

(4) two representatives each from the fields of—

(A) clinical medicine focused on lung cancer;

(B) lung cancer research;

(C) imaging;

(D) drug development; and

(E) lung cancer advocacy,

to be appointed by the Secretary of Health and Human Services.

SEC. ___6. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out the programs under this title (and the amendments made by this title), there is authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.

SA 1249. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 907(a) of the Federal Food, Drug, and Cosmetic Act (as added by section 101), insert after paragraph (4) the following:

''(5) TECHNOLOGICAL FEASABILITY.—A tobacco product standard adopted under this section shall be based on a finding by the Secretary that technology is available to achieve the reductions required by such standard.''.

SA 1250. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 102(a)(2)(D), insert ''and other components and accessories necessary for the assembly of roll-your-own cigarettes'' after ''paper''.

SA 1251. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 900 of the Federal Food, Drug, and Cosmetic Act (as added by section 101) strike paragraph (16) and insert the following:

''(16) SMALL TOBACCO PRODUCT MANUFACTURER.—The term 'small tobacco product manufacturer' includes any farmer owned tobacco cooperative or a tobacco product manufacturer other than a cooperative that employs fewer than 350 employees. For purposes of determining the number of employees of a manufacturer under the preceding sentence, the employees of a manufacturer are deemed to include the employees of each entity that controls, is controlled by, or is under common control with such manufacture.''.

SA 1252. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 907(a)(4) of the Federal Food, Drug, and Cosmetic Act (as added by section 101(b)), strike clause (ii) of subparagraph (B) and all that follows through clause (v) of such subparagraph, and insert the following:

''(ii) provisions for the testing in a laboratory located in the United States (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d);

''(C) shall require all tobacco product testing on domestic and foreign manufacturers' products to be performed in a laboratory located in the United States to ensure compliance with Federal law;

SA 1253. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

In section 901(c)(2)(C) of the Federal Food, Drug, and Cosmetic Act (as added by section 101), strike '', other than activities by a manufacturer affecting production''.

SA 1254. Mrs. HAGAN submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 907 of the Federal Food, Drug, and Cosmetic Act (as added by section 101) add the following:

''(f) TECHNOLOGY REQUIRED TO MEET STANDARD.—It shall not be an act of infringement under section 271 of title 35, United States Code, for a tobacco product manufacturer to make use of a patented technology if such technology is used for the purpose of meeting any standard established under this section.''.

SA 1255. Ms. STABENOW (for herself, Mr. BROWNBACK, Ms. MIKULSKI, Mr. VOINOVICH, Mrs. SHAHEEN, Mr. BOND,

Mr. BURRIS, Mr. DURBIN, Mr. LEVIN, and Mr. BROWN) submitted an amendment intended to be proposed by her to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

DIVISION ____—DRIVE AMERICA FORWARD PROGRAM

SEC. __01. SHORT TITLE.

This division may be cited as the ''Drive America Forward Act of 2009''.

SEC. __02. DRIVE AMERICA FORWARD PROGRAM.

(a) ESTABLISHMENT.—There is established in the National Highway Traffic Safety Administration a voluntary program to be known as the ''Drive America Forward Program'' through which the Secretary, in accordance with this section and the regulations promulgated under subsection (d), shall—

(1) authorize the issuance of an electronic voucher, subject to the specifications set forth in subsection (c), to offset the purchase price or lease price for a qualifying lease of a new fuel efficient automobile upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program;

(2) certify dealers for participation in the Program and require all participating dealers—

(A) to accept vouchers as provided in this section as partial payment or down payment for the purchase or qualifying lease of any new fuel efficient automobile offered for sale or lease by that dealer; and

(B) in accordance with subsection (c)(2), to transfer each eligible trade-in vehicle surrendered to the dealer under the Program to an entity for disposal;

(3) in consultation with the Secretary of the Treasury, make electronic payments to dealers for vouchers accepted by such dealers, in accordance with the regulations issued under subsection (d); and

(4) in consultation with the Secretary of the Treasury and the Inspector General of the Department of Transportation, establish and provide for the enforcement of measures to prevent and penalize fraud under the Program.

(b) QUALIFICATIONS FOR AND VALUE OF VOUCHERS.—A voucher issued under the Program shall have a value that may be applied to offset the purchase price or lease price for a qualifying lease of a new fuel efficient automobile as follows:

(1) $3,500 VALUE.—The voucher may be used to offset the purchase price or lease price of the new fuel efficient automobile by $3,500 if—

(A) the new fuel efficient automobile is a passenger automobile and the combined fuel economy value of such automobile is at least 4 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(B) the new fuel efficient automobile is a category 1 truck and the combined fuel economy value of such truck is at least 2 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(C) the new fuel efficient automobile is a category 2 truck that has a combined fuel economy value of at least 15 miles per gallon and—

(i) the eligible trade-in vehicle is a category 2 truck and the combined fuel economy value of the new fuel efficient automobile is at least 1 mile per gallon higher than the combined fuel economy value of the eligible trade-in vehicle; or

(ii) the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier; or

(D) the new fuel efficient automobile is a category 3 truck and the eligible trade-in vehicle is a category 3 truck of model year of 2001 or earlier and is of similar size or larger than the new fuel efficient automobile as determined in a manner prescribed by the Secretary.

(2) $4,500 VALUE.—The voucher may be used to offset the purchase price or lease price of the new fuel efficient automobile by $4,500 if—

(A) the new fuel efficient automobile is a passenger automobile and the combined fuel economy value of such automobile is at least 10 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(B) the new fuel efficient automobile is a category 1 truck and the combined fuel economy value of such truck is at least 5 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle; or

(C) the new fuel efficient automobile is a category 2 truck that has a combined fuel economy value of at least 15 miles per gallon and the combined fuel economy value of such truck is at least 2 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle and the eligible trade-in vehicle is a category 2 truck.

(c) PROGRAM SPECIFICATIONS.—

(1) LIMITATIONS.—

(A) GENERAL PERIOD OF ELIGIBILITY.—A voucher issued under the Program shall be used only for the purchase or qualifying lease of new fuel efficient automobiles that occur between—

(i) the date of the enactment of this Act; and

(ii) the day that is 1 year after the date on which the regulations promulgated under subsection (d) are implemented.

(B) NUMBER OF VOUCHERS PER PERSON AND PER TRADE-IN VEHICLE.—Not more than 1 voucher may be issued for a single person and not more than 1 voucher may be issued for the joint registered owners of a single eligible trade-in vehicle.

(C) NO COMBINATION OF VOUCHERS.—Only 1 voucher issued under the Program may be applied toward the purchase or qualifying lease of a single new fuel efficient automobile.

(D) CAP ON FUNDS FOR CATEGORY 3 TRUCKS.—Not more than 7.5 percent of the total funds made available for the Program shall be used for vouchers for the purchase or qualifying lease of category 3 trucks.

(E) COMBINATION WITH OTHER INCENTIVES PERMITTED.—The availability or use of a Federal, State, or local incentive or a State-issued voucher for the purchase or lease of a new fuel efficient automobile shall not limit the value or issuance of a voucher under the Program to any person otherwise eligible to receive such a voucher.

(F) NO ADDITIONAL FEES.—A dealer participating in the program may not charge a person purchasing or leasing a new fuel efficient automobile any additional fees associated with the use of a voucher under the Program.

(G) NUMBER AND AMOUNT.—The total number and value of vouchers issued under the Program may not exceed the amounts appropriated for such purpose.

(2) DISPOSITION OF ELIGIBLE TRADE-IN VEHICLES.—

(A) IN GENERAL.—For each eligible trade-in vehicle surrendered to a dealer under the Program, the dealer shall certify to the Secretary, in such manner as the Secretary shall prescribe by rule, that the dealer—

(i) has not and will not sell, lease, exchange, or otherwise dispose of the vehicle for use as an automobile in the United States or in any other country; and

(ii) will transfer the vehicle (including the engine block), in such manner as the Secretary prescribes, to an entity that will ensure that the vehicle—

(I) will be crushed or shredded within such period and in such manner as the Secretary prescribes; and

(II) has not been, and will not be, sold, leased, exchanged, or otherwise disposed of for use as an automobile in the United States or in any other country.

(B) SAVINGS PROVISION.—Nothing in subparagraph (A) may be construed to preclude a person who dismantles or disposes of the vehicle from—

(i) selling any parts of the disposed vehicle other than the engine block and drive train (unless the transmission, drive shaft, or rear end are sold as separate parts); or

(ii) retaining the proceeds from such sale.

(C) COORDINATION.—The Secretary shall coordinate with the Attorney General to ensure that the National Motor Vehicle Title Information System and other publicly accessible systems are appropriately updated on a timely basis to reflect the crushing or shredding of vehicles under this section and appropriate reclassification of the vehicles' titles. The commercial market shall also have electronic and commercial access to the vehicle identification numbers of vehicles that have been disposed of on a timely basis.

(d) REGULATIONS.—Notwithstanding the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate final regulations to implement the Program not later than 30 days after the date of the enactment of this Act. Such regulations shall—

(1) provide for a means of certifying dealers for participation in the Program;

(2) establish procedures for the reimbursement of dealers participating in the Program to be made through electronic transfer of funds for both the amount of the vouchers and any reasonable administrative costs incurred by the dealer as soon as practicable but no longer than 10 days after the submission of a voucher for the new fuel efficient automobile to the Secretary;

(3) require the dealer to use the voucher in addition to any other rebate or discount advertised by the dealer or offered by the manufacturer for the new fuel efficient automobile and prohibit the dealer from using the voucher to offset any such other rebate or discount;

(4) require dealers to disclose to the person trading in an eligible trade-in vehicle the best estimate of the scrappage value of such vehicle and to permit the dealer to retain $50 of any amounts paid to the dealer for scrappage of the automobile as payment for any administrative costs to the dealer associated with participation in the Program;

(5) consistent with subsection (c)(2), establish requirements and procedures for the disposal of eligible trade-in vehicles and provide such information as may be necessary to entities engaged in such disposal to ensure that such vehicles are disposed of in accordance with such requirements and procedures, including—

(A) requirements for the removal and appropriate disposition of refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to the crushing or shredding of

an eligible trade-in vehicle, in accordance with rules established by the Secretary in consultation with the Administrator of the Environmental Protection Agency, and in accordance with other applicable Federal or State requirements;

(B) a mechanism for dealers to certify to the Secretary that each eligible trade-in vehicle will be transferred to an entity that will ensure that the vehicle is disposed of, in accordance with such requirements and procedures, and to submit the vehicle identification numbers of the vehicles disposed of and the new fuel efficient automobile purchased with each voucher; and

(C) a list of entities to which dealers may transfer eligible trade-in vehicles for disposal; and

(6) provide for the enforcement of the penalties described in subsection (e).

(e) ANTI-FRAUD PROVISIONS.—

(1) VIOLATION.—It shall be unlawful for any person to violate any provision under this section or any regulations issued pursuant to subsection (d) (other than by making a clerical error).

(2) PENALTIES.—Any person who commits a violation described in paragraph (1) shall be liable to the United States Government for a civil penalty of not more than $15,000 for each violation. In determining the amount of the civil penalty, the severity of the violation and the intent and history of the person committing the violation shall be taken into account.

(f) INFORMATION TO CONSUMERS AND DEALERS.—Not later than 30 days after the date of the enactment of this Act, and promptly upon the update of any relevant information, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall make available on an Internet website and through other means determined by the Secretary information about the Program, including—

(1) how to determine if a vehicle is an eligible trade-in vehicle;

(2) how to participate in the Program, including how to determine participating dealers; and

(3) a comprehensive list, by make and model, of new fuel efficient automobiles meeting the requirements of the Program.

Once such information is available, the Secretary shall conduct a public awareness campaign to inform consumers about the Program and where to obtain additional information.

(g) RECORDKEEPING AND REPORT.—

(1) DATABASE.—The Secretary shall maintain a database of the vehicle identification numbers of all new fuel efficient vehicles purchased or leased and all eligible trade-in vehicles disposed of under the Program.

(2) REPORT ON EFFICACY OF THE PROGRAM.—Not later than 60 days after the termination date described in subsection (c)(1)(A)(ii), the Secretary shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the efficacy of the Program, including—

(A) a description of Program results, including—

(i) the total number and amount of vouchers issued for purchase or lease of new fuel efficient automobiles by manufacturer (including aggregate information concerning the make, model, model year) and category of automobile;

(ii) aggregate information regarding the make, model, model year, and manufacturing location of vehicles traded in under the Program; and

(iii) the location of sale or lease;

(B) an estimate of the overall increase in fuel efficiency in terms of miles per gallon, total annual oil savings, and total annual greenhouse gas reductions, as a result of the Program; and

(C) an estimate of the overall economic and employment effects of the Program.

(h) EXCLUSION OF VOUCHERS FROM INCOME.—

(1) FOR PURPOSES OF ALL FEDERAL AND STATE PROGRAMS.—A voucher issued under the Program shall not be regarded as income and shall not be regarded as a resource for the month of receipt of the voucher and the following 12 months, for purposes of determining the eligibility of the recipient of the voucher (or the recipient's spouse or other family or household members) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal or State program.

(2) FOR PURPOSES OF TAXATION.—A voucher issued under the Program shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

(i) DEFINITIONS.—As used in this section—

(1) the term ''passenger automobile'' means a passenger automobile, as defined in section 32901(a)(18) of title 49, United States Code, that has a combined fuel economy value of at least 22 miles per gallon;

(2) the term ''category 1 truck'' means a nonpassenger automobile, as defined in section 32901(a)(17) of title 49, United States Code, that has a combined fuel economy value of at least 18 miles per gallon, except that such term does not include a category 2 truck;

(3) the term ''category 2 truck'' means a large van or a large pickup, as categorized by the Secretary using the method used by the Environmental Protection Agency and described in the report entitled ''Light-Duty Automotive Technology and Fuel Economy Trends: 1975 through 2008'';

(4) the term ''category 3 truck'' means a work truck, as defined in section 32901(a)(19) of title 49, United States Code;

(5) the term ''combined fuel economy value'' means—

(A) with respect to a new fuel efficient automobile, the number, expressed in miles per gallon, centered below the words ''Combined Fuel Economy'' on the label required to be affixed or caused to be affixed on a new automobile pursuant to subpart D of part 600 of title 40, Code of Federal Regulations;

(B) with respect to an eligible trade-in vehicle, the equivalent of the number described in subparagraph (A), and posted under the words ''Estimated New EPA MPG'' and above the word ''Combined'' for vehicles of model year 1984 through 2007, or posted under the words ''New EPA MPG'' and above the word ''Combined'' for vehicles of model year 2008 or later on the fueleconomy.gov website of the Environmental Protection Agency for the make, model, and year of such vehicle; or

(C) with respect to an eligible trade-in vehicle manufactured between model years 1978 through 1984, the equivalent of the number described in subparagraph (A) as determined by the Secretary (and posted on the website of the National Highway Traffic Safety Administration) using data maintained by the Environmental Protection Agency for the make, model, and year of such vehicle;

(6) the term ''dealer'' means a person licensed by a State who engages in the sale of new automobiles to ultimate purchasers;

(7) the term ''eligible trade-in vehicle'' means an automobile or a work truck (as such terms are defined in section 32901(a) of title 49, United States Code) that, at the time it is presented for trade-in under this section—

(A) is in drivable condition;

(B) has been continuously insured consistent with the applicable State law and registered to the same owner for a period of not less than 1 year immediately prior to such trade-in;

(C) was manufactured less than 25 years before the date of the trade-in; and

(D) in the case of an automobile, has a combined fuel economy value of 18 miles per gallon or less;

(8) the term ''new fuel efficient automobile'' means an automobile described in paragraph (1), (2), (3), or (4)—

(A) the equitable or legal title of which has not been transferred to any person other than the ultimate purchaser;

(B) that carries a manufacturer's suggested retail price of $45,000 or less;

(C) that—

(i) in the case of passenger automobiles, category 1 trucks, or category 2 trucks, is certified to applicable standards under section 86.1811–04 of title 40, Code of Federal Regulations; or

(ii) in the case of category 3 trucks, is certified to the applicable vehicle or engine standards under section 86.1816–08, 86.007–11, or 86.008–10 of title 40, Code of Federal Regulations; and

(D) that has the combined fuel economy value of at least—

(i) 22 miles per gallon for a passenger automobile;

(ii) 18 miles per gallon for a category 1 truck; or

(iii) 15 miles per gallon for a category 2 truck;

(9) the term ''Program'' means the Drive America Forward Program established by this section;

(10) the term ''qualifying lease'' means a lease of an automobile for a period of not less than 5 years;

(11) the term ''scrappage value'' means the amount received by the dealer for a vehicle upon transferring title of such vehicle to the person responsible for ensuring the dismantling and destroying the vehicle;

(12) the term ''Secretary'' means the Secretary of Transportation acting through the National Highway Traffic Safety Administration;

(13) the term ''ultimate purchaser'' means, with respect to any new automobile, the first person who in good faith purchases such automobile for purposes other than resale; and

(14) the term ''vehicle identification number'' means the 17-character number used by the automobile industry to identify individual automobiles.

SEC. _03. REALLOCATION OF APPROPRIATIONS.

The Director of the Office of Management and Budget may reallocate not more than $4,000,000,000 from the amounts appropriated under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) to carry out the Drive America Forward Program established under this division if the Director notifies the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives not less than 15 days before reallocating any such amounts.

SEC. _04. EMERGENCY DESIGNATION.

For purposes of House and Senate enforcement, this division is designated as an emergency requirement and necessary to meet emergency needs pursuant to—

(1) clause 10 of rule XXI of the Rules of the House of Representatives for the 111th Congress for purposes of pay-as-you-go principles; and

(2) section 403 of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

SA 1256. Mr. SCHUMER (for Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. AKAKA, and Mr. VOINOVICH)) proposed an amendment to amendment

1247 proposed by Mr. DODD to the bill H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I of division B, add the following:

Subtitle B—Other Retirement-Related Provisions

SEC. 111. CREDIT FOR UNUSED SICK LEAVE.

(a) IN GENERAL.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating the second subsection (k) and subsection (l) as subsections (l) and (m), respectively; and

(2) in subsection (l) (as so redesignated by paragraph (1))—

(A) by striking ''(l) In computing'' and inserting ''(l)(1) In computing''; and

(B) by adding at the end the following:

''(2) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the days of unused sick leave to his credit under a formal leave system and for which days the employee has not received payment, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x) through (xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.''.

(b) EXCEPTION FROM DEPOSIT REQUIREMENT.—Section 8422(d)(2) of title 5, United States Code, is amended by striking ''section 8415(k)'' and inserting ''paragraph (1) or (2) of section 8415(l)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to annuities computed based on separations occurring on or after the date of enactment of this Act.

SEC. 112. LIMITED EXPANSION OF THE CLASS OF INDIVIDUALS ELIGIBLE TO RECEIVE AN ACTUARIALLY REDUCED ANNUITY UNDER THE CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Section 8334(d)(2)(A)(i) of title 5, United States Code, is amended by striking ''October 1, 1990'' each place it appears and inserting ''March 1, 1991''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act.

SEC. 113. COMPUTATION OF CERTAIN ANNUITIES BASED ON PART-TIME SERVICE.

(a) IN GENERAL.—Section 8339(p) of title 5, United States Code, is amended by adding at the end the following:

''(3) In the administration of paragraph (1)—

''(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and

''(B) subparagraph (B) of such paragraph—

''(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

''(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act.

SEC. 114. AUTHORITY TO DEPOSIT REFUNDS UNDER FERS.

(a) DEPOSIT AUTHORITY.—Section 8422 of title 5, United States Code, is amended by adding at the end the following:

''(i)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which such employee or Member may be allowed credit under this chapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

''(2) Interest under this subsection shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office. The option under the third sentence of section 8334(e)(2) to make a deposit in one or more installments shall apply to deposits under this subsection.

''(3) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONAL AMENDMENT.—Section 8401(19)(C) of title 5, United States Code, is amended by striking ''8411(f);'' and inserting ''8411(f) or 8422(i);''.

(2) CREDITING OF DEPOSITS.—Section 8422(c) of title 5, United States Code, is amended by adding at the end the following: ''Deposits made by an employee, Member, or survivor also shall be credited to the Fund.''.

(3) SECTION HEADING.—(A) The heading for section 8422 of title 5, United States Code, is amended to read as follows:

''§ 8422. Deductions from pay; contributions for other service; deposits''.

(B) The analysis for chapter 84 of title 5, United States Code, is amended by striking the item relating to section 8422 and inserting the following:

''8422. Deductions from pay; contributions for other service; deposits.''.

(4) RESTORATION OF ANNUITY RIGHTS.—The last sentence of section 8424(a) of title 5, United States Code, is amended by striking ''based.'' and inserting ''based, until the employee or Member is reemployed in the service subject to this chapter.''.

SEC. 115. RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE.

(a) RETIREMENT CREDIT.—

(1) IN GENERAL.—Any individual who is treated as an employee of the Federal Government for purposes of chapter 83 or chapter 84 of title 5, United States Code, on or after the date of enactment of this Act who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual's creditable service under sections 8332 or 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

(A) Sections 8333 and 8410 (relating to eligibility for annuity).

(B) Sections 8336 (other than subsections (d), (h), and (p) thereof) and 8412 (relating to immediate retirement).

(C) Sections 8338 and 8413 (relating to deferred retirement).

(D) Sections 8336(d), 8336(h), 8336(p), and 8414 (relating to early retirement).

(E) Section 8341 and subchapter IV of chapter 84 (relating to survivor annuities).

(F) Section 8337 and subchapter V of chapter 84 (relating to disability benefits).

(2) TREATMENT OF DETENTION OFFICER SERVICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion of an individual's qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1–626.04(2), D.C. Official Code) shall be treated as service as a law enforcement officer under sections 8331(20) or 8401(17) of title 5, United States Code, for purposes of applying paragraph (1) with respect to the individual.

(3) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

(b) QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.—In this section, ''qualifying District of Columbia service'' means any of the following:

(1) Service performed by an individual as a nonjudicial employee of the District of Columbia courts—

(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997—

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government under section 11232(f) of such Act; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(4) In the case of an individual who was an employee of the District of Columbia Department of Corrections who was separated from service as a result of the closing of the Lorton Correctional Complex and who was appointed to a position with the Bureau of Prisons, the District of Columbia courts, the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, the United States Parole Commission, or the District of Columbia Public Defender Service, service performed by the individual as an employee of the District of Columbia Department of Corrections—

(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(c) CERTIFICATION OF SERVICE.—The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.

SEC. 116. RETIREMENT TREATMENT OF CERTAIN SECRET SERVICE EMPLOYEES.

(a) DEFINITION.—In this section the term ''covered employee'' means an individual who—

(1) was hired as a member of the United States Secret Service Division during the period beginning on January 1, 1984 through December 31, 1986;

(2) has actively performed duties other than clerical for 10 or more years directly related to the protection mission of the United States Secret Service described under section 3056 of title 18, United States Code;

(3) is serving as a member of the United States Secret Service Division or the United States Secret Service Uniform Division (or any successor entity) on the effective date of this section; and

(4) files an election to be a covered employee under subsection (b)(1).

(b) ELECTION OF COVERAGE.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, an individual described under subsection (a)(1), (2), and (3) may file an election with the United States Secret Service to be a covered employee and to transition to the District of Columbia Police and Fire Fighter Retirement and Disability System.

(2) NOTIFICATION.—Not later than 30 days after the date of enactment of this Act, the Office of Personnel Management and the United States Secret Service shall notify each individual described under subsection (a)(1), (2), and (3) that the individual is qualified to file an election under paragraph (1).

(c) RETIREMENT COVERAGE CONVERSION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, and in consultation with the Secretary of Homeland Security and the Thrift Savings Board, the Office of Personnel Management shall prescribe regulations to carry out the responsibilities of the Federal Government under this section. The regulations prescribed under this paragraph shall provide for transition of covered employees from the Federal Employees' Retirement System to the Civil Service Retirement System.

(2) TREATMENT OF COVERED EMPLOYEES.—

(A) ELECTION OF COVERAGE.—

(i) IN GENERAL.—If a covered employee files an election under subsection (b)(1), the covered employee shall, subject to clause (ii), be converted from the Federal Employees' Retirement System to the Civil Service Retirement System.

(ii) COVERAGE IN DISTRICT OF COLUMBIA RETIREMENT SYSTEM.—

(I) IN GENERAL.—Chapter 7 of title 5 of the District of Columbia Code shall apply with respect to a covered employee on the date on which the covered employee transitions to the Civil Service Retirement System.

(II) AUTHORIZATION FOR DISTRICT OF COLUMBIA.—The government of the District of Columbia shall provide for the coverage of covered employees in the District of Columbia Police and Fire Fighter Retirement and Disability System in accordance with this section.

(B) THRIFT SAVINGS PLAN.—A covered employee shall forfeit, under procedures prescribed by the Executive Director of the Federal Retirement Thrift Investment Board, all Thrift Savings Plan contributions and associated earnings made by an employing agency pursuant to section 8432(c) of title 5, United States Code. Any amounts remaining in the Thrift Savings Plan account of the covered employee may be transferred to a private account or the District of Columbia Police and Firefighter Retirement and Disability System.

(C) FORFEITURE OF SOCIAL SECURITY BENEFITS.—

(i) CONTRIBUTIONS.—Upon conversion into the Civil Service Retirement System, a covered employee shall forfeit all contributions made under title II of the Social Security Act while employed by the United States Secret Service. All forfeited funds shall remain in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as applicable .

(ii) BENEFITS.—A covered employee shall not be entitled to any benefit based on any contribution forfeited under clause (i).

(3) IMPLEMENT.—The Office of Personnel Management, the Department of Homeland Security, the Social Security Administration, and the Thrift Savings Board shall take such actions as necessary to provide for the implementation of this section.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), this section shall take effect on the first day of the first applicable pay period that begins 180 days after the date of enactment of this Act.

(2) ELECTIONS AND IMPLEMENTATION.—Subsections (b) and (c)(1) and (3) shall take effect on the date of enactment of this Act.

TITLE _____—NON-FOREIGN AREA RETIREMENT EQUITY ASSURANCE

SEC. __01. SHORT TITLE.

This title may be cited as the ''Non-Foreign Area Retirement Equity Assurance Act of 2009'' or the ''Non-Foreign AREA Act of 2009''.

SEC. __02. EXTENSION OF LOCALITY PAY.

(a) LOCALITY-BASED COMPARABILITY PAYMENTS.—Section 5304 of title 5, United States Code, is amended—

(1) in subsection (f)(1), by striking subparagraph (A) and inserting the following:

''(A) each General Schedule position in the United States, as defined under section 5921(4), and its territories and possessions, including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, shall be included within a pay locality;'';

(2) in subsection (g)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'' after the semicolon;

(ii) in subparagraph (B) by striking the period and inserting ''; and''; and

(iii) by adding after subparagraph (B) the following:

''(C) positions under subsection (h)(1)(C) not covered by appraisal systems certified under section 5382; and''; and

(B) by adding at the end the following:

''(3) The applicable maximum under this subsection shall be level II of the Executive Schedule for positions under subsection (h)(1)(C) covered by appraisal systems certified under section 5307(d).''; and

(3) in subsection (h)(1)—

(A) in subparagraph (B) by striking ''and'' after the semicolon;

(B) by redesignating subparagraph (C) as subparagraph (D);

(C) by inserting after subparagraph (B) the following:

''(C) a Senior Executive Service position under section 3132 or 3151 or a senior level position under section 5376 stationed within the United States, but outside the 48 contiguous States and the District of Columbia in which the incumbent was an individual who on the day before the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009 was eligible to receive a cost-of-living allowance under section 5941; and'';

(D) in clause (iv) in the matter following subparagraph (D), by inserting '', except for members covered by subparagraph (C)'' before the semicolon; and

(E) in clause (v) in the matter following subparagraph (D), by inserting '', except for members covered by subparagraph (C)'' before the semicolon.

(b) ALLOWANCES BASED ON LIVING COSTS AND CONDITIONS OF ENVIRONMENT.—Section 5941 of title 5, United States Code, is amended—

(1) in subsection (a), by adding after the last sentence ''Notwithstanding any preceding provision of this subsection, the cost-of-living allowance rate based on paragraph (1) shall be the cost-of-living allowance rate in effect on the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009, except as adjusted under subsection (c).'';

(2) by redesignating subsection (b) as subsection (d); and

(3) by inserting after subsection (a) the following:

''(b) This section shall apply only to areas that are designated as cost-of-living allowance areas as in effect on December 31, 2009.

''(c)(1) The cost-of-living allowance rate payable under this section shall be adjusted on the first day of the first applicable pay period beginning on or after—

''(A) January 1, 2010; and

''(B) January 1 of each calendar year in which a locality-based comparability adjustment takes effect under section __04 (2) and (3) of the Non-Foreign Area Retirement Equity Assurance Act of 2009.

''(2)(A) In this paragraph, the term 'applicable locality-based comparability pay percentage' means, with respect to calendar year 2010 and each calendar year thereafter, the applicable percentage under section __04 (1), (2), or (3) of Non-Foreign Area Retirement Equity Assurance Act of 2009.

''(B) Each adjusted cost-of-living allowance rate under paragraph (1) shall be computed by—

''(i) subtracting 65 percent of the applicable locality-based comparability pay percentage from the cost-of-living allowance percentage rate in effect on December 31, 2009; and

''(ii) dividing the resulting percentage determined under clause (i) by the sum of—

''(I) one; and

''(II) the applicable locality-based comparability payment percentage expressed as a numeral.

''(3) No allowance rate computed under paragraph (2) may be less than zero.

''(4) Each allowance rate computed under paragraph (2) shall be paid as a percentage of basic pay (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law).''.

SEC. __03. ADJUSTMENT OF SPECIAL RATES.

(a) IN GENERAL.—Each special rate of pay established under section 5305 of title 5, United States Code, and payable in an area designated as a cost-of-living allowance area under section 5941(a) of that title, shall be adjusted, on the dates prescribed by section __04 of this title, in accordance with regulations prescribed by the Director of the Office of Personnel Management under section __08 of this title.

(b) AGENCIES WITH STATUTORY AUTHORITY.—

(1) IN GENERAL.—Each special rate of pay established under an authority described under paragraph (2) and payable in a location designated as a cost-of-living allowance area under section 5941(a)(1) of title 5, United States Code, shall be adjusted in accordance with regulations prescribed by the applicable head of the agency that are consistent with the regulations issued by the Director of the Office of Personnel Management under subsection (a).

(2) STATUTORY AUTHORITY.—The authority referred to under paragraph (1), is any statutory authority that—

(A) is similar to the authority exercised under section 5305 of title 5, United States Code;

(B) is exercised by the head of an agency when the head of the agency determines it to be necessary in order to obtain or retain the services of persons specified by statute; and

(C) authorizes the head of the agency to increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations.

(c) TEMPORARY ADJUSTMENT.—Regulations issued under subsection (a) or (b) may provide that statutory limitations on the amount of such special rates may be temporarily raised to a higher level during the transition period described in section __04 ending on the first day of the first pay period beginning on or after January 1, 2012, at which time any special rate of pay in excess of the applicable limitation shall be converted to a retained rate under section 5363 of title 5, United States Code.

SEC. __04. TRANSITION SCHEDULE FOR LOCALITY-BASED COMPARABILITY PAYMENTS.

Notwithstanding any other provision of this title or section 5304 or 5304a of title 5, United States Code, in implementing the amendments made by this title, for each non-foreign area determined under section 5941(b) of that title, the applicable rate for the locality-based comparability adjustment that is used in the computation required under section 5941(c) of that title shall be adjusted effective on the first day of the first pay period beginning on or after January 1—

(1) in calendar year 2010, by using ⅓ of the locality pay percentage for the rest of United States locality pay area;

(2) in calendar year 2011, by using ⅔ of the otherwise applicable comparability payment approved by the President for each non-foreign area; and

(3) in calendar year 2012 and each subsequent year, by using the full amount of the applicable comparability payment approved by the President for each non-foreign area.

SEC. __05. SAVINGS PROVISION.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the application of this title to any employee should not result in a decrease in the take home pay of that employee;

(2) in calendar year 2012 and each subsequent year, no employee shall receive less than the Rest of the U.S. locality pay rate;

(3) concurrent with the surveys next conducted under the provisions of section 5304(d)(1)(A) of title 5, United States Code, beginning after the date of the enactment of this Act, the Bureau of Labor Statistics should conduct separate surveys to determine the extent of any pay disparity (as defined by section 5302 of that title) that may exist with respect to positions located in the State of Alaska, the State of Hawaii, and the United States territories, including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands;

(4) if the surveys under paragraph (3) indicate that the pay disparity determined for the State of Alaska, the State of Hawaii, or any 1 of the United States territories including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands exceeds the pay disparity determined for the locality which (for purposes of section 5304 of that title) is commonly known as the ''Rest of the United States'', the President's Pay Agent should take appropriate measures to provide that each such surveyed area be treated as a separate pay locality for purposes of that section; and

(5) the President's Pay Agent will establish 1 locality area for the entire State of Hawaii and 1 locality area for the entire State of Alaska.

(b) SAVINGS PROVISIONS.—

(1) IN GENERAL.—During the period described under section __04 of this title, an employee paid a special rate under 5305 of title 5, United States Code, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, and who continues to be officially stationed in an allowance area, shall receive an increase in the employee's special rate consistent with increases in the applicable special rate schedule. For employees in allowance areas, the minimum step rate for any grade of a special rate schedule shall be increased at the time of an increase in the applicable locality rate percentage for the allowance area by not less than the dollar increase in the locality-based comparability payment for a non-special rate employee at the same minimum step provided under section __04 of this title, and corresponding increases shall be provided for all step rates of the given pay range.

(2) CONTINUATION OF COST OF LIVING ALLOWANCE RATE.—If an employee, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, would receive a rate of basic pay and applicable locality-based comparability payment which is in excess of the maximum rate limitation set under section 5304(g) of title 5, United States Code, for his position (but for that maximum rate limitation) due to the operation of this title, the employee shall continue to receive the cost-of-living allowance rate in effect on December 31, 2009 without adjustment until—

(A) the employee leaves the allowance area or pay system; or

(B) the employee is entitled to receive basic pay (including any applicable locality-based comparability payment or similar supplement) at a higher rate,

but, when any such position becomes vacant, the pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

(3) LOCALITY-BASED COMPARABILITY PAYMENTS.—Any employee covered under paragraph (2) shall receive any applicable locality-based comparability payment extended under section __04 of this title which is not in excess of the maximum rate set under section 5304(g) of title 5, United States Code, for his position including any future increase to statutory pay limitations under 5318 of title 5, United States Code. Notwithstanding paragraph (2), to the extent that an employee covered under that paragraph receives any amount of locality-based comparability payment, the cost-of-living allowance rate under that paragraph shall be reduced accordingly, as provided under section 5941(c)(2)(B) of title 5, United States Code.

SEC. __06. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.

(a) IN GENERAL.—

(1) DEFINITION.—In this subsection, the term ''covered employee'' means—

(A) any employee who—

(i) on the day before the date of enactment of this Act—

(I) was eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

(II) was not eligible to be paid locality-based comparability payments under 5304 or 5304a of that title; or

(ii) on or after the date of enactment of this Act becomes eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; or

(B) any employee who—

(i) on the day before the date of enactment of this Act—

(I) was eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

(II) was eligible to be paid an allowance under section 1005(b) of title 39, United States Code;

(III) was employed by the Transportation Security Administration of the Department of Homeland Security and was eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

(IV) was eligible to be paid under any other authority a cost-of-living allowance that is equivalent to the cost-of-living allowance under section 5941 of title 5, United States Code; or

(ii) on or after the date of enactment of this Act—

(I) becomes eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

(II) becomes eligible to be paid an allowance under section 1005(b) of title 39, United States Code;

(III) is employed by the Transportation Security Administration of the Department of Homeland Security and becomes eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

(IV) is eligible to be paid under any other authority a cost-of-living allowance that is equivalent to the cost-of-living allowance under section 5941 of title 5, United States Code.

(2) APPLICATION TO COVERED EMPLOYEES.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of this title (including the amendments made by this title) any covered employee shall be treated as an employee to whom section 5941 of title 5, United States Code (as amended by section __02 of this title), and section __04 of this title apply.

(B) PAY FIXED BY STATUTE.—Pay to covered employees under section 5304 or 5304a of title 5, United States Code, as a result of the application of this title shall be considered to be fixed by statute.

(C) PERFORMANCE APPRAISAL SYSTEM.—With respect to a covered employee who is subject to a performance appraisal system no part of pay attributable to locality-based comparability payments as a result of the application of this title including section 5941 of title 5, United States Code (as amended by section __02 of this title), may be reduced on the basis of the performance of that employee.

(b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

(1) IN GENERAL.—Section 1005(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)'';

(B) by striking ''Section 5941,'' and inserting ''Except as provided under paragraph (2), section 5941'';

(C) by striking ''For purposes of such section,'' and inserting ''Except as provided under paragraph (2), for purposes of section 5941 of that title,''; and

(D) by adding at the end the following:

''(2) On and after the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009—

''(A) the provisions of that Act and section 5941 of title 5 shall apply to officers and employees covered by section 1003 (b) and (c) whose duty station is in a nonforeign area; and

''(B) with respect to officers and employees of the Postal Service (other than those officers and employees described under subparagraph (A)) of section __06(b)(2) of that Act shall apply.''.

(2) CONTINUATION OF COST OF LIVING ALLOWANCE.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, any employee of the Postal Service (other than an employee covered by section 1003 (b) and (c) of title 39, United States Code, whose duty station is in a nonforeign area) who is paid an allowance under section 1005(b) of that title shall be treated for all purposes as if the provisions of this title (including the amendments made by this title) had not been enacted, except that the cost-of-living allowance rate paid to that employee—

(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

(ii) shall be the greater of—

(I) the cost-of-living allowance rate in effect on December 31, 2009 for the applicable area; or

(II) the applicable locality-based comparability pay percentage under section __04.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

(ii) authorize an employee described under subparagraph (A) to file an election under section __07 of this title.

SEC. __07. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

(a) DEFINITION.—In this section the term ''covered employee'' means any employee—

(1) to whom section __04 applies;

(2) who is separated from service by reason of retirement under chapter 83 or 84 of title 5, United States Code, during the period of January 1, 2010, through December 31, 2012; and

(3) who files an election with the Office of Personnel Management under subsection (b).

(b) ELECTION.—

(1) IN GENERAL.—An employee described under subsection (a) (1) and (2) may file an election with the Office of Personnel Management to be covered under this section.

(2) DEADLINE.—An election under this subsection may be filed not later than December 31, 2012.

(c) COMPUTATION OF ANNUITY.—

(1) IN GENERAL.—Except as provided under paragraph (2), for purposes of the computation of an annuity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on or after January 1, 2010 through the first applicable pay period ending on or after December 31, 2012, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.

(2) LIMITATION.—The amount of the cost-of-living allowance which may be considered basic pay under paragraph (1) may not exceed the amount of the locality-based comparability payments the employee would have received during that period for the applicable pay area if the limitation under section __04 of this title did not apply.

(d) CIVIL SERVICE RETIREMENT AND DISABILITY RETIREMENT FUND.—

(1) EMPLOYEE CONTRIBUTIONS.—A covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund—

(A) an amount equal to the difference between—

(i) employee contributions that would have been deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during the period described under subsection (c) of this section if the cost-of-living allowances described under that subsection had been treated as basic pay under section 8331(3) or 8401(4) of title 5, United States Code; and

(ii) employee contributions that were actually deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during that period; and

(B) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under subparagraph (A).

(2) AGENCY CONTRIBUTIONS.—

(A) IN GENERAL.—The employing agency of a covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund an amount for applicable agency contributions based on payments made under paragraph (1).

(B) SOURCE.—Amounts paid under this paragraph shall be contributed from the appropriation or fund used to pay the employee.

(3) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this section.

SEC. __08. REGULATIONS.

(a) IN GENERAL.—The Director of the Office of Personnel Management shall prescribe regulations to carry out this title, including—

(1) rules for special rate employees described under section __03;

(2) rules for adjusting rates of basic pay for employees in pay systems administered by the Office of Personnel Management when such employees are not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, without regard to otherwise applicable statutory pay limitations during the transition period described in section __04 ending on the first day of the first pay period beginning on or after January 1, 2012; and

(3) rules governing establishment and adjustment of saved or retained rates for any employee whose rate of pay exceeds applicable pay limitations on the first day of the first pay period beginning on or after January 1, 2012.

(b) OTHER PAY SYSTEMS.—With the concurrence of the Director of the Office of Personnel Management, the administrator of a pay system not administered by the Office of Personnel Management shall prescribe regulations to carry out this title with respect to employees in such pay system, consistent with the regulations prescribed by the Office under subsection (a). With respect to employees not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, regulations prescribed under this subsection may provide for special payments or adjustments for employees who were eligible to receive a cost-of-living allowance under section 5941 of that title on the date before the date of enactment of this Act.

SEC. __09. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided by subsection (b), this title (including the amendments made by this title) shall take effect on the date of enactment of this Act.

(b) LOCALITY PAY AND SCHEDULE.—The amendments made by section __02 and the provisions of section __04 shall take effect on the first day of the first applicable pay period beginning on or after January 1, 2010.

TITLE _____—PART-TIME REEMPLOYMENT OF ANNUITANTS

SEC. ___1. SHORT TITLE.

This title may be cited as the ''Part-Time Reemployment of Annuitants Act of 2009''.

SEC. ___2. PART-TIME REEMPLOYMENT.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8344 of title 5, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m);

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

''(l)(1) For purposes of this subsection—

''(A) the term 'head of an agency' means—

''(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

''(ii) the head of the United States Postal Service;

''(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

''(iv) any employing authority described under subsection (k)(2), other than the Government Accountability Office; and

''(B) the term 'limited time appointee' means an annuitant appointed under a temporary appointment limited to 1 year or less.

''(2) The head of an agency may waive the application of subsection (a) or (b) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

''(A) fulfill functions critical to the mission of the agency, or any component of that agency;

''(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.);

''(C) assist in the development, management, or oversight of agency procurement actions;

''(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

''(E) promote appropriate training or mentoring programs of employees;

''(F) assist in the recruitment or retention of employees; or

''(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

''(3) The head of an agency may not waive the application of subsection (a) or (b) with respect to an annuitant—

''(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual's annuity commencing date;

''(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

''(C) for more than a total of 3120 hours of service performed by that annuitant.

''(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

''(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

''(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

''(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

''(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

''(B) Any regulations promulgated under subparagraph (A) may—

''(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

''(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office of Personnel Management or other employing agencies as necessary to ensure compliance with paragraph (3);

''(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

''(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for the effective operation of, or to ensure compliance with, this subsection; and

''(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

''(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

''(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

''(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) or (b) shall terminate 5 years after the date of enactment of the Part-Time Reemployment of Annuitants Act of 2009.''; and

(3) in subsection (m) (as so redesignated)—

(A) in paragraph (1), by striking ''(k)'' and inserting ''(l)''; and

(B) in paragraph (2), by striking ''or (k)'' and inserting ''(k), or (l)''.

(b) FEDERAL EMPLOYEE RETIREMENT SYSTEM.—Section 8468 of title 5, United States Code, is amended—

(1) by redesignating subsection (i) as subsection (j);

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

''(i)(1) For purposes of this subsection—

''(A) the term 'head of an agency' means—

''(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

''(ii) the head of the United States Postal Service;

''(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

''(iv) any employing authority described under subsection (h)(2), other than the Government Accountability Office; and

''(B) the term 'limited time appointee' means an annuitant appointed under a temporary appointment limited to 1 year or less.

''(2) The head of an agency may waive the application of subsection (a) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

''(A) fulfill functions critical to the mission of the agency, or any component of that agency;

''(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.);

''(C) assist in the development, management, or oversight of agency procurement actions;

''(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

''(E) promote appropriate training or mentoring programs of employees;

''(F) assist in the recruitment or retention of employees; or

''(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

''(3) The head of an agency may not waive the application of subsection (a) with respect to an annuitant—

''(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual's annuity commencing date;

''(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

''(C) for more than a total of 3120 hours of service performed by that annuitant.

''(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(l) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

''(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(l) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

''(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

''(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

''(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

''(B) Any regulations promulgated under subparagraph (A) may—

''(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

''(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office or other employing agencies as necessary to ensure compliance with paragraph (3);

''(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

''(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for effective operation of, or to ensure compliance with, this subsection; and

''(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

''(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

''(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

''(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) shall terminate 5 years after the date of enactment of the Part-Time Reemployment of Annuitants Act of 2009.''; and

(3) in subsection (j) (as so redesignated)—

(A) in paragraph (1), by striking ''(h)'' and inserting ''(i)''; and

(B) in paragraph (2), by striking ''or (h)'' and inserting ''(h), or (i)''.

(c) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section may be construed to authorize the waiver of the hiring preferences under chapter 33 of title 5, United States Code in selecting annuitants to employ in an appointive or elective position.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1005(d)(2) of title 39, United States Code, is amended—

(1) by striking ''(l)(2)'' and inserting ''(m)(2)''; and

(2) by striking ''(i)(2)'' and inserting ''(j)(2)''.

SEC. ___3. GENERAL ACCOUNTABILITY OFFICE REPORT.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report regarding the use of the authority under the amendments made by section ___2.

(b) CONTENTS.—The report submitted under subsection (a) shall—

(1) include the number of annuitants for whom a waiver was made under subsection (l) of section 8344 of title 5, United States Code, as amended by this title, or subsection (i) of section 8468 of title 5, United States Code, as amended by this title; and

(2) identify each agency that used the authority described in paragraph (1).

(c) AGENCY DATA.—Each head of an agency (as defined under sections 8344(l)(1) and 8468(i)(1)(A) of title 5, United States Code, as added by section ___2 of this title) shall—

(1) collect and maintain data necessary for purposes of the Comptroller General report submitted under subsection (a); and

(2) submit to the Comptroller General that data as the Comptroller General requires in a timely fashion.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on June 3, 2009 at 2 p.m. to conduct a hearing entitled ''A Fresh Start For New Starts.''

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 2:30 p.m., in room 106 of the Dirksen Senate office building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 11 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 3, 2009 at 2:30 p.m.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Homeland security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 10 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on June 3, 2009, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The Uniting American Families Act: Addressing Inequality in Federal Immigration Law.''

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

PERSONNEL SUBCOMMITTEE

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Personnel Subcommittee of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 2:30 p.m.

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

AD HOC SUBCOMMITTEE ON STATE, LOCAL, AND PRIVATE SECTOR PREPAREDNESS AND INTEGRATION

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 2 p.m. to conduct a hearing entitled, ''Pandemic Flu: Closing the Gaps.''

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 10 a.m.

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

SUBCOMMITTEE ON STRATEGIC FORCE

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, June 3, 2009, at 2:30 p.m.

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

SPECIAL COMMITTEE ON AGING

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet during the session of the Senate on June 3, 2009, from 2 p.m. to 4 p.m. in Hart 216 for the purpose of conducting a hearing.

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

DISCHARGE AND REFERRAL—S. 1144

Mr. SCHUMER. Mr. President, I ask unanimous consent that the bill S. 1144 be discharged from the Committee on Commerce, Science, and Transportation and that it be referred to the Committee on Banking, Housing, and Urban Affairs.

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

ORDERS FOR THURSDAY, JUNE 4, 2009

Mr. SCHUMER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., tomorrow, Thursday, June 4; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the second half; further, I ask following morning business the Senate resume consideration of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act.

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

PROGRAM

Mr. SCHUMER. Mr. President, tomorrow we will resume consideration of the tobacco regulation bill; the Burr-Hagan substitute amendment is pending and we hope to reach agreement to vote in relation to it tomorrow morning. Senators will be notified when any votes are scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SCHUMER. If there is no further business to come before the Senate, I ask unanimous consent it adjourn under the previous order.

There being no objection, the Senate, at 7:55 p.m., adjourned until Thursday, June 4, 2009, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF STATE

LAURIE SUSAN FULTON, OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO DENMARK.

DEPARTMENT OF THE TREASURY

DANIEL M. TANGHERLINI, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE PETER B. MCCARTHY, RESIGNED.

DANIEL M. TANGHERLINI, OF THE DISTRICT OF COLUMBIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF THE TREASURY, VICE PETER B. MCCARTHY, RESIGNED.

DEPARTMENT OF LABOR

RAYMOND M. JEFFERSON, OF HAWAII, TO BE ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT AND TRAINING, VICE CHARLES S. CICCOLELLA, RESIGNED.

EXTENSIONS OF REMARKS

HONORING MARK COHN'S 80TH BIRTHDAY AND HIS DEDICATION TO SACRAMENTO COUNTY

HON. DORIS O. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. MATSUI. Madam Speaker, I rise today to honor Mr. Mark Cohn for his sixty years of service and devotion to the Mosaic Law Congregation and the greater Sacramento community. On May 31st, the Mosaic Law Congregation celebrated Mr. Cohn's 80th birthday and honored him for his immeasurable dedication to the people of Sacramento. As Mr. Cohn's friends, family and colleagues gather to pay tribute to his lifelong achievements, I ask that all my colleagues join me in honoring this inspirational individual.

After proudly serving his country in the U.S. Air Force from the late 1940s to the early 1950s, Mr. Cohn returned to Sacramento and started his Kustom Kitchens design business. Since the inception of Kustom Kitchens, Mr. Cohn has received numerous residential designs awards which have been publicized in many local and national publications, such as the Sacramento Bee and Sacramento Magazine.

Despite the demands and immense time commitment it takes to run a successful business, Mr. Cohn continues to give back to the Sacramento community. A few of the many organizations Mr. Cohn has volunteered his time to includes the YWCA, Stanford Home Foundations, B'nai Brith, and 4 Robinhoods. "He takes on any challenge and never lets anything get in the way of the big picture," said his wife Dianne Cohn, "he never seems to run out of energy." For example, from 1991 to 1995, Mr. Cohn served as President of the Mosaic Law Congregation, managed his Kustom Kitchens business and served on various non-profit boards.

Mr. Cohn continues to be an incredibly active gentleman, walking the Great Wall of China at the age of 73, and skydiving at the ages of 75 and 80! Throughout his life, Mr. Cohn has shown substantial leadership skills, strength, innovation, and passion. He is a man we can all look up to.

Madam Speaker, as Mark Cohn, his wife Dianne and children Shelli, Lanie, Nelson, Larry, and Scott, along with his many friends and colleagues gather to celebrate Mr. Cohn's 80th birthday, I ask all my colleagues to join me in saluting him.

HONORING BETH ASHLEY

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. WOOLSEY. Madam Speaker, I rise with pleasure today to honor my long-time friend, Beth Ashley, of Marin County, California. Beth is retiring from the Marin Independent Journal, IJ, after 35 years of passionate and thoughtful writing that has made her a community institution.

Beth's news career began with school newspapers, including editor of the Stanford Daily. At the Marin IJ, she has served in many roles, most recently as a feature writer. Her columns reflected her immersion in many aspects of county life as well as her foreign travels. From Moscow during the early years of Glasnost to Afghanistan and Iran, her trips tended to focus on the humanitarian struggles in troubled areas of the world. Her compassionate heart shines through all her work.

From raising five sons to serving on nonprofit boards in Marin County, Beth has had a very full life in addition to her IJ duties. Now 83, she writes that "it's hard to act the intrepid girl reporter, especially when I totter a bit when I walk and can hardly see, hear or speak coherently to boot." But she assures us she has "loved every minute. I only wish I'd done more."

Beth has done more in her career than most of us can dream of. The community will miss her regular features, but we still expect to see her around town enjoying her new adventure—she will be remarrying in a few months.

Madam Speaker, Beth Ashley's work has expressed the heart and soul of Marin County. It has been an honor and delight to read her columns and to know her as a friend. I wish her the best of luck in her retirement and in her new marriage.

PERSONAL EXPLANATION

HON. TRENT FRANKS

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. FRANKS of Arizona. Madam Speaker, on rollcall No. 292, I was unavoidably detained. Had I been present, I would have voted "yes."

A PROCLAMATION HONORING CLOW WATER SYSTEMS COMPANY'S 100 YEAR ANNIVERSARY OF PROVIDING UNINTERRUPTED AND DEDICATED SERVICE

HON. ZACHARY T. SPACE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SPACE. Madam Speaker:

Whereas, Clow Water Systems was founded on March 17, 1910 in the city of Coshocton; and

Whereas, Clow Water Systems has grown from a two-man operation to employing more than 350 workers; and

Whereas, Clow Water Systems has been at the cutting edge of pipe and fitting production, often trading and competing in discoveries that have both improved efficiency and lowered costs industry-wide; and

Whereas, Clow Water Systems recently expanded their industry even further, exporting pipes to help in the effort to rebuild Iraq; now, therefore, be it

Resolved, that along with their friends and family, and the residents of the 18th Congressional District, I congratulate Clow Water Systems Company on their 100 Year Anniversary. Their dedication to quality products and customer service has made them a dependable pillar of the Coshocton community.

IN RECOGNITION OF JACK E. SINGLEY AND HIS DEDICATED SERVICE TO IRVING INDEPENDENT SCHOOL DISTRICT

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SESSIONS. Madam Speaker, I rise today to honor Mr. Jack E. Singley, former Superintendent of the Irving Independent School District (IISD).

Mr. Singley first joined Irving ISD as a math teacher at MacArthur High School in 1965. Over the past forty-four years, he has served in various roles from teacher to vice principal to personnel director to Superintendent. Upon taking the reins as Superintendent in 1988, Irving ISD has undergone tremendous change. Irving ISD added eight schools, enrollment grew from 21,887 to 33,233 students, over 30,000 students graduated from high schools, and employees increased from 2,309 to 4,177. He exhibited great leadership skills and carried out his vision to improve Irving ISD, helping students achieve their full potential. Aside from being one of the longest serving Superintendents in the State of Texas, Jack will be remembered for his commitment to public education and dedicated service to Irving ISD. He has touched countless lives and will be greatly missed.

Madam Speaker, I ask my esteemed colleagues to join me in congratulating Mr. Singley for devoting his career to public education and expressing our heartfelt gratitude for his forty-four years of service to Irving ISD.

MEDIA SHOW

HON. LAMAR SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SMITH of Texas, Madam Speaker, Judge Sotomayor has yet to answer a question at a confirmation hearing, but the national media's verdict already is in.

Network evening newscasts used the term "conservative" to describe Judge Sotomayor's

critics more often than they used the term "liberal" to describe Judge Sotomayor herself, despite her very liberal record.

And there is a clear double standard in the media's coverage of Judge Sotomayor compared to President Bush's nominees.

After they were nominated, the national media referred to Justice Alito and Justice Roberts as "conservative" far more frequently than they have labeled Judge Sotomayor "liberal."

In addition, the national media have heralded Judge Sotomayor's impressive life story, despite ignoring the similar personal story of former Attorney General Alberto Gonzales during his confirmation.

The national media should set aside bias and treat Judge Sotomayor the same way they treated previous nominees.

HONORING THE LIFE OF MARIA ESTHER CARRILLO, FOUNDER OF THE HISPANIC-AMERICAN INTERCULTURAL WORKSHOP, FORMER MEMBER OF THE MAYOR'S HISPANIC ADVISORY COUNCIL, FOUNDER OF THE HISPANIC YOUTH VOICE OF TAMPA AND FORMER DIRECTOR OF THE TAMPA HISPANIC HERITAGE INC.

HON. KATHY CASTOR

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. CASTOR of Florida. Madam Speaker, I rise today to herald the life and philanthropic contributions of Maria Esther Carrillo, and to express our gratitude for her achievements in the Tampa Bay area as a passionate community activist and educational leader.

Carrillo and her husband Francisco escaped a violent Colombia, controlled by Marxist guerillas and drug cartels, to settle in Tampa in 1990; only five years after graduating from The University of the Andes in 1985. Carrillo immediately identified with the strong Hispanic culture in Tampa. She made it her life's work to focus on improving the education of those around her. She sought to bridge English and Hispanic cultures by introducing multicultural studies in language and heritage. Through her work with the Tampa Hispanic Heritage Inc., Carrillo was able to bridge communities of Hispanic and non-Hispanic citizens through countless cultural celebrations and in so doing fusing together diverse groups within the Tampa area.

Carrillo's faith and fervor in a multicultural Tampa, led to the foundation of the Taller Intercultural Hispano-Americano (TICH) in 1998. Her non-profit was established to champion the coexistence of diverse groups; to educate, share and enjoy other cultures and heritage. Carrillo, the Founder-Director, amassed sponsorships for a free festival that emphasized dance, folklore, food, culture, lifestyle and art for the Tampa community.

Her core beliefs were founded in the limitless potential of the next generation and it is with her commitment that her intrinsic reaction was not surprising. Sacrificing herself, Maria Esther Carrillo moved her body into harm's way, allowing her maternal instinct to shield her daughter from the out of control truck in Miami, Florida. The proud mother was accompanying her daughter, a high school senior, home after accepting a college scholarship so that she could attend Columbia University in the fall.

She lived as she died, protecting and helping the future of the hardworking Hispanic youth that she loved so dearly.

I wish Maria Liliana Carrillo a speedy recovery and my thoughts and prayers are with the Carrillo family.

INTRODUCING THE HEALTHY TRANSITIONS ACT OF 2009

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. STARK. Madam Speaker, I rise today with Representatives MARY BONO MACK and DAVE CAMP to introduce bipartisan legislation aimed at addressing the unique needs of young people with serious mental illness. This legislation will provide comprehensive support for youth so that they can transition into healthy and successful adults.

Young adults suffering from mental illness fall through the cracks far too often. Last year, former Senator Gordon Smith and I requested a report from the Government Accountability Office (GAO) examining the challenges facing this population. The results were very troubling. As of 2006, approximately 2.4 million young adults age 18–26 in America had a serious mental illness and another 9.3 million suffered with a moderate or mild mental illness. This population has significantly higher rates of unemployment, incarceration, suicide, inadequate housing, as well as lower rates of continuing education.

There is no coherent federal policy to address this issue and our system is fragmented. The GAO found that many youth lose mental health coverage or have their coverage disrupted when they turn 18, and are unable to find age-appropriate services in the adult mental health system. As a result, many young adults are adrift without services, support, or guidance.

The dysfunctional mental health system described by GAO has had a particularly harsh impact on vulnerable youth, such as those aging out of foster care. A national survey found that foster youth were four times more likely to have attempted suicide in the preceding year when compared to those never placed in foster care. Another study found that these youth suffer from Post Traumatic Stress Disorder at rates similar to Iraq War veterans. We cannot let this cycle of neglect continue.

We developed the Healthy Transitions Act in response to GAO's findings that exposed the critical gaps in age-appropriate mental health and supportive services for young adults. This legislation builds on the successful Partnership for Youth in Transition Demonstration Program and will allow the Substance Abuse and Mental Health Services Administration (SAMHSA) to expand their efforts to assist states in serving young people with mental illness. It will provide grant funding to states to develop statewide coordination plans that will assist adolescents and young adults with serious mental health disorders in making a healthy transition into adulthood. The bill will also provide grant funding for states to successfully implement their plans and ensure that the care systems created are both comprehensive and sustainable. Finally, the legislation will create a Committee of Federal Partners. The Committee will include representatives from all agencies that serve young adults as well as representatives from consumer and family advocacy organizations. The Federal Partners will evaluate the states' programs, provide technical assistance, and report to Congress on the progress being made.

It has become increasingly difficult for young adults to navigate our current fragmented mental health system. The Healthy Transitions Act aims to fill the cracks in the system by coordinating the work of federal, state, and local partners. It is our social responsibility to help these youth develop into successful, independent adults. I hope all of my colleagues can recognize the importance of investing in our young people and will support this legislation.

COMMEMORATING 20TH ANNIVERSARY OF THE TIANANMEN SQUARE SUPPRESSION

SPEECH OF

HON. EARL BLUMENAUER

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 2, 2009

Mr. BLUMENAUER. Madam Speaker, having just returned from a week in China with Speaker Pelosi, I am glad to more fully appreciate the country's tremendous scope, population, the vast and varied landscape, and its rich history. Although the focus was on global warming and the environment and the impressive progress China has made to adjust its policies, the subject of human rights was never far from the surface.

In Tiananmen Square I was taken back to the monumental events of 20 years ago and their tragic conclusion. It is sobering to understand how intensely the Chinese government suppresses any mention or image of the Tiananmen Square massacre. So much so that today there is virtually no knowledge of these events on the part of the young.

That is why it is so important for Congress to mark this observance: to give knowledge to those with no memory and to give hope to those that do remember. It is critical that those who risked so much, those who died or who were persecuted, are celebrated for their courage. It is my hope that one day the Chinese people will have the freedom they deserve.

COMMEMORATING 20TH ANNIVERSARY OF THE TIANANMEN SQUARE SUPPRESSION

SPEECH OF

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 2, 2009

Mr. HOLT. Madam Speaker, I rise today in support of H. Res. 489, recognizing the twentieth anniversary of the Tiananmen Square crackdown. In June of 1989, the Chinese government unnecessarily applied the heavy hand of the People's Liberation Army to violently

suppress peaceful demonstrators who were calling for an elimination of corruption, the expansion of freedoms, and progress toward political and economic reforms. Twenty years later, there still has been no accurate accounting of those who were killed or injured, and we do not know how many hundreds or thousands of activists remain imprisoned. But we do know that thousands living in exile and millions living in China are unable to freely express themselves in their home country, where censorship and repression still drown out peaceful calls for reform.

The People's Republic of China is a proud nation that increasingly is taking its place on the world stage. But if China wants to be fully integrated into the community of nations, it must recognize that the persecution of peaceful movements is unacceptable, and it must act to reverse the objectionable and counterproductive policies exemplified by the Tiananmen Square crackdown. Violations of human rights and international standards of law are not behavior consistent with a modern nation that wants to contribute to the world of international exchange, global trade, and academic cooperation.

The freedoms of expression and assembly are universal rights, and the flames of these liberties burn in all mankind. Today, we speak for the brave voices who were wrongfully silenced 20 years ago, for the families who have been unable to publicly mourn the loss of their loved ones, and for all those who continue to stand up for free expression in China and around the world. I fervently hope that this effort will hasten the day that the unfettered voices of the Chinese people may be heard in Tiananmen Square and throughout China. For though freedom's flames may be smothered, its smoldering embers will always prod ice, as Martin Luther King put it, a certain kind of fire that no water can put out.

IN HONOR OF NATIONAL ARTHRITIS MONTH AND THE MILLIONS OF AMERICANS LIVING WITH ARTHRITIS

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. PALLONE. Madam Speaker, I rise today to recognize that last month was National Arthritis Awareness Month. This commemoration provided an important opportunity to discuss the serious impact of arthritis, particularly for older Americans, and to highlight the range of treatments available to improve the health and quality of life of individuals with arthritis. However, just because May is over, doesn't mean our awareness of arthritis and the millions of Americans living with arthritis should be any less diminished.

The term arthritis describes more than 100 diseases and conditions affecting the joints. The most common form of arthritis is osteoarthritis, which is a painful chronic condition characterized by the breakdown of the joint's cartilage. Osteoarthritis affects almost 27 million Americans. Older Americans are particularly impacted by this disease, with a third of the population 65 and older affected by osteoarthritis.

Osteoarthritis limits the movement of most patients, and can seriously interfere with basic activities of daily living. In fact, osteoarthritis of the knee is one of the leading causes of disability among non-institutionalized adults. As an indication of the seriousness of this disease, hospitalizations for osteoarthritis also are on the rise, increasing from about 322,000 in 1993 to 735,000 in 2006.

Fortunately, there are a range of treatments available that can help many individuals with osteoarthritis reduce the pain they experience, minimize damage to their joints, and improve their physical functions. In some cases, these treatments involve lifestyle modifications, such as exercise and weight loss. In other cases, physical therapy or medications can lead to improvements. And even in the more advanced cases of osteoarthritis, including those that have not responded to other treatments, surgical intervention, including debridement, resurfacing, and total joint replacement, can relieve pain and improve joint function.

Given the prevalence of osteoarthritis among the elderly, it is especially important for senior citizens to know that Medicare covers a wide range of osteoarthritis treatments. Doctor's visits, physical therapy, and surgical procedures, including total joint replacement surgery, all may be covered by Medicare if medically appropriate. It is also important to ensure that Medicare beneficiaries with advanced OA do not forgo medically necessary joint replacement procedures because of concerns about copayments, since pain and disability can get progressively worse when such procedures are delayed. In fact, most Medicare beneficiaries have supplemental coverage, such as Medigap or employer-provided insurance, to help pay the premium, deductible, and coinsurance associated with joint replacement surgery. Fear about copayments should not stand in the way of a beneficiary obtaining relief from this painful and debilitating disease.

Whether it be National Arthritis Awareness month or any month, individuals with arthritis should take the opportunity to talk to their doctors about lifestyle changes and other treatments available to help them manage their condition. With appropriate care, individuals with arthritis can take steps to live active, pain free lives.

RECOGNIZING THE 50TH ANNIVERSARY OF STS. VARTANANTZ ARMENIAN APOSTOLIC CHURCH OF RIDGEFIELD, NEW JERSEY

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. ROTHMAN. Madam Speaker, I rise today to honor the 50th anniversary of Sts. Vartanantz Armenian Apostolic Church of Ridgefield, New Jersey.

On May 19, 1957, a community's dream began to take shape. On that day, ground was broken for what was then known as the Armenian Apostolic Church of New Jersey. In two short years, the Armenian American community of Bergen County came together and raised the necessary funds to realize the dream of building a church.

On May 3, 1959, the church was consecrated by His Eminence Archbishop Khoren Paroyian, Nuncio of His Holiness Zareh I, Catholicos of the Great House of Cilicia.

Sts. Vartanantz today stands as a beacon of Armenian American community life in Bergen County with its Sunday school, the Nareg Saturday Armenian School, the ladies guild, the men's club, the seniors groups, and several cultural, youth, educational, and fraternal organizations working to perpetuate the Armenian faith and heritage.

I extend my congratulations to the pastor, Rev. Fr. Hovnan Bozoian, the Board of Trustees, and all members and friends of Sts. Vartanantz and wish them many more years of growth and service to the Armenian American community.

I sincerely hope that my colleagues will join me in celebrating the 50th anniversary of Sts. Vartanantz Church for its contributions to the Armenian American residents of Bergen County, as well the larger Armenian American community in the United States.

PERSONAL EXPLANATION

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. COBLE. Madam Speaker, yesterday my flight was cancelled due to weather and I missed the three suspension votes.

On rollcall No. 292—H. Res. 421—Recognizing and commending the Great Smoky Mountains National Park on its 75th year anniversary, I would have voted ''aye.''

On rollcall No. 293—H.J. Res. 40—Native American Heritage Day Act of 2009, I would have voted ''aye.''

On rollcall No. 294—H. Res. 489—Recognizing the 20th anniversary of the brutal suppression of protesters and citizens in and around Tiananmen Square, I would have voted ''aye.''

RECOGNIZING 65TH ANNIVERSARY OF ALLIED LANDING ON D-DAY

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. POE of Texas. Madam Speaker, ''We shall not flinch or fail. We shall go on to the end. . . . We shall fight on the seas and oceans. We shall fight with growing strength in the air. We shall defend . . . whatever the cost may be. We shall fight on the beaches. We shall fight on the landing grounds. We shall fight in the fields and in the streets. We shall fight everywhere. We shall never surrender.''

Winston Churchill said this showing the dedication of our armed forces. They never give up; and, of course, they never give in.

Churchill was right, Madam Speaker. In WWII, American troops did not flinch—they fought wherever and whenever they were. needed—to the very end.

For many young Americans, 31,000, to be specific, that courage took them to the beaches of Normandy, France.

And for more than 6,000 Americans that meant giving everything they had for the cause of liberty and freedom.

This July 6th marks the 65th anniversary of the infamous D-day.

I am a proud cosponsor of the resolution before the House today which expresses the gratitude and appreciation of the House of Representatives for the acts of heroism and military achievement of all the Members of the Armed Forces who participated in the D-day landings on Normandy beach.

These brave warriors went to war to liberate Europe for the cause of freedom.

The average age of the brave young warriors representing the United States on those shores was just 20 years old.

They might have been young Madam Speaker, but their leadership and their commitment to freedom marked the beginning of the liberation of France and ultimately culminated in the destruction of the Nazi Empire and the triumph of the Allied Forces.

I am pleased to speak in support of the resolution today and urge all my colleagues to support this important legislation.

And that's just the way it is.

HONORING THE JHPIEGO GROUP

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. RUPPERSBERGER. Madam Speaker, I rise before you today to honor the JHPIEGO Group for its continuing efforts in preventing the deaths of women and children around the globe, on its 35th Anniversary.

For two and a half decades, the JHPIEGO Group has brought medical innovations into common practice for the worlds most vulnerable populations in order to bring high-quality medical services to these areas. While they began as a group of technical experts in reproductive, maternal, and children's health, they have expanded their purpose by embracing new challenges, including education of HIV/AIDS prevention, malaria, and cervical cancer.

In its continuing mission to save lives around the world, the JHPIEGO Group has become an innovator of healthcare treatments, a leader in sustainable healthcare systems, and a voice around the world advocating for the advancement of policies and programs designed to improve healthcare the world over. They have become a model for similar institutions worldwide by providing data, research and training.

The JHPIEGO Group provides front-line healthcare workers with effective, low cost, and hands on solutions designed to enhance the delivery of health care services in difficult environments. By partnering with organizations from the local to national level, the JHPIEGO Group has been successful in building sustainable local capacity healthcare reforms through advocacy, policy development, and quality improvement approaches. Over the course of this journey, the JHPIEGO Group has worked in 150 countries and is currently running 60 programs in 40 countries.

Madam Speaker, I ask that you join with me today to honor the JHPIEGO Group on this memorable occasion. Their dedication to improving the quality of life of people around the world has provided life saving health care and opportunities for medical advancement that have made a positive difference in the global community.

RECOGNIZING THE POLK COUNTY CHAMBER OF COMMERCE

HON. PHIL GINGREY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. GINGREY of Georgia. Madam Speaker, I rise today to recognize a delegation, from my district that has traveled to Washington representing Polk County, Georgia and its Chamber of Commerce. The delegation includes representatives from the Chamber, elected officials from the City of Cedartown, elected officials from the City of Rockmart, county elected officials, as well as local business leaders.

Located just outside metro Atlanta on the Georgia-Alabama line, Polk County offers a number of great opportunities for both residents and businesses that are looking to locate to Georgia. However, like counties across America, Polk County and its citizens are facing their own economic challenges. For this reason, this delegation has come to Washington to advocate on behalf of their community and to discuss both the potential positive and negative impact that actions here in Washington can have not just on Polk County, but on all of our Nation's communities.

I want to take this opportunity to commend the Polk County Chamber of Commerce for taking this proactive approach in representing the best interests of the people of Northwest Georgia. I look forward to our visit as we continue to work together to facilitate a stronger and even more economically vibrant Polk County.

PERSONAL EXPLANATION

HON. TRENT FRANKS

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. FRANKS of Arizona, Madam Speaker, on rollcall No. 293, I was unavoidably detained.

Had I been present, I would have voted "yes."

HONORING WINKELMAN BUILDING CORPORATION OF ST. CLOUD, MINNESOTA, FOR 40 YEARS OF EXCELLENCE

HON. MICHELE BACHMANN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mrs. BACHMANN. Madam Speaker, I rise today to honor Winkelman Building Corporation on its 40th anniversary as a business leader in the St. Cloud community. Success at their level of expertise could not have been achieved without hard work, long hours, and many sacrifices. I know that everyone at Winkelman Building Corporation can be very proud of the accomplishment that brings them together at this milestone.

Winkelman Building Corporation has been working with communities across the nation to build structures that serve a purpose and make a statement. They have been recognized 18 times by local and national groups for their innovation and excellence since 1993. Most recently, they were awarded the Project of the Year by the Minnesota Construction Association for the Kennedy Community School in St. Joseph, Minnesota. This school is the pride of the community and one of the first Leader in Energy and Environmental Design (LEED) certified schools in the nation. When I toured the Kennedy Community School I was impressed by the amount of thought that went into making it not only an innovative facility, but a welcoming place in which children could learn.

I rise today, Madam Speaker, to honor the tireless efforts of the employees at Winkelman Building Corporation that have brought this company four decades of success. The backbone of our local and national economies is America's small businesses, and through good times and bad, companies like Winkelman are pulling through with resolve and optimism. I join other community and business leaders in St. Cloud in looking forward to another 40 years of groundbreakings, grand openings and award celebrations.

FAA REAUTHORIZATION ACT OF 2009

SPEECH OF

HON. JIM MATHESON

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 21, 2009

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 915) to amend title 49, United States Code, to authorize appropriations for the Federal Aviation Administration for fiscal years 2009 through 2012, to improve aviation safety and capacity, to provide stable funding for the national aviation system, and for other purposes:

Mr. MATHESON. Mr. Chairman, I rise today to speak in support of Navigational Aids funding for the new St. George airport in Utah.

I would like to thank Chairman OBERSTAR and the T&I committee staff for working on this important piece of legislation.

Last October, the City of St. George broke ground on the construction of a new replacement airport—this is the only airport in the country currently being built. While the FAA has committed to funding a large portion of the project, they did not provide enough funding for critical navigational equipment.

Given the difficult mountainous terrain and the need to avoid flying over two National Parks—Zion and the Grand Canyon—navigational equipment for the new airport is essential for public safety.

In April, Transportation Secretary Ray LaHood committed to the City that FAA would fully fund the navigational aids component of the airport.

I would like to thank the Secretary for undertaking this commitment. I stand ready to work with the FAA, DOT, and the T&I committee to make sure funding is provided in order to open the new airport on time.

A TRIBUTE TO JANE HAGEDORN

HON. DORIS O. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. MATSUI. Madam Speaker, I rise today in recognition of Jane Hagedorn's 33 years of service as Chief Executive Officers of Breathe California of Sacramento-Emigrant Trails, Inc. As Jane retires, she leaves a lasting legacy of dedication and commitment to the Sacramento region. After decades of service, her leadership and expertise will be deeply missed by all. I ask all my colleagues to join me in honoring one of Sacramento's finest public servants.

After earning her bachelor's degree with honors in political science from the University of North Carolina at Chapel Hill, and her master's degree in International Relations and Latin American Studies from Johns Hopkins School of Advanced International Studies, Jane spent the last three decades advocating on behalf of the people of Sacramento for improved air quality. I met Jane when she first came to Sacramento and have always been impressed by her intellect, compassion, and desire to do what is right. She began her career with Breathe California of Sacramento-Emigrant Trails, Inc, formerly known as American Lung Association of Sacramento Emigrant Trails, in 1976. Under her leadership, the association has developed innovative clean air strategies which include creating the Cleaner Air Partnership with the Chamber of Commerce, bringing light rail to the Sacramento area, and working toward clean air initiatives. Breathe California was also a strong proponent of Proposition 99, California's tax initiative to reduce smoking.

Her dedication to our community is apparent through her work both with Breathe California and with other local non-profits. She serves on the board of Tahoe Regional Planning Agency, Arden Park and Recreation District, Friends of Light Rail, Planning and Conservation League, Sacramento Tomorrow Coalition, and the Sacramento Symphony. Additionally, she was the first woman appointed to the Sacramento County Planning Commission, was the founding President of the Sacramento Tree Foundation and is instrumental in the California Oak Foundation. Jane has chaired the American River Parkway Funding Working Group and served on the Board of Directors of Valley Vision. She has taught at the University of California, Davis Graduate School of Management and has co-authored two books on historic preservation of native oaks in the Central Valley. Personally, I am honored to call Jane my friend. She has always been a pleasure to work with. Her thoughtfulness and intelligence has touched many policy debates and countless people's lives.

Madam Speaker, I am honored to pay tribute to Jane Hagedorn's distinguished commitment to Sacramento and regions needs. Jane's outstanding leadership and dedication to Breathe California of Sacramento-Emigrant Trails Inc, has helped promote clean air strategies which has set an example for others across the state nation. We all are thankful for her efforts. As Jane's husband Jim, her children James and Jennifer, colleagues, family, and friends gather to honor her service, I ask all my colleagues to join me in wishing Jane Hagedorn continued good fortune in her future endeavors.

DEDICATION OF THE LIGHT OF RECONCILIATION MEMORIAL IN PRINCE EDWARD COUNTY, VIRGINIA

HON. THOMAS S.P. PERRIELLO

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. PERRIELLO. Madam Speaker, today I wish to commemorate the official unveiling and dedication of the Light of Reconciliation Memorial in Prince Edward County, Virginia. The Light of Reconciliation, in the bell tower of the Prince Edward County Courthouse, is a permanent monument created to honor the memory of the historic events in Prince Edward County during the era of public school segregation, to recognize the role of local students in ending school discrimination in Virginia and across the United States and to call on each of us to shine our own Light of Reconciliation in the world.

In 1951, a group of dedicated high school students led by Barbara Rose Johns organized a strike to protest the disgraceful condition of Robert Russa Moton High School in Farmville, Virginia. The school lacked a gymnasium, a cafeteria, heat, desks, blackboards, and in some cases even classrooms: a school bus parked outside served as one classroom for the overcrowded and underfunded school. The student strike ultimately led to Davis v. County School Board of Prince Edward County, one of the five court cases that would make up Brown v. Board of Education. The Davis case was the only one of the five to arise from student activism. Following the Supreme Court's decision that ''separate educational facilities are inherently unequal,'' Prince Edward County closed its public schools for the years of 1959 to 1964 rather than allow black and white students to attend school together. After five years and the Supreme Court decision in Griffin v. County School Board, the schools were finally reopened and integrated. The Light of Reconciliation and the memorial stand as both a reminder of the mistakes of the past and a celebration of the students from R.R. Moton High School and from other schools across the country who continued the fight for education for all.

Today marks the 50th anniversary of the action that would close the Prince Edward County public schools, one of the darkest moments of Virginia's civil rights struggle. Acknowledging this part our history is painful, and I commend the Prince Edward County Board of Supervisors for their courage in publicizing past transgressions against our fellow citizens in hopes of preventing future ones. It is only in seeking truth about our past that we can hope to pursue justice for our future, and this memorial is a public expression of our renewed commitment to justice for all.

On this occasion we are reminded that each of us is called to work to bring our nation closer to its fundamental ideals of equality. If one 16-year-old student can spark the protests that would ultimately galvanize a nation in the cause of civil rights, we should all ask of ourselves what we can do to fight for human dignity and the common good. As long as inequality and suffering persist in our nation and in the world, our work is incomplete. This memorial not only looks back to the dreams deferred by locked schoolhouse doors, but also forward to a better nation, one of ever-expanding opportunity for all. Martin Luther King Jr. once said, ''Darkness cannot drive out darkness; only light can do that.'' Let this light in Prince Edward County, Virginia be a permanent reminder of our ongoing struggle for a fairer world.

CONGRATULATING WAR HERO IRA WEINSTEIN ON HIS 90TH BIRTHDAY

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. KIRK. Madam Speaker, I rise today in honor of the 90th birthday of Ira Weinstein. For almost 60 years Ira has been a resident of Illinois' 10th District, and currently lives in Glencoe, IL. We also take this time to commemorate Ira, a WWII hero and an ex-POW for his bravery and service to his country.

Born in Chicago in 1919 to a family of modest means, Mr. Weinstein found his calling in advertising when he worked for his high school newspaper. Unfortunately, his career aspirations were soon interrupted by the attack on Pearl Harbor and America's entrance into World War II.

In 1942, just before completing his training as a bombardier-navigator, he married Norma Randall, a marriage that would last until her death in 1995. While overseas, Ira was based with the 702nd Squadron in the 445th Bomb Group of the famed 8th Air Force. He flew two dozen harrowing missions, each time taking over the piloting duties of the massive B–24 Liberator.

Trying to close out his quota of missions in order to go back home to his new bride, he traded in his pass for the Jewish High Holidays to complete one more mission. What was supposed to be a routine-mission became the ill-fated Kassel mission—the greatest single loss of men during the European air war. On September 27, 1944, his B–24 was critically damaged by an enemy attack forcing him to evacuate the bombardier's compartment while the aircraft was burning, falling to the ground in a dizzying flat spin. After a failed attempt, he bailed out with little time to spare. Landing safely in the tree line, Ira watched the locals pull his copilot out of the wreckage and pitchfork the man to death.

After 6 days of evading capture, Mr. Weinstein was forced to turn himself in to local authorities in Germany. For the better part of the following year, he was held prisoner in Stalag Luft I in Barth, Germany, enduring brutal and unthinkable conditions. On May 11, 1945, the camp was liberated and for his heroism Ira was awarded several medals, including the Purple Heart and the distinguished French Croix de Guerre.

Returning to Chicago, Mr. Weinstein took over a small advertising agency and grew it into a nationally known direct marketing firm. To those close to him, Ira was indefatigable, inquisitive, and inspiring, a man of unquestioned integrity, a loving father to two daughters, Laura and Terri, a proud grandfather, a

cherished husband and a successful businessman acknowledged by his peers as a pioneer in his field. Today, Ira is retired and remarried to Mary Gandelman, with whom he continues to travel the globe.

On June 10, we pause to celebrate the 90th birthday of Ira Weinstein. I commend Ira for his hard work and determination throughout some of the most challenging moments in American history. I hope that his story will never be forgotten.

PERSONAL EXPLANATION

HON. TIMOTHY V. JOHNSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. JOHNSON of Illinois. Madam Speaker, unfortunately last night, June 2, 2009, I was unable to cast my votes on H. Res. 421, H.J. Res. 40, and H. Res. 489 and wish the record to reflect my intentions had I been able to vote.

Had I been present for rollcall No. 292, on suspending the rules and passing H. Res. 421, Recognizing and commending the Great Smoky Mountains National Park on its 75th year anniversary, I would have voted "Aye."

Had I been present for rollcall No. 293, on suspending the Rules and passing H.J. Res. 40, To honor the achievements and contributions of Native Americans to the United States, and for other purposes, I would have voted "Aye."

Had I been present for rollcall No. 294, on suspending the rules and passing H. Res. 489, Recognizing the 20th anniversary of the suppression of protesters and citizens in and around Tiananmen Square, I would have voted "Aye."

A PROCLAMATION HONORING OHIO'S FIRST AND OFFICIAL OUTDOOR DRAMA, TRUMPET IN THE LAND, ON THE 40TH ANNIVERSARY OF ITS FIRST PERFORMANCE

HON. ZACHARY T. SPACE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SPACE. Madam Speaker:

Whereas, former Governor James Rhodes named Trumpet in the Land Ohio's Official Outdoor Drama; and

Whereas, more than 2,300 actors and technicians have taken part in the drama; and

Whereas, July 3rd marks the 40th Anniversary of the first performance of Trumpet in the Land; and

Whereas, Trumpet in the Land is anticipated and enjoyed every year by hundreds of Ohio families and gives them a window into the historical beginnings of our great state; now, therefore, be it

Resolved, that along with the friends and family of the Ohio Outdoor Drama Historical Association and the residents of the 18th Congressional District, I congratulate the cast and crew of the 40th Anniversary production of Trumpet in the Land, as well as anyone who has been fortunate enough to experience and take part in this uniquely Ohioan historical drama.

A TRIBUTE TO THE CAMPBELLSVILLE UNIVERSITY BASEBALL TEAM

HON. BRETT GUTHRIE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. GUTHRIE. Madam Speaker, I rise today to honor the Campbellsville University Baseball Team on their outstanding performance this season. They demonstrated extraordinary athletic and academic achievement that brought national attention to Campbellsville University, the Campbellsville and Taylor County communities, and all of Kentucky's Second District.

Under the leadership of head coach Beauford Sanders and his staff, the Campbellsville University Baseball Team reached the National Association of Intercollegiate Athletics (NAIA) World Series for the first time in school history. The Tigers reached the NAIA World Series following a tremendous performance by senior pitcher Bryan Fuller. Mr. Fuller pitched 21 scoreless innings in 26 hours to give the team three straight victories that propelled them to the highest level of competition in their league.

The team finished the season with a remarkable 39–12 record. Coach Sanders reached a noteworthy milestone this season as well by reaching 835 career wins for his tenure. Coach Sanders and his staff should be commended for providing leadership, direction, and encouragement to these student athletes.

The Campbellsville University Baseball Team's performance is a testament to their exceptional talent and commitment to excellence. Theirs is an example for all of Kentucky to follow. I commend the coaching staff and student athletes for the recognition they have brought to Campbellsville University, the Campbellsville and Taylor County communities, and the Second District.

A TRIBUTE TO THE JEWISH LABOR COMMITTEE AND ITS WESTERN REGION BASED IN LOS ANGELES ON THE OCCASION OF THE JLC'S 75TH ANNIVERSARY

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. LUCILLE ROYBAL-ALLARD. Madam Speaker, I rise today to recognize the Jewish Labor Committee and the committee's Western Region, based in Los Angeles, California, on the occasion of the national non-profit organization's 75th anniversary of fighting to protect the rights of working families in our country.

In 1934, the national Jewish Labor Committee (JLC) formed on New York's Lower East Side by a coalition of labor and Jewish groups that recognized that European Nazism threatened the rights of trade unionists and Jews. That same year, the committee's "Western Region" formed in Los Angeles.

With its funding drawn primarily from labor union members and the Jewish community, the JLC focused its resources on saving unionists and other political prisoners from Nazi tyranny in Europe during World War II. Alerting the world to the Nazi/Fascist threat, the JLC worked tirelessly with its labor affiliates to defeat Hitler by organizing economic boycotts of German-made products and raising large amounts of money for anti-Nazi partisan fighters. Immediately following the war, the JLC helped thousands of people, especially war orphans, survive Displaced Persons camps and emigrate to America and the then-forming state of Israel.

Recognizing post-war changing labor patterns, the JLC's Western Region developed deep relationships with Latino, African American and Asian communities in Los Angeles, continuing the fight for social justice on political fronts. The JLC's Western Region fought to elect minority candidates, gain fair housing, eradicate racial discrimination, and defeat anti-labor campaigns.

In 1949, the JLC's Western Region worked with the AFL Central Labor Council, the CIO Council, The Anti Defamation League, American Jewish Congress, the National Association for the Advancement of Colored People, Japanese American Citizens League, the Mexican-American oriented Community Services Organization, and many religious organizations, to rally behind my father, the late Congressman Edward Roybal, who was then a Los Angeles City Councilman as he proposed the Fair Employment Practices Ordinance. Eight years later, in 1958, the JLC's Western Region joined a coalition of labor, minority and religious civil rights groups to prevent California from becoming a Right-to-Work state.

In 2009, under the current leadership of President Floyd Glen-Lambert, the Jewish Labor Committee Western Region still fights anti-labor campaigns, most notably by pushing for passage of the Employee Free Choice Act in partnership with the Los Angeles County Federation of Labor.

To remind the community how critical it is for workers to safeguard organized representation to bargain for fair wages, benefits and conditions, the JLC holds annual Labor Passover Seders and continues to work with labor and Jewish businesses to resolve disputes. The JLC is also forming a new Ethnic Coalition to address persistent labor issues.

Under the auspices of Captive Daughters of the Los Angeles Unity Coalition, the JLC's Western Region is using a grant to make labor aware of human trafficking, the fastest growing crime in America. The JLC will never forget how quickly slave labor burgeoned in Europe during World War II and remains committed to its eradication.

As an affiliate of the Labor Task Force for Universal Healthcare, the JLC's Western Region is making headway on another crucial issue to workers—bringing health care reform to California and the nation. With state budget cuts looming, the Jewish Public Affairs Committee and the JLC's Western Region are also lobbying state legislators on many other critical issues, including how budget cuts will affect our most vulnerable citizens who need in-home health care to avoid being forced into nursing homes and the need for fair wages for in-home health care givers.

Finally, in keeping with the Jewish principle of Tikun Olam, which means "to repair the

world,'' the JLC's Western Region is planning a training program for foster youth who are about to find their first jobs. In an effort to help them succeed, the training program is designed to give them an in-depth understanding of the legal, social and political intricacies of the workplace.

To mark the national organization's 75 year anniversary, the committee's Western Region is holding an awards brunch on June 14 at the Century Plaza Hyatt Regency Hotel in Los Angeles at which a number of honorees will be recognized for their outstanding service to our communities. The honorees are: State Controller John Chiang; Executive Liaison for Universal Pictures James D. Brubaker; President/CEO of the National Association for the Hispanic Elderly Dr. Carmela Lacayo; and Business Manager, Southern California District Council of Laborers, Mike Quevedo Jr.

Madam Speaker, as the Jewish Labor Committee observes this milestone and continues the fight for social and political justice in Los Angeles, California and throughout our great nation, I ask my colleagues to please join me in commending everyone involved with the national JLC and its Western Region as well as this year's honorees for their continued commitment to securing fairness for all working families. I extend to them my best wishes for many more successful years ahead.

PAYING RESPECTS TO PRESIDENT EPHRAIM KATZIR

HON. SCOTT GARRETT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. GARRETT of New Jersey. Madam Speaker, I rise today to pay my respects to a great statesman and an important world leader. This past Saturday, Ephraim Katzir, the fourth President of the State of Israel, passed away at the age of 93.

Over a long and remarkable life, President Katzir dedicated himself to the security of the State of Israel and the progress of mankind. In addition to being a leading Israeli statesman, President Katzir was a world-renowned biophysicist, performing groundbreaking research in defense studies and the natural sciences. After receiving his Ph.D. from the Hebrew University of Jerusalem, Katzir went on to study and teach at leading American universities, such as Harvard, Columbia, and UCLA. He then returned to Israel to lead the Department of Biophysics at the Weizmann Institute of Science, and later became the chief scientist for the Israel Defense Forces. Katzir was awarded the Israel Prize—the state's highest civilian honor—for his work in natural science, and was the inaugural recipient of the Japan Prize for ''original and outstanding achievements in science'' and ''having advanced the frontiers of knowledge and served the cause of peace and prosperity for mankind.'' He was also elected into the British Royal Society of London for the Improvement of Natural Knowledge, and in 1996 became the first Israeli inducted into the American Academy of Sciences.

In 1973, Ephraim Katzir answered Prime Minster Golda Meir's call to serve as President of Israel. During the first year of his tenure, Israel was attacked by her Egyptian and Syrian neighbors in the Yom Kippur War. Just four years later, President Katzir and Prime Minister Menachem Begin welcomed Egyptian President Anwar El Sadat to Jerusalem, making Sadat the first Arab leader to visit the Jewish capital. This visit, combined with President Katzir's dedication to peace and human progress, led to the Camp David Accords a year later and an easing in the previously contentious Israeli-Egyptian relations.

Like Cincinnatus returning to his field, President Katzir chose to not stand for a second term, instead returning to his studies and spending time with his beloved wife, Nina. Though an able public servant, Katzir was never motivated by power not defined by his position. His integrity and intellect had few peers, and his devotion to the State of Israel was sincere and complete. As a scientist, a politician, and a proud citizen, President Katzir dedicated his life to a Jewish state for the Jewish people. Through his stewardship of the Office of President, President Katzir handed down to later generations a safe and prosperous nation.

The prophet Isaiah writes, ''Those who walk uprightly enter into peace; they find rest as they lie in death.'' On behalf of the Fifth District of New Jersey, I wish peace for former President Katzir, and convey my deepest condolences to his family, friends, and country.

PERSONAL EXPLANATION

HON. GREGG HARPER

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. HARPER. Madam Speaker, on rollcall Nos. 292, 293 and 294, my flight was delayed due to weather. Had I been present, I would have voted ''yea'' on all three.

HONORING DR. LEONARD SHLAIN

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. WOOLSEY. Madam Speaker, I rise today with sadness to honor Dr. Leonard Shlain of Mill Valley, California who passed away May 11, at the age of 71, after a struggle with brain cancer.

Dr. Shlain excelled in two professions simultaneously. He was a pioneering surgeon in San Francisco as well as a best-selling author. As Chairman of Laparoscopic Surgery at California Pacific Medical Center and Associate Professor of Surgery at UCSF, he developed his surgical techniques to such an extent that he was flown around the world to train other doctors and also patented several surgical instruments.

His three published books have been best-sellers, their thoughtful and provocative content earning him fans from singer Bjork to Vice President Al Gore. Despite some initial skepticism about a surgeon writing on other topics, his books wove connections between everything from art and physics to human evolution in a highly creative and accessible style.

Art & Physics (1990) was hailed as a visionary exploration of the work of scientists and artists over the centuries. The Alphabet vs. the Goddess (1998) further enhanced his reputation as an insightful and poetic storyteller while Sex, Time and Power: How Women's Sexuality Shaped Human Evolution (2003) offers dramatic explorations into the emergence of the human species. His fourth book, Leonardo's Brain, The Right-Left Roots of Creativity, will be published next year.

Dr. Shlain won many awards and was in high demand as a speaker from Italy to Los Alamos. But the most memorable thing about him was his generous and outgoing personality matched by intellectual curiosity and encyclopedic knowledge. His colleagues, friends, and family were privileged to experience this side of him, and he instilled his enthusiasm and drive in his children.

Daughter Kimberly Brooks relates ''dinner conversations typically spanned from the Heisenberg Uncertainty Principle to politics, literature to an incredibly dirty joke.'' He would often ''diagram the operation of the day on a napkin. Later, his diagrams became more adventuresome and expanded to thought experiments that included what it would be like to sit astride a beam of light and how that corresponded with Picasso's rose period.'' She also remembers how, for show and tell at her elementary school, her dad brought a human brain in a white bucket of formaldehyde and how he built a stained-glass geodesic dome (complete with a hot tub) in the back yard instead of a conventional swing set.

Born in 1937 in Detroit, Michigan, to immigrant parents, Dr. Shlain graduated from high school at the age of 16 and from medical school when he was 23. After a stint as a Captain in the U.S. Army, he got married and moved to Mill Valley in the late sixties.

He is survived by his wife, Judge Ina Gyemant, and children, artist Kimberly Brooks, filmmaker and Webby Awards founder, Tiffany Shlain, and doctor/entrepeneur Jordan Shlain. He was also father in-law to filmmaker Albert Brooks, scientist/artist Ken Goldberg, Ph.D. and Caroline Eggli Shlain, Ph.D., respectively. He had two stepchildren, attorney Anne Gyemant Paris and writer Roberto Gyemant, Jr. His son-in-law Michael Paris is a medical engineer. He is pre-deceased by his sister Shirley Wollock and survived by siblings Marvin Shlain and Sylvia Goldstick, and nine grandchildren (with a tenth on the way).

Madam Speaker, although Dr. Shlain taught his children never to trust a man who needs more than one sentence to describe what he does for a living, it is impossible to sum up his own accomplishments so briefly. The world is a richer place for his work, his spirit, and his wonderful family.

TRIBUTE TO MR. DAVE SALLENGS

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to Dave Sallengs, a Kentuckian whose efforts to fight the scourge of drug addiction throughout Kentucky have made huge strides towards stopping this horrific epidemic. His extensive knowledge of scheduled prescription drug trends has impacted the method in which doctors prescribe

scheduled narcotics, how pharmacists track and fill orders, and the way law enforcement agencies fight the drug problem throughout Kentucky.

As the manager of Kentucky's Drug Enforcement and Professional Practices Branch, Dave Sallengs is responsible for operating the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) monitoring program, as well as enforcing the Kentucky Controlled Substances Act. With the leading prescription monitoring system in the nation, Mr. Sallengs has made it his mission to train a broad range of authorized users on KASPER.

Under the leadership of Mr. Sallengs, the number of KASPER users tripled in merely two years. On average, the number of individuals participating in KASPER continues to grow by an astounding two percent each month. This growth is a testament of his effort to promote and educate health care providers and law enforcement officers to the tremendous impact KASPER can make on people's lives. The KASPER system is one of the best weapons we have in the war against prescription drug abuse and trafficking in the Bluegrass State.

Mr. Sallengs' passion for eliminating drug abuse and addiction is evident by his continual efforts to promote KASPER to all those agencies who benefit from this important program. A graduate of the University of Kentucky College of Pharmacy, Mr. Sallengs spent 12 years as an owner and operator of an independent retail pharmacy before gaining in-depth experience in the wholesale drug and pharmacy computer industries. In addition to being a registered pharmacist, Mr. Sallengs has served his community as a law enforcement officer.

Madam Speaker, I ask my colleagues to join me in honoring the Pharmacy Association of Kentucky's ''Pharmacist of the Year,'' Mr. Dave Sallengs. The award recognizes those who use their profession to benefit those both in the profession and the community. In my opinion, there is no one more deserving of this award in our state, or in our country, as his work is now part of a national model to end prescription drug abuse.

HONORING MS. BEATRIZ A. GARZA

HON. CIRO D. RODRIGUEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. RODRIGUEZ. Madam Speaker, I rise today to celebrate and recognize the accomplishments of Ms. Beatriz A. Garza, the recent college graduate from Haskell Indian Nations University in Lawrence, Kansas, and a tribal member of the Kickapoo Traditional Tribe of Texas (KTTT).

Graduating from Haskell Indian Nations University with an Associate of Arts degree in Liberal Arts in 2006 and a Bachelor of Science degree in Business Administration in 2009, Ms. Beatriz A. Garza has become the first college graduate from the Kickapoo Tribe in the state of Texas.

Ms. Garza grew up in Eagle Pass, Texas, on the Kickapoo Indian Reservation, graduating from Eagle Pass High School's C.C. Winn Campus. Influenced by her father, Juan Garza, Jr., she pursued higher education at Haskell Indian Nations University.

In 1884, the doors of this fine educational institution opened up to the yearning minds of twenty-two American Indian children. It was known then as the United States Indian Industrial Training School. Today, Haskell Indian Nations University, the largest Indian university in the country, serves roughly one thousand college students per semester, and continues to serve American Indians with a multitude of innovative curricula that prepares students to enter baccalaureate programs in areas such as elementary education, American Indian studies, and business administration, which Ms. Garza, as previously noted, pursued herself, emphasizing her study in tribal management. She currently plans to pursue a professional degree in law.

Students attending this University represent federally recognized tribes from across the United States, producing a dynamic and diverse student body bringing life experiences to the forefront of the classroom while integrating American Indian and Alaskan Native culture into all its curricula. Through my time spent on a Texas school board, I have seen people who, like Ms. Garza, are intelligent, responsible, and driven. Ms. Garza excelled in the classroom and pushed forward toward a brighter future. People like Ms. Garza, are the change makers in our world, the backbone of the American dream, and the reason America succeeds. Boundaries like this are broken by great men and women who lead this country forward, inspiring future generations to follow in their footsteps.

I am proud of Ms. Garza's success and it is with great honor that I extend my most sincere congratulations to Ms. Beatriz A. Garza as she makes this monumental milestone in her life.

COMMEMORATING 20TH ANNIVERSARY OF THE TIANANMEN SQUARE SUPPRESSION

SPEECH OF

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 2, 2009

Mr. PAUL. Madam Speaker, I rise to oppose this unnecessary and counter-productive resolution regarding the 20th anniversary of the incident in China's Tiananmen Square. In addition to my concerns over the content of this legislation, I strongly object to the manner in which it was brought to the floor for a vote. While the resolution was being debated on the House floor, I instructed my staff to obtain a copy so that I could read it before the vote. My staff was told by no less than four relevant bodies within the House of Representatives that the text was not available for review and would not be available for another 24 hours. It is unacceptable for Members of the House of Representatives to be asked to vote on legislation that is not available for them to read!

As to the substance of the resolution, I find it disturbing that the House is going out of its way to meddle in China's domestic politics, which is none of our business, while ignoring the many pressing issues in our own country that definitely are our business.

This resolution ''calls on the People's Republic of China to invite full and independent investigations into the Tiananmen Square crackdown, assisted by the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross . . .'' Where do we get the authority for such a demand? I wonder how the U.S. government would respond if China demanded that the United Nations conduct a full and independent investigation into the treatment of detainees at the U.S.-operated Guantanamo facility?

The resolution ''calls on the legal authorities of People's Republic of China to review immediately the cases of those still imprisoned for participating in the 1989 protests for compliance with internationally recognized standards of fairness and due process in judicial proceedings.'' In light of U.S. government's extraordinary renditions of possibly hundreds of individuals into numerous secret prisons abroad where they are held indefinitely without charge or trial, one wonders what the rest of the world makes of such U.S. demands. It is hard to exercise credible moral authority in the world when our motto toward foreign governments seems to be ''do as we say, not as we do.''

While we certainly do not condone government suppression of individual rights and liberties wherever they may occur, why are we not investigating these abuses closer to home and within our jurisdiction? It seems the House is not interested in investigating allegations that U.S. government officials and employees approved and practiced torture against detainees. Where is the Congressional investigation of the U.S.-operated ''secret prisons'' overseas? What about the administration's assertion of the right to detain individuals indefinitely without trial? It may be easier to point out the abuses and shortcomings of governments overseas than to address government abuses here at home, but we have the constitutional obligation to exercise our oversight authority in such matters. I strongly believe that addressing these current issues would be a better use of our time than once again condemning China for an event that took place some 20 years ago.

PERSONAL EXPLANATION

HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. ETHERIDGE. Madam Speaker, I regret that yesterday inclement weather delayed my flight and prevented my timely return to Washington. I was, therefore, unable to cast a vote on a number of roll call votes.

Had I been present, I would have voted Yes on H. Res. 421, recognizing and commending the Great Smoky Mountains National Park on its 75th year anniversary. I would have voted Yes on H.J. Res. 40, to encourage the people of the United States to honor Native Americans by designating the Friday immediately following Thanksgiving Day as Native American Heritage Day. I also would have voted Yes on H. Res. 489, recognizing the 20th anniversary of the brutal suppression of protesters and citizens in and around Tiananmen Square.

IN MEMORY OF TERRENCE L. BARNICH

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. KIRK. Madam Speaker, I rise today to honor the life of Terrence L. Barnich. Terry served as Chairman of the Illinois Commerce Commission (ICC) in the early nineties, and spent the last two years as Deputy Director of the Iraq Transition Assistance Office in Baghdad. Terry died on Memorial Day after his convoy was hit by a roadside bomb on the outskirts of Fallujah.

Terry was appointed Chairman of the ICC by Gov. Jim Thompson in 1989, serving for three years before joining the private sector. In 2007 he took a leave of absence from his job as CEO of Paradigm Resources Group to spend a year working with the State Department in Baghdad. After that year, Terry volunteered to stay in Iraq to continue his work helping the Iraqis build modern public utility systems. He embodied the American commitment to the people of Iraq, and his work was helping us fulfill that commitment.

Terry died after inspecting a new wastewater treatment facility that will provide essential services to Fallujah and Anbar Province. His patriotism and love of his work are evident in a quote he gave a Chicago newspaper shortly after he arrived in Baghdad. He said:

''To those back home who say the Iraqi experience has made the Iraqis unready or incapable for democracy, I say come work with me. I deal with Iraqis who daily brave physical hardship, violence and threats of violence to make their contribution to building a government that deserves the consent of the governed.''

Funeral services were held today in Chicago, and I hope my colleagues will join me in sending our condolences to Terry's family as we remember his dedication to public service.

IN HONOR OF LARRY CAVITT'S 40 YEARS OF TEACHING EXCELLENCE

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SESSIONS. Madam Speaker, I rise today to honor a teaching legend, Mr. Larry Cavitt and to celebrate his forty years of dedicated service at St. Mark's School of Texas. I am proud to represent St. Mark's in the 32nd Congressional District of Texas.

Mr. Cavitt first joined St. Mark's faculty on August 28, 1969 after receiving his M.A. from Southern Methodist University. In his current role, he serves as the 5th grade humanities teacher and senior class advisor. During his tenure at St. Mark's, he has also taught 7th, 8th, and 9th grade Social Studies, 8th grade Humanities, U.S. History, and Advanced Placement Law and Government. Outside of the classroom, members of the basketball and baseball team know him as ''coach.'' In his forty years of service, he has helped shaped young impressionable minds, providing them a firm educational foundation for success. He always encourages his students to chase their dreams and I know these young men have greatly benefitted from his teaching, wisdom, and insight. St. Mark's is a successful institution because of dedicated and caring teachers such as Mr. Cavitt.

I admire him for his passion for teaching and ask my colleagues to join me in expressing our gratitude for his continued service. I congratulate Mr. Cavitt on reaching his forty-year milestone and wish him all the best.

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

SPEECH OF

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 18, 2009

Mr. BERMAN. Madam Speaker, I rise today in support of the Fraud Enforcement & Recovery Act of 2009. I want to specifically address the language in this bill that will strengthen the provisions of our Nation's most effective fraud-fighting tool, the federal False Claims Act. With our Nation spending hundreds of billions of dollars to revitalize our faltering economy, now is the time to plug the loopholes that have been created in the False Claims Act over the last quarter century. Now is the time to update this law to ensure that it reaches the modern fraud schemes that are draining our public fisc with impunity. As one of the authors of both the 1986 False Claims Act Amendments and the relevant language in S. 386 which we consider today, I submit this statement to clarify the true intent of the False Claims Act and to send a clear message that all government funds should be protected from fraud.

I. HISTORY OF THE FALSE CLAIMS ACT

Before I get into the provisions of the bill we are considering today, Madam Speaker, I'd like to provide some background on the False Claims Act, how it came to be and how it has been amended in the past.

Congress enacted the False Claims Act in 1863, in response to complaints about ''the frauds and corruptions practiced in obtaining pay from the Government during the [Civil] War.'' Proposed by President Lincoln, the legislation offered private citizens a reward if they assisted the Government in combating fraud. The sponsor of the original False Claims Act explained that the statute, ''offers, in short, a reward to the informer who comes into court and betrays his coconspirator, if he be such; but it is not confined to that class.''

The 1863 Act authorized private individuals, called ''qui tam relators,'' to bring lawsuits on behalf of the United States to prosecute fraud against the Government and to recover funds that were wrongfully obtained. The Act provided for double damages and a $2,000 civil penalty per false claim, and private individuals who successfully pursued claims under the Act were entitled to half of the Government's recovery. The Act did not authorize the Government to intervene in the private individual's case, nor did it preclude qui tam actions based upon the source of the relator's information.

Nearly eighty years later, in the midst of World War II, Attorney General Francis Biddle requested that Congress make changes to the False Claims Act that would prevent parasitic lawsuits. Biddle was concerned that qui tam complaints were being filed based solely on information contained in criminal indictments. Biddle argued that such cases contributed nothing new and could interfere with the Government's criminal prosecutions. So, he urged Congress to repeal the authorization for qui tam actions.

The Senate and House of Representatives each considered Attorney General Biddle's request, and the House went so far as to pass a bill, H.R. 1203, proposing repeal of the False Claims Act's qui tam provisions. The Senate demurred. The House Judiciary Committee then considered legislation providing that jurisdiction would be barred on qui tam suits that were based on information in the possession of the Government, unless the relator was an original source of that information. Without explanation, the resulting conference report dropped the reference to ''original sources.''

The 1943 amendments changed the False Claims Act in several ways. Most significantly, these amendments authorized the Department of Justice to take over cases initiated by relators. The 1943 amendments required relators to submit all of their supporting evidence to the Department of Justice at the time the relator filed his complaint and gave the Department sixty days to decide whether or not to intervene and take exclusive control of the suit. If the Government elected to intervene, the relator would have no role in the case and no voice in its resolution.

The 1943 amendments also included a ''government knowledge bar,'' which deprived courts of jurisdiction over qui tam actions that were ''based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought.'' The 1943 amendments also significantly reduced the amount of the relator's share of any recovery. In fact, under the 1943 amendments, relators were not assured of a minimum recovery at all. The amendments provided that if the Government prosecuted the suit, the court could award the informer ''fair and reasonable compensation'' not to exceed 10–percent of the proceeds. If the Government did not intervene, the informer's award could not exceed 25–percent of the proceeds.

These changes put the False Claims Act into hibernation. By the 1980s, it had become evident that the False Claims Act was no longer an effective tool against fraud. In particular, some courts, for example in *United States ex rel. State of Wis. (Dept. of Health and Social Services)* v. *Dean*, 729 F.2d 1100 (7th Cir. 1984), had broadly interpreted the government knowledge bar adopted in 1943, holding that the bar precluded all qui tam cases involving information already known to the Government, even when the qui tam relator had been the source of that information.

Additionally, the changes to the amount of the relator's share undermined the Act's usefulness. Individuals with information about fraud against the Government were far less likely to become relators without some guarantee that they would be rewarded if they prevailed, particularly since relators often exposed fraud by their employers and were terminated from their jobs as a result. The 1943 amendments did not provide relators with an adequate incentive to bring qui tam actions. Consequently, from 1943 to 1986, fewer than

ten False Claims Act cases were brought each year.

As a result of the problems that arose following the 1943 amendments, by the 1980s, fraud against the Government had grown to unprecedented levels. A 1981 three-volume General Accounting Office report, Fraud in Government Programs:—How Extensive is It?—How Can it Be Controlled, concluded that fraud against the Government was ''widespread.'' The report also noted that false or fraudulent claims against the Government result both in monetary losses and a broad spectrum of non-monetary losses. These include, for example, loss of confidence in Government programs, Government benefits not going to intended recipients, and harm to public health and safety. During this same period, several legal scholars began discussing the merits of increased use of the False Claims Act to address fraud against the Government.

In response to these concerns, Senators CHARLES GRASSLEY, CARL LEVIN, and Dennis DeConcini introduced S. 1562 in 1985. The Committee on Administrative Practice and Procedure of the Senate Committee on the Judiciary held hearings on S. 1562 and S. 1673, a similar bill supported by the Reagan Administration. The House of Representatives took up a similar bill, H.R. 3317, and the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary held hearings on that measure.

Both Committees heard from a range of witnesses, including whistleblowers and the Department of Justice. The Senate Committee heard testimony that ''45 of the 100 largest defense contractors—including 9 of the top 10—were under investigation for multiple fraud offenses.'' In addition, the Committee learned that, due to limited Government resources, ''[a]llegations that perhaps could develop into very significant cases are often left unaddressed at the outset due to a judgment that devoting scarce resources to a questionable case may not be efficient. And with current budgetary constraints, it is unlikely that the Government's corps of individuals assigned to anti-fraud enforcement will substantially increase.'' The Senate and House bills sought to address this resource problem by constructing legislation which would empower private citizens with knowledge of fraud or false claims to come forward and bring the resources of private counsel to bear on Government investigations under the Act.

In response to the problems Congress identified, as well as concerns raised by the Department of Justice and potential defendants, Congress adopted the False Claims Amendments Act of 1986. President Reagan signed the bill into law on November 23, 1986. The 1986 amendments made a number of changes to the False Claims Act. Although the amendments did not include a provision for recovering consequential damages, they increased the penalty provision, which had been unchanged for more than 100 years, from double damages to treble damages. In order to limit interference with Government investigations, the amendments provided that qui tam actions be filed under seal for sixty days and served on the United States, but not the defendant, to provide the Government time to determine whether to take over the action. However, while the amendments limited the seal period to sixty days, they permitted the Government the opportunity to request and receive an extension for good cause. The amendments also provided the Government, for the first time, the option of intervening later in a case, even if it had initially declined to join, if it had ''good cause'' to do so. Furthermore, the legislation provided that a qui tam relator would remain a fully participating party even if the Government joined the case, but provided that a court could, under specified circumstances, restrict the relator's role.

Additionally, in order to incentivize individuals to report false claims and fraud, Congress eliminated the uncertainty of purely discretionary rewards. Rather, since 1986, rewards to qui tam relators have been based on the relator's contributions. In most cases, relators would be guaranteed at least a 15–percent share of the Government's recovery. The 1986 amendments also eliminated a potent disincentive for relators, by creating a new right of action for any employee who is retaliated against for lawful acts in furtherance of False Claims Act proceedings. Under the 1986 amendments, employees who suffered retaliation would be entitled to all relief necessary to make them whole, including double back pay and attorneys' fees. The 1986 amendments also sought to replace the government knowledge bar with a ''public disclosure bar'' that would only bar truly parasitic relators whose complaints were ''based upon allegations or transactions in a . . . [Government proceeding] or investigation, or from the news media,'' and were not an ''original source'' as defined under the Act. Congress also authorized the award of attorneys' fees to a defendant prevailing in a suit that ''the court finds . . . was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.''

II. THE CURRENT FALSE CLAIMS ACT

Currently, the False Claims Act permits the Government to recover treble damages from those who knowingly present, or cause to be presented, false claims to a United States Government officer, employee or member of the Armed Forces; or who knowingly make, or cause to be made, false statements to get such claims paid by the United States. The Act also applies to those who make false statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government. It also covers certain conspiracies to violate the Act. In addition to damages, the courts are required to award the Government a civil penalty of $5,500 to $11,000 for each violation of the Act. The Government is entitled to recover such forfeitures upon any showing that a defendant violated the False Claims Act, without needing to prove that the violation resulted in damages in the case at hand. Thus, a defendant may be held liable for these penalties under the False Claims Act whether or not payment was made on the tainted claim.

The Act defines several statutory terms. The term ''person'' is broadly defined in the law's civil investigative demand provision to include partnerships, associations, and corporations, as well as States and political subdivisions thereof. The statutory definition of ''claim'' is also intended to be read broadly and, indeed, is not an exclusive list. The definition applies to any request or demand for Government money or property, regardless of whether it is submitted to the Government or to another entity, such as a Government contractor, agency, instrumentality, quasi-governmental corporation, or a non-appropriated fund. In defining the word ''claim'' so broadly, Congress intended in 1986 to make sure that the FCA would impose liability even if the claims or false statements were made to a party other than the Government, if the payment thereon could potentially result in a loss to the Government or cause the Government to wrongfully pay out money. For example, because any fraud that reduces the effectiveness of programs and initiatives the Government has sought to advance also undermines the Government's purpose in supplying funding support, Congress intended for a false claim to the recipient of a grant from the United States or to a State under a program financed in part by the United States, to be considered a false claim to the United States.

In sum, Congress intended the False Claims Act to protect all Government funds and property, without qualification or limitation. However, over the years, some courts have incorrectly grafted limitations to the reach of the Act, leaving billions of dollars vulnerable to fraud. Most recently, in June 2008, the Supreme Court ruled in the Allison Engine decision that, absent the ''Government itself'' inking the check or approving a false claim, the Act does not impose liability for false claims on Government funds disbursed for a Government purpose by a Government contractor or other recipient of Government funds, even if such fraud damages the Government or its programs. Because so many inherently governmental functions are carried out by government contractors these days, including contracting and program management functions, this ruling severely limits the reach of the law. The primary impetus for the current corrective legislation is to reverse these unacceptable limitations and restore the False Claims Act to its original status as the protector of all Government funds or property. While we cannot possibly predict the breadth of fraudulent schemes that can be used to target the public fisc, I take this opportunity to stress that, when done knowingly, the following conduct clearly violates the False Claims Act:

Charging the Government for more than was provided.

Seeking payment pursuant to a program for which the claimant was not eligible.

Demanding payment for goods or services that do not conform to contractual or regulatory requirements.

Fraudulently withholding property from the Government or attempting to pay the Government less than is owed in connection with any goods, services, concession, or other benefits provided by the Government.

Fraudulently seeking to obtain a Government contract.

Submitting a fraudulent application for a grant of Government funds.

Submitting a false application for a Government loan.

Requesting payment for goods or services that are defective or of lesser quality than those for which the Government contracted.

Making false statements for a loan guaranteed by the Government that later defaults.

Requesting Government services to which one is not entitled.

Submitting a claim that falsely certifies that the defendant has complied with a law, contract term, or regulation.

Submitting a claim by a person who has violated a statute or regulation, the violation of which is capable of influencing the payment decision.

Submitting a false application in a multi-staged grant application process, where the second stage of the application would not have been granted had the applicant been truthful in the first stage.

Submitting a claim for payment even though the defendant was violating the Government-funded program's conditions of participation or payment.

Submitting a claim that seeks payment for an estimate or opinion that the defendant knows to be false.

Submitting claims based on an interpretation of a regulation or contract that the defendant knows has been rejected by the Government.

Fraudulently cashing a Government check or knowingly keeping Government funds that were initially wrongfully or mistakenly obtained.

The False Claim Act does not specify a particular method for assessing damages. Courts, however, should liberally measure damages to effectuate the remedial purpose of the Act, which is to afford the Government a full and complete recovery. The Government has finite resource. So when a fraudfeasor wrongfully obtains or retains Government owned or administered funds, it prevents the Government from achieving the full purposes and benefits intended to result from its spending or from utilizing funds wasted as a result of fraud or abuse for other purposes. Indeed, when a defendant obtains a Government contract under false pretenses or wrongfully qualifies for a Government-funded program, it has no right to receive payment for the services it provides. In such a case, the Government should be awarded damages of the entire amount paid by the Government. Finally, it has long been the law that where the Government received legitimate value from the defendant's work, any offset occurs after, rather than before, trebling. This assures, for example, that defendants who know they are not eligible to participate in a Government program or contract cannot substantially evade and defeat the purposes of eligibility requirements by contending that the services or products they provided under false pretenses have similar market value to services or products that otherwise would have been provided by persons whom the Government intended to be eligible.

When a court calculates civil penalties under the False Claims Act, it should consider each separate bill, voucher or other demand, concealment of payment, or other prohibited act as a separate violation for which a civil penalty should be imposed. This is true although many such claims may be submitted at one time. For example, a doctor who completes separate Medicare claims for each patient treated will be liable for a civil penalty for each such claim, even though several paper claims forms or electronic requests for payment may be submitted to a Medicare contractor at one time. Likewise, each claim for payment submitted under a contract, loan guarantee, or other agreement which was originally obtained by means of false statements or other corrupt or fraudulent conduct, or in violation of any statute or applicable regulation, constitutes a false claim. For example, claims submitted under a contract obtained through collusive bidding are false and actionable under the Act, as are all Medicare claims submitted by or on behalf of a physician who knows he or she is ineligible to participate in the program.

III. PURPOSE OF THE FALSE CLAIMS ACT AMENDMENTS

Since its inception, the central purpose of the False Claims Act has been to enlist private citizens in combating fraud against the U.S. Treasury. Specifically, the Act's qui tam provisions were crafted to provide a clear procedural roadmap, so as to assist and encourage private citizens to not only report fraudulent schemes, but to actively participate in investigating and prosecuting those who steal from the public fisc. However, over the course of the Act's history, courts have embraced a number of conflicting interpretations that have removed protection for billions of federal dollars and discouraged qui tam relators from filing suits under the Act.

The False Claims Act amendments included in S. 386, the Fraud & Enforcement & Recovery Act of 2009, remove some of the confusion that is currently undermining the Act's ability to fully reach those who target the American tax dollar. S. 386 clarifies a number of key provisions and reaffirms that the False Claims Act is intended to protect all Government funds, without qualification or limitation, from the predation of those who would avail themselves of taxpayer money without the right to do so. This legislation is the first step in correcting the erosion of the effectiveness of the False Claims Act that has resulted from court decisions contrary to the intent of Congress. This mounting confusion occurs at a time when the country can least afford weakened antifraud legislation. Particularly now, at a time of dramatically-increased reliance on private contractors to perform what have traditionally been viewed as governmental functions, clarity of purpose and effect must be the hallmarks of the False Claims Act.

The False Claims Act also needs to be amended to bolster protections for qui tam plaintiffs, the individuals who bring fraud on government programs to the attention of the federal government and file FCA suits on behalf of the United States. Qui tam relators have been able to uncover vast amounts of fraud, and their efforts have resulted in the return of billions to the Treasury. In Fiscal Year 1986, the year prior to Congress revitalizing the False Claims Act qui tam provisions, the Department of Justice recovered just $54 million under the Act. Since then, there has been a steady increase in recoveries, culminating in settlements and judgments of more than $5 billion in the past two years. This success has been due, in large part, to qui tam relators who ferreted out and prosecuted False Claims Act violations. Indeed, of the $21.6 billion recovered under the False Claims Act from 1986 to 2008, $13.7 billion was the result of qui tam actions. However, with estimates of fraud and abuse losses remaining in the range of 10% of disbursements to contractors, much remains to be done.

In February 27, 2008, testimony before the Senate Committee on the Judiciary, Michael F. Hertz, Deputy Assistant Attorney General, Civil Division of the U.S. Department of Justice, whose long career as the Government's chief False Claims Act prosecutor predates the 1986 amendments, noted the critical role played by qui tam plaintiffs:

> [T]he 1986 qui tam amendments to the Act that strengthened whistleblower provisions have allowed us to recover losses to the federal fisc that we might not have otherwise been able to identify.

Recent testimony heard by the House Committee on the Judiciary underscores the critical role qui tam relators play in uncovering and prosecuting violations of the False Claims Act. The Subcommittee on Courts, the Internet and Intellectual Property and the Subcommittee on Commercial and Administrative Law held a joint legislative hearing on June 19, 2008, on H.R. 4854, the False Claims Act Corrections Act of 2007, a bill I sponsored with Mr. SENSENBRENNER to address many of the same problems that are addressed in S. 386, as amended by the House of Representatives. At that hearing, the Subcommittees heard testimony from Shelley R. Slade, a Washington, D.C. attorney who represents qui tam plaintiffs and serves on the Board of Directors of Taxpayers Against Fraud, a national nonprofit public interest organization dedicated to fighting fraud against the federal and state governments. Ms. Slade, who also handled FCA cases and related matters for the U.S. Department of Justice for ten years, testified that:

> Qui tam plaintiffs are key to the Government's efforts to fight fraud, mainly for two reasons. First, as inside witnesses, they produce evidence that can be absolutely critical to establishing liability. Fraudulent activity by its very nature is concealed. . . . Without the help of insiders who brought the Government documents and other hard evidence of the fraud, it would have been extremely difficult for the Government to develop sufficient evidence to establish liability in many of the successful FCA cases. Second, it is the relentless, zealous pursuit of qui tam litigation by qui tam plaintiffs and their counsel that has led to many of the largest FCA cases in the last eighteen years. A close study of the largest recoveries will reveal that, in many instances, the qui tam plaintiff spent years either trying to persuade the Government of the merits of the case before finally achieving an intervention decision, or litigating the case following a Government declination.

Over the course of the last twenty years, it has become increasingly evident that fraud permeates a very wide range of Government programs, ranging from welfare and food stamps benefits to multi-billion dollar defense procurements; from crop subsidies to disaster relief programs; and from Government-backed loan programs to health care and homeland security.

While fraud is not limited to any one Government agency, fraud in the health care arena has been particularly pernicious, covering nearly every facet of this industry from hospitals and laboratory work to drug companies, durable medical equipment makers, nursing homes, and renal care facilities. In the health care arena, recovery in the top twenty hospital fraud cases settled under the False Claims Act totaled more than $3.4 billion. The largest twenty settlements against pharmaceutical companies exceed, in total, $4.6 billion.

While qui tam relators have long increased the efficiency of the Federal Government in identifying fraud and false claims and understanding the mechanics and scope of particular schemes, the role of relators has been particularly important in the health care arena where the complexity of frauds might otherwise thwart a Government investigation.

Of the 6,199 qui tam False Claims Act cases filed between 1986 and 2008, more than half (3,306) focused on fraud against Government health care programs, such as Medicare and Medicaid. These cases were responsible for recovering $10.1 billion, or more

than 74-percent of the total $13.7 billion recovered in qui tam cases. Along with fraud against the health care programs, fraud against the Department of Defense still appears to be pervasive, with about 12-percent of recoveries, or $1.7 billion, recovered due to qui tam actions involving DoD contracts. The cost of fraud cannot be measured only in dollars and cents. GAO pointed out in its 1981 report, fraud erodes public confidence in the Government's ability to efficiently and effectively manage its programs. General Accounting Office, Fraud in Government Programs: How Extensive is It?—How Can it Be Controlled? (1981).

Thus, fraud continues to drain funds from the public fisc, and the Government is increasingly relying on relators to uncover these fraudulent schemes. However, there are mounting legal divisions and uncertainties among the circuit courts that are jeopardizing Government funds and discouraging potential qui tam relators from filing actions. The bill on the floor today, S. 386, is a critical first step needed to remove the confusion and to ensure that qui tam actions continue to assist the Government in protecting its limited resources.

The False Claims Act amendments in S. 386 clarify the reach of the Act's liability provisions, strengthen anti-retaliation protections, and remove impediments to the Government's investigative powers under the Act. Other corrections and clarifications that are needed to the False Claims Act have not been included in S. 386 due to the particular overall purpose of S. 386. Those additional False Claims Act corrections and clarifications should be taken up in separate legislation. However, I rise today to clarify the intent behind the False Claims Act amendments that are included in S. 386.

A. SECTION 4(A): LIABILITY PROVISIONS

In Section 4(a), the legislation updates the liability provisions of Section 3729(a) of the False Claims Act to address misreadings of the Act by the courts, to remove ambiguities created by inconsistency of language in the present provisions, and to clarify how the Act should be applied when the Government implements its programs with the help of contractors and intermediaries or administers funds on behalf of beneficiaries such as another government or a Tribal authority. Existing provisions of Section 3729(a) are also renumbered. I want to go through each of the issues addressed.

1. Fraud Against Government Contractors and Grantees

In *United States ex rel, Totten* v. *Bombardier Corp.*, 380 F. 3d 488 (D.C. Cir. 2005), the D.C. Court of Appeals ruled that, notwithstanding the FCA's broad definition of the term ''claim,'' liability will not lie under subsection (a)(1) of 31 U.S.C. §3729, which imposes liability for knowing false claims, unless the false claims are presented directly to the United States Government itself. According to the D.C. Court of Appeals, when third parties disburse federal funds in furtherance of federal contracts, they are not the same as the ''U.S. Government'' for purposes of this liability provision. Following that decision, a number of courts held that the False Claims Act does not reach false claims that are (i) presented to Government grantees or contractors and (ii) paid with Government grant or contract funds. In *Allison Engine Co.* v. *United States ex rel. Sanders*, 128 S.Ct. 2123 (2008), the U.S. Supreme Court similarly ruled that liability will not lie under subsection (a)(2) of 31 U.S.C. Section 3729, which imposes liability for knowing false statements, unless the false statements are made to get false claims paid by the United States Government itself. Moreover, the Supreme Court held that plaintiffs must show that the fraudfeasor ''intended'' for its false statements to cause the ''Government itself' to ''rely'' on the false statements as a ''condition of payment.''

With the Government increasingly relying on private entities to disburse Government funds, it is a rare instance in which the ''Government itself' would be paying the claims. The implications are considerable. The amendments clarify that liability under Section 3729(a) attaches whenever a person knowingly makes a false claim to obtain money or property, any part of which is provided by the Government without regard to whether the wrongdoer deals directly with the Federal Government; with an agent acting on the Government's behalf; or with a third party contractor, grantee, or other recipient of such money or property. To ensure that the Act is not interpreted to federalize fraud that threatens no harm to Government purposes or federal program objectives, the Amendment explicitly excludes from liability requests or demands for money or property that the Government has paid to an individual as compensation for federal employment or as an income subsidy, such as Social Security retirement benefits, with no restrictions on that individual's use or the money or property at issue.

The amendments also clarify that the False Claims Act may be used to redress fraud on Medicare's new Part D prescription drug benefit program and fraud on Medicare managed care. Both of these programs are administered by Government contractors. The legislation eliminates any argument that the False Claims Act does not reach false claims submitted to State-administered Medicaid programs, as some have argued under the Totten case (and as the Atkins court held).

The amendments clarify that the False Claims Act can be used to redress false claims submitted to recipients of federal block grants administered by state agencies or other third parties. Such claims undermine the purpose of those grants by diverting funding away from the objectives that the federal program sought to achieve and cause harm to the United States. Thus, for example, if a large non-minority owned business falsely applied for grant funds that the Government provided a municipality to assist small, minority-owned businesses, the business entity would be subject to False Claims Act liability.

These clarifications are consistent with what Congress intended to achieve in 1986. By removing from Section 3729(a)(1) language that can be narrowly read to limit liability to persons who present false claims directly ''to an officer or employee of the Government, or to a member of the Armed Forces,'' the amendments finish the job Congress intended to complete in 1986, when it defined actionable ''claims'' in the current Act to include ''any request or demand . . . for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.''

2. Fraud Against Funds Administered by the United States

In a 2006 decision involving Iraq reconstruction fraud, a federal trial court in Virginia held that the False Claims Act does not reach false claims against funds administered, but not owned, by the U.S. Government. This was *United States ex rel. DRC, Inc.* v. *Custer Battles, LLC*, 376 F. Supp. 2d 617, 636–641 (E.D. Va. 2006). This result is not consistent with what Congress intended in 1986. When the United States Government elects to invest its resources in administering funds or managing property belonging to another entity, it does so because use of such investments or property for their designated purposes will further interests of the United States. Misdirection of such money or property as the result of false or fraudulent conduct by contractors frequently creates funding gaps which either thwart federal interests or require infusions of federal money to see program goals achieved. Accordingly, false claims made against Government-administered funds damage the interests of the United States in essentially the same way as does misappropriation or wasting of funds owned by the United States. Whenever money directed to address Government interests is wasted, it becomes necessary either to redirect other funds to complete the contemplated task at hand or to make do with diminished returns on Government program investments. The amendments address this problem by defining ''claim'' to include, among other things, requests or demands for money or property that are presented to an officer, employee, or agent of the United States ''whether or not the United States has title to the money or property.'' See new 31 U.S.C. 3729(b)(2)(A). This amendment to the existing statutory language clarifies that FCA liability attaches to knowingly false requests or demands upon the United States for money or property administered by the United States on behalf of another person.

3. Conspiracy

Currently, Section 3729(a)(3) imposes liability on persons ''who conspire to defraud the Government by getting a false or fraudulent claim allowed or paid.'' This wording can be construed to apply only to conspiracies that violate subsections 3729(a)(1), (2) or (7). Some courts have interpreted the section to be even more limited. For example the court in *United States ex rel. Huangyan Import & Export Corp.* v. *Nature's Farm Products, Inc.*, 370 F. Supp. 2d 993 (N.D. Cal. 2005) held that section 3729(a)(3) does not extend to conspiracies to violate section 3729(a)(7). The current provision does not explicitly impose liability on those who conspire to violate other provisions of the False Claims Act, such as delivery of less Government property than that promised the Government or making false statements to conceal an obligation to pay money to the Government. Section 4(a) of S. 386 amends current Section 3729(a)(3) to clarify that conspiracy liability can arise whenever a person conspires to violate any of the provisions of Section 3729 imposing False Claims Act liability. Because this expands conspiracy liability to other sub-sections of 3729, this particular amendment is a substantive

change. The rest of the Section 4 amendments are meant to merely clarify the existing scope of False Claims Act liability.

4. Wrongful Possession, Custody or Control of Government Property

The amendments to the False Claims Act in S. 386 also update current Section 3729(a)(4) of the False Claims Act, which makes the Government's ability to recover for conversion of Government assets dependent upon issuance of an inaccurate certificate or receipt. This language is unchanged from the original Act as drafted in 1863. This outmoded phraseology led the court in *United States ex rel. Aakhus* v. *Dyncorp, Inc.*, 136 F.3d 676 (10th Cir. 1998), to dismiss a case on the technical grounds that no receipt was provided. Where knowing conversion of Government property occurs, it should make no difference whether the person committing the offense receives an inaccurate certificate or receipt documenting the transaction. The updated provision eliminates reference to such documentation. It appears in the renumbered provisions of the Act as Section 3729(a)(1)(D).

5. Wrongful Retention of Government Money or Property

Currently, Section 3729(a)(7) of the False Claims Act imposes liability for ''reverse'' False Claims Act violations when a person makes or uses false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government. This liability provision is analogous to the liability established under current Section 3729(a)(2) for making false records or statements to get false or fraudulent claims paid or approved. The Act, however, currently contains no provision that expressly imposes liability on a person who wrongfully avoids a duty to return funds or property to the United States by remaining silent. The amendments address this issue by expressly imposing liability on anyone who ''knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the United States.'' This language is intended to make clear that a person who retains an overpayment, while avoiding a duty to disclose or return the overpayment that arises from a statute, regulation or contract, violates the False Claims Act. Indeed, to address any potential confusion among the courts as to what is intended to be encompassed within the term ''obligation'' as used in Section 3729(a)(7), the amendments define that term in new Section 3729(b)(3) as encompassing legal duties that arise from the retention of any overpayment.

A legal obligation to disclose or refund an overpayment can arise in various ways. Examples include, but are not limited to: (i) Government contracts that incorporate a rule of the Federal Acquisition Regulations that requires disclosure of an overpayment, and (ii) criminal statutes that penalize a party's non-disclosure of an overpayment in order to fraudulently secure the overpayment. Importantly, the amendments do not impose liability in situations in which the law clearly permits the recipient of the overpayment to retain the overpayment without disclosure pending a reconciliation process.

Liability for all non-disclosed overpayments of the same type also should be imposed once an organization or other person is on notice that it has been employing a practice that has led to multiple instances of overpayment. For example, if a corporation learns after-the-fact that it has been violating a billing rule or a contract requirement in its billing, and it nonetheless fails to comply with a legal obligation to disclose the resulting overpayments, this amendment renders the corporation liable under the Act for all overpayments resulting from the violation of the billing rule or contract requirement, even those not specifically identified or quantified.

We use the term ''disclose'' in this provision to mean full disclosure of all the pertinent facts concerning the overpayment to the appropriate Government officials with authority to determine what actions, if any, the recipient of the overpayment should take to remedy the situation.

The amendments also define the term ''obligation'' to include fixed and contingent duties owed to the Government, a term intended to encompass, among other things, ad valorem and other customs duties, such as custom duties for mismarking country of origin on imported products. The amendments are intended to overrule the result reached in American Textile Manufacturers Institute, Inc., supra, as applied to ad valorem duties imposed for import violations. Reference to that particular custom duty is not intended to exclude other types of customs duties or statutory obligations that are similar in effect and purpose or that otherwise meet the definition set forth in the proposed amendments.

B. SECTION 4(B): GOVERNMENT COMPLAINTS-IN-INTERVENTION

Section 4(b) of S. 386 deals with the Government's ability to intervene in a relator's case. The False Claims Act does not expressly provide that the United States may amend the qui tam plaintiff's complaint—or, if more practical, file its own complaint upon intervention in a qui tam case—subject to the same rules on ''relation back'' of amended claims as would apply if it were amending its own complaint. Federal Rule of Civil Procedure 15(c)(2) provides that a party's amendment of a pleading will relate back to the date of its original pleading when the claim ''asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.'' In *United States* v. *Baylor Univ. Medical Center*, 469 F.3d 263 (2d Cir. 2006), the Second Circuit suggested that the United States may not be able to avail itself of this rule when amending a qui tam plaintiff's complaint. The implication of this ruling is that the United States could sometimes be forced to forgo a thorough investigation of the merits of qui tam allegations in order to ensure that it does not lose claims due to the running of the statute of limitations.

Section 4(b) clarifies that the Government's complaint in intervention or amended complaint will relate back to the date of the original qui tam complaint so long as the conditions of Federal Rule of Civil Procedure 15(c)(2) otherwise are met. Thus, Section 4(b) adds a new paragraph (c) to Section 3731 that expressly provides that the United States' complaint-in-intervention or amended complaint relates back to the date of the complaint filed by the qui tam plaintiff ''to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.''

C. SECTION 4(C)—CIVIL INVESTIGATIVE DEMANDS

The False Claims Act was amended in 1986 to give the Department of Justice an effective investigative tool: civil investigative demands or ''CIDs,'' which are administrative subpoenas for documents, interrogatory responses and sworn testimony that may be used to investigate allegations of potential violations of the False Claims Act. Use of this tool, provided for in Section 3733, is increasingly necessary for effective investigation of False Claims Act allegations. Program agencies are strapped for resources and unable to assign investigators even to meritorious cases, let alone issue Office of Inspector General subpoenas.

Nevertheless, as a result of restrictive language in the False Claims Act's CID provisions, the Department of Justice very rarely uses CIDs. The Assistant U.S. Attorneys and Main Justice trial attorneys are disinclined to use these subpoenas because of the length of time required to obtain review and approval by the Attorney General. Pursuant to Section 3733, the Attorney General may not delegate his authority to issue CIDs.

Moreover, Department attorneys are concerned that the False Claims Act, by limiting access to CID material to Government ''custodians'' and ''false claims law investigators,'' implicitly may preclude them from showing the documents, interrogatory responses and testimony obtained through CIDs to fact and expert witnesses and consultants, and the parties, in connection with their investigation or litigation of the case or proceeding. While statutory language does permit them to make ''official use'' of this material, they are nonetheless disinclined to rely on this language alone because of potential ambiguity as to its reach. Without being able to share the evidence in this manner, they fear that they may be unable to make sense of the documents and information produced and, accordingly, rarely employ CIDs.

Section 4(c) of S. 386 facilitates the issuance of CIDs by amending Section 3733 to authorize the Attorney General to delegate the authority to issue CIDs to a designee, and clarifying that CIDs may be issued during the investigation of qui tam allegations prior to the Government's intervention decision. Section 4(c) also clarifies that the Attorney General or his designee may disclose CID material to the qui tam plaintiff when necessary to further a False Claims Act investigation or litigation. Qui tam plaintiffs are not only parties to the False Claims Act proceeding, they often are fact witnesses or experts in the subject matter under investigation. Accordingly, more often than not, it will be necessary for the Department of Justice to show information obtained through CIDs to the relator in order to investigate or litigate the allegations effectively. However, the Department of Justice retains the discretion to evaluate whether disclosure to the relator is appropriate under the circumstances of the case, taking into account such factors as the need to protect the integrity of its investigation.

Finally, to eliminate any ambiguity on the question of whether Department of Justice attorneys may use and disclose the documents, testimony and interrogatory responses obtained through CIDs in connection with the steps that law enforcement customarily takes to investigate, and, if required, litigate allegations of wrongdoing, Section 4(c) of the bill clarifies Section 3733 by adding a new definition of ''official use'' in subsection 3733(1).

The definition provides that ''official use'' includes ''any use that is consistent with the law, and the regulations and policies of the Department of Justice.'' The new definition of ''official use'' also includes specific examples of the types of uses that fall within the term ''official use.'' These examples are not meant to be an exhaustive list, but rather illustrative of the ordinary, lawful uses of subpoenaed material in a Department of Justice investigation or litigation that we intend the Department of Justice to employ in False Claims Act cases. Section 4(c) of the bill also removes confusing language in Section 3733(i)(2)(B) and (C) that could be misinterpreted by the courts to prevent the custodian of CID material from sharing the material with other Department of Justice or program agency personnel for these official uses in the absence of authority from regulations or a court.

D. SECTION 4(D): RELIEF FROM RETALIATORY ACTIONS

Section 3730(h) of the False Claims Act imposes liability on any employer who discriminates in the terms or conditions of employment against an employee because of the employee's lawful acts in furtherance of a qui tam action. This section needs to be amended so that it is clear that it covers the following types of retaliation that whistleblowers commonly have faced over the course of the last twenty years: (i) retaliation against not only those who actually file a qui tam action, but also against those who plan to file a qui tam that never gets filed, who blow the whistle internally or externally without the filing of a qui tam action, or who refuse to participate in the wrongdoing; (ii) retaliation against the family members and colleagues of those who have blown the whistle; and, (iii) retaliation against contractors and agents of the discriminating party who have been denied relief by some courts because they are not technically ''employees.''

To address the need to widen the scope of protected activity, Section 4(d) of S. 386 provides that Section 3730(h) protects all ''lawful acts done'' . . . in furtherance of . . . other efforts to stop 1 or more violations'' of the False Claims Act. This language is intended to make clear that this subsection protects not only steps taken in furtherance of a potential or actual qui tam action, but also steps taken to remedy the misconduct through methods such as internal reporting to a supervisor or company compliance department and refusals to participate in the misconduct that leads to the false claims, whether or not such steps are clearly in furtherance of a potential or actual qui tam action.

To address the concern about indirect retaliation against colleagues and family members of the person who acts to stop the violations of the False Claims Act, Section 4(d) clarifies Section 3730(h) by adding language expressly protecting individuals from employment retaliation when ''associated others'' made efforts to stop False Claims Act violations. This language is intended to deter and penalize indirect retaliation by, for example, firing a spouse or child of the person who blew the whistle.

To address the need to protect persons who seek to stop violations of the Act regardless of whether the person is a salaried employee, an employee hired as an independent contractor, or an employee hired in an agency relationship, Section 4(d) of S. 386 amends Section 3730(h) so that it expressly protects not just ''employees'' but also ''contractors'' and ''agents.'' Among other things, this amendment will ensure that Section 3730(h) protects physicians from discrimination by health care providers that employ them as independent contractors, and government subcontractors from discrimination or other retaliation by government prime contractors.

I should note that this amendment does not in any way require that a qui tam plaintiff must have refused to engage in the misconduct or tried to stop the fraud internally before he or she may avail themselves of the incentives and protections in the False Claims Act. As the Congress recognized when the False Claims Act's qui tam provisions were first enacted in the nineteenth century, and as we have repeatedly affirmed in different contexts, including the new IRS whistleblower law, sometimes it ''takes a rogue to catch a rogue.'' An individual who participates in the fraud, and who for whatever reason does not challenge the misconduct within his or her organization, is still entitled to a relator's award and the protections of Section 3730(h) unless he or she is otherwise barred by a specific provision in the law.

E. SECTION 4(E): SERVICE UPON STATE PLAINTIFFS

Increasingly, qui tam plaintiffs are filing False Claims Act actions on behalf of not only the Federal Government, but also one or more States joined as co-plaintiffs pursuant to state False Claims Act statutes. Such cases ordinarily allege false claims submitted to Medicaid, which is a program funded jointly by the United States and the states. These cases are increasing in number as many states recently have enacted qui tam statutes, and many more are expected to do so in light of provisions in the Deficit Reduction Act of 2005. False Claims Act Section 3732 provides that state law claims may be asserted in a case filed under the federal False Claims Act if the claims arise from the same transaction or occurrence. The statute is unclear, however, as to whether the seal imposed by the U.S. District Court on the case pursuant to Section 3730(b) precludes the qui tam plaintiff from complying with state requirements to serve the complaint, or restricts the qui tam plaintiff and the Federal Government in their ability to serve other pleadings on the States, and disclose other materials to the States.

The amendment in Section 4(e) of S. 386 adds a new paragraph (c) to Section 3732 that clarifies that the seal does not preclude service or disclosure of such materials to the State officials authorized to investigate and prosecute the allegations that the qui tam plaintiff raises on behalf of the State. This paragraph also clarifies that State officials and employees must respect the seal imposed on the case to the same extent as other parties to the proceeding must respect the seal.

F. SECTION 4(F). EFFECTIVE DATE AND APPLICATION

Section 4(f) of S. 386 provides that the amendments in Section 4 take effect upon enactment and apply to conduct on or after the date of enactment, with the exception of the amendment of Section 3729(a)(1)(B), which shall apply to False Claims Act claims pending on or after June 7, 2008, and the amendments set forth in Section 4(b), (c), and (e) of the Bill, each of which shall apply to all cases pending on the date of enactment. We intend for the definition of claim also to apply to all False Claims Act claims pending on or after June 7, 2008, as that definition is an intrinsic part of amended Section 3729(a)(1)(B). The purpose of this amendment is to avoid the extensive litigation over whether the amendments apply retroactively, as occurred following the 1986 False Claims Act amendments.

However, while the amendments state that the remainder of the Section 4(a) liability provisions are not retroactive, the courts should recognize that Section 4(a) only includes one substantive change to existing False Claims Act liability, which is the expansion of the conspiracy liability. All of the other Section 4(a) amendments merely clarify the law as it currently exists under the False Claims Act. With the exception of conspiracy liability, the courts should rely on these amendments to clarify the existing scope of False Claims Act liability, even if the alleged violations occurred before the enactment of these amendments.

In other words, the clarifying amendments in Section 4(a) do not create a new cause of action where there was none before. Moreover, these clarifications do not remove a potential defense or alter a defendant's potential exposure under the Act. In turn, courts should consider and honor these clarifying amendments, for they correctly describe the existing scope of False Claims Act liability under the current and amended False Claims Act. The amended conspiracy provision, on the other hand, is limited to those violations that occur after the enactment of these amendments.

Each of the provisions in S. 386 dealing with the False Claims Act is key to protecting taxpayer dollars, and I urge my colleagues to support this legislation.

HONORING THOSE WHO HAVE SERVED IN THE ARMED FORCES

HON. JOE SESTAK

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SESTAK. Madam Speaker,

A CORPSMAN'S LAMENT

(By HM3 Mike Hall, 5th Marine Division Iwo Jima)

I remember fair-haired dreamers,
Full of themselves, going off to war.
We went willing with visions of heroism in our head.
We felt prepared for what was to come.
Then they opened the door to let reality in;
Fear, blood, and the smell of death.
All around us were the cries for ''Doc!''
Who should we help?
I tend to the first, second, and third:
Bandages, Morphine, plasma, and more.
No time for me to feel or think
Keep moving, keep helping; don't sleep.
Then they bring him all battered, near death;
I can't save him.
I look into his eyes and want to cry.
''Doc it's okay, let me go.''
I ignore his words; I try.
This man who looks like me . . . he dies.
Tears flow down my cheeks.
No time to grieve, five others lay at my feet.
That day stays with me still.
I shall never forget his words.
''It's okay, Doc.
Let me go.''
With his last breath,
He comforted me.

HONORING THE RETIREMENT OF SENIOR CHIEF PETTY OFFICER TAMMY LOGAN

HON. RICK LARSEN

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. LARSEN of Washington. Madam Speaker, I rise today to honor Senior Chief Petty Officer Tammy D. Logan, United States Navy, who is retiring after 20 years of service to our nation.

In May 1989, Senior Chief Logan, a native of my home state of Washington, enlisted in the U.S. Navy as a Seaman Recruit. Over the course of the next twenty years, Senior Chief Logan served the Navy in a wide variety of roles, travelling throughout the country and overseas. Her assignments include Helicopter Anti-Submarine Squadron (Light) 32, Carrier Strike Group 5, and the Commander in Chief, U.S. Atlantic Fleet.

Throughout her career, Senior Chief Logan has demonstrated a commitment to continuing her education. In 2002, she earned her Associate of Arts degree from Saint Leo University, and she is currently scheduled to graduate from Excelsior College with a Bachelor of Science Degree in July of 2009.

Senior Chief Logan has also earned a variety of awards for her outstanding service to our country. Her personal awards include the Meritorious Service Medal, Navy and Marine Corps Commendation Medal (two awards), Navy and Marine Corps Achievement Medal (five awards), and the Good Conduct Medal (six awards).

I commend Senior Chief Logan for her commitment to our country and the sacrifices she has made on its behalf. On the occasion of her retirement, I thank her and her family for her honorable service to our nation and wish her fair winds and following seas as she concludes a distinguished career.

A PROCLAMATION HONORING THE TOWN OF WARSAW, OHIO, ON THE 175TH ANNIVERSARY OF ITS FOUNDING

HON. ZACHARY T. SPACE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SPACE. Madam Speaker:

Whereas, Colonel William Simmons, a trusted friend of General George Washington, proved himself on the field of battle on numerous occasions; and

Whereas, for his more than 40 years of service, Colonel Simmons was given 4,297 acres of land in Southeastern Ohio; and

Whereas, Colonel Simmons laid out the plots of land in 1820 which were to become the town of Warsaw; and

Whereas, Warsaw was named after the capital of Poland, a country then attempting to achieve its own independence; and

Whereas, the official town charter dates back to June 3, 1834; now, therefore, be it

Resolved, that along with friends, family, and the residents of Warsaw, as well as the entire 18th Congressional District, I congratulate the town of Warsaw on their 175th Anniversary. The town of Warsaw has been and will continue to be a shining example for those who are willing to fight for their freedom and liberty.

IN HONOR OF THE SACRAMENTO REGIONAL CONSERVATION CORPS' 25TH ANNIVERSARY

HON. DORIS O. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. MATSUI. Madam Speaker, I rise today to congratulate the members, employees, and supporters of the Sacramento Regional Conservation Corps on the 25th anniversary of the organization's founding last week. For the last twenty-five years, this fine organization has improved the Sacramento region, while also transforming the lives of thousands of corpsmembers.

In 1984, the Sacramento Metropolitan Chamber of Commerce saw the need to create a program that would give Sacramento's young adults an opportunity to further their education and at the same time allow them to garner invaluable work experience. From that, the Sacramento Local Conservation Corps was born. In order to properly reflect their growth and commitment to the greater Sacramento region's wellbeing, they recently changed their name to the Sacramento Regional Conservation Corps.

The Sacramento Regional Conservation Corps is a true community partnership. Exemplifying this is their board of directors, comprised of representatives from local financial institutions, law firms, businesses and government agencies. Their funding sources are equally as diverse. Each year the SRCC's committed staff looks far and wide in soliciting funding from government sources, private grants, and corporate supporters to ensure the SRCC can continue to serve the public and improve the lives of its corpsmembers.

The young men and women that make up the Sacramento Regional Conservation Corps are just as varied as their supporters. They come from all neighborhoods of Sacramento, from all ethnicities and backgrounds, but they are united in their purpose, which is to improve their own lives and their community. They take on projects from clearing creeks and planting trees to teaching children about recycling and performing weatherization improvements on the homes of the less fortunate. Since their founding in 1984, over 4,500 young adults have taken part in this wonderful organization.

In doing so, corpsmembers often earn their high school diploma or GED. Upon graduating from the Sacramento Regional Conservation Corps many have enrolled in college courses, while others have obtained well paying jobs. While in the program, corpsmembers learn valuable lessons in teamwork, community stewardship, and about how to become leaders in their own right.

Madam Speaker, as the Sacramento Regional Conservation Corps celebrates their 25th Anniversary at the annual "Breakfast on the River," I am honored to congratulate SRCC Executive Director Dwight Washabaugh, Board President Philip Lantsberger, and the thousands of SRCC alumni on this momentous achievement. I ask all my colleagues to join me in honoring this fine organization for all the work they have done for the people of Sacramento, and to wish them continued success in the future.

PERSONAL EXPLANATION

HON. TRENT FRANKS

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. FRANKS of Arizona. Madam Speaker, on rollcall No. 294 I was unavoidably detained.

Had I been present, I would have voted "yes."

PERSONAL EXPLANATION

HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately I missed recorded votes on the House floor on Thursday, May 21 2009.

Had I been present, I would have voted "Nay" on Roll Call vote #282 (on agreeing to H. Con. Res. 133), "Nay" on Roll Call vote #283 (Table Appeal of the Ruling of the Chair), "Nay" on Roll Call vote #284 (on ordering the previous question to H. Res. 464), "Nay" on Roll Call vote #285 (on agreeing to H. Res. 464), "Aye" on Roll Call vote #286 (on agreeing to the conference report to S. 454), "Aye" on Roll Call vote #287 (on motion to suspend the rules and pass H.R. 1676), "Aye" on Roll Call vote #288 (on agreeing to the Burgess of Texas amendment to H.R. 915), "Aye" on Roll Call vote #289 (on agreeing to the McCaul of Texas amendment to H.R. 915), "Aye" on Roll Call vote # 290 (on agreeing to the motion to recommit with instructions to H.R. 915), "Nay" on Roll Call vote # 291 (on passage of H.R. 915)

INTRODUCTION OF H.R. 2680, THE "TERRITORIAL HEALTH PARITY ACT OF 2009"

HON. MADELEINE Z. BORDALLO

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. BORDALLO. Madam Speaker, today I have introduced a bill, H.R. 2680, to amend the Social Security Act to provide for parity in the Medicaid program for Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa. This bill, entitled the "Territorial Health Parity Act of 2009," would amend the Social Security Act to eliminate the federal funding caps now in place and to strike the statutorily set Federal Medicaid Assistance Percentage (FMAP) of 50% that currently applies to all the territories. This bill would ensure that each of the territories, like each of the 50 states, receives an FMAP that accurately reflects its economic conditions and demographics. In addition, because certain data

needed to determine the true FMAP rates for the territories is presently lacking from the Bureau of Economic Analysis (BEA), this bill would direct the Secretary of the Department of Health and Human Services to take steps to ensure that the FMAP rates for the territories are calculated in a fair and appropriate manner.

It is clear from all the evidence that the federal funding caps and the FMAP set in statute at 50% (which applies solely to the territories) have created significant health disparities between residents of the territories and their fellow citizens residing in the 50 states. Additionally, this policy has resulted in the territorial governments shouldering a disproportionately high financial liability when it comes to providing health care services to their indigent populations. Treating the territories in such fashion is as unjust in principle as it is harmful in effect.

The bill I have introduced today, along with my colleagues from the territories, is needed as Congress continues the debate over comprehensive health care reform. Based on a report released last year by the Office of Insular Affairs, within the Department of the Interior, the territories' health jurisdictions are ''at the crossroads of a total breakdown.'' Combined with the financial state of the territorial governments, operating under decreasing revenues due to an economic downturn, the territories must bear a majority of the payment for indigent care under the current arrangements. Accordingly, eliminating the funding caps and adjusting the FMAPs for the territories are both critically important to public health in these U.S. jurisdictions.

Additionally there is a provision in this bill that extends the Medicaid program to the citizens of the Freely Associated States (FAS), which is comprised of the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) and the Republic of Palau (RoP). The FAS governments have special relationships with the United States, as they entered into Compacts of Free Association that have been approved by the Congress of the United States. One component of these international, federally-negotiated agreements, allows for the unrestricted entry of citizens of the FAS to the United States, including the territories, without visas. Many FAS citizens have settled in the Pacific territories of Guam and the Commonwealth of the Northern Mariana Islands. They also constitute a significant and growing presence in the states of Hawaii and Arkansas. This section of the bill is important as it extends federal Medicaid coverage to them and would set an FMAP for otherwise qualified services rendered by the states and territories to them at 100%. This change in law would ensure that the territorial and state governments do not shoulder the sole costs of providing care for these citizens. I believe that this provision is consistent with the intent of the Medicaid program and provides for health equity to a disenfranchised population.

This bill represents policy for which I and my colleagues from the territories—Mr. PIERLUISI of Puerto Rico, Mrs. CHRISTENSEN of the Virgin Islands, Mr. SABLAN of the Northern Mariana Islands, and Mr. FALEOMAVAEGA of American Samoa—have collaborated. We are grateful for the support that we have received from Mr. SERRANO, who joins us as an original co-sponsor. Each of us and our predecessors has worked on improving the federal Medicaid program for the territories. This bill is to serve as starting point for advancing parity in treatment for the territories, with respect to the national health care reform debate. There are other areas of federal law that need to be amended in order to improve public health in the territories and to bring full parity. These include, for example, amendments to law governing Medicare Part D and the Supplemental Security Income Program (SSI). We look forward to working with the leaders in the House of Representatives and the Senate, and the Chairmen and Ranking Members of the committees of jurisdiction in both chambers in advancing legislation addressing these issues, including the bill we have introduced today.

THE LUMBEE RECOGNITION ACT AND THE THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT OF 2009

HON. DONNA M. CHRISTENSEN

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mrs. CHRISTENSEN. Madam Speaker, I am honored to join my colleagues to once again support H.R. 31, the Lumbee Recognition Act offered by Rep. MCINTYRE and H.R. 1385, the Thomasina E. Jordan Indian Tribes of Virginia Recognition Act of 2009 introduced by Rep. MORAN.

It is only fitting that these indigenous populations be officially recognized as Native peoples of this land. As we move forward as a Nation to level the playing field for all citizens, H.R. 31 and H.R. 1385 is undoubtedly a monumental step in righting these historical tragedies. I second the sentiments of our President in his remarks that Congress should intervene and recognize the Lumbee Indians as a tribal group.

Aptly extending federal distinction to the Lumbee, Chickahominy, Chickahominy—Eastern Division, Upper Mataponi, Rappahannock, Monacan and Nansemond tribes is the only way to address hundreds of years of injustice endured.

Federal recognition will dramatically transform the lives of the Native American tribes currently being considered. Our failure to extend federal recognition to them has meant years of discriminatory treatment. Countless individuals have had difficulty naming children, getting marriage licenses and even getting inducted into military service. Other communities have been disproportionately affected by interruptions and cuts in funding that are crucial to services provided by tribal programs.

It has been a long time coming, but it is high time that they are ascribed the rights and protections afforded to other citizens of our Country.

While this is a time marked by challenge for the entire Nation, it is my hope that this legislation be stalled no more and swiftly enacted into law.

I urge my colleagues to support this very important piece of legislation.

RESOURCES, REVENUE, AND RESPONSIBILITY: STRENGTHENING REVENUE AND BUDGET TRANSPARENCY THROUGH THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. HASTINGS of Florida. Madam Speaker, as Co-Chairman of the U.S. Commission on Security and Cooperation in Europe (commonly referred to as the Helsinki Commission), I recently returned from a meeting in Dublin, Ireland, with almost 100 parliamentarians from 30 countries where we had the opportunity to discuss responses to the global economic crisis. The meeting was organized by the Organization for Security and Cooperation in Europe Parliamentary Assembly (OSCE PA) and the Parliament of Ireland. All countries are grappling with difficult national problems related to the economic crisis. And indeed, we are in a crisis, and for America, this is the worst economy we've experienced since the Great Depression in the 1920s. People all across America, and in my home state of Florida, are losing their homes, their jobs, and are unable to provide for their families.

In addition to discussions on financial regulation, trade protectionism, good governance, and the social consequences of the crisis, I was pleased that we also discussed revenue transparency in the extractive industries as an integral part of creating more transparency in the global financial system overall. As legislators, we have a duty to find ways to relieve the suffering caused by the financial crisis through vital investments in health care, education, infrastructure, and job creation so that we can emerge from this crisis stronger and better than before. But part of the solution is looking at how we even got into this crisis. Transparency—or the lack of it—in the financial world is certainly one of the culprits. And as revenue dwindles, making the most of what we have becomes even more important.

The way I see it, improvements in revenue transparency, particularly when we focus on the extractive industries, are important in at least three key ways: The first is to help alleviate poverty. 3.5 billion people live in countries that are rich in oil, gas and minerals. With good governance, the exploitation of these resources can generate large revenues to foster growth and reduce poverty. Resource revenue transparency is necessary in order for citizens—the true owners of their country's natural wealth—to be able to demand greater accountability from their governments for spending that serves the public interest.

The second is to promote stable investment climates. Mandatory disclosure can help diminish the political instability caused by opaque governance. Since extractive industries are capital-intensive and dependent on long-term stability to generate returns, transparency of payments made to a government can help mitigate political and reputational risks and also allow shareholders to make better-informed assessments of opportunity costs.

The third area is to enhance energy security. Opening the extractive industries sector to greater public scrutiny is key to increasing civil society participation in government. This form

of transparency, in conjunction with an increasingly active civil society, can help create more stable, democratic governments, as well as stable business environments.

It's a well-known, and well-bemoaned, fact that the United States is becoming more and more reliant on imported energy to fuel our economy. We are the world's largest consumer of oil—we account for an astounding 25 percent of global daily oil demand—despite having less than 3 percent of the world's proven reserves. And we source that oil from some unstable and unfriendly places in the world such as Nigeria and Venezuela.

In the context of today's discussion some of you may wonder why the United States should care what is happening in Turkmenistan or Kazakhstan, when we don't rely on these countries for our energy supplies. Russia is only number eight on our list of top ten oil suppliers and Kazakhstan, Turkmenistan, Uzbekistan and Azerbaijan don't even make it into the top twenty.

The answer is that unlike natural gas, oil is a commodity, so regardless of where we source our oil, what happens in other oil-rich countries impacts the stability of our price and our supply as well. Truly, no one country can achieve energy security without global energy security.

I think we can all agree that relying on a country as a source of energy can distort a bilateral relationship. I'm sure you can imagine how drastically different our interactions with some countries would be if we did not rely so heavily on these countries' resources. I think it goes without saying that we would have more leverage to promote democracy and civil society. Clearly oil constrains, if not drives, our foreign policy.

So while it is imperative that we work to limit our dependence on foreign oil and change the dynamic of supply and demand, it is just as important to create more stable and reliable sources of energy. One of the key ways the international community has sought to counteract the political and economic instability inherent in the resource curse is through programs that seek to instill transparency and accountability into the resource payment system.

As legislators, there is a lot that we can do to further the cause of transparency in the extractive industries.

As Co-Chairman of the U.S. Helsinki Commission, I have held hearings and briefings on energy security and transparency that call attention to problems and advocate for solutions. I have also written letters—co-signed by a number of my congressional colleagues—on this topic to the Executive Branch to advocate for specific policy stances related to U.S. participation in EITI. Drafting and passing legislation is also important, and in 2007 we were successful in passing legislation that spells out the importance of extractive industries transparency in U.S. foreign policy and directs the U.S. State Department to actively promote EITI.

I also co-sponsored legislation that would require oil, gas, and mining companies registered with the U.S. Securities and Exchange Commission (SEC) to publicly disclose the payments they make to foreign governments for the extraction of natural resources. The information would be included in financial statements already required by the SEC and would apply to both American and foreign companies listed with the SEC, which includes 90 percent of the world's largest oil, gas and mining companies. I'm hopeful that we will see that legislation pass in this Congress.

Another tool is direct communication with the Executive Branch. One thing we have already started discussions with the Obama Administration on is how we can play a responsible role—not dominant—in EITI. I strongly believe that the best thing we can do to help boost EITI is to follow the lead of other OSCE member states such as Azerbaijan, Kazakhstan, Kyrgyzstan and Norway and become a Candidate Country with the goal of becoming fully compliant with EITI standards. Right now we think that can be accomplished without any legislative action by the Congress, but if we do need to make some legal changes, then that is something we will work on.

If there is one word that has gotten us in this problem, it is greed. This needs to be said so that we as legislators can do something about it. As we are talking about hedge funds, and all these other mechanisms for moving money, we can't ignore the impact of the shadow economy. It is something that we need to address because it fuels crime and instability.

Madam Speaker, in the Dublin meeting there were many opinions about the roots of the crisis and potential solutions. However, one clear message I took away from that meeting is that we must work together to find a global solution to a global crisis.

PERSONAL EXPLANATION

HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately I missed recorded votes on the House floor on Tuesday, June 2, 2009.

Had I been present, I would have voted "Aye" on Roll Call vote #292 (Motion to suspend the rules and Agree to H. Res. 421), "Aye" on Roll Call vote #293 (Motion to Suspend the Rules and Agree to H.J. Res. 40), "Aye" on Roll Call vote #294 (Motion to Suspend the Rules and Agree to H. Res. 489)

UPON THE CHANGE OF COMMAND AT THE PORT OF BALTIMORE

HON. ELIJAH E. CUMMINGS

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. CUMMINGS. Madam Speaker, as Chairman of the Subcommittee on Coast Guard and Maritime Transportation, I rise today to recognize the accomplishments of Captain Brian Kelley, who has served as the Commander of Coast Guard Sector Baltimore since June 2006. He is transferring out of this assignment on May 29.

As Captain of the Port of Baltimore, Captain Kelley oversaw all Coast Guard operations at this major port, currently ranked 12th in value of foreign cargo handled and 14th in foreign tonnage handled.

During his tenure, Captain Kelley conducted Major Control actions or detentions of 23 foreign vessels for safety violations—ensuring the safety of vessel operations in the Port of Baltimore. He also managed more than 1,100 search and rescue cases that saved the lives of more than 250 mariners in distress.

Captain Kelley oversaw a major effort to improve environmental conditions at Sector Baltimore and directed the clean-up of the abandoned vessel Sea Witch, preventing the release of more than half a million gallons of oil into the environment.

Captain Kelley's next assignment will be as the Deputy Commander of the Coast Guard's Personnel Services Command. As such, he will assist in managing all personnel services for all of the Coast Guard's nearly 42,000 active duty military members and in supervising the Coast Guard's recruiting efforts.

Since graduating from the Coast Guard Academy in 1982, Captain Kelley's assignments have included service as the Commander of cutters ATTU and POINT FRANKLIN. He also served as Chief of the Strategic and Business Planning Division at Coast Guard headquarters and was a Federal Executive Fellow at the Center for Strategic and International Studies.

On a personal note, I have known Captain Kelley to be an extraordinarily conscientious leader—and have appreciated his personal hospitality during numerous events at Sector Baltimore.

I have also appreciated his diligence in keeping me and my staff fully informed of developments at Sector Baltimore, including the Sector's evaluation of the proposed LNG terminal at Sparrow's Point in the Port of Baltimore.

Captain Kelley is an outstanding officer who embodies the highest ideals of the Coast Guard and I commend him for his dedication to excellence in the service of our nation.

HONORING THE WORK AND SERVICE OF JACK E. SINGLEY

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, I rise today in recognition of Jack E. Singley and the 43 years he spent in service to Irving Independent School District.

Jack Singley began his career in 1965 by teaching Math at MacArthur High School in Irving, Texas, and rose through the ranks of the school district to become superintendent in 1988. He served in that role for nearly 21 years making him one of the longest serving school administrators in Texas. Earlier this year, he announced that 2009 would mark the end of his remarkable career, and his determination, strength of character, and wisdom will be greatly missed.

Throughout his career, Mr. Singley saw the transformation of Irving ISD from a small suburban school district to the large vibrant school district it is today. During his tenure as superintendent, eight schools were added to the school district and the number of employees serving in Irving ISD nearly doubled. One of Mr. Singley's most impressive successes was the creation of The Academy of Irving ISD. This high school opened in 2001 and is considered to be at the forefront of technological innovation and educational philosophy.

After Mr. Singley announced his retirement earlier this year, the Irving ISD School Board voted unanimously to rename the Academy of Irving ISD to the Jack E. Singley Academy, much to his dismay. With great humility and regard for others, he asked that the school not be named in his honor and said, ''I honestly believe that when you're naming schools after local people, they ought to be volunteers, not staff members.''

Jack Singley has made such a big difference in the lives of so many students and teachers, and I cannot think of a better way to honor him than by renaming this academy to the Jack E. Singley Academy. I ask my fellow colleagues to join me in recognizing Mr. Singley and his lifelong commitment to ensuring quality education for young people in Irving, Texas.

PERSONAL EXPLANATION

HON. J. GRESHAM BARRETT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. BARRETT of South Carolina. Madam Speaker, unfortunately I missed recorded votes on the House floor on Wednesday, May 20, 2009.

Had I been present, I would have voted ''Nay'' on Rollcall vote No. 273 (on agreeing to H.Res. 456), ''Nay'' on Rollcall vote No. 274 (on ordering the previous question to H.Res. 457), ''Nay'' on Rollcall vote No. 275 (on agreeing to H. Res. 457), ''Nay'' on Rollcall vote No. 276 (concur in all but section 512 of Senate amendment to H.R. 627), ''Aye'' on Rollcall vote No. 277 (concur in Section 512 of Senate Amendment to H.R. 627), ''Aye'' on Rollcall vote No. 278 (Motion to suspend the rules and agree to H. Res. 297), ''Aye'' on Rollcall vote No. 279 (on agreeing to the Kratovil of Maryland amendment H.R. 2352), ''Aye'' on Rollcall vote No. 280 (on agreeing to the motion to recommit with instructions to H.R. 2352), ''Aye'' on Rollcall vote No. 281 (on agreeing to H.R. 2352).

A TRIBUTE TO MONTE HALE

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Mr. SCHIFF. Madam Speaker, I rise today to celebrate the life and accomplishments of the popular Singing Cowboy and actor, Monte Hale, who passed away on Sunday, March 29, 2009, at the age of 89. His career as an entertainer spanned over 60 years in the industry making Westerns and singing country tunes.

Born Samuel Buren Ely in Ada, Oklahoma, Monte moving to San Angelo, Texas at an early age. He bought his first guitar for $8.50 at the age of thirteen and launched his musical career performing at various clubs around the State. It was during his performance at a War Bond Rally that Phillip Isley discovered him and soon the handsome, talented young man was headed to Hollywood for a screen test. He hitchhiked all the way, stopping at a gasoline station around the corner from the studio, just long enough to wash his face and comb his hair before making his appearance.

Monte's screen test was so impressive that he was immediately signed to star in ''The Big Bonanza'' with Richard Arlen. Shortly after he was signed to a 7-year contract with Republic where he was groomed up with films starring Wild Bill Elliott, Sunset Carson, and such fare as ''Steppin in Society'' (1945) with Everett Horton.

Around this time the executives at Republic were looking for someone to test a new color film and they decided to team Monte with Adrian Booth in the Magnicolor ''Home On The Range'' (1946), thus making Monte Hale Republic's first western star in a color series. Monte went on to star in 19 of his own films.

Monte was tall and handsome and possessed an excellent voice. With this in mind, Republic put his voice and his songwriting talents to work in the westerns. Not considered true musical westerns like those of Gene Autry and Roy Rogers, Monte's films were mainly dramas in which he stopped to sing a song now and then. He became one of Republic's most popular and respected singing cowboys.

Hale made a significant splash in the international comic book market of the era. Six Monte Hale series of the dime picture books were published in 27 languages and over two million copies per month were sold.

After his departure from Republic, Monte went on to do guest starring roles on such TV series as ''Gunsmoke,'' ''Wild Bill Hickock,'' and ''Circus Boy.'' He was a member of the panel on ''Juke Box Jury'' and appeared on the ''Western Star Theatre'' radio program. In addition he continued his work in films, most notably as Rock Hudson's attorney in ''Giant'' (1956) and in ''Chase'' (1966) with Marlon Brando.

Off the screen, his most lasting contribution was helping to establish the Autry museum. Monte and his wife Joanne were co-founders of the Gene Autry Western Heritage Museum and served as members of the board of directors and have since the inception of the museum which is now part of the Autry National Center as the Museum of the American West.

Hale made other contributions to the museum after its 1988 opening by greeting guests and enabling them to chat with a real, live singing cowboy. He also started encouraging fellow cowboy stars to contribute their signature memorabilia for permanent display in the museum's movie gallery.

He donated his own white hat, guns, gun belt and other prized treasures—then rounded up more contributions, including Chuck Connors' shirt from ''The Rifleman'' TV series, Buffalo Bill's saddle and a Lone Ranger outfit. A permanent exhibit dedicated to Monte Hale's career is located in the Museum of the American West's Spirit of Imagination Gallery. In 2004, Monte was honored with a Star on the Hollywood Walk of Fame for Motion Pictures. His work for the Autry National Center of the American West and his legacy as an entertainer will not be forgotten.

INTRODUCTION OF H.R. 2685, THE CLIMATE AND OCEAN RESEARCH AND COORDINATION ACT OF 2009

HON. MADELEINE Z. BORDALLO

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 3, 2009

Ms. BORDALLO. Madam Speaker, the risks of climate change and climate variability are well-documented and under certain circumstances threaten public safety, national security, industry and the economy, natural resource management, and our American way of life. As these risks increase and become more known, we are all challenged with how to strategically respond and adapt to an unpredictable climate. Just as my constituents in Guam face uncertainty over how to respond to rising sea levels and the increasing frequency and ferocity of cyclonic storms, such as typhoons, each state and territory of our great Nation faces their own challenges in adapting to climate change. Without reliable climate information and tools to project climate impacts, it is difficult for any government to make informed and strategic decisions. Strong leadership, better coordination, more exchanges of information, and a new approach to federal climate services are required to strategically and cost-effectively manage public and private resources in this dynamic environment.

H.R. 2685, the Climate and Ocean Research and Coordination Act of 2009, which I have introduced today, addresses these needs by providing specific authority to enhance the leadership role of the National Oceanic and Atmospheric Administration (NOAA) in the delivery of oceanic, weather, atmospheric, and climate services, and for the first time, establishes a cooperative governmental and nongovernmental partnership to advance the ability of the federal government and the public to respond to, adapt to, and plan for climate change and climate change impacts.

Title I of this legislation codifies NOAA, enabling it to better execute its diverse responsibilities, and formalizes its role as the link between global oceanic and atmospheric research science, and the functions, processes, ecosystems, and management of our coastal and ocean resources. Title II establishes a public-private National Climate Enterprise (NCE), comprised of federal and non-federal partners to provide scientifically-based, authoritative, timely, and useful climate and climate impacts information, products, and services to meet end-user needs and guide climate change adaptation and mitigation.

Coping with the uncertainties raised by climate change will be one of our Nation's most serious challenges in the foreseeable future. Credible, reliable, and usable climate information will be fundamental toward determining our success in confronting this risk to our economy, society, and environment. Now is the time for the Congress to both codify NOAA and establish a coordinated, public-private National Climate Enterprise to ensure that our national efforts to mitigate climate impacts will be guided by the best available scientific information.

I look forward to working with my colleagues on both sides of the aisle, and especially with my colleagues on the Committee on Science and Technology which shares oversight responsibility for NOAA with the Committee on Natural Resources, to advance this legislation and to strengthen the abilities of the federal government and the public to better understand our dynamic climate and respond to, adapt to, and plan for climate change impacts.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, June 4, 2009 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 5

9:30 a.m.
Joint Economic Committee
To hold hearings to examine the employment situation for May 2009.
SD–106

10 a.m.
Finance
To hold hearings to examine the nomination of Miriam E. Sapiro, of the District of Columbia, to be a Deputy United States Trade Representative, with the rank of Ambassador.
SD–215

JUNE 9

9:30 a.m.
Commerce, Science, and Transportation
Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee
To hold hearings to examine the role of the oceans in our nation's economic future.
SR–253

10 a.m.
Judiciary
Constitution Subcommittee
To hold hearings to examine the legal, moral, and national security consequences of prolonged detention.
SD–226

Environment and Public Works
Oversight Subcommittee
To hold joint hearings to examine scientific integrity and transparency reforms at the Environmental Protection Agency.
SD–406

Foreign Relations
To hold hearings to examine the nomination of Ellen O. Tauscher, of California, to be Under Secretary of State for Arms Control and International Security.
SD–419

Joint Economic Committee
To hold hearings to examine the Troubled Asset Relief Program (TARP) accountability and oversight, focusing on the strength of financial institutions.
210, Cannon Building

10:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2010 for the Department of Defense.
SD–192

Appropriations
Financial Services and General Government Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2010 for the Department of the Treasury and the Internal Revenue Service.
SD–138

2:30 p.m.
Armed Services
Airland Subcommittee
To hold hearings to examine the Defense Authorization request for fiscal year 2010 and the Future Years Defense Program for tactical aviation programs.
SR–222

Foreign Relations
To hold hearings to examine the nomination of Eric P. Goosby, of California, to be Ambassador at Large and Coordinator of United States Government Activities to Combat HIV/AIDS Globally, Department of State.
SD–419

Appropriations
Labor, Health and Human Services, Education, and Related Agencies Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2010 for the Department of Health and Human Services.
SD–124

Intelligence
To hold closed hearings to examine certain intelligence matters.
S–407, Capitol

JUNE 10

Time to be announced
Health, Education, Labor, and Pensions
Business meeting to consider any pending nominations.
Room to be announced

9:30 a.m.
Veterans' Affairs
To hold an oversight hearing to examine the Department of Veterans Affairs' construction process.
SR–418

10 a.m.
Homeland Security and Governmental Affairs
To hold hearings to examine the nominations of Tara Jeanne O'Toole, of Maryland, to be Under Secretary for Science and Technology, Department of Homeland Security, and Jeffrey D. Zients, of the District of Columbia, to be Deputy Director for Management, Office of Management and Budget.
SD–342

Judiciary
To hold hearings to examine the continued importance of the Violence Against Women Act.
SD–226

2 p.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine the state of the domestic automobile industry, focusing on the impact of federal assistance.
SD–538

2:30 p.m.
Commerce, Science, and Transportation
Aviation Operations, Safety, and Security Subcommittee
To hold hearings to examine aviation safety, focusing on the Federal Aviation Administration's role in the oversight of air carriers.
SR–253

Rules and Administration
To hold hearings to examine the nomination of John J. Sullivan, of Maryland, to be a Member of the Federal Election Commission.
SR–301

3 p.m.
Rules and Administration
Business meeting to consider the nomination of John J. Sullivan, of Maryland, to be a Member of the Federal Election Commission.
SR–301

JUNE 11

2 p.m.
Foreign Relations
To hold hearings to examine certain North Korea issues.
SD–419

2:30 p.m.
Homeland Security and Governmental Affairs
Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee
To hold hearings to examine S. 372, to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel.
SD–342

Intelligence
To hold closed hearings to examine certain intelligence matters.
S–407, Capitol

JUNE 16

2:30 p.m.
Armed Services
Airland Subcommittee
To hold hearings to examine the Defense Authorization request for fiscal year 2010 and the Future Years Defense Program for Army modernization and management of the Future Combat Systems Program.
SR–222

JUNE 17

10 a.m.
Commerce, Science, and Transportation
Aviation Operations, Safety, and Security Subcommittee
To hold hearings to examine aviation safety, focusing on the role and responsibility of commercial air carriers and employees.
SR–253

2:30 p.m.
Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to examine S. 409, to secure Federal ownership and management of significant natural, scenic, and recreational resources, to provide for the protection of cultural resources, to facilitate the efficient extraction of mineral resources by authorizing and directing an exchange of Federal and non-Federal land, S. 782, to provide for the establishment of the National Volcano Early Warning and Monitoring System, S. 874, to establish El Rio Grande Del Norte National Conservation Area in the State of New Mexico,

S. 1139, to require the Secretary of Agriculture to enter into a property conveyance with the city of Wallowa, Oregon, and S. 1140, to direct the Secretary of the Interior to convey certain Federal land to Deschutes County, Oregon.

SD–366

JUNE 18

2:30 p.m.

Armed Services

Emerging Threats and Capabilities Subcommittee

To hold hearings to examine the Defense Authorization request for fiscal year 2010 and the Future Years Defense Program for United States Special Operations Command.

SR–222

JUNE 24

9:30 a.m.

Veterans' Affairs

To hold an oversight hearing to examine the Department of Veterans Affairs quality management activities.

SR–418

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S5985–S6133

Measures Introduced: Thirteen bills and one resolution were introduced, as follows: S. 1166–1178, and S. Res. 167. **Page S6030**

Measures Considered:

Family Smoking Prevention and Tobacco Control Act: Senate began consideration of H.R. 1256, to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, after agreeing to the motion to proceed, taking action on the following amendments proposed thereto: **Pages S5994–S6017, S6017–20, S6020–23**

Pending:

Dodd Amendment No. 1247, in the nature of a substitute. **Pages S6017–20, S6020–23**

Burr/Hagan Amendment No. 1246 (to Amendment No. 1247), in the nature of a substitute. **Pages S6019–20, S6020–23**

Schumer (for Lieberman) Amendment No. 1256 (to Amendment No. 1247), to modify provisions relating to Federal employees retirement. **Page S6023**

A unanimous-consent agreement was reached providing for further consideration of the bill at approximately 10:30 a.m., on Thursday, June 4, 2009. **Page S6133**

Rural Transit Improvement and Flexibility Act—Referral Agreement: A unanimous-consent agreement was reached providing that the Committee on Commerce, Science, and Transportation be discharged from further consideration of S. 1144, to improve transit services, including in rural States, and the bill then be referred to the Committee on Banking, Housing, and Urban Affairs. **Page S6133**

Nominations Received: Senate received the following nominations:

Laurie Susan Fulton, of Virginia, to be Ambassador to Denmark.

Daniel M. Tangherlini, of the District of Columbia, to be an Assistant Secretary of the Treasury.

Daniel M. Tangherlini, of the District of Columbia, to be Chief Financial Officer, Department of the Treasury.

Raymond M. Jefferson, of Hawaii, to be Assistant Secretary of Labor for Veterans' Employment and Training. **Page S6133**

Messages from the House: **Page S6028**

Measures Referred: **Page S6028**

Executive Communications: **Pages S6028–30**

Additional Cosponsors: **Pages S6030–32**

Statements on Introduced Bills/Resolutions: **Pages S6032–51**

Additional Statements: **Pages S6027–28**

Amendments Submitted: **Pages S6051–S6132**

Authorities for Committees to Meet: **Pages S6132–33**

Adjournment: Senate convened at 9:30 a.m. and adjourned at 7:55 p.m., until 9:30 a.m. on Thursday, June 4, 2009. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S6133.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS: DEPARTMENT OF EDUCATION

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education, and Related Agencies concluded a hearing to examine proposed budget estimates for fiscal year 2010 for the Department of Education, after receiving testimony from Arne Duncan, Secretary, and Thomas P. Skelly, Director, Budget Services, both of the Department of Education.

APPROPRIATIONS: DEPARTMENT OF THE INTERIOR

Committee on Appropriations: Subcommittee on Interior, Environment, and Related Agencies concluded

a hearing to examine proposed budget estimates for fiscal year 2010 for the Department of the Interior, after receiving testimony from Ken Salazar, Department of the Interior.

ELECTRICITY GRID VULNERABILITY

Committee on Armed Services: Subcommittee on Readiness and Management Support received a closed briefing to examine electricity grid vulnerabilities to critical defense assets and missions from James R. Schlesinger, Co-Chairman, and R. James Woolsey, Jr., Co-Chair, Policy Panel, both of the Defense Science Board Task Force on Department of Defense Energy Strategy.

STRATEGIC FORCES BUDGET

Committee on Armed Services: Subcommittee on Strategic Forces concluded a hearing to examine the Defense Authorization request for fiscal year 2010 and the Future Years Defense Program for strategic forces programs, after receiving testimony from Thomas P. D'Agostino, Under Secretary for Nuclear Security and Administrator for the National Nuclear Security Administration, Department of Energy; and Major General C. Donald Alston, USAF, Assistant Chief of Staff, Strategic Deterrence and Nuclear Integration, and Major General Floyd L. Carpenter, USAF, Commander, 8th Air Force, Air Combat Command, both of the United States Air Force, and Rear Admiral Stephen E. Johnson, USN, Director, Strategic Systems Programs, United States Navy, all of the Department of Defense.

MILITARY FAMILY PROGRAMS BUDGET

Committee on Armed Services: Subcommittee on Personnel concluded a hearing to examine the Defense Authorization request for fiscal year 2010 and the Future Years Defense Program for military family programs, policies, and initiatives, after receiving testimony from Arthur J. Myers, Principal Director and Acting Deputy Under Secretary of Defense for Military Community and Family Policy, Terri J. Rau, Deputy Director for Research and Development and Performance Measurement, Navy Installations Command, United States Navy, Eliza G. Nesmith, Chief, Airmen and Family Services Division, United States Air Force, Kathleen Marin, Director, Installation Services, Office of the Assistant Chief of Staff for Installation Management, United States Army, and Major General Timothy R. Larsen, USMC (Ret.), Director, Personal and Family Readiness Division, Manpower and Reserve Affairs Department, United States Marine Corps, all of the Department of Defense; Kathleen B. Moakler, National Military Family Association; and Sheila L. Casey, Colleen K. Smith, Jennifer A. Mancini, and Patricia Davis.

FEDERAL TRANSIT ADMINISTRATION NEW STARTS PROGRAM

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Housing, Transportation and Community Development concluded a hearing to examine a fresh start for the Federal Transportation Administration's New Starts Program, after receiving testimony from A. Nicole Clowers, Acting Director, Physical Infrastructure Issues, Government Accountability Office; Richard Sarles, Executive Director, New Jersey Transit, Newark; Gary C. Thomas, Dallas Area Rapid Transit, Dallas, Texas, on behalf of the American Public Transportation Association; and Mariia Zimmerman, Reconnecting America, Washington, DC.

GM AND CHRYSLER DEALERSHIP CLOSURES

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine General Motors and Chrysler dealership closures, focusing on dealers and consumers, after receiving testimony from James Press, Chrysler LLC, Auburn Hills, Michigan; Fritz Henderson, General Motors, Detroit, Michigan; John P. McEleney, National Automobile Dealers Association, McLean, Virginia; Peter Lopez, Spencer Auto Group, Spencer, West Virginia; and Russell Whatley, Mineral Wells, Texas.

BUSINESS MEETING

Committee on Environment and Public Works: Committee announced the following subcommittee assignments:

Subcommittee on Transportation and Infrastructure: Senators Baucus (Chair), Carper, Lautenberg, Cardin, Sanders, Klobuchar, Specter, Voinovich, Vitter, Barrasso, and Crapo.

Subcommittee on Clean Air and Nuclear Safety: Senators Carper (Chair), Baucus, Cardin, Sanders, Merkley, Vitter, Voinovich, and Bond.

Subcommittee on Superfund, Toxics and Environmental Health: Senators Lautenberg (Chair), Baucus, Klobuchar, Whitehouse, Gillibrand, Specter, Crapo, and Bond.

Subcommittee on Water and Wildlife: Senators Cardin (Chair), Lautenberg, Whitehouse, Udall (NM), Merkley, Crapo, Barrasso, and Alexander.

Subcommittee on Green Jobs and the New Economy: Senators Sanders (Chair), Carper, Gillibrand, Bond, and Voinovich.

Subcommittee on Children's Health: Senators Klobuchar (Chair), Udall (NM), Merkley, Specter, Alexander, and Vitter.

Subcommittee on Oversight: Senators Whitehouse (Chair), Udall (NM), Gillibrand, Barrasso, and Vitter.

Senators Boxer and Inhofe are ex-officio members of each of the Subcommittees.

PAKISTAN NUCLEAR PROGRAM

Committee on Foreign Relations: Committee met in closed session to receive a briefing to examine the security of Pakistan's nuclear program from national security briefers.

NOMINATIONS

Committee on Foreign Relations: Committee concluded a hearing to examine the nominations of Eric P. Schwartz, of New York, to be Assistant Secretary for Population, Refugees, and Migration, who was introduced by Senator Merkley and former Representative Solarz, and Andrew J. Shapiro, of New York, to be Assistant Secretary for Political-Military Affairs, who was introduced by Representative Lowey, both of the Department of State, after the nominees testified and answered questions in their own behalf.

NOMINATION

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine the nomination of Martha N. Johnson, of Maryland, to be Administrator, General Services Administration, after the nominee testified and answered questions in her own behalf.

PANDEMIC FLU

Committee on Homeland Security and Governmental Affairs: Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration concluded a hearing to examine pandemic flu, after receiving testimony from Bernice Steinhardt, Director, Strategic Issues, Government Accountability Office; Stephen M. Ostroff, Director, Pennsylvania Department of Health Bureau of Epidemiology, Harrisburg, on behalf of the Council of State and Territorial Epidemiologists; John Thomasian, National Governors Association Center for Best Practices, Washington, D.C.; and Paul E. Jarris, Association of State and Territorial Health Officials, Arlington, Virginia.

FEDERAL IMMIGRATION LAW

Committee on the Judiciary: Committee concluded a hearing to examine The Uniting American Families Act, focusing on addressing inequalities in federal immigration law, after receiving testimony from Julian Bond, National Board of Directors of the National Association for the Advancement of Colored People, and Christopher Nugent, American Bar Association, both of Washington, D.C.; Roy Beck, NumbersUSA Education and Research Foundation, Arlington, Virginia; Jessica M. Vaughn, Center for Immigration Studies, Franklin, Massachusetts; Shirley Tan, Pacifica, California; and Gordon Stewart, London, United Kingdom.

LONG-TERM CARE INSURANCE

Special Committee on Aging: Committee concluded a hearing to examine the value of long-term care insurance, after receiving testimony from Sean Dilweg, Wisconsin Commissioner of Insurance, Madison; Carol Cutter, Indiana Department of Insurance Chief Deputy Commissioner Health and Legislative Affairs, Indianapolis; Diane Rowland, Kaiser Commission on Medicaid and the Uninsured, Washington, D.C.; Thomas M. Stinson, Genworth Financial, Richmond, Virginia; and Bonnie Burns, California Health Advocates, Scotts Valley.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 22 public bills, H.R. 2672–2693; 1 private bill, H.R. 2694; and 9 resolutions, H. Con. Res. 138–143; and H. Res. 499–500, 502, were introduced.

Pages H6154–55

Additional Cosponsors: **Pages H6155–56**

Reports Filed: Reports were filed today as follows:

H.R. 415, to provide Capitol-flown flags to the immediate family of fire fighters, law enforcement officers, emergency medical technicians, and other rescue workers who are killed in the line of duty (H. Rept. 111–132) and

H. Res. 501, providing for consideration of the bill (H.R. 626) to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave (H. Rept. 111–133).

Page H6154

Speaker: Read a letter from the Speaker wherein she appointed Representative Berkley to act as Speaker pro tempore for today. **Page H6079**

Suspensions: The House agreed to suspend the rules and pass the following measures:

Frederic Remington Post Office Building Designation Act: H.R. 2090, to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building''; **Pages H6084–87**

Carl B. Smith Post Office Designation Act: H.R. 2173, to designate the facility of the United States Postal Service located at 1009 Crystal Road in Island Falls, Maine, as the ''Carl B. Smith Post Office''; **Pages H6087–90**

Honoring the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition to the Susan G. Komen Global Race for the Cure on June 6, 2009: H. Con. Res. 109, to honor the 20th anniversary of the Susan G. Komen Race for the Cure in the Nation's Capital and its transition to the Susan G. Komen Global Race for the Cure on June 6, 2009, by a ⅔ yea-and-nay vote of 417 yeas with none voting ''nay'', Roll No. 298; and **Pages H6090–93, H6122–23**

Supporting the goals and ideals of Mental Health Month: H. Res. 437, amended, to support the goals and ideals of Mental Health Month.

Pages H6093–99

Suspension—Proceedings Postponed: The House debated the following measure under suspension of the rules. Further proceedings were postponed:

John S. Wilder Post Office Building Designation Act: H.R. 1817, to designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the ''John S. Wilder Post Office Building''. **Pages H6081–84**

Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009: The House passed H.R. 1385, to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe-Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, by voice vote. **Pages H6101–15**

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule. **Page H6107**

Agreed to:

Goodlatte amendment (No. 1 printed in H. Rept. 111–131) that provides that eminent domain may not be used to acquire lands in fee or in trust for an Indian tribe recognized under this Act and

Page H6113

Goodlatte amendment (No. 2 printed in H. Rept. 111–131), as modified, that amends section 506(a) of the bill to remove all counties except Amherst County, Virginia. **Pages H6113–15**

H. Res. 490, the rule providing for consideration of the bills (H.R. 31 and H.R. 1385), was agreed to by a yea-and-nay vote of 231 yeas to 174 nays, Roll No. 295, after agreeing to order the previous question without objection. **Pages H6099–H6101**

Lumbee Recognition Act: The House passed H.R. 31, to provide for the recognition of the Lumbee Tribe of North Carolina, by a yea-and-nay vote of 240 yeas to 179 nays, Roll No. 297. **Pages H6115–22**

Rejected the Hastings (WA) motion to recommit the bill to the Committee on Natural Resources with instructions to report the same back to the House forthwith with an amendment, by a yea-and-nay vote of 197 yeas to 224 nays, Roll No. 296.

Pages H6120–22

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on Natural Resources now printed in the bill shall be considered as adopted. **Page H6115**

H. Res. 490, the rule providing for consideration of the bills (H.R. 31 and H.R. 1385), was agreed

to by a yea-and-nay vote of 231 yeas to 174 nays, Roll No. 295, after agreeing to order the previous question without objection. **Pages H6099–H6101**

Suspension—Proceedings Resumed: The House agreed to suspend the rules and agree to the following measure which was debated on Tuesday, June 2nd:

Expressing sympathy to the victims, families, and friends of the tragic act of violence at the combat stress clinic at Camp Liberty, Iraq, on May 11, 2009: H. Res. 471, amended, to express sympathy to the victims, families, and friends of the tragic act of violence at the combat stress clinic at Camp Liberty, Iraq, on May 11, 2009, by a ⅔ yea-and-nay vote of 416 yeas with none voting "nay", Roll No. 299. **Pages H6123–24**

Privileged Resolution—Motion to Refer: Agreed to refer H. Res. 500, directing the Committee on Standards of Official Conduct to report to the House of Representatives on the actions the Committee has taken concerning any misconduct of Members and employees of the House in connection with activities of the PMA Group, to the Committee on Standards of Official Conduct by a yea-and-nay vote of 270 yeas to 134 nays with 17 voting "present", Roll No. 300. **Pages H6124–25**

Committee Resignation: Read a letter from Representative McHugh, wherein he resigned from the Committee on Armed Services, effective today. **Page H6125**

Quorum Calls—Votes: Six yea-and-nay votes developed during the proceedings of today and appear on pages H6100–01, H6121, H6122, H6122–23, H6123–24, and H6624–25. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 8:26 p.m.

Committee Meetings

U.S FORESTRY POLICY

Committee on Agriculture: Subcommittee on Department Operations, Oversight, Nutrition and Forestry held a hearing to review the future of forestry in the United States. Testimony was heard from Jay Jensen, Deputy Under Secretary, Natural Resources and Environment, USDA; and public witnesses.

DEFENSE APPROPRIATIONS

Committee on Appropriations: Subcommittee on Defense held a hearing on Air Force Posture. Testimony was heard from the following officials of the Department of the Air Force: Michael B. Donley, Secretary; and GEN Norton A. Schwartz, USAF, Chief of Staff.

The Subcommittee also held a hearing on Navy and Marine Corps Posture. Testimony was heard from the following officials of the Department of the Navy: Raymond E. Mabus, Secretary; ADM Gary Roughhead, USN, Chief of Naval Operations; and GEN James T. Conway, USMC, Commandant of the Marine Corps.

ENERGY AND WATER DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Energy and Water Development, and Related Agencies held a hearing on the Secretary of Energy. Testimony was heard from Stephen Chu, Secretary of Energy.

LABOR, HHS, EDUCATION, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education, and Related Agencies held a hearing on the Secretary of Education. Testimony was heard from Arne Duncan, Secretary of Education.

COORDINATING REQUIREMENTS/ BUDGETS/ACQUISITIONS

Committee on Armed Services: Defense Acquisition Reform Panel held a hearing on Coordinating Requirements, Budgets, and Acquisition: How Does It Affect Costs and Acquisition Outcomes. Testimony was heard from the following former officials of the Department of Defense: Gordon England, Secretary of Defense and Secretary of the Navy; ADM Edmund P. Giambastiani, USN (ret.); and LTG Ron Ladish, USAF (ret.).

MILITARY CONSTRUCTION BUDGET

Committee on Armed Services: Subcommittee on Readiness held a hearing on the Fiscal Year 2010 National Defense Authorization Budget Request for Military Construction, Family Housing, Base Closure, Facilities Operations and Maintenance. Testimony was heard from the following officials of the Department of Defense: Wayne Arny, Deputy Under Secretary, Installations and Environment; Joseph Calcara, Deputy Assistant Secretary, Army, Installations and Housing; B.J. Penn, Assistant Secretary, Navy, Installations and Environment; and Kathleen I. Ferguson, Deputy Assistant Secretary, Air Force, Installations.

FEDERAL RESERVE'S ECONOMIC VIEW

Committee on the Budget: Held a hearing on Challenges Facing the Economy: The View of the Federal Reserve. Testimony was heard from Benjamin S. Bernanke, Chairman, Board of Governors, Federal Reserve System.

MISCELLANEOUS MEASURES

Committee on Energy and Commerce: Subcommittee on Commerce, Trade, and Consumer Protection concluded markup of the following bills: H.R. 2221, Data Accountability and Trust Act; H.R. 2309, Consumer Credit and Debt Protection Act; H.R. 2190, Mercury Pollution Reduction Act; and H.R. 1706, Protecting Consumer Access to Generic Drugs Act.

FOOD SAFETY ENHANCEMENT ACT OF 2009

Committee on Energy and Commerce: Subcommittee on Health held a hearing on draft legislation the Food Safety Enhancement Act of 2009. Testimony was heard from Margaret Hamburg, M.D., Commissioner, FDA, Department of Health and Human Services; Tim F. Jones, M.D., State Epidemiologist, Department of Health, State of Tennessee; and public witnesses.

FANNIE MAE/FREDDIE MAC

Committee on Financial Services: Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing entitled ''The Present Condition and Future Status of Fannie Mae and Freddie Mac.'' Testimony was heard from the following officials of the Federal Housing Finance Agency: James B. Lockhart III, Director; Edward J. DeMarco, Chief Operating Officer and Senior Deputy Director, Housing Mission and Goals; and Christopher Dickerson, Deputy Director, Enterprise Regulation; and public witnesses.

REMITTANCES: REGULATION AND DISCLOSURE

Committee on Financial Services: Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled ''Remittances: Regulation and Disclosure in a New Economic Environment.'' Testimony was heard from public witnesses.

GENERIC DRUG PATENT SETTLEMENT DELAYS

Committee on the Judiciary: Subcommittee on Courts and Competition Policy held a hearing on Pay to Delay: Are Patent Settlements That Delay Generic Drug Market Entry Anticompetitive? Testimony was heard from Richard Feinstein, Director, Bureau of Competition, FTC; and public witnesses.

JUDGE SAMUEL B. KENT IMPEACHMENT

Committee on the Judiciary: Task Force on Judicial Impeachment held a hearing to consider Possible Impeachment of United States District Judge Samuel B. Kent. Testimony was heard from the following officials of the U.S. District Court, Southern District of Texas: Cathy McBroom, Case Manager; and Donna Wilkerson, Legal Secretary; Alan Baron, Special Impeachment Counsel, House Committee on the Judiciary; and a public witness.

MISCELLANEOUS MEASURES

Committee on Natural Resources: Held a hearing on the following bills: H.R. 1061, Hoh Indian Tribe Safe Homelands Act; H.R. 2040, To authorize a process by which the Secretary of the Interior shall process acquisitions of certain real property by the Samish Indian Nation into trust; and H.R. 1035, Morris K. Udall Scholarship and Excellence in National Environmental Policy Amendments Act of 2009. Testimony was heard from George Skibine, Assistant Secretary, Policy and Economic Development for Indian Affairs, Department of the Interior; and public witnesses.

FEDERAL EMPLOYEES PAID PARENTAL LEAVE ACT OF 2009

Committee on Rules: Granted, by a non-record vote, a structured rule providing for consideration of H.R. 626, the Federal Employees Paid Parental Leave Act of 2009. The rule provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Government Reform. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the bill shall be considered as read. The rule waives all points of order against provisions in the bill.

The rule makes in order only those amendments printed in the Rules Committee report. The amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of Rule XXI are waived. The rule provides one motion to recommit with or without instructions. Testimony was heard from Representatives Lynch, Maloney, Al Green of Texas, and Issa.

NATIONAL CLIMATE SERVICES ACT OF 2009

Committee on Science and Technology: Ordered reported, as amended, H.R. 2407, National Climate Service Act of 2009.

HEALTH REFORM

Committee on Small Business: Held a hearing entitled "Common Ground: Finding Consensus on Health Reform, the Small Business Perspective." Testimony was heard from public witnesses.

WATER/ENVIRONMENT AGENCY BUDGETS

Committee on Transportation and Infrastructure: Subcommittee on Water Resources and Environment held a hearing on Agency Budgets and Priorities for FY 2010. Testimony was heard from the following officials of the EPA; Michael Shapiro, Acting Assistant Administrator, Office of Water; and Barry Breen, Acting Assistant Administrator, Office of Solid Waste and Emergency Response; David White, Chief, Natural Resources Conservation Service, USDA; Collister Johnson, Jr., Administrator, Saint Lawrence Seaway Development Corporation, Department of Transportation; John H. Dunnigan, Assistant Administrator, National Ocean Service, NOAA, Department of Commerce; and John M. Thomas III, Vice President and Controller, Financial Services, TVA.

ENDING VETERANS HOMELESSNESS

Committee on Veterans' Affairs: Held a hearing on a National Commitment to End Veterans Homelessness. Testimony was heard from Peter H. Dougherty, Director, Homeless Veterans Programs, Department of Veterans Affairs; John M. McWilliam, Deputy Assistant Secretary, Veterans' Employment and Training Service, Department of Labor; representatives of veterans organizations; and public witnesses.

VETERANS LEGISLATION

Committee on Veterans' Affairs: Subcommittee on Disability Assistance and Memorial Affairsapproved for full Committee action the following bills: H.R. 952, as amended, COMBAT PTSD Act; and H.R. 2270, Benefits for Qualified World War II Veterans Act of 2009.

HUMAN CAPITAL

Permanent Select Committee on Intelligence: Met in executive session to hold a hearing on Human Capital. Testimony was heard from LTG John F. Kimmons, USA, Deputy Chief of Staff, Intelligence, Department of the Army; and the following officials of the Office of the Director of National Intelligence: Ron Sanders, Associate Director, National Intelligence for Human Capital; and Patricia Taylor, Chief, Intelligence Community EEO and Diversity.

Joint Meetings

No joint committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D614)*

H.R. 131, to establish the Ronald Reagan Centennial Commission. Signed on June 2, 2009. (Public Law 111–25)

COMMITTEE MEETINGS FOR THURSDAY, JUNE 4, 2009

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry: to hold hearings to examine regulatory reform and derivatives markets, 2 p.m., SR–328A.

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies, to hold hearings to examine proposed budget estimates for fiscal year 2010 for the Federal Bureau of Investigation, to be followed by a closed session at 11:15 a.m. in SVC–217, 9:30 a.m., SD–192.

Subcommittee on Defense, to hold hearings to examine proposed budget estimates for fiscal year 2010 for the Department of the Air Force, 10:30 a.m., SD–138.

Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, to hold hearings to examine proposed budget estimates for fiscal year 2010 for the Department of Agriculture, 2 p.m., SD–192.

Subcommittee on Legislative Branch, to hold hearings to examine proposed budget estimates for fiscal year 2010 for the Library of Congress and the Open World Leadership Center, 2:30 p.m., SD–138.

Committee on Armed Services: to hold hearings to examine the Defense Authorization request for fiscal year 2010 and the Future Years Defense Program for the Department of the Navy; to be possibly followed by a closed session in SVC–217, 9:30 a.m., SH–216.

Committee on Banking, Housing, and Urban Affairs: to hold hearings to examine the nomination of Herbert M. Allison, Jr., of Connecticut, to be Assistant Secretary of the Treasury for Financial Stability, 9:30 a.m., SD–538.

Committee on Energy and Natural Resources: business meeting to consider pending energy legislation, 9:30 a.m., SD–366.

Committee on Environment and Public Works: business meeting to consider the nominations of Peter Silva Silva, of California, to be Assistant Administrator for Water, and Stephen Alan Owens, of Arizona, to be Assistant Administrator for Prevention, Pesticides, and Toxic Substances, both of the Environmental Protection Agency, Time to be announced, Room to be announced.

Committee on Foreign Relations: to hold hearings to examine challenges and opportunities for U.S.-China cooperation on climate change, 10 a.m., SD–419.

Committee on Homeland Security and Governmental Affairs: Ad Hoc Subcommittee on Disaster Recovery, to hold hearings to examine a status report on emergency preparedness for the 2009 hurricane season, 2:30 p.m., SD–342.

Committee on the Judiciary: business meeting to consider S. 417, to enact a safe, fair, and responsible state secrets privilege Act, S. 257, to amend title 11, United States Code, to disallow certain claims resulting from high cost credit debts, S. 448 and H.R. 985, bills to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, and the nominations of David F. Hamilton, of Indiana, to be United States Circuit Judge for the Seventh Circuit, Andre M. Davis, of Maryland, to be United States Circuit Judge for the Fourth Circuit, and Thomas E. Perez, of Maryland, to be Assistant Attorney General, Civil Rights Division, Department of Justice, 10 a.m., SD–226.

Committee on Small Business and Entrepreneurship: to hold hearings to examine SBIR and STTR reauthorization, focusing on ensuring a strong future for small business in federal research and development, 9:30 a.m., SR–428A.

Select Committee on Intelligence: to hold closed hearings to examine certain intelligence matters, 2:30 p.m., S–407, Capitol.

House

Committee on Agriculture, Subcommittee on General Farm Commodities and Risk Management, hearing to review implications of the CFTC v. Zelener case, 10 a.m., 1300 Longworth.

Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, to mark up the Commerce, Justice, Science, and Related Agencies Appropriations for Fiscal Year 2010, 9 a.m., H140 Capitol.

Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies, on the Secretary of Transportation, 10 a.m., 2359 Rayburn.

Committee on Armed Services, Subcommittee on Oversight and Investigations, hearing on Thinkers and Practitioners: Do Senior Professional Military Education Schools Produce Strategists? 10 a.m., 2212 Rayburn.

Subcommittee on Terrorism Unconventional Threats and Capabilities, hearing on the Fiscal Year 2010 National Authorization Budget Request for the U.S. Special Operations Command, 1 p.m., 2212 Rayburn.

Committee on Education and Labor, hearing on Building on What Works at Charter Schools, 10 a.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, hearing on oversight of the Internet Corporation for Assigned Names and Numbers (ICANN), 10 a.m., 2123 Rayburn.

Subcommittee on Oversight and Investigations, hearing entitled ''Commercial Sales of Military Technologies,'' 10 a.m., 2322 Rayburn.

Committee on Financial Services, Subcommittee on Housing and Community Opportunity, hearing entitled ''The Section 8 Voucher Reform Act,'' 10 a.m., 2128 Rayburn.

Committee on Foreign Affairs, Subcommittee on Africa and Global Health, hearing on Local and Regional Purchases: Opportunities to Enhance U.S. Food Aid, 10:30 a.m., 2172 Rayburn.

Subcommittee on Asia, the Pacific and Global Environment, hearing on Agent Orange: What Efforts Are Being Made To Address The Continuing Impact of Dioxin in Vietnam? 2 p.m., 2172 Rayburn.

Committee on Homeland Security, Subcommittee on Management,Investigations, and Oversight, hearing entitled ''The FY 2010 Budget for Departmental Management and Operations at DHS,'' 10 a.m., 311 Cannon.

Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, hearing on H.R. 1508, Sunshine in Litigation Act of 2009, 11 a.m., 2237 Rayburn.

Subcommittee on the Constitution, Civil Rights, and Civil Liberties, hearing on H.R. 984, State Secret Protection Act of 2009, 2 p.m., 2141 Rayburn.

Subcommittee on Crime, Terrorism, and Homeland Security, hearing on Indigent Representation: A Growing National Crisis, 9:30 a.m., 2141 Rayburn.

Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, to mark up a measure to extend certain immigration programs, 3 p.m., 2237 Rayburn.

Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, oversight hearing entitled ''Unconventional Fuels, Part I: Shale Gas Potential,'' 10 a.m., 1334 Longworth.

Subcommittee on National Parks, Forests and Public Lands and the Subcommittee on Insular Affairs, Oceans and Wildlife, joint oversight hearing on White-nose Syndrome: What's Killing Bats in the Northeast, 10 a.m., 1324 Longworth.

Committee on Oversight and Government Reform, to mark up the following measures: Government Accountability Office Improvement Act of 2009; H.R. 1345, District of Columbia Hatch Act Reform Act of 2009; H.R. 2392, Government Information Transparency Act; H. Res. 420, Celebrating the symbol of the United States Flag and supporting the goals and ideals of Flag Day; H. Res. 435, Celebrating Asian Pacific American Heritage Month; H.R. 2325, To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office;'' H.R. 2422, To designate the facility of the United States Postal Service located at 702 East University Avenue in Georgetown, Texas, as the ''Lyle G. West Post Office Building;'' and H.R. 2470, To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building,'' 10 a.m., 2154 Rayburn.

Committee on Science and Technology, Subcommittee on Energy and Environment, hearing on a New Direction for Federal Oil Spill Research and Development, 2 p.m., 2318 Rayburn.

Committee on Small Business, Subcommittee on Contracting and Technology, hearing entitled ''Legislative Initiatives to Strengthen and Modernize the SBIR and STTR programs.'' 10 a.m., 2360 Rayburn.

Committee on Transportation and Infrastructure, to consider the following measures: H.R. 2093, Clean Coastal Environment and Public Health Act of 2009; H.R. 2650, Maritime Safety Act of 2009; H.R. 2651, Maritime

Workforce Development Act; H.R. 2652, Coast Guard Modernization Act; H.R. 2121, To provide for the transfer of certain Federal Property to the Galveston Historical Foundation; H.R. 1687, To designate the Federal building and United States Courthouse located at McKinley Avenue and Third Street, S. W., Canton, Ohio, as the "Ralph Regula Federal Office Building and United States Courthouse;" H.R. 2053, To designate the United States courthouse located at 525 Magoffin Avenue in El Paso, Texas, as the "Albert Armendariz, Sr., United States Courthouse;" H.R. 2498, To designate the Federal building located at 844 North Rush Street in Chicago, Illinois, as the "William O. Lipinski Federal Building;" H. Res. 410, Recognizing the numerous contributions of the recreational boating community and the boating industry to the continuing prosperity and affluence of the United States; H. Res. 472, Congratulating and saluting the seventieth anniversary of the Aircraft Owners and Pilots Association (AOPA) and their dedication to general aviation, safety and the important contribution general aviation provides to the United States; H. Res. 484, Expressing support for designation of June 10th as the "National Pipeline Safety Day; " General Services Administration Section 11(b) resolutions, and other pending business, 11 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, to mark up the following bills: H.R. 1037, Pilot College Work Study Programs for Veterans Act of 2009; H.R. 1098, Veterans' Worker Retaining Act of 2009; H.R. 1172, To direct the Secretary of Veterans Affairs to include on the Internet website of the Department of Veterans Affairs a list of organizations that provide scholarships to veterans and their survivors; H.R. 1821, Equity for Injured Veterans Act of 2009; H.R. 1879, National Guard Employment Protection Act of 2009; and H.R. 2180, To amend title 38, United States Code, to waive housing loan fees for certain veterans with service-connected disabilities called to active service, 1 p.m., 340 Cannon.

Subcommittee on Health, to mark up H.R. 1211, Women Veterans Health Care Improvement Act; followed by a hearing on Meeting the Needs of Family Caregivers of Veterans, 10 a.m., 334 Cannon.

Committee on Ways and Means, Subcommittee on Oversight, hearing on IRS operations, the fiscal year 2010 budget proposals, and the 2009 tax return filing season, 10 a.m., 1100 Longworth.

Permanent Select Committee on Intelligence, executive, briefing on Intelligence Matters, 2 p.m., 304 HVC Capitol.

Subcommittee on Oversight and Investigations, executive, hearing on Intelligence Matters, 10 a.m., 304 HVC, Capitol.

Next Meeting of the **SENATE**

9:30 a.m., Thursday, June 4

Senate Chamber

Program for Thursday: After the transaction of any morning business (not to extend beyond one hour), Senate will continue consideration of H.R. 1256, Family Smoking Prevention and Tobacco Control Act.

Next Meeting of the **HOUSE**

10 a.m., Thursday, June 4

House Chamber

Program for Thursday: Consideration of H.R. 2200—Transportation Security Administration Authorization Act of 2009 (Subject to a Rule).

Extensions of Remarks, as inserted in this issue

HOUSE

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