and second time by unanimous consent, and referred as indicated:

By Mr. GRAHAM:

S. 1456. A bill for the relief of Rocco A. Trecosta of Fort Lauderdale, Florida; to the Committee on the Judiciary.

By Mr. WYDEN (for himself and Mr. CRAIG):

S. 1457. A bill to amend the Energy Policy Act of 1992 to assess opportunities to increase carbon storage on national forests derived from the public domain and to facilitate voluntary and accurate reporting of forest projects that reduce atmospheric carbon dioxide concentrations, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID:

S. 1458. A bill to provide for a reduction in the rate of adolescent pregnancy through the evaluation of public and private prevention programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MACK (for himself, Mrs. FEINSTEIN, Mr. HELMS, and Mr. ROBB):

S. 1459. A bill to amend title XVIII of the Social Security Act to protect the right of a medicare beneficiary enrolled in a Medicare+Choice plan to receive services at a skilled nursing facility selected by that individual; to the Committee on Finance.

By Mr. ABRAHAM (for himself and Mr. LEVIN):

S. 1460. A bill to amend the Consolidated Farm and Rural Development Act to allow business and industry guaranteed loans to be made for farmer-owned projects that add value to or process agricultural products; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. ABRAHAM, Mr. TORRICELLI, Mr. DEWINE, Mr. KOHL, and Mr. SCHUMER):

S. 1461. A bill to amend the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) to protect consumers and promote electronic commerce by prohibiting the bad-faith registration, trafficking or use of Internet domain names that are identical to, confusingly similar to, or dilutive of distinctive trademarks or service marks; to the Committee on the Judiciary.

By Mr. JEFFORDS:

S. 1462. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage and through mail order of certain covered products for personal use from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself, Ms. SNOWE, Mr. TORRICELLI, Ms. COLLINS, Mr. DURBIN, Mrs. FEINSTEIN, Ms. MIKULSKI, Mr. SCHUMER, Mr. BINGAMAN, Mr. CHAFEE, and Mr. KENNEDY):

S. 1463. A bill to establish a program to provide assistance for programs of credit and other financial services for microenterprises in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. HAGEL (for himself, Mrs. LINCOLN, Mr. ROBERTS, Ms. LANDRIEU, Mr. HUTCHINSON, Mr. COCHRAN, Mr. GRAMS, Mr. ABRAHAM, Mr. SMITH of Oregon, Mr. HOLLINGS, Mr. CRAIG, Mr. GORTON, Mr. GRASSLEY, Mr. CRAPO, Mr. BURNS, Mr. FRIST, Mr. BREAUX, Mr. ASHCROFT, Mr. COVERDELL, Mr. HELMS, and Mr. LOTT):

S. 1464. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish certain requirements regarding the Food Quality Protection Act of 1996, and for other purposes. ; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. LINCOLN:

S. 1465. A bill to provide for safe schools, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THOMPSON (for himself and Mr. ASHCROFT):

S. 1466. A bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of rules establishing or increasing taxes; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN (for himself and Mr. CRAIG):

S. 1457. A bill to amend the Energy Policy Act of 1992 to assess opportunities to increase carbon storage on national forests derived from the public domain and to facilitate voluntary and accurate reporting of forest projects that reduce atmospheric carbon dioxide concentrations, and for other purposes; to the Committee on Energy and Natural Resources.

THE FOREST RESOURCES FOR THE ENVIRONMENT AND THE ECONOMY ACT

Mr. WYDEN. Mr. President, today Senator CRAIG and I are introducing a bill that will help protect the global climate system by improving local natural resource management and strengthening the economy in rural communities. The Forest Resources for the Environment and the Economy Act of 1999 will expand the nation's forested lands and provide effective tools for including forests in our national efforts to fight global warming. The bill focuses on forests because they are the lungs of our planet. Investing in healthy forests is an investment in the health of our environment today and the well-being of our planet for decades to come.

In the Pacific Northwest, forests are more than critical environmental resources—they are also a cornerstone of our economy. In debates about forest policies, there are those who have advocated an exclusively environmental pathway, and others who have stressed an exclusively economic pathway. This bill is part of what I believe is a third pathway through the woods—a path to both stronger rural economies and healthier forests. It will reduce the buildup of greenhouse gases in the atmosphere and help protect our global climate for ourselves, our children and our grandchildren. It will provide improved wildlife and fish habitats and protect our waterways. It will enhance our national forests by reducing water pollution within their watersheds. It will provide jobs in the forestry sector in areas that have been hard hit by declining timber harvests. And it will grow additional timber resources on underproductive private lands.

The legislation does all of this through an entirely voluntary, incentive-based approach. The bill makes new resources available to private landowners through state-operated revolving loan programs that provide assistance for tree planting and other forest management actions. By quantifying forests' contribution to climate protection, the bill puts the free market to work at turning the initial Federal investment into a long-term source of non-federal funding for forestry projects. And the bill takes an important first step toward reducing greenhouse gases on Federal lands by directing the Forest Service to report to Congress on options to increase carbon storage in our national forests.

I am deeply concerned about the risks that we are taking with our unprecedented experiment with the global climate system. Global climate change may jeopardize critical forest and other natural resources that are closely tied with Oregon's economy and our citizens' quality of life. Water managers in the Northwest may be faced with daunting challenges if the predicted climate changes, such as drier, hotter summers, complicate protection and management of water supplies. Over the last Century, the average temperature in Corvallis, Oregon has increased 2.5 degrees Fahrenheit, and average temperatures across Oregon could increase by 5 degrees or more over the next century, putting the elderly in Oregon especially at risk from more intense heat waves. And sea level rise resulting from global warming could eliminate the salt marshes along Tillamook and Coos Bay regions. Given these potential hazards of global warming, the challenge is to find strategies to protect our quality of life that won't cause an economic meltdown.

One of the key strategies for meeting this challenge is something this planet has been doing for more than 300 million years—growing abundant and healthy forests. Forests are a critical part of our global climate system. The total amount of greenhouse gases in our atmosphere depends in part on the efficiency of forests and other natural ''sinks'' that absorb carbon dioxide—the most significant greenhouse gas—from the atmosphere. In fact, the world's forests contain 200 times as much carbon as is emitted to the atmosphere each year from burning fossil fuels. The implications are as simple as they are scientifically sound—if we grow more trees, bigger trees, and healthier trees, we will remove more greenhouse gases from the atmosphere and help protect the global climate. According to the Pacific Forest Trust, our forest lands in the United States are only storing one-quarter of the carbon they can ultimately store. Just tapping a portion of this potential by expanding and increasing the productivity of the nation's 737 million acres of forests is an important part of a win-win strategy to slow global warming.

And here's the good news—an ounce of investment in our forests is worth not only a pound of global warming cure, but also two pounds of jobs and three pounds of protection for our waterways and wildlife. The bill that I am introducing today will not only protect our global environment, but also will

provide immediate dividends in terms of watershed and habitat protection. It will provide jobs today for tree planting and forest management, and jobs tomorrow in carbon accounting and monitoring to ensure that greenhouse gas reductions are real and verifiable.

I recognize that global warming is a large problem that cannot be solved by forestry actions alone. We need a portfolio of approaches, and I continue to strongly support research, development and deployment of energy efficient and renewable technologies that reduce greenhouse gas emissions. But increasing our nation's forest lands is a key part of the solution and something we can do immediately. Forests may not be a silver bullet that will solve the entire global warming problem, but they are a silver lining to the problem that can provide jobs around the country while taking a big step to reverse the buildup of greenhouse gas in the atmosphere.

It is sometimes hard to believe that seven years ago Senators from both parties proclaimed their universal support for taking action to protect the climate system and reducing the buildup of greenhouse gases in the atmosphere. When the 1992 United Nations Framework Convention on Climate Change was ratified by the Senate, Senators from both parties came to the floor to applaud this commitment to begin reducing greenhouse gas emissions. We cannot afford to let the current debates about international treaties paralyze this Congress into inaction when there are opportunities here at home to protect our environment in ways that also provide jobs and economic growth.

Forests are one of those opportunities. This bill will take the money that polluters pay when they are caught violating the Clean Air Act and Clean Water Act and use it to expand our forests, protect streams and rivers and help remove greenhouse gases from the air. In fiscal year 1998, $45 million of these environmental penalties were assessed against polluters. There are currently no guarantees that these penalties, which revert to the General Fund, are used to improve our environment. This bill would make this money available as loans to small and medium landowners to cover the upfront costs of tree planting and other projects that grow healthy, productive forests and provide better wildlife habitats.

This bill is supported by the National Association of State Foresters and the Society of American Foresters. It responds to recent recommendations of the National Academy of Sciences by providing assistance to overcome the capital constraints that prevent nonindustrial, private forest land owners from growing healthy forests. Almost 10 million landowners in the United States own 42 percent of non-industrial, private forest land in parcels of less than 100 acres. Access to these low-interest loans can empower these landowners to improve their lands while providing global environmental protection.

Under the bill, State Foresters will be able to give loans for forest projects that remove greenhouse gases from the atmosphere while improving habitats and protecting waterways. For example, loans will be available for planting trees as buffer zones along salmon streams and rivers in areas that are currently being used by livestock or for crop production. Loans will be available to turn thin and poorly stocked forest lands into healthier and more productive lands that remove greater amounts of greenhouse gases from the atmosphere and provide additional timber resources on private lands. And loans will be available to grow trees for use in bioenergy facilities that can provide energy without increasing the greenhouse gases in our atmosphere.

These loans must be repaid with interest—money that will be reinvested in additional loans to double and triple the impact of every federal dollar over time. Loans may not be provided for reforestation activities already required under any state or local laws. And the bill ensures that people aren't paid to cut their existing trees in order to receive funding for replanting afterwards.

A critical element of the bill is that it harnesses the power of the free market to allow responsible businesses to invest in the nation's forests. Across the nation, companies are voluntarily seeking ways to reduce greenhouse gases. Some companies are going as far as sending money oversees to protect forests in other countries. Forests in Brazil are important, but forests in Bend, Oregon, can do just as good a job at fighting off global warming. In fact, our Northwest forests are some of the best carbon ''sinks'' in the world. This bill provides a way for companies to invest in American forests and know with accuracy the amount of greenhouse gases that are removed from the atmosphere due to their investments. Once businesses recognize that the nation's forests are an opportunity for environmental investment, their entrepreneurial ingenuity will generate new opportunities for consumers and other businesses to tap into this win-win opportunity.

We know that this approach works because of the leadership of my home State of Oregon. The loan program is modeled after the innovative Forest Resource Trust, which was established in Oregon in 1993, and is just one of the many ways Oregon continues to lead the nation in state actions to reduce greenhouse gas emissions. I am pleased to say that PacifiCorp announced last month that it is contributing $1.5 million to the Forest Resource Trust to support tree planting and reduce greenhouse gases in the atmosphere. This leadership by PacifiCorp will create forestry jobs in Oregon, protect salmon and fish habitat, create new wildlife habitats, and remove greenhouse gases from the atmosphere. I am introducing this bill to make sure that we take advantage of these opportunities across the country and encourage more businesses to invest in the nation's forests.

In addition to establishing the state revolving loan programs, the bill makes important changes to the Energy Policy Act of 1992 to strengthen the voluntary accounting and verification of greenhouse gas reductions from forestry activities. The bill directs the Secretary of Agriculture to develop new guidelines on accurate and cost-effective methods to account for and report real and credible greenhouse gas reductions. These guidelines will be developed with the input of a new advisory board representing industry, foresters, states, and environmental groups.

This bill is about taking advantage of a clear win-win opportunity. It's a win for the global environment. It's a win for sustainable forestry. It's a win for local water protection. And it's a win for rural communities.

For these reasons, the bill is already supported by timber companies and environmental organizations alike. I have already received supportive letters from: American Forest and Paper Association, American Forests, Environmental Defense Fund, Governor John A. Kitzhaber of Oregon, National Association of State Foresters, PacifiCorp, Society of American Foresters, The Nature Conservancy, and The Pacific Forest Trust.

I look forward to working with my colleagues to make sure that we pursue this common-sense good step toward protecting the environment and supporting our forest workers.

I ask unanimous consent that the Section-by-Section Analysis of the Forest Resources for the Environment and the Economy Act be printed in the RECORD.

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

THE FOREST RESOURCES FOR THE ENVIRONMENT AND THE ECONOMY ACT—SECTION-BY-SECTION ANALYSIS

SUMMARY

The purpose of the bill is to promote sustainable forestry in the United States by increasing forest carbon sequestration, improving forest health, enhancing wildlife and fish habitats, improving water quality, providing employment and income to rural communities, providing new sources of forest products and increasing use of renewable biomass energy that improves the energy security of the United States. The bill achieves these purposes through four major actions:

(1) State Revolving Loan Programs. The bill provides assistance to nonindustrial private forest landowners and Indian tribes to grow new forests and increase the productivity of existing forests in order to increase carbon sequestration, protect watersheds and fish habitats and improve wildlife diversity. Assistance to landowners will be provided through State-based loan

programs. The Federal share of funding for these State loan programs will come from penalties that are being assessed against violators of the Clean Air Act and the Clean Water Act (civil penalties assessed in FY 1998 totaled $45 million).

(2) Guidelines for Accurate Carbon Accounting for Forests. The bill directs the Secretary of Agriculture to establish scientifically-based guidelines for accurate reporting, monitoring and verification of carbon storage from forest management actions. The bill establishes a multi-stakeholder Carbon and Forestry Advisory Council to assist USDA in developing the guidelines.

(3) Report on Options to Increase Carbon Storage on Federal Lands. The bill directs the Secretary of Agriculture to report to Congress on forestry options to increase carbon storage in National Forests.

(4) National Forest Watershed Restoration Cooperative Agreements. The bill allows the Secretary of Agriculture to enter into cooperative agreements with willing State and local governments, Indian tribes, private and nonprofit entities, and landowners for protection, restoration and enhancement of fish and wildlife habitat and other resources on public land, Indian land or private land in a national forest watershed.

SECTION 1. SHORT TITLE

The title of the bill is the ''Forest Resources for the Environment and the Economy Act''.

SECTION 2. FINDINGS AND PURPOSES

This section states the purpose of the bill, which is to promote sustainable forestry in the United States by increasing forest carbon sequestration, improving forest health, enhancing wildlife and fish habitats, improving water quality, providing employment and income to rural communities, providing new sources of forest products and increasing use of renewable biomass energy that improves the energy security of the United States.

This section also states the findings of the bill, including:

The Federal Government should increase the forest carbon storage on public land while pursuing existing statutory objectives, but insufficient information exists on the opportunities to increase carbon storage on public land through improvements in forest land management;

Important environmental benefits to national forests can be achieved through cooperative forest projects that enhance fish and wildlife habitats, water and other resources on public or private land located in national forest watersheds;

Forest projects also provide economic benefits, including employment and income that contribute to the sustainability of rural communities and future supplies of forest products;

Monitoring and verification of forest carbon storage provides an important opportunity to create employment in rural communities and substantiate improvements in natural habitats or watersheds due to forestry activities; and

Sustainable production of biomass energy feedstocks provides a renewable source of energy that can reduce carbon dioxide emissions and improve the energy security of the United States by diversifying energy fuels.

SECTION 3. DEFINITIONS

This section defines terms used in the bill, including the following:

''Forestry carbon activity'' is defined as a forest management action that increases long-term carbon storage and has a positive impact on watersheds, fish habitats and wildlife diversity.

''Forest carbon reservoir'' is defined as trees, roots, soils or other biomass associated with forest ecosystems or products from the biomass that store carbon.

''Forest carbon storage'' is defined as the quantity of carbon sequestered from the atmosphere and stored in forest carbon reservoirs, including forest products.

''Forest land'' is defined as land that is, or has been, at least 10 percent stocked by forest trees of any size, including land that had such forest cover and that will be naturally or artificially regenerated, and including a transition zone between a forested and nonforested area that is capable of sustaining forest cover.

''Forest management action'' is defined as the practical application of forestry principles to the regeneration, management, utilization and conservation of forests to meet specific goals and objectives, while maintaining the productivity of the forests. ''Forest management action'' includes management of forests for aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products and other forest values.

''National forest watershed'' is defined as a watershed that contains national forest land, that consequently has unique interest to Federal land managers, and in which all landowners, including the Federal Government, share interest and influence in the management and health of the watershed.

''Reforestation'' is defined as the reestablishment of forest cover naturally or artificially, including planned replanting, reseeding and managed natural regeneration.

SECTION 4. CARBON MANAGEMENT ON FEDERAL LAND; CARBON MONITORING AND VERIFICATION GUIDELINES.

This section directs the Secretary of Agriculture to report to Congress on carbon management on Federal land, and directs the Secretary of Agriculture to develop guidelines for the voluntary reporting, monitoring and verification of carbon storage resulting from forest management actions. This section is accomplished through amendment of Title XVI (''Global Climate Change'') of the Energy Policy Act of 1992.

(a) Definitions. This subsection amends the Energy Policy Act to add the definitions for ''forest carbon storage,'' ''carbon storage program,'' ''forest carbon reservoir,'' ''forest management action'' and ''sequestration'' that were specified in Section 3.

(b) Carbon Management on Federal Land. This subsection directs the Secretary of Agriculture to report to Congress within one year on the quantity of carbon contained in the forest carbon reservoir on Western national forests (i.e., ''national forests derived from the public domain''). The report will include an assessment of forest management actions that can increase carbon storage on these national forest lands while providing positive impacts on watersheds and fish and wildlife habitats. Finally, the report will include an assessment of the role of forests in the carbon cycle and the contributions of forestry to the global carbon budget. This subsection is accomplished by amendment to section 1604 of the Energy Policy Act (''Assessment of Alternative Policy Mechanisms for Addressing Greenhouse Gas Emissions'').

(c) Monitoring and Verification of Carbon Storage. This subsection amends section 1605(b) of the Energy Policy Act (''Voluntary Reporting'') by directing the Secretary of Agriculture to review the existing Federal guidelines on reporting, monitoring, and verification of carbon storage from forest management actions. Within 18 months of enactment and following an opportunity for public comment on the existing guidelines, the Secretary of Agriculture will make recommendations to the Secretary of Energy for amendment of the guidelines.

Carbon and Forestry Advisory Council: This subsection also directs the Secretary of Agriculture to establish an 18-member, multi-stakeholder Carbon and Forestry Advisory Council for the purpose of advising the Department of Agriculture on: the development of the guidelines for accurate voluntary reporting of greenhouse gas sequestration from forest management actions; evaluating the potential implementation of the guidelines; estimating the effect of proposed implementation on atmospheric carbon mitigation; reviewing and updating the guidelines; reporting to Congress on the results of the carbon storage program established in Section 5 of this bill; and assessing the vulnerability of forests to climate change. The Advisory Council includes experts on carbon sequestration representing Federal agencies, the forestry industries, forestry workers and professionals, States, environmental organizations and landowners, as well as independent scientists. Terms of the Advisory Council are staggered to ensure continuity from year to year.

Criteria: The guidelines developed by the Secretary of Agriculture must be based on: (1) measuring increases in carbon storage in excess of that which would have occurred in the absence of the forest management actions; and (2) comprehensive carbon accounting that reflects net increases in the carbon reservoir and takes into account any carbon emissions resulting from disturbance of carbon reservoirs existing at the start of forest management actions. The guidelines must include options for estimating possible leakage of carbon emissions to other lands, and for quantifying the expected carbon storage over various time periods, taking into account the likely duration of carbon stored in the carbon reservoir.

Recommended practices: The guidelines must also include recommended practices for monitoring, measurement and verification of carbon storage from forest management actions that, to the maximum extent practicable: are based on statistically sound sampling strategies, are cost-effective and allow pooled assessments across lands with multiple owners.

Guidance to States: The guidelines will include guidance to States for reporting, monitoring and verifying carbon storage achieved under the carbon storage program established in Section 5 of the bill.

Biomass energy projects: The guidelines will include guidance on calculating net greenhouse gas reductions from biomass energy projects, including net changes in carbon storage resulting from changes in land use, and the effect that using biomass to generate electricity (including cofiring of biomass with fossil fuels) has on the displacement of greenhouse gas emissions from fossil fuels.

Adoption of recommendations by DOE: The subsection directs the Secretary of Energy,

acting through the Administrator of the Energy Information Administration, to revise the existing voluntary reporting guidelines to include the recommendations provided by the Secretary of Agriculture.

Periodic review of guidelines: At least every 24 months, the Secretary of Agriculture must convene the Advisory Council, review the guidelines and revise the guidelines as necessary, including to ensure consistency with any future Federal laws that provide recognition, credit or reward for reductions of atmospheric greenhouse gas concentrations resulting from forest management actions.

Monitoring of State revolving loan programs: States participating in the revolving loan program established in Section 5 of the bill must report annually to the Secretary of Agriculture on the results of the program. If a company or non-governmental organization provides funding to the State for specific projects, then the State shall report the carbon achieved by those projects. The Secretary of Agriculture shall review each of these reports, certify reports that are in compliance with the guidelines established by USDA and submit the certified report to the EIA Administrator for inclusion in the 1605(b) voluntary reporting data base.

SECTION 5. CARBON STORAGE AND WATERSHED RESTORATION PROGRAM

This section directs the Secretary of Agriculture to establish a program to provide assistance through State revolving loan funds to Indian tribes and owners of nonindustrial private forest land to undertake forestry carbon activities. This section also allows the Secretary of Agriculture to enter into cooperative agreements to protect and enhance fish and wildlife habitat and other resources.

(a) National Forest Watershed Restoration Cooperative Agreements. This subsection allows the Secretary of Agriculture to enter into cooperative agreements with willing State and local governments, Indian tribes, private and nonprofit entities and landowners for protection, restoration and enhancement of fish and wildlife habitat and other resources on public land, Indian land or private land in a national forest watershed. Projects under such a cooperative agreement are eligible for loans discussed in the next subsection. This subsection extends appropriations authorities that were first provided under Section 334 of the Interior and Related Appropriation Act for FY 1998 (''the WYDEN Amendment'').

(b) State Revolving Loan Funds. This subsection establishes a program to provide assistance through State revolving loan funds to Indian tribes and owners of not more than 5,000 acres of nonindustrial private forest land. The assistance is in the form of loans to support forestry carbon activities that increase long-term carbon storage or provide new sources of biomass feedstocks for renewable energy generation, and that have a positive impact on watersheds, fish habitats and wildlife diversity. The program will be administered by the Secretary of Agriculture.

Guidance: USDA, in collaboration with States, will provide guidance on eligible forestry carbon activities based on the criteria of the bill, recognizing that States should have maximum flexibility to achieve the purposes of the bill in ways most appropriate for each State.

Prohibitions: Loans will not be issued for activities required under other applicable Federal, State or local laws, nor for costs incurred before entering into a loan agreement with the State.

Limitation on land considered for funding: States shall not enter into new loan agreements under the bill to fund reforestation of land that has been harvested after enactment if the landowner receives revenues from the harvest sufficient to reforest the land.

Native species: Funding of reforestation activities shall be provided only for a species that is native to a region, with preference given to species that formerly occupied the land.

Sustainable forest management plan: States must give priority to projects on land under a sustainable forestry management program or forest stewardship plan, if the projects are consistent with the program or plan.

Loan amount: Loans can cover up to 100 percent of total project costs, not to exceed $100,000 during any 2-year period.

Repayment: Loans must be repaid to the State with interest at a rate of at least 5 percent per annum. Loans are to be repaid when the land is harvested, or in accordance with any other repayment schedule determined by the State (for example, a portion of proceeds from each timber sale to be paid over more than one rotation).

Risk: Landowners do not have to repay loans for timber that is lost to natural catastrophes or that cannot be harvested because of government-imposed restrictions on timber harvesting.

Lien: The loan terms will include a lien on all timber, forest products and biomass grown on land covered by the loan, with an assurance that the terms of the lien shall transfer with the land on sale, lease or transfer of the land.

Buyout option: The loan terms will specify financial terms allowing the owner to pay off the loan with interest prior to harvesting the timber specified in the loan.

Greenhouse gas reductions: A loan agreement must include recognition that, until the loan is paid off or otherwise terminated, all reductions in atmospheric greenhouse gases achieved by projects funded by the loan are attributable to the State that provides funding for the loan, or to any company or NGO that provides funding for the loan via the State program.

Permanent conservation easements: Loan recipients can cancel the loan by donating to the State or another appropriate entity a permanent conservation easement that permanently protects the land and resources at a level above what is required under applicable Federal, State and local law and furthers the purposes of the bill, including managing the land in a manner that maximizes the forest carbon reservoir of the land.

Reinvestment of funds: All repayments collected by a State must be reinvested in the program and used by the State to make additional loans.

Records: The State Forester shall maintain all loan records and make them available to the public.

Matching funds: A State must match Federal funding by at least 25% beginning in the second year of participating in the program.

Funding Distribution: Not later than 180 days after enactment, the Secretary will report to Congress on a formula under which Federal funds will be distributed among eligible States. The formula will be based on maximizing the potential for meeting the objectives of the bill, and give appropriate consideration to:

The acreage of unstocked or underproducing private forest land in each State within national forest watersheds; the potential productivity of such land; the potential long-term carbon storage of such land; the potential to achieve other environmental benefits, such as restoration of native forest communities in riparian areas; the number of owners eligible for loans in each State; and the need for reforestation, timber stand improvement, or other forestry investments consistent with the objectives of the bill.

The formula will give priority to States that have experienced or are expected to experience significant declines in employment levels in the forestry industries due to declining timber harvests on Federal land.

Private funding: A revolving loan fund may accept and distribute as loans any funds provided by nongovernmental organizations, businesses or persons in support of the purposes of this Act.

Bonneville Power Administration (BPA): States served by BPA (Washington, Oregon, Idaho and Montana) may apply for funding from BPA for purposes of funding loans that meet both the objectives of this Act and the fish and wildlife objectives of BPA under current law. Any such application will be subject to the same rules and procedures as any other application.

Authorization of Appropriations: For the state revolving loan program, this subsection authorizes funding from FY 2001 to FY 2010 at amounts equal to civil penalties collected under the Clean Water Act and the Clean Air Act, which currently revert to the Treasury as General Revenues. In fiscal year 1998, $45 million in penalties were assessed. Because penalty assessments can not be accurately predicted in advance, authorization in any given year would be based on the penalties assessed two years preceding.

By Mr. REID:

S. 1458. A bill to provide for a reduction in the rate of adolescent pregnancy through the evaluation of public and private prevention programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

TEEN PREGNANCY REDUCTION BILL

Mr. REID. Mr. President, despite the recent declines in teen birth rates in general, the overall teen birth rate for 1996 is still higher than it was in the early to mid-1980s, when the rate was at its lowest point. In fact, United States has the highest rates of teen pregnancy and births in the western industrialized world. More than 4 out of 10 young women in the U.S. become pregnant at least once before they reach the age of 20—nearly one million a year.

Unfortunately, my home state of Nevada has the highest teen pregnancy rate in the country—140 pregnancies per 1,000 girls aged 15–19 in 1996.

Teen pregnancy affects us all. Teen mothers are less likely to complete high school, and more likely to end up on welfare (nearly 80 percent of unmarried teen mothers end up on welfare). Teen pregnancy costs the United States at least $7 billion annually. The children of teenage mothers have lower birth weights, are more likely to perform poorly in school, and are at greater risk of abuse and neglect. The sons of teen mothers are 13 percent more likely to end up in prison while teen daughters are 22 percent more likely to become teen mothers themselves.

Teen pregnancy has become a significant problem in America's fastest growing ethnic group—the Hispanic community. Latinos currently constitute approximately 11 percent of the total U.S. population. By 2010, Latinos will be the largest minority group, and by 2050 approximately one-quarter of the U.S. population will be Latino.

Latinas have the highest teen birth rate among the major racial/ethnic groups in the United States. In 1997, the birth rate for Latina 15- to 19-year-olds was 97.4 per 1,000, nearly double the national rate of 52.3 per 1,000. Approximately one-quarter of the births in 1997 to teens aged 15 to 19 were to Latinas. Further, the teen birth and pregnancy rates for Latinas have not decreased as much in recent years as have the overall U.S. teen birth and pregnancy rates.

To combat the plague of teen pregnancy in this country, I am introducing the ''Teenage Pregnancy Reduction Act of 1999.'' In so doing, I join Congresswoman LOWEY, who has introduced the House companion bill.

The Teenage Pregnancy Reduction Act of 1999 will provide in-depth evaluation of promising teenage pregnancy prevention programs. Experts on teen pregnancy have informed us that such an evaluation is very needed. This three year evaluation will be funded at $3.5 million per year. The bill requires that a report of the evaluation's results be made to Congress, and the results be disseminated to the administrators of prevention programs, medical associations, public health services, school administrators and others. In addition, the bill provides for the establishment of a National Clearinghouse on Teenage Pregnancy Prevention Programs. Lastly, the bill provides $10 million for a one-time incentive grant to programs that complete the evaluation and are found to be effective.

Social problems like teen pregnancy are not happening in a vacuum, independent from other social problems. Nevada has the highest teen pregnancy rate, and it also has the highest high school dropout rate. Obviously, these two issues are related. Only one-third of teen mothers receive a high school diploma.

Senator BINGAMAN and I have offered a dropout bill similar to the teen pregnancy bill I introduce today. Both bills look to what states and communities are doing now and focus on those programs that are working. We can then help states and communities replicate these successful programs. But we are not going to totally solve problems like teen pregnancy through programs and legislation—we need to talk to our children. Studies show that teenagers who have strong emotional attachments to their parents are much less likely to become sexually active at an early age. We cannot legislate parents talking to their children, but we can provide the information and programs that will help parents work with their teens.

I would like to acknowledge the National Campaign to Prevent Teen Pregnancy, whose mission is to reduce the teen pregnancy rate by one-third between 1996 and 2005. I think that we can accomplish this goal, and I will do all that I can to help.

By Mr. MACK (for himself, Mrs. FEINSTEIN, Mr. HELMS, and Mr. ROBB):

S. 1459. A bill to amend title XVIII of the Social Security Act to protect the right of a Medicare beneficiary enrolled in a Medicare+Choice plan to receive services at a skilled nursing facility selected by that individual; to the Committee on Finance.

MEDICARE RETURN TO HOME ACT OF 1999

Mr. MACK. Mr. President, today I am pleased to join my colleagues, Mrs. FEINSTEIN, Mr. HELMS and Mr. ROBB, in sponsoring the Medicare Return to Home Act of 1999.

This legislation will ensure that senior citizens enrolled in Medicare+Choice health plans who normally reside in continuing care retirement communities or nursing homes have the opportunity to return to the same facility after a period of hospitalization. Many of the retirement communities contain fully licensed facilities established to provide skilled nursing services to their residents when required them. Often, people choose a continuing care retirement community because of the different levels of care that will be available to them as they age in that community. These living arrangements allow couples and individuals to maintain their independence by having the ability to move in and out of various levels of care according to their needs over time. People who are fully independent when they move into a residential community often require assisted living, skilled nursing care or some other assistance over the course of their lifetime in residence.

An increasing number of seniors have chosen Medicare+Choice plans as the way that they wish to receive health care services under Medicare. These plans reduce the potential for substantial out-of-pocket costs for the very sick which might be the experience with the traditional original Medicare plan.

One unfortunate consequence of the Medicare+Choice option involves the inability of seniors to return to their chosen community or nursing home where they resided following a period of hospitalization. Some Medicare+Choice plans will only permit patients to be discharged from the hospital to a facility with which the Medicare+Choice plan has a contract. Then, patients cannot return to the residential community that they selected, which may have been chosen because it included a skilled nursing facility. Nor can they return to the nursing home in which they had previously resided. This can be traumatic for frail elderly patients and may contribute to their disorientation and impede their recovery. It places them in an unfamiliar setting away from home, possibly separating them from a spouse and friends. Staff at their chosen retirement community or nursing home may also be familiar with their individual needs and habits which could only assist in their return to wellness. It makes little sense for them to be sent elsewhere upon discharge from a hospital.

Passage of this legislation ensures the ability of Medicare+Choice beneficiaries to return to the residential home facility of their choice or nursing home in which they previously resided following hospitalization under the following conditions:

1. The enrollee chooses to return to the residential community facility where they had been living.

2. The facility is licensed and qualified under state and federal law to provide the required services.

3. The residential community or nursing home agrees to accept the managed care plan's payment which must be similar to the payment made to contracted facilities.

This legislation provides for continuity in the lives of the elderly following a period of hospitalization. It does not increase costs to Medicare+Choice plans or to beneficiaries.

It allows people to return to their loved ones in the facility where they have chosen to live.

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

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

S. 1459

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Return To Home Act of 1999''.

SEC. 2. ENSURING CHOICE FOR SKILLED NURSING FACILITY SERVICES UNDER THE MEDICARE+CHOICE PROGRAM.

(a) IN GENERAL.—Section 1852 of the Social Security Act (42 U.S.C. 1395w–22) is amended by adding at the end the following:

''(l) ENSURING CHOICE OF SKILLED NURSING FACILITY SERVICES.—

''(1) COVERAGE OF SERVICES PROVIDED AT A SNF LOCATED IN ENROLLEE'S CONTINUING CARE RETIREMENT COMMUNITY OR AT A SNF IN WHICH ENROLLEE PREVIOUSLY RESIDED.—Subject to paragraph (2), a Medicare+Choice organization may not deny coverage for any service provided to an enrollee of a Medicare+Choice plan (offered by such organization) by—

''(A) a skilled nursing facility located within the continuing care retirement community in which the enrollee resided prior to being admitted to a hospital; or

''(B) a skilled nursing facility in which the enrollee resided immediately prior to being admitted to a hospital.

The requirement described in the preceding sentence shall apply whether or not the Medicare+Choice organization has a contract with such skilled nursing facility to provide such services.

''(2) REQUIRED FACTORS.—Paragraph (1) shall not apply unless the following factors exist:

''(A) The Medicare+Choice organization would be required to provide reimbursement for the service under the Medicare+Choice plan in which the individual is enrolled if the skilled nursing facility was under contract with the Medicare+Choice organization.

''(B) The individual—

''(i) had a contractual or other right to return, after hospitalization, to the continuing care retirement community described in

paragraph (1)(A) or the skilled nursing facility described in paragraph (1)(B); and

''(ii) elects to receive services from the skilled nursing facility after the hospitalization, whether or not, in the case of a skilled nursing facility described in paragraph (1)(A), the individual resided in such facility before entering the hospital.

''(C) The skilled nursing facility has the capacity to provide the services the individual requires.

''(D) The skilled nursing facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated skilled nursing facilities that are under contract with the Medicare+Choice organization.

''(3) COVERAGE OF SNF SERVICES TO PREVENT HOSPITALIZATION.—A Medicare+Choice organization may not deny payment for services provided to an enrollee of a Medicare+Choice plan (offered by such organization) by a skilled nursing facility in which the enrollee resides, without a preceding hospital stay, regardless of whether the Medicare+Choice organization has a contract with such facility to provide such services, if—

''(A) the Medicare+Choice organization has determined that the service is necessary to prevent the hospitalization of the enrollee; and

''(B) the factors specified in subparagraphs (A), (C), and (D) of paragraph (2) exist.

''(4) COVERAGE OF SERVICES PROVIDED IN SNF WHERE SPOUSE RESIDES.—A Medicare+Choice organization may not deny payment for services provided to an enrollee of a Medicare+Choice plan (offered by such organization) by a skilled nursing facility in which the enrollee resides, regardless of whether the Medicare+Choice organization has a contract with such facility to provide such services, if the spouse of the enrollee is a resident of such facility and the factors specified in subparagraphs (A), (C), and (D) of paragraph (2) exist.

''(5) SKILLED NURSING FACILITY MUST MEET MEDICARE PARTICIPATION REQUIREMENTS.—This subsection shall not apply unless the skilled nursing facility involved meets all applicable participation requirements under this title.

''(6) PROHIBITIONS.—A Medicare+Choice organization offering a Medicare+Choice plan may not—

''(A) deny to an individual eligibility, or continued eligibility, to enroll or to renew coverage under such plan, solely for the purpose of avoiding the requirements of this subsection;

''(B) provide monetary payments or rebates to enrollees to encourage such enrollees to accept less than the minimum protections available under this subsection;

''(C) penalize or otherwise reduce or limit the reimbursement of a health care provider or organization because such provider or organization provided services to the individual in accordance with this subsection; or

''(D) provide incentives (monetary or otherwise) to a health care provider or organization to induce such provider or organization to provide care to a participant or beneficiary in a manner inconsistent with this subsection.

''(7) COST-SHARING.—Nothing in this subsection shall be construed as preventing a Medicare+Choice organization offering a Medicare+Choice plan from imposing deductibles, coinsurance, or other cost-sharing for services covered under this subsection if such deductibles, coinsurance, or other cost-sharing would have applied if the skilled nursing facility in which the enrollee received such services was under contract with the Medicare+Choice organization.

''(8) NONPREEMPTION OF STATE LAW.—The provisions of this subsection shall not be construed to preempt any provision of State law that affords greater protections to beneficiaries with regard to coverage of items and services provided by a skilled nursing facility than is afforded by such provisions of this subsection.

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

''(A) CONTINUING CARE RETIREMENT COMMUNITY.—The term 'continuing care retirement community' means an organization that provides or arranges for the provision of housing and health-related services to an older person under an agreement.

''(B) SKILLED NURSING FACILITY.—The term 'skilled nursing facility' has the meaning given such term in section 1819(a).''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. ABRAHAM, Mr. TORRICELLI, Mr. DEWINE, Mr. KOHL, and Mr. SCHUMER):

S. 1461. A bill to amend the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) to protect consumers and promote electronic commerce by prohibiting the bad-faith registration, trafficking or use of Internet domain names that are identical to, confusingly similar to, or dilutive of distinctive trademarks or service marks; to the Committee on the Judiciary.

DOMAIN NAME PIRACY PREVENTION ACT OF 1999

Mr. HATCH. Mr. President, I am pleased to rise today, along with my colleague, the Ranking Member on the Judiciary Committee, Senator LEAHY, to introduce legislation that will address a growing problem for consumers and American businesses online. At issue is the deliberate, bad-faith, and abusive registration of Internet domain names in violation of the rights of trademark owners. for the Net-savy, this burgeoning form of cyber-abuse is known as ''cybersquatting.'' for the average consumer, it is basically fraud, deception, and the bad-faith trading on the goodwill of others. Whatever you call it, it is an issue that has a great impact on American consumers and the brand names they rely on as indications of source, quality, and authenticity.

As anyone who has walked down the aisle in the grocery store knows, trademarks serve as the primary indicators of source, quality, and authenticity in the minds of consumers. How else do you explain the price disparity between various brands of toothpaste, laundry detergent, or even canned beans. These brand names are valuable in that they convey to the consumer reliable information regarding the source and quality of goods and services, thereby facilitating commerce and spurring confidence in the marketplace. Unauthorized uses of others' marks undercuts the market by eroding consumer confidence and the communicative value of the brand names we all rely on. For that very reason, Congress has enacted a number of statutes addressing the problems of trademark infringement, false advertising and unfair competition, trademark dilution, and trademark counterfeiting. Doing so has helped protect American businesses and, more importantly perhaps, American consumers.

As we are seeing with increased frequency, the problems of brand-name abuse and consumer confusion are particularly acute in the online environment. The fact is that a consumer in a ''brick and mortar'' world has the luxury of a variety of additional indicators of source and quality aside from a brand name. For example, when one walks in to the local consumer electronics retailer, he is fairly certain with whom he is dealing, and he can often tell by looking at the products and even the storefront itself whether or not he is dealing with a reputable establishment. These protections are largely absent in the electronic world, where anyone with Internet access and minimal computer knowledge can set up a storefront online.

In many cases what consumers see when they log on to a site is their only indication of source and authenticity, and legitimate and illegitimate sites may be indistinguishable in cyberspace. In fact, a well-known trademark in a domain name may be the primary source indicator for the online consumer. So it a bad actor is using that name, rather than the trademark owner, an online consumer is at serious risk of being defrauded, or at the very least confused. The result, as with other forms of trademark violations, is the erosion of consumer confidence in brand name identifiers and in electronic commerce generally.

Last week the Judiciary Committee heard testimony of a number of examples of consumer confusion on the Internet stemming from abusive domain name registrations. For example, Anne Chasser, President of the International Trademark Association, testified that a cybersquatter had registered the domain names ''attphonecard.com'' and ''attcallingcard.com'' and used those names to establish sites purporting to sell calling cards and soliciting personally identifying information, including credit card numbers. Chris Young, President of Cyveillance, Inc.—a company founded specifically to assist trademark owners police their marks online—testified that a cybersquatter had registered the name ''dellspares.com'' and was purporting to sell Dell products online, when in fact Dell does not authorize online resellers to market its products. We heard similar testimony of an offshore cybersquatter selling web-hosting services under the name ''bellatlantics.com''. And Greg Phillips, a Salt Lake City trademark practitioner that represents Porsche in protecting their famous trademark against what is now more than 300 instances of cybersquatting, testified of several examples where bad actors have registered Porsche marks to sell counterfeit goods and non-genuine Porsche parts.

Consider also the child who in a ''hunt-and-peck'' manner mistakenly typed in the domain for ''dosney.com'', looking for the rich and family-friendly content of Disney's home page, only to wind up staring at a page of hardcore pornography because someone snatched up the ''dosney'' domain in anticipation that just such a mistake would be made. In a similar case, a 12-year-old California boy was denied privileges at his school when he entered ''zelda.com'' in a web browser at his school library, looking for a site he expected to be affiliated with the computer game of the same name, but ended up at a pornography site.

In addition to these types of direct harm to consumers, cybersquatting harms American businesses and the goodwill value associated with their names. In part this is a result of the fact that in each case of consumer confusion there is a case of brand-name misappropriation and an erosion of goodwill. But, even absent consumer confusion, there are many many cases of cybersquatters who appropriate brand names with the sole intent of extorting money from the lawful mark owner, of precluding evenhanded competition, or even very simply of harming the goodwill of the mark.

For example, a couple of years ago a small Canadian company with a single shareholder and a couple of dozen domain names demanded that Umbro International, Inc., which markets and distributes soccer equipment, pay $50,000 to its sole shareholder, $50,000 to a charity, and provide a lifetime supply of soccer equipment in order for it to relinquish the ''umbro.com'' name. Warner Bros. was reportedly asked to pay $350,000 for the rights to the names ''warner-records.com'', ''warner-bros-records.com'', ''warner-pictures.com'', ''warner-bros-pictures'', and ''warnerpictures.com''. And Intel Corporation was forced to deal with a cybersquatter who registered the ''pentium3.com'' domain and used it to post pornographic images of celebrities.

It is time for Congress to take a closer look at these abuses and to respond with appropriate legislation. In the 104th Congress, Senator LEAHY and I sponsored the ''Federal Trademark Dilution Act,'' which has proved useful in assisting the owners of famous trademarks to police online uses of their marks that dilute their distinctive quality. Unfortunately, the economics of litigation have resulted in a situation where it is often more cost-effective to simply ''pay off'' a cybersquatter rather than pursue costly litigation with little hope of anything more than an injunction against the offender. And cybersquatters are becoming more sophisticated and more creative in evading what good case law has developed under the dilution statute.

The bill I am introducing today with the Senator from Vermont is designed to address these problems head on by clarifying the rights of trademark owners online with respect to cybersquatting, by providing clear deterrence to prevent such bad faith and abusive conduct, and by providing adequate remedies for trademark owners in those cases where it does occur. While the bill shares the goals of, and has some similarity to, legislation introduced earlier by Senator ABRAHAM, it differs in a number of substantial respects.

First, like Senator ABRAHAM's legislation, our bill allows trademark owners to recover statutory damages in cybersquatting cases, both to deter wrongful conduct and to provide adequate remedies for trademark owners who seek to enforce their rights in court. Our bill goes beyond simply stating the remedy, however, and sets forth a substantive cause of action, based in trademark law, to define the wrongful conduct sought to be deterred and to fill in the gaps and uncertainties of current trademark law with respect to cybersquatting.

Under our bill, the abusive conduct that is made actionable is appropriately limited to bad faith registrations of others' marks by persons who seek to profit unfairly from the goodwill associated therewith. In addition, the bill balances the property interests of trademark owners with the interests of Internet users who would make fair use of others' marks or otherwise engage in protected speech online. Our bill also limits the definition of domain name identifier to exclude such things as screen names, file names, and other identifiers not assigned by a domain name registrar or registry. it also omits criminal penalties found in Senator ABRAHAM's earlier legislation.

Second, our bill provides for in rem jurisdiction, which allows a mark owner to seek the forfeiture, cancellation, or transfer of an infringing domain name by filing an in rem action against the name itself, where the mark owner has satisfied the court that it has exercised due diligence in trying to locate the owner of the domain name but is unable to do so. A significant problem faced by trademark owners in the fight against cybersquatting is the fact that many cybersquatters register domain names under aliases or otherwise provide false information in their registration applications in order to avoid identification and service of process by the mark owner. Our bill will alleviate this difficulty, while protecting the notions of fair play and substantial justice, by enabling a mark owner to seek an injunction against the infringing property in those cases where, after due diligence, a mark owner is unable to proceed against the domain name registrant because the registrant has provided false contact information and is otherwise not to be found.

Additionally, some have suggested that dissidents and others who are online incognito for legitimate reasons might give false information to protect themselves and have suggested the need to preserve a degree of anonymity on the Internet particularly for this reason. Allowing a trademark owner to proceed against the domain names themselves, provided they are, in fact, infringing or diluting under the Trademark Act, decreases the need for trademark owners to join the hunt to chase down and root out these dissidents or others seeking anonymity on the Net. The approach in our bill is a good compromise, which provides meaningful protection to trademark owners while balancing the interests of privacy and anonymity on the Internet.

Third, like the Abraham bill, our bill encourages domain name registrars and registries to work with trademark owners to prevent cybersquatting by providing a limited exemption from liability for domain name registrars and registries that suspend, cancel, or transfer domain names pursuant to a court order or in the implementation of a reasonable policy prohibiting the registration of infringing domain names. Our bill goes further, however, in order to protect the rights of domain name registrants against overreaching trademark owners. Under our bill, a trademark owner who knowingly and materially misrepresents to the domain name registrar or registry that a domain name is infringing is liable to the domain name registrant for damages resulting from the suspension, cancellation, or transfer of the domain name. Our bill also promotes the continued ease and efficiency users of the current registration system enjoy by codifying current case law limiting the secondary liability of domain name registrars and registries for the act of registration of a domain name.

Finally, our bill includes an explicit savings clause making clear that the bill does not affect traditional trademark defenses, such as fair use, or a person's first amendment rights, and it ensures that any new remedies created by the bill will apply prospectively only.

Mr. President, this bill is an important piece of legislation that will promote the growth of online commerce by protecting consumers and providing clarity in the law for trademark owners in cyberspace. It is a balanced bill that protects the rights of Internet users and the interests of all Americans in free speech and protected uses of trademarked names for such things as parody, comment, criticism, comparative advertising, news reporting, etc. It reflects many hours of discussions with senators and affected parties on all sides. I want to thank Senator LEAHY for his cooperation in crafting this particular measure, and also Senator ABRAHAM for his cooperation in this effort. I expect that the substance of this bill will be offered as a Committee substitute to Senator ABRAHAM's legislation when the Judiciary Committee turns to that bill tomorrow, and I look forward to broad bipartisan support at that time. I similarly

look forward to working with my other colleagues here in the Senate to report this bill favorably to the House, and I urge their support in this regard.

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

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

S. 1461

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Domain Name Piracy Prevention Act of 1999''.

(b) REFERENCES TO THE TRADEMARK ACT OF 1946.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 2. FINDINGS.

Congress finds the following:

(1) The registration, trafficking in, or use of a domain name that is identical to, confusingly similar to, or dilutive of a trademark or service mark of another that is distinctive at the time of registration of the domain name, without regard to the goods or services of the parties, with the bad-faith intent to profit from the goodwill of another's mark (commonly referred to as ''cyberpiracy'' and ''cybersquatting'')—

(A) results in consumer fraud and public confusion as to the true source or sponsorship of goods and services;

(B) impairs electronic commerce, which is important to interstate commerce and the United States economy;

(C) deprives legitimate trademark owners of substantial revenues and consumer goodwill; and

(D) places unreasonable, intolerable, and overwhelming burdens on trademark owners in protecting their valuable trademarks.

(2) Amendments to the Trademark Act of 1946 would clarify the rights of a trademark owner to provide for adequate remedies and to deter cyberpiracy and cybersquatting.

SEC. 3. CYBERPIRACY PREVENTION.

(a) IN GENERAL.—Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended by inserting at the end the following:

''(d)(1)(A) Any person who, with bad-faith intent to profit from the goodwill of a trademark or service mark of another, registers, traffics in, or uses a domain name that is identical to, confusingly similar to, or dilutive of such trademark or service mark, without regard to the goods or services of the parties, shall be liable in a civil action by the owner of the mark, if the mark is distinctive at the time of the registration of the domain name.

''(B) In determining whether there is a bad-faith intent described under subparagraph (A), a court may consider factors such as, but not limited to—

''(i) the trademark or other intellectual property rights of the person, if any, in the domain name;

''(ii) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

''(iii) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

''(iv) the person's legitimate noncommercial or fair use of the mark in a site accessible under the domain name;

''(v) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

''(vi) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for substantial consideration without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services;

''(vii) the person's intentional provision of material and misleading false contact information when applying for the registration of the domain name; and

''(viii) the person's registration or acquisition of multiple domain names which are identical to, confusingly similar to, or dilutive of trademarks or service marks of others that are distinctive at the time of registration of such domain names, without regard to the goods or services of such persons.

''(C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

''(2)(A) The owner of a mark may file an in rem civil action against a domain name if—

''(i) the domain name violates any right of the registrant of a mark registered in the Patent and Trademark Office, or section 43 (a) or (c); and

''(ii) the court finds that the owner has demonstrated due diligence and was not able to find a person who would have been a defendant in a civil action under paragraph (1).

''(B) The remedies of an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.''.

(b) ADDITIONAL CIVIL ACTION AND REMEDY.—The civil action established under section 43(d)(1) of the Trademark Act of 1946 (as added by this section) and any remedy available under such action shall be in addition to any other civil action or remedy otherwise applicable.

SEC. 4. DAMAGES AND REMEDIES.

(a) REMEDIES IN CASES OF DOMAIN NAME PIRACY.—

(1) INJUNCTIONS.—Section 34(a) of the Trademark Act of 1946 (15 U.S.C. 1116(a)) is amended in the first sentence by striking ''section 43(a)'' and inserting ''section 43 (a), (c), or (d)''.

(2) DAMAGES.—Section 35(a) of the Trademark Act of 1946 (15 U.S.C. 1117(a)) is amended in the first sentence by inserting '', (c), or (d)'' after ''section 43 (a)''.

(b) STATUTORY DAMAGES.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

''(d) In a case involving a violation of section 43(d)(1), the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. The court shall remit statutory damages in any case in which an infringer believed and had reasonable grounds to believe that use of the domain name by the infringer was a fair or otherwise lawful use.''.

SEC. 5. LIMITATION ON LIABILITY.

Section 32(2) of the Trademark Act of 1946 (15 U.S.C. 1114) is amended—

(1) in the matter preceding subparagraph (A) by striking ''under section 43(a)'' and inserting ''under section 43 (a) or (d)''; and

(2) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following:

''(D)(i) A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name shall not be liable for monetary relief to any person for such action, regardless of whether the domain name is finally determined to infringe or dilute the mark.

''(ii) An action referred to under clause (i) is any action of refusing to register, removing from registration, transferring, temporarily disabling, or permanently canceling a domain name—

''(I) in compliance with a court order under section 43(d); or

''(II) in the implementation of a reasonable policy by such registrar, registry, or authority prohibiting the registration of a domain name that is identical to, confusingly similar to, or dilutive of another's mark registered on the Principal Register of the United States Patent and Trademark Office.

''(iii) A domain name registrar, a domain name registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of bad faith intent to profit from such registration or maintenance of the domain name.

''(iv) If a registrar, registry, or other registration authority takes an action described under clause (ii) based on a knowing and material misrepresentation by any person that a domain name is identical to, confusingly similar to, or dilutive of a mark registered on the Principal Register of the United States Patent and Trademark Office, such person shall be liable for any damages, including costs and attorney's fees, incurred by the domain name registrant as a result of such action. The court may also grant injunctive relief to the domain name registrant, including the reactivation of the domain name or the transfer of the domain name to the domain name registrant.''.

SEC. 6. DEFINITIONS.

Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by inserting after the undesignated paragraph defining the term ''counterfeit'' the following:

''The term 'Internet' has the meaning given that term in section 230(f)(1) of the Communications Act of 1934 (47 U.S.C. 230(f)(1)).

''The term 'domain name' means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.''.

SEC. 7. SAVINGS CLAUSE.

Nothing in this Act shall affect any defense available to a defendant under the Trademark Act of 1946 (including any defense under section 43(c)(4) of such Act or relating to fair use) or a person's right of free speech or expression under the first amendment of the United States Constitution.

SEC. 8. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. EFFECTIVE DATE.

This Act shall apply to all domain names registered before, on, or after the date of enactment of this Act, except that statutory

damages under section 35(d) of the Trademark Act of 1946 (15 U.S.C. 1117), as added by section 4 of this Act, shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of enactment of this Act.

SECTION BY SECTION ANALYSIS—S. 1461, THE ''DOMAIN NAME PIRACY PREVENTION ACT OF 1999.''

SECTION 1. SHORT TITLE; REFERENCES

This section provides that the Act may be cited as the ''Domain Name Piracy Prevention Act of 1999'' and that any references within the bill to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.), also commonly referred to as the Lanham Act.

SECTION 2. FINDINGS

This section sets forth Congress' findings that cybersquatting and cyberpiracy—defined as the registration, trafficking in, or use of a domain name that is identical to, confusingly similar to, or dilutive of a distinctive trademark or service mark of another with the bad faith intent to profit from the goodwill of that mark—harms the public by causing consumer fraud and public confusion as to the true source or sponsorship of goods and services, by impairing electronic commerce, by depriving trademark owners of substantial revenues and consumer goodwill, and by placing unreasonable, intolerable, and overwhelming burdens on trademark owners in protecting their own marks. Amendments to the Trademark Act would clarify the rights of trademark owners to provide for adequate remedies for the abusive and bad faith registration of their marks as Internet domain names and to deter cyberpiracy and cybersquatting.

SECTION 3. CYBERPIRACY PREVENTION

Subsection (a). In General. This subsection amends section the Trademark Act to provide an explicit trademark remedy for cybersquatting under a new section 43(d). Under paragraph (1)(A) of the new section 43(d), actionable conduct would include the registration, trafficking in, or use of a domain name that is identical to, confusingly similar to, or dilutive of the trademark or service mark of another, provided that the mark was distinctive (i.e., enjoyed trademark status) at the time the domain name was registered. The bill is carefully and narrowly tailored, however, to extend only to cases where the plaintiff can demonstrate that the defendant registered, trafficked in, or used the offending domain name with bad-faith intent to profit from the goodwill of a mark belonging to someone else. Thus, the bill does not extend to innocent domain name registrations by those who are unaware of another's use of the name, or even to someone who is aware of the trademark status of the name but registers a domain name containing the mark for any reason other than with bad faith intent to profit from the goodwill associated with that mark.

Paragraph (1)(B) of the new section 43(d) sets forth a number of nonexclusive, nonexhaustive factors to assist a court in determining whether the required bad-faith element exists in any given case. These factors are designed to balance the property interests of trademark owners with the legitimate interests of Internet users and others who seek to make lawful uses of others' marks, including for purposes such as comparative advertising, comment, criticism, parody, news reporting, fair use, etc. The bill suggests a total of eight factors a court may wish to consider. The first four suggest circumstances that may tend to indicate an absence of bad-faith intent to profit from the goodwill of a mark, and the last four suggest circumstances that may tend to indicate that such bad-faith intent exists.

First, under paragraph (1)(B)(i), a court may consider whether the domain name registrant has trademark or any other intellectual property rights in the name. This factor recognizes, as does trademark law in general, that there may be concurring uses of the same name that are noninfringing, such as the use of the ''Delta'' mark for both air travel and sink faucets. Similarly, the registration of the domain name ''deltaforce.com'' by a movie studio would not tend to indicate a bad faith intent on the part of the registrant to trade on Delta Airlines or Delta Faucets' trademarks.

Second, under paragraph (1)(B)(ii), a court may consider the extent to which the domain name is the same as the registrant's own legal name or a nickname by which that person is commonly identified. This factor recognizes, again as does the concept of fair use in trademark law, that a person should be able to be identified by their own name, whether in their business or on a web site. Similarly, a person may bear a legitimate nickname that is identical or similar to a well-known trademark, such as in the well-publicized case of the parents who registered the domain name ''pokey.org'' for their young daughter who goes by that name, and these individuals should not be deterred by this bill from using their name online. This factor is not intended to suggest that domain name registrants may evade the application of this act by merely adopting Exxon, Ford, or other well-known marks as their nicknames. It merely provides a court with the appropriate discretion to determine whether or not the fact that a person bears a nickname similar to a mark at issue is an indication of an absence of bad-faith on the part of the registrant.

Third, under paragraph (1)(B)(iii), a court may consider the domain name registrant's prior use, if any, of the domain name in connection with the bona fide offering of goods or services. Again, this factor recognizes that the legitimate use of the domain name in online commerce may be a good indicator of the intent of the person registering that name. Where the person has used the domain name in commerce without creating a likelihood of confusion as to the source or origin of the goods or services and has not otherwise attempted to use the name in order to profit from the goodwill of the trademark owner's name, a court may look to this as an indication of the absence of bad faith on the part of the registrant.

Fourth, under paragraph (1)(B)(iv), a court may consider the person's legitimate noncommercial or fair use of the mark in a web site that is accessible under the domain name at issue. This factor is intended to balance the interests of trademark owners with the interests of those who would make lawful noncommercial or fair uses of others' marks online, such as in comparative advertising, comment, criticism, parody, news reporting, etc. The fact that a person may use a mark in a site in such a lawful manner may be an appropriate indication that the person's registration or use of the domain name lacked the required element of bad-faith. This factor is not intended to create a loophole that otherwise might swallow the bill by allowing a domain name registrant to evade application of the Act by merely putting up a noninfringing site under an infringing domain name. For example, in the well known case of *Panavision Int'l* v. *Toeppenn*, 141 F.3d 1316 (9th Cir. 1998), a well known cybersquatter had registered a host of domain names mirroring famous trademarks, including names for Panavision, Delta Airlines, Neiman Marcus, Eddie Bauer, Lufthansa, and more than 100 other marks, and had attempted to sell them to the mark owners for amounts in the range of $10,000 to $15,000 each. His use of the ''panavision.com'' and ''panaflex.com'' domain names was seemingly more innocuous, however, as they served as addresses for sites that merely displayed pictures of Pana Illinois and the word ''Hello'' respectively. This bill would not allow a person to evade the holding of that case—which found that Mr. Toeppen had made a commercial use of the Panavision marks and that such uses were, in fact, diluting under the Federal Trademark Dilution Act—merely by posting noninfringing uses of the trademark on a site accessible under the offending domain name, as Mr. Toeppen did. Rather, the bill gives courts the flexibility to weigh appropriate factors in determining whether the name was registered or used in bad faith, and it recognizes that one such factor may be the use the domain name registrant makes of the mark.

Fifth, under paragraph (1)(B)(v), a court may consider whether, in registering or using the domain name, the registrant intended to divert consumers away from the trademark owner's website to a website that could harm the goodwill of the mark, either for purposes of commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site. This factor recognizes that one of the main reasons cybersquatters use other people's trademarks is to divert Internet users to their own sites by creating confusion as to the source, sponsorship, affiliation, or endorsement of the site. This is done for a number of reasons, including to pass off inferior goods under the name of a well-known mark holder, to defraud consumers into providing personally identifiable information, such as credit card numbers, to attract eyeballs to sites that price online advertising according to the number of ''hits'' the site receives, or even just to harm the value of the mark. Under this provision, a court may give appropriate weight to evidence that a domain name registrant intended to confuse or deceive the public in this manner when making a determination of bad-faith intent.

Sixth, under paragraph (1)(B)(vi), a court may consider a domain name registrant's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for substantial consideration, where the registrant has not used, and did not have any intent to use, the domain name in the bona fide offering of any goods or services. This factor is consistent with the court cases, like the *Panavision* case mentioned above, where courts have found a defendant's offer to sell the domain name to the legitimate mark owner as being indicative of the defendant's intent to trade on the value of a trademark owner's marks by engaging in the business of registering those marks and selling them to the rightful trademark owners. It does not suggest that a court should consider the mere offer to sell a domain name to a mark owner or the failure to use a name in the bona fide offering of goods or services is sufficient to indicate bad faith. Indeed, there are cases in which a person registers a name in anticipation of a business venture that simply never pans out. And someone who has a legitimate registration of a domain name that mirrors someone else's domain name, such as a trademark owner that is a lawful concurrent user of that name with another trademark owner, may, in fact, wish to sell

that name to the other trademark owner. This bill does not imply that these facts are an indication of bad-faith. It merely provides a court with the necessary discretion to recognize the evidence of bad-faith when it is present. In practice, the offer to sell domain names for exorbitant amounts to the rightful mark owner has been one of the most common threads in abusive domain name registrations.

Seventh, under paragraph (1)(B)(vii), a court may consider the registrant's intentional provision of material and misleading false contact information in an application for the domain name registration. Falsification of contact information with the intent to evade identification and service of process by trademark owners is also a common thread in cases of cybersquatting. This factor recognizes that fact, while still recognizing that there may be circumstances in which the provision of false information may be due to other factors, such as mistake or, as some have suggested in the case of political dissidents, for purposes of anonymity. This bill balances those factors by limiting consideration to the person's contact information, and even then requiring that the provision of false information be material and misleading. As with the other factors, this factor is nonexclusive and a court is called upon to make a determination based on the facts presented whether or not the provision of false information does, in fact, indicate bad-faith.

Eighth, under paragraph (1)(B)(viii), a court may consider the domain name registrant's acquisition of multiple domain names that are identical to, confusingly similar to, or dilutive of others' marks. This factor recognizes the increasingly common cybersquatting practice known as ''warehousing'', in which a cybersquatter registers multiple domain names—sometimes hundreds, even thousands—that mirror the trademarks of others. By sitting on these marks and not making the first move to offer to sell them to the mark owner, these cybersquatters have been largely successful in evading the case law developed under the Federal Trademark Dilution Act. This bill does not suggest that the mere registration of multiple domain names is an indication of bad faith, but allows a court to weigh the fact that a person has registered multiple domain names that infringe or dilute the trademarks of others as part of its consideration of whether the requisite bad-faith intent exists.

Paragraph (1)(C) makes clear that in any civil brought under the new section 43(d), a court may order the forfeiture, cancellation, or transfer of a domain name to the owner of the mark.

Paragraph (2)(A) provides for in rem jurisdiction, which allows a mark owner to seek the forfeiture, cancellation, or transfer of an infringing domain name by filing an in rem action against the name itself, where the mark owner has satisfied the court that it has exercised due diligence in trying to locate the owner of the domain name but is unable to do so. As indicated above, a significant problem faced by trademark owners in the fight against cybersquatting is the fact that many cybersquatters register domain names under aliases or otherwise provide false information in their registration applications in order to avoid identification and service of process by the mark owner. This bill will alleviate this difficulty, while protecting the notions of fair play and substantial justice, by enabling a mark owner to seek an injunction against the infringing property in those cases where, after due diligence, a mark owner is unable to proceed against the domain name registrant because the registrant has provided false contact information and is otherwise not to be found, provided the mark owner can show that the domain name itself violates substantive trademark law. Paragraph (2)(B) limits the relief available in such an in rem action to an injunction ordering the forfeiture, cancellation, or transfer of the domain name.

Subsection (b). Additional Civil Action and Remedy. This subsection makes clear that the creation of a new section 43(d) in the Trademark Act does not in any way limit the application of current provisions of trademark, unfair competition and false advertising, or dilution law, or other remedies under counterfeiting or other statutes, to cybersquatting cases.

SECTION 4. DAMAGES AND REMEDIES

This section applies traditional trademark remedies, including injunctive relief, recovery of defendant's profits, actual damages, and costs, to cybersquatting cases under the new section 43(d) of the Trademark Act. The bill also amends section 35 of the Trademark Act to provide for statutory damages in cybersquatting cases, in an amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. The bill requires the court to remit statutory damages in any case where the infringer believed and had reasonable grounds to believe that the use of the domain name was a fair or otherwise lawful use.

SECTION 5. LIMITATION ON LIABILITY

This section amends section 32(2) of the Trademark Act to extend the Trademark Act's existing limitations on liability to the cybersquatting context. This section also creates a new subparagraph (D) in section 32(2) to encourage domain name registrars and registries to work with trademark owners to prevent cybersquatting through a limited exemption from liability for domain name registrars and registries that suspend, cancel, or transfer domain names pursuant to a court order or in the implementation of a reasonable policy prohibiting cybersquatting. This section also protects the rights of domain name registrants against overreaching trademark owners. Under a new section subparagraph (D)(iv) in section 32(2), a trademark owner who knowingly and materially misrepresents to the domain name registrar or registry that a domain name is infringing shall be liable to the domain name registrant for damages resulting from the suspension, cancellation, or transfer of the domain name. In addition, the court may grant injunctive relief to the domain name registrant by ordering the reactivation of the domain name or the transfer of the domain name back to the domain name registrant. Finally, in creating a new subparagraph (D)(iii) of section 32(2), this section codifies current case law limiting the secondary liability of domain name registrars and registries for the act of registration of a domain name, absent bad-faith on the part of the registrar and registry.

SECTION 6. DEFINITIONS

This section amends the Trademark Act's definitions section (section 45) to add definitions for key terms used in this Act. First, the term ''Internet'' is defined consistent with the meaning given that term in the Communications Act (47 U.S.C. 230(f)(1)). Second, this section creates a narrow definition of ''cybersquatting'' to target the specific bad faith conduct sought to be addressed while excluding such things as screen names, file names, and other identifiers not assigned by a domain name registrar or registry.

SECTION 7. SAVINGS CLAUSE

This section provides an explicit savings clause making clear that the bill does not affect traditional trademark defenses, such as fair use, or a person's first amendment rights.

SECTION 8. SEVERABILITY

This section provides a severability clause making clear Congress' intent that if any provision of this Act, an amendment made by the Act, or the application of such provision or amendment to any person or circumstances is held to be unconstitutional, the remainder of the Act, the amendments made by the Act, and the application of the provisions of such to any person or circumstance shall not be affected by such determination.

SECTION 9. EFFECTIVE DATE

This section provides that new statutory damages provided for under this bill shall not apply to any registration, trafficking, or use of a domain name that took place prior to the enactment of this Act.

Mr. LEAHY. Mr. President, I am pleased to join Senator HATCH, and others, today in introducing the ''Domain Name Piracy Prevention Act of 1999.'' We have worked hard to craft this legislation in a balanced fashion to protect trademark owners and consumers doing business online, and Internet users who want to participate in what the Supreme Court has described '''a unique and wholly new medium of worldwide human communication.''' *Reno* v. *ACLU*, 521 U.S. 844 (1997).

Trademarks are important tools of commerce. The exclusive right to the use of a unique mark helps companies compete in the marketplace by distinguishing their goods and services from those of their competitors, and helps consumers identify the source of a product by linking it with a particular company. The use of trademarks by companies, and reliance on trademarks by consumers, will only become more important as the global marketplace becomes larger and more accessible with electronic commerce. The reason is simple: when a trademark name is used as a company's address in cyberspace, customers know where to go online to conduct business with that company.

The growth of electronic commerce is having a positive effect on the economies of small rural states like mine. A Vermont Internet Commerce report I commissioned earlier this year found that Vermont gained more than 1,000 new jobs as a result of Internet commerce, with the potential that Vermont could add more than 24,000 jobs over the next two years. For a small state like ours, this is very good news.

Along with the good news, this report identified a number of obstacles that stand in the way of Vermont reaching the full potential promised by Internet commerce. One obstacle is that ''merchants are anxious about not being able to control where their names and brands are being displayed.'' Another is the need to bolster consumers' confidence in online shopping.

Cybersquatters hurt electronic commerce. Both merchant and consumer confidence in conducting business online are undermined by so-called ''cybersquatters'' or ''cyberpirates,''

who abuse the rights of trademark holders by purposely and maliciously registering as a domain, name the trademarked name of another company to divert and confuse customers or to deny the company the ability to establish an easy-to-find online location. A recent report by the World Intellectual Property Organization (WIPO) on the Internet domain name process has characterized cybersquatting as ''predatory and parasitical practices by a minority of domain registrants acting in bad faith'' to register famous or well-known marks of others—which can lead to consumer confusion or downright fraud.

Enforcing trademarks in cyberspace will promote global electronic commerce. Enforcing trademark law in cyberspace can help bring consumer confidence to this new frontier. That is why I have long been concerned with protecting registered trademarks online. Indeed, when the Congress passed the Federal Trademark Dilution Act of 1995, I noted that:

> [A]lthough no one else has yet considered this application, it is my hope that this antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others. (Congressional Record, Dec. 29, 1995, page S19312)

In addition, last year I authored an amendment that was enacted as part of the Next Generation Internet Research Act authorizing the National Research Council of the National Academy of Sciences to study the effects on trademark holders of adding new top-level domain names and requesting recommendations on expensive and expeditious procedures for resolving trademark disputes over the assignment of domain names. Both the Internet Corporation for Assigned Names and Numbers (I–CANN) and WIPO are also making recommendations on these procedures. Adoption of a uniform trademark domain name dispute resolution policy will be of enormous benefit to American trademark owners.

The ''Domain Name Piracy Prevention Act of 1999,'' which we introduce today, is not intended in any way to frustrate these global efforts already underway to develop inexpensive and expeditious procedures for resolving domain name disputes that avoid costly and time-consuming litigation in the court systems either here or abroad. In fact, the bill expressly provides liability limitations for domain name registrars, registries or other domain name registration authorities when they take actions pursuant to a reasonable policy prohibiting the registration of domain names that are identical, confusingly similar to or dilutive of another's trademark. The I–CANN and WIPO consideration of these issues will inform the development by domain name registrars and registries of such reasonable policies.

The Federal Trademark Dilution Act of 1995 has been used as I predicted to help stop misleading uses of trademarks as domain names. One court has described this exercise by saying that ''attempting to apply established trademark law in the fast-developing world of the Internet is somewhat like trying to board a moving bus . . . ''*Bensusan Restaurant Corp.* v. *King*, 126 F.3d 25 (2d Cir. 1997). Nevertheless, the courts appear to be handling ''cybersquatting'' cases well. As University of Miami Law Professor Michael Froomkin noted in testimony submitted at the Judiciary Committee's hearing on this issue on July 22, 1999, ''[i]n every case involving a person who registered large numbers of domains for resale, the cybersquatter has lost.''

For example, courts have had little trouble dealing with a notorious ''cybersquatter,'' Dennis Toeppen from Illinois, who registered more than 100 trademarks—including ''yankeestadium.com,'' ''deltaairlines.com,'' and ''neiman-marcus.com''—as domain names for the purpose of eventually selling the names back to the companies owning the trademarks. The various courts reviewing his activities have unanimously determined that he violated the Federal Trademark Dilution Act.

Similarly, Wayne State University Law Professor Jessica Litman noted in testimony submitted at the Judiciary Committees hearing that those businesses which ''have registered domain names that are confusingly similar to trademarks or personal names in order to use them for pornographic web sites . . . have without exception lost suits brought against them.''

Enforcing or even modifying our trademark laws will be only part of the solution to cybersquatting. Up to now, people have been able to register any number of domain names in the popular ''.com'' domain with no money down and no money due for 60 days. Network Solutions Inc. (NSI), the dominant Internet registrar, announced just last week that it was changing this policy, and requiring payment of the registration fee up front. In doing so, the NSI admitted that it was making this change to curb cybersquatting.

In light of the developing case law, the ongoing efforts within WIPO and ICANN to build a consensus global mechanism for resolving online trademark disputes, and the implementation of domain name registration practices designed to discourage cybersquatting, the legislation we introduce today is intended to build is intended to build upon this progress and provide constructive guidance to trademark holders, domain name registrars and registries and Internet users registering domain names alike.

Other Anti-cybersquatting Legislation Is Flawed. This is not the first bill to be introduced this session to address the problem of cybersquatting, and I appreciate the efforts of Senators ABRAHAM, TORICELLI, HATCH, and MCCAIN, to focus our attention on this important matter. They introduced S. 1255, the ''Anticybersquatting Consumer Protection Act,'' which proposed making it illegal to register or use any ''Internet domain name or identifier of an online location'' that could be confused with the trademark of another person or cause dilution of a ''famous trademark.'' Violations were punishable by both civil and criminal penalties.

I voiced concerns at a hearing before the Judiciary Committee last week that S. 1255 would have a number of unintended consequences that could hurt rather than promote electronic commerce, including the following specific problems:

The definition in S. 1255 is overbroad. S. 1255 covers the use or registration of any ''identifier,'' which could cover not just second level domain names, but also e-mail addresses, screen names used in chat rooms, and even files accessible and readable on the Internet. As one witness pointed out, '' the definitions will make every fan a criminal.'' How? A file document about Batman, for example, that uses the trademark ''Batman'' in its name, which also identifies its online location, could land the writer in court under that bill. Cybersquatting is not about file names.

S. 1255 threatens hypertext linking. The Web operates on hypertext linking, to facilitate jumping from one site to another. S. 1255 could disrupt this practice by imposing liability on operators of sites with links to other sites with trademark names in the address. One could imagine a trademark owner not wanting to be associated with or linked with certain sites, and threatening suit under this proposal unless the link were eliminated or payments were made for allowing the linking.

S. 1255 would criminalize dissent and protest sites. A number of Web sites collect complaints about trademarked products or services, and sue the trademarked names to identify themselves. For example, there are protest sites named ''boycotts-cbs.com'' and ''www.PepsiBloodbath.com.'' While the speech contained on those sites is clearly constitutionally protected, S. 1255 would criminalizes the use of the trademarked name to reach the site and make them difficult to search for and find online.

S. 1255 would stifle legitimate warehousing of domain names. The bill would change current law and make liable persons who merely register domain names similar to other trademarked names, whether or not they actually set up a site and use the name. The courts have recognized that companies may have legitimate reason for registering domain names without using them and have declined to find trademark violations for mere registration of a trademarked name. For example, a company planning to acquire another company might register a domain name containing the target company's name in anticipation of the

deal. S. 1255 would make that company liable for trademark infringement.

For these and other reasons, Professor Litman concluded that this ''bill would in many ways be bad for electronic commerce, by making it hazardous to do business on the Internet without first retaining trademark counsel.'' Faced with the risk of criminal penalties, she stated that ''many start-up businesses may choose to abandon their goodwill and move to another Internet location, or even to fold, rather than risk liability.''

The Hatch-Leahy Domain Name Piracy Prevention Act is a better solution. The legislation we introduce today addresses the cybersquatting problem without jeopardizing other important online rights and interests. This bill would amend section 43 of the Trademark Act (15 U.S.C. §11125) by adding a new section to make liable for actual or statutory damages any person, who with bad-faith intent to profit from the goodwill of another's trademark, registers or uses a domain name that is identical to, confusingly similar to or dilutive of such trademark, without regard to the goods or services of the parties. the fact that the domain name registrant did not compete with the trademark owner would not be a bar to recovery. Significant sections of this bill include:

Definition. Domain names are narrowly defined to mean alphanumeric designations registered with or assigned by domain name registrars or registries, or other domain name registration authority as part of an electronic authority as part of an electronic address on the Internet. Since registrars only second level domain names this definition effectively excludes file names, screen names, and e-mail addresses and, under current registration practice, applies only to second level domain names.

Scienter requirement. Good faith, innocent or negligent uses of domain names that are identical or similar to, or dilutive of, another's mark are not covered by the bill's prohibition. Thus, registering a domain name while unaware that the name is another's trademark would not be actionable. Nor would the use of a domain name that contains a trademark for purposes of protest, complaint, parody or commentary satisfy the requisite scienter requirement. Bad-faith intent to profit is required for a violation to occur.

This requirement of bad-faith intent to profit is critical since, as Professor Litman pointed out in her testimony, our trademark laws permit multiple businesses to register the same trademark for different classes of products. Thus, she explains:

> [a]lthough courts have been quick to impose liability for bad faith registration, they have been far more cautious in disputes involving a domain name registrant who has a legitimate claim to use a domain name and registered it in good faith. In a number of cases, courts have refused to impose liability where there is no significant likelihood that anyone will be misled, even if there is a significant possibility of trademark dilution.

The legislation outlines the following non-exclusive list of eight factors for courts to consider in determining whether such bad-faith intent to profit is proven: (i) the trademark rights of the domain name registrant in the domain name; (ii) whether the domain name is the legal or nickname of the registrant; (iii) the prior use by the registrant of the domain name in connection with the bona fide offering of any goods or services; (iv) the registrant's legitimate noncommercial or fair use of the mark at the site under the domain name; (v) the registrant's intent to divert consumers from the mark's owner's online location in a manner that could harm the mark's goodwill, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site; (vi) the registrant's offer to sell the domain name for substantial consideration without having or having an intent to use the domain name in the bona fide offering of goods or services; (vii) the registrant's international provision of material false and misleading contact information when applying for the registration of the domain name; and (viii) the registrant's registration of multiple domain names that are identical or similar to or dilutive of another's trademark.

Damages. In civil actions against cybersquatters, the plaintiff is authorized to recover actual damages and profits, or may elect before final judgment to award of statutory damages of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. The court is directed to remit statutory damages in any case where the infringer reasonably believed that use of the domain name was a fair or otherwise lawful use.

In Rem actions. The bill would also permit an in rem civil action filed by a trademark owner in circumstances where the domain name violates the owner's rights in the trademark and the court finds that the owner demonstrated due diligence and was not able to find the domain name holder to bring an in persona civil action. The remedies of an in rem action are limited to a court order for forfeiture or cancellation of the domain name or the transfer of the domain name to the trademark owner.

Liability limitations. The bill would limit the liability for monetary damages of domain name registrars, registries or other domain name registration authorities for any action they take to refuse to register, remove from registration, transfer, temporarily disable or permanently cancel a domain name pursuant to a court order or in the implementation of reasonable policies prohibiting the registration of domain names that are identical or similar to, or dilutive of, anothers trademark.

Prevention of reverse domain name hijacking. Reverse domain name hijacking is an effort by a trademark owner to take a domain name from a legitimate good faith domain name registrant. There have been some well-publicized cases of trademark owners demanding the take down of certain web sites set up by parents who have registered their children's names in the .org domain, such as two year old Veronica Sams's ''Little Veronica'' website and 12 year old Chris ''Pokey'' Van Allen's web page.

In order to protect the rights of domain name registrants in their domain names the bill provides that registrants may recover damages, including costs and attorney's fees, incurred as a result of a knowing and material misrepresentation by a person that a domain name is identical or similar to, or dilutive of, a trademark. In addition, the domain name or the transfer or return of a domain name to the domain name registrant.

Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet. Any legislative solution to cybersquatting must tread carefully to ensure that any remedies do not impede or stifle the free flow of information on the Internet. In many ways, the United States has been the incubator of the World Wide Web, and the world closely watches whenever we venture into laws, customs or standards that affect the Internet. We must only do so with great care and caution. Fair use principles are just as critical in cyberspace as in any other intellectual property arena.

I am pleased that Chairman HATCH and I, along with Senators ABRAHAM, TORRICELLI, and KOHL have worked together to find a legislative solution that respects these considerations. We also stand ready to make additional refinements to this legislation that prove necessary as this bill moves through the legislative process.

By Mr. JEFFORDS:

S. 1462. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage and through mail order of certain covered products for personal use from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

PERSONAL USE PRESCRIPTION DRUG IMPORTATION ACT OF 1999

Mr. JEFFORDS. Mr. President, today I am introducing legislation that takes another positive step toward the goal of providing access to affordable prescription drugs for patients in my state of Vermont, and many other patients across the United States.

The high cost of prescription drugs is an issue that faces many Americans every single day, as they try to decide how to make ends meet, and whether they can afford to fill the prescription given to them by their doctor. Unfortunately, it is not uncommon to hear of patients who cut pills in half, or skip dosages in order to make prescriptions

last longer. This is a serious health problem, and I am committed to legislative solutions that we can enact that provides immediate assistance to those who need it. I will soon introduce legislation that will provide prescription drug insurance for low-income Medicare beneficiaries. And today I am introducing legislation that will allow Americans of all ages who do not have sufficient coverage for prescription drugs, to purchase the medicines they need at prices they can afford.

Mr. President, it is well documented that the average price of prescription medicines is much lower in Canada than in the United States, with the price of some drugs in Vermont being twice that of the same drug available only a few miles away in a Canadian pharmacy. This is true even though many of the drugs sold in Canada are actually manufactured, packed, and distributed by American companies that sell the same products in both markets, but at drastically different prices. That is why many residents of my home state travel the short distance across the border into Canada to buy their prescription medicines at the lower price. Unfortunately, in most cases this is a violation of Federal law. This does not seem fair to many Vermonters, and it does not seem fair to me.

The legislation I am introducing today will change that, so that Americans who want to buy prescription medicines in Canada can legally do so. This legislation will require the Food and Drug Administration (FDA) to promulgate new regulations permitting patients to import prescription medications purchased in Canada. Currently, it is illegal for Americans to go to Canada and purchase drugs to be brought back to the United States. But FDA and U.S. Customs employ a ''discretionary enforcement policy'', allowing some Americans to enter the U.S. with drugs that they bought in Canada.

My legislation does a number of things. First, it requires the Secretary of Health and Human Services to promulgate regulations that will allow individuals to import prescription FDA-approved medicines from Canada in personal baggage, so long as the appropriate use is identified and the product does not represent a significant health risk. Under this bill, patients could also be asked to identify the licensed U.S. health professional responsible for treatment, and to affirm that the product is for personal use, and provide other necessary information so that the FDA can continue to ensure the safety of the U.S. drug supply. All information collected under this provision will be subject to the Privacy Act of 1974.

Under this proposal, the Secretary of Health and Human Services will also be required to promulgate regulations regarding importation of prescription drugs from Canada by mail order. The Secretary will establish criteria which will ensure the safety of patients in the United States that wish to purchase drugs by mail order from Canada.

Finally, this legislation will require the Secretary of HHS to study the safety and purity of the prescription drug products that are imported under this Act.

Mr. President, it has often been said that we have the international gold standard when it comes to drug safety. Well, we have the platinum standard when it comes to prices. I want to emphasize, again, my commitment to helping Vermonters and all Americans have access to the prescription drugs that they need at prices that they can afford. As Chairman of the Health, Education, Labor and Pensions Committee, the safety of American patients is always one of my top priorities, and I am committed to achieving the goal of affordable prescription drugs without putting patients' lives at risk. This is a responsible proposal to help Vermonters and all Americans with the high prices of drugs, and I hope my colleagues will support it.

By Mr. DEWINE (for himself, Ms. SNOWE, Mr. TORRICELLI, Ms. COLLINS, Mr. DURBIN, Mrs. FEINSTEIN, Ms. MIKULSKI, Mr. SCHUMER, Mr. BINGAMAN, Mr. CHAFEE, and Mr. KENNEDY):

S. 1463. A bill to establish a program to provide assistance for programs of credit and other financial services for microenterprises in developing countries, and for other purposes; to the Committee on Foreign Relations.

MICRO-ENTERPRISE FOR SELF RELIANCE ACT OF 1999

Mr. DEWINE. Mr. President, I rise today to introduce legislation that would ensure the future success of international micro-enterprise grant and loan programs. Many members of Congress have seen the success of micro-enterprise programs around the world. These programs reach the poorest of the poor with small loans to help them work their way out of poverty. These have proven to be very worthwhile and successful programs administered worldwide by the U.S. Agency for International Development (USAID).

Unlike other assistance programs, we do not give funds away. Instead, we lend these funds to people once considered credit risks. The record of these programs boasts a client repayment rate of between 95% to 98%. Micro-enterprise programs are proof that with access to credit, the poor can and do better their lives while repaying their loans.

To ensure the future of these programs and provide continued hope to others seeking to build out of poverty, I introduce today the Micro-Enterprise for Self Reliance Act of 1999. I am pleased to be introducing the legislation along with Senators SNOWE, TORRICELLI, COLLINS, DURBIN, FEINSTEIN, MIKULSKI, SCHUMER, BINGAMAN, CHAFEE and KENNEDY. This bill would strengthen the foundations of these programs to ensure their survival and provide the mechanisms necessary for their continued success as financial institutions. First, it would provide grant assistance to micro-enterprise programs to increase availability of credit and other services. We also target half of all micro-enterprise resources to support programs that serve the poorest of the poor with loans of $300 or less. This is a key provision of the bill and would give strong direction to USAID to work with sections of society that respond best to micro-lending programs.

Second, this bill would authorize credits to micro-lending programs. These credits generally are used to expand already successful programs. Further, we seek to guarantee these programs' survival by establishing a facility to help rescue micro-lending institutions that are imperiled by war, currency movements or natural disasters. The facility would provide for loans to successful institutions to help them get back on their feet.

Finally, we are interested in encouraging the future development and stability of these programs. Our bill calls for a report by USAID that would recommend other steps that could be taken to further the development of micro-lending institutions such as networks, regulations, a federal charter, financial instruments and coordination with multilateral institutions.

We believe that this investment in micro-enterprise programs now will reduce the need for foreign assistance in the future. Congress now has the chance to ensure the future of these very successful programs, and help provide a sense of hope and a future of possibilities for the poor in developing countries. I thank my fellow cosponsors for their support for this legislation and look forward to working with them to gain congressional approval.

Mr. President, I ask unanimous consent that the text of the Micro-Enterprise for Self-Reliance Act be printed in the RECORD.

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

S. 1463

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 ''Microenterprise for Self-Reliance Act of 1999''.

SEC. 2. FINDINGS AND DECLARATIONS OF POLICY.

The Congress makes the following findings and declarations:

(1) According to the World Bank, more than 1,200,000,000 people in the developing world, or one-fifth of the world's population, subsist on less than $1 a day.

(2) Over 32,000 of their children die each day from largely preventable malnutrition and disease.

(3)(A) Women in poverty generally have larger work loads and less access to educational and economic opportunities than their male counterparts.

(B) Directly aiding the poorest of the poor, especially women, in the developing world has a positive effect not only on family incomes, but also on child nutrition, health

and education, as women in particular reinvest income in their families.

(4)(A) The poor in the developing world, particularly women, generally lack stable employment and social safety nets.

(B) Many turn to self-employment to generate a substantial portion of their livelihood. In Africa, over 80 percent of employment is generated in the informal sector of the self-employed poor.

(C) These poor entrepreneurs are often trapped in poverty because they cannot obtain credit at reasonable rates to build their asset base or expand their otherwise viable self-employment activities.

(D) Many of the poor are forced to pay interest rates as high as 10 percent per day to money lenders.

(5)(A) The poor are able to expand their incomes and their businesses dramatically when they can access loans at reasonable interest rates.

(B) Through the development of self-sustaining microfinance programs, poor people themselves can lead the fight against hunger and poverty.

(6)(A) On February 2–4, 1997, a global Microcredit Summit was held in Washington, District of Columbia, to launch a plan to expand access to credit for self-employment and other financial and business services to 100,000,000 of the world's poorest families, especially the women of those families, by 2005. While this scale of outreach may not be achievable in this short-time frame, the realization of this goal could dramatically alter the face of global poverty.

(B) With an average family size of five, achieving this goal will mean that the benefits of microfinance will thereby reach nearly half of the world's more than 1,000,000,000 absolute poor people.

(7)(A) Nongovernmental organizations, such as those that comprise the Microenterprise Coalition (such as the Grameen Bank (Bangladesh,) K–REP (Kenya), and networks such as Accion International, the Foundation for International Community Assistance (FINCA), and the credit union movement) are successful in lending directly to the very poor.

(B) Microfinance institutions such as BRAC (Bangladesh), BancoSol (Bolivia), SEWA Bank (India), and ACEP (Senegal) are regulated financial institutions that can raise funds directly from the local and international capital markets.

(8)(A) Microenterprise institutions not only reduce poverty, but also reduce the dependency on foreign assistance.

(B) Interest income on the credit portfolio is used to pay recurring institutional costs, assuring the long-term sustainability of development assistance.

(9) Microfinance institutions leverage foreign assistance resources because loans are recycled, generating new benefits to program participants.

(10)(A) The development of sustainable microfinance institutions that provide credit and training, and mobilize domestic savings, are critical components to a global strategy of poverty reduction and broad-based economic development.

(B) In the efforts of the United States to lead the development of a new global financial architecture, microenterprise should play a vital role. The recent shocks to international financial markets demonstrate how the financial sector can shape the destiny of nations. Microfinance can serve as a powerful tool for building a more inclusive financial sector which serves the broad majority of the world's population including the very poor and women and thus generate more social stability and prosperity.

(C) Over the last two decades, the United States has been a global leader in promoting the global microenterprise sector, primarily through its development assistance programs at the United States Agency for International Development. Additionally, the United States Department of the Treasury and the Department of State have used their authority to promote microenterprise in the development programs of international financial institutions and the United Nations.

(11)(A) In 1994, the United States Agency for International Development launched the ''Microenterprise Initiative'' in partnership with the Congress.

(B) The initiative committed to expanding funding for the microenterprise programs of the Agency, and set a goal that, by the end of fiscal year 1996, half of all microenterprise resources would support programs and institutions that provide credit to the poorest, with loans under $300.

(C) In order to achieve the goal of the microcredit summit, increased investment in microcredit institutions serving the poorest will be critical.

(12) Providing the United States share of the global investment needed to achieve the goal of the microcredit summit will require only a small increase in United States funding for international microcredit programs, with an increased focus on institutions serving the poorest.

(13)(A) In order to reach tens of millions of the poorest with microcredit, it is crucial to expand and replicate successful microcredit institutions.

(B) These institutions need assistance in developing their institutional capacity to expand their services and tap commercial sources of capital.

(14) Nongovernmental organizations have demonstrated competence in developing networks of local microfinance institutions and other assistance delivery mechanisms so that they reach large numbers of the very poor, and achieve financial sustainability.

(15) Recognizing that the United States Agency for International Development has developed very effective partnerships with nongovernmental organizations, and that the Agency will have fewer missions to carry out its work, the Agency should place priority on investing in those nongovernmental network institutions that meet performance criteria through the central funding mechanisms of the Agency.

(16) By expanding and replicating successful microcredit institutions, it should be possible to create a global infrastructure to provide financial services to the world's poorest families.

(17)(A) The United States can provide leadership to other bilateral and multilateral development agencies as such agencies expand their support to the microenterprise sector.

(B) The United States should seek to improve coordination among G–7 countries in the support of the microenterprise sector in order to leverage the investment of the United States with that of other donor nations.

(18) Through increased support for microenterprise, especially credit for the poorest, the United States can continue to play a leadership role in the global effort to expand financial services and opportunity to 100,000,000 of the poorest families on the planet.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to make microenterprise development an important element of United States foreign economic policy and assistance;

(2) to provide for the continuation and expansion of the commitment of the United States Agency for International Development to the development of microenterprise institutions as outlined in its 1994 Microenterprise Initiative;

(3) to support and develop the capacity of United States and indigenous nongovernmental organization intermediaries to provide credit, savings, training and technical services to microentrepreneurs;

(4) to increase the amount of assistance devoted to credit activities designed to reach the poorest sector in developing countries, and to improve the access of the poorest, particularly women, to microenterprise credit in developing countries; and

(5) to encourage the United States Agency for International Development to coordinate microfinance policy, in consultation with the Department of the Treasury and the Department of State, and to provide global leadership in promoting microenterprise for the poorest among bilateral and multilateral donors.

SEC. 4. MICROENTERPRISE DEVELOPMENT GRANT ASSISTANCE.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) by redesignating the second section 129 (as added by section 4 of the Torture Victims Relief Act of 1998 (Public Law 105–320)) as section 130; and

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

"SEC. 131. MICROENTERPRISE DEVELOPMENT GRANT ASSISTANCE.

''(a) FINDINGS AND POLICY.—The Congress finds and declares that—

''(1) the development of microenterprise is a vital factor in the stable growth of developing countries and in the development of free, open, and equitable international economic systems;

''(2) it is therefore in the best interest of the United States to assist the development of microenterprises in developing countries; and

''(3) the support of microenterprise can be served by programs providing credit, savings, training, and technical assistance.

''(b) AUTHORIZATION.—(1) In carrying out this part, the President is authorized to provide grant assistance for programs to increase the availability of credit and other services to microenterprises lacking full access to capital and training through—

''(A) grants to microfinance institutions for the purpose of expanding the availability of credit, savings, and other financial services to microentrepreneurs;

''(B) training, technical assistance, and other support for microenterprises to enable them to make better use of credit, to better manage their enterprises, and to increase their income and build their assets;

''(C) capacity building for microfinance institutions in order to enable them to better meet the credit and training needs of microentrepreneurs; and

''(D) policy and regulatory programs at the country level that improve the environment for microfinance institutions that serve the poor and very poor.

''(2) Assistance authorized under paragraph (1) shall be provided through organizations that have a capacity to develop and implement microenterprise programs, including particularly—

''(A) United States and indigenous private and voluntary organizations;

''(B) United States and indigenous credit unions and cooperative organizations;

''(C) other indigenous governmental and nongovernmental organizations; or

''(D) business development services, including indigenous craft programs.

''(3) In carrying out sustainable poverty-focused programs under paragraph (1), 50 percent of all microenterprise resources shall be used for direct support of programs under this subsection through practitioner institutions that provide credit and other financial

services to the poorest with loans of $300 or less in 1995 United States dollars and can cover their costs of credit programs with revenue from lending activities or that demonstrate the capacity to do so in a reasonable time period.

''(4) The President should continue support for central mechanisms and missions that—

''(A) provide technical support for field missions;

''(B) strengthen the institutional development of the intermediary organizations described in paragraph (2);

''(C) share information relating to the provision of assistance authorized under paragraph (1) between such field missions and intermediary organizations; and

''(D) support the development of nonprofit global microfinance networks, including credit union systems, that—

''(i) are able to deliver very small loans through a vast grassroots infrastructure based on market principles; and

''(ii) act as wholesale intermediaries providing a range of services to microfinance retail institutions, including financing, technical assistance, capacity building and safety and soundness accreditation.

''(5) Assistance provided under this subsection may only be used to support microenterprise programs and may not be used to support programs not directly related to the purposes described in paragraph (1).

''(c) MONITORING SYSTEM.—In order to maximize the sustainable development impact of the assistance authorized under subsection (a)(1), the Administrator of the United States Agency for International Development shall establish a monitoring system that—

''(1) establishes performance goals for such assistance and expresses such goals in an objective and quantifiable form, to the extent feasible;

''(2) establishes performance indicators to be used in measuring or assessing the achievement of the goals and objectives of such assistance;

''(3) provides a basis for recommendations for adjustments to such assistance to enhance the sustainable development impact of such assistance, particularly the impact of such assistance on the very poor, particularly poor women; and

''(4) provides a basis for recommendations for adjustments to measures for reaching the poorest of the poor, including proposed legislation containing amendments to improve paragraph (3).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—(A) There are authorized to be appropriated $152,000,000 for fiscal year 2000 and $167,000,000 for fiscal year 2001 to carry out this section.

''(B) Amounts appropriated pursuant to the authorization of appropriations under subparagraph (A) are authorized to remain available until expended.

''(2) RULE OF CONSTRUCTION.—Amounts authorized to be appropriated under paragraph (1) are in addition to amounts otherwise available to carry out this section.''.

SEC. 5. MICRO- AND SMALL ENTERPRISE DEVELOPMENT CREDITS.

Section 108 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151f) is amended to read as follows:

''SEC. 108. MICRO- AND SMALL ENTERPRISE DEVELOPMENT CREDITS.

''(a) FINDINGS AND POLICY.—The Congress finds and declares that—

''(1) the development of micro- and small enterprises are a vital factor in the stable growth of developing countries and in the development and stability of a free, open, and equitable international economic system; and

''(2) it is, therefore, in the best interests of the United States to assist the development of the enterprises of the poor in developing countries and to engage the United States private sector in that process.

''(b) PROGRAM.—To carry out the policy set forth in subsection (a), the President is authorized to provide assistance to increase the availability of credit to micro- and small enterprises lacking full access to credit, including through—

''(1) loans and guarantees to credit institutions for the purpose of expanding the availability of credit to micro- and small enterprises;

''(2) training programs for lenders in order to enable them to better meet the credit needs of microentrepreneurs; and

''(3) training programs for microentrepreneurs in order to enable them to make better use of credit and to better manage their enterprises.

''(c) ELIGIBILITY CRITERIA.—The Administrator of the United States Agency for International Development shall establish criteria for determining which entities described in subsection (b) are eligible to carry out activities, with respect to micro- and small enterprises, assisted under this section. Such criteria may include the following:

''(1) The extent to which the recipients of credit from the entity do not have access to the local formal financial sector.

''(2) The extent to which the recipients of credit from the entity are among the poorest people in the country.

''(3) The extent to which the entity is oriented toward working directly with poor women.

''(4) The extent to which the entity recovers its cost of lending to the poor.

''(5) The extent to which the entity implements a plan to become financially sustainable.

''(d) ADDITIONAL REQUIREMENT.—Assistance provided under this section may only be used to support micro- and small enterprise programs and may not be used to support programs not directly related to the purposes described in subsection (b).

''(e) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—(A) There are authorized to be appropriated $1,500,000 for each of the fiscal years 2000 and 2001 to carry out this section.

''(B) Amounts authorized to be appropriated under subparagraph (A) shall be made available for the subsidy cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, for activities under this section.

''(2) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated $500,000 for each of the fiscal years 2000 and 2001 for the cost of administrative expenses in carrying out this section.

''(3) RULE OF CONSTRUCTION.—Amounts authorized to be appropriated under this subsection are in addition to amounts otherwise available to carry out this section.''.

SEC. 6. MICROFINANCE LOAN FACILITY.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), as amended by this Act, is further amended by adding the following new section:

''SEC. 132. UNITED STATES MICROFINANCE LOAN FACILITY.

''(a) ESTABLISHMENT.—The Administrator of the United States Agency for International Development is authorized to establish a United States Microfinance Loan Facility (hereinafter in this section referred to as the 'Facility') to pool and manage the risk from natural disasters, war or civil conflict, national financial crisis, or short-term financial movements that threaten the long-term development of United States-supported microfinance institutions.

''(b) SUPERVISORY BOARD OF THE FACILITY.—(1) The Facility shall be supervised by a board composed of the following representatives appointed by the President not later than 180 days after the date of the enactment of Microenterprise for Self-Reliance Act of 1999:

''(A) 1 representative from the Department of the Treasury.

''(B) 1 representative from the Department of State.

''(C) 1 representative from the United States Agency for International Development.

''(D)(i) 2 United States citizens from United States nongovernmental organizations that operate United States-sponsored microfinance activities.

''(ii) Individuals described in clause (i) shall be appointed for a term of 2 years.

''(2) The Administrator of the United States Agency for International Development or his designee shall serve as Chairman and an additional voting member of the board.

''(c) DISBURSEMENTS.—(1) The board shall make disbursements from the Facility to United States-sponsored microfinance institutions to prevent the bankruptcy of such institutions caused by (A) natural disasters, (B) national wars or civil conflict, or (C) national financial crisis or other short term financial movements that threaten the long-term development of United States-supported microfinance institutions. Such disbursements shall be made as concessional loans that are repaid maintaining the real value of the loan to microfinance institutions that demonstrate the capacity to resume self-sustained operations within a reasonable time period. The Facility shall provide for loan losses with each loan disbursed.

''(2) During each of the fiscal years 2001 and 2002, funds may not be made available from the Facility until 15 days after notification of the availability has been provided to the congressional committees specified in section 634A of this Act in accordance with the procedures applicable to reprogramming notifications under that section.

''(d) REPORT.—Not later than 60 days after the date on which the last representative to the board is appointed pursuant to subsection (b), the chairman of the board shall prepare and submit to the appropriate congressional committees a report on the policies, rules, and regulations of the Facility.

''(e) FUNDING.—

''(1) AVAILABILITY OF FUNDS TO COVER SUBSIDY COSTS.—Of the funds made available to carry out this part for fiscal years 2000 and 2001, up to $5,000,000 may be made available to cover the subsidy cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990) to carry out this section for each such fiscal year. In addition, of such amount for each fiscal year, up to $_____ may be made available for administrative expenses in carrying out this section.

''(2) APPLICABLE AUTHORITIES.—The provisions of section 107A(d) of the Foreign Assistance Act of 1961 (as contained in section 306 of H.R. 1486, as reported to the House of Representatives on May 9, 1997) shall be applicable to assistance provided under this section, except that paragraphs (5) through (8) thereof shall not apply.

''(3) RELATION TO OTHER AMOUNTS AVAILABLE.—Amounts made available under paragraph (1) are in addition to amounts available to carry out this section under any other provision of law.

''(f) DEFINITIONS.—In this section:

''(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional

committees' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

''(2) UNITED STATES-SUPPORTED MICROFINANCE INSTITUTION.—The term 'United States-supported microfinance institution' means a financial intermediary that has received funds made available under this Act for fiscal year 1980 or any subsequent fiscal year.''.

SEC. 7. REPORT RELATING TO FUTURE DEVELOPMENT OF MICROFINANCE INSTITUTIONS.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President, in consultation with the Administrator of the United States Agency for International Development, the Secretary of State, and the Secretary of the Treasury, shall prepare and transmit to the appropriate congressional committees a report on the most cost-effective methods for increasing the access of poor people to credit, other financial services, and related training.

(b) CONTENTS.—The report described in subsection (a)—

(1) should include how the President, in consultation with the Administrator of the United States Agency for International Development, the Secretary of State, and the Secretary of the Treasury, will jointly develop a comprehensive strategy for advancing the global microenterprise sector in a way that maintains market principles while assuring that the very poor, particularly women, obtain access to financial services; and

(2) shall provide guidelines and recommendations for—

(A) instruments to assist microenterprise networks to develop multi-country and regional microlending programs;

(B) technical assistance to foreign governments, foreign central banks and regulatory entities to improve the policy environment for microfinance institutions, and to strengthen the capacity of supervisory bodies to supervise microcredit institutions;

(C) the potential for federal chartering of United States-based international microfinance network institutions, including proposed legislation;

(D) instruments to increase investor confidence in microcredit institutions which would strengthen the long-term financial position of the microcredit institutions and attract capital from private sector entities and individuals, such as a rating system for microcredit institutions and local credit bureaus;

(E) an agenda for integrating microfinance into United States foreign policy initiatives seeking to develop and strengthen the global finance sector; and

(F) innovative instruments to attract funds from the capital markets, such as instruments for leveraging funds from the local commercial banking sector, and the securitization of microloan portfolios.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''appropriate congressional committees'' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 8. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT AS GLOBAL LEADER AND COORDINATOR OF BILATERAL AND MULTILATERAL MICROENTERPRISE ASSISTANCE ACTIVITIES.

(a) FINDINGS AND POLICY.—The Congress finds and declares that—

(1) the United States can provide leadership to other bilateral and multilateral development agencies as such agencies expand their support to the microenterprise sector; and

(2) the United States should seek to improve coordination among G–7 countries in the support of the microenterprise sector in order to leverage the investment of the United States with that of other donor nations.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) the Administrator of the United States Agency for International Development and the Secretary of State should seek to support and strengthen the effectiveness of microfinance activities in United Nations agencies, such as the International Fund for Agricultural Development (IFAD) and the United Nations Development Program (UNDP), which have provided key leadership in developing the microenterprise sector; and

(2) the Secretary of the Treasury should instruct each United States Executive Director of the Multilateral Development Banks (MDBs) to advocate the development of a coherent and coordinated strategy to support the microenterprise sector and an increase of multilateral resource flows for the purposes of building microenterprise retail and wholesale intermediaries.

By Mr. HAGEL (for himself, Mrs. LINCOLN, Mr. ROBERTS, Ms. LANDRIEU, Mr. HUTCHINSON, Mr. COCHRAN, Mr. GRAMS, Mr. ABRAHAM, Mr. SMITH of Oregon, Mr. HOLLINGS, Mr. CRAIG, Mr. GORTON, Mr. GRASSLEY, Mr. CRAPO, Mr. BURNS, Mr. FRIST, Mr. BREAUX, Mr. ASHCROFT, Mr. COVERDELL, Mr. HELMS, and Mr. LOTT):

S. 1464. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish certain requirements regarding the Food Quality Protection Act of 1996, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

REGULATORY OPENNESS AND FAIRNESS ACT OF 1999

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

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

S. 1464

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 ''Regulatory Openness and Fairness Act of 1999''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
TITLE I—ISSUANCE AND CONTINUATION OF TOLERANCES
Sec. 101. Transition analysis and description of basis for decisions relating to tolerance reviews.
Sec. 102. Interim procedures for reviews of tolerances.
Sec. 103. Implementation rules and guidance.
Sec. 104. Data in support of tolerances and registrations.
Sec. 105. Tolerances for emergency uses.
TITLE II—STUDIES AND REPORTS
Sec. 201. Definitions.
Sec. 202. Priorities and resources.
Sec. 203. International trade effects.
Sec. 204. Advisory committee.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Food Quality Protection Act of 1996 (Public Law 104–170; 110 Stat. 1489), enacted on August 3, 1996, made many major modifications to section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) that require the Administrator of the Environmental Protection Agency to consider new kinds of information and use additional criteria in regulating pesticide chemical residues and in reviewing tolerances for pesticide chemical residues that had previously been found to be adequate to protect the public health.

(2)(A) Amendments made by the Food Quality Protection Act of 1996 prescribe the use of a number of new risk assessment criteria that require the development of major modifications to regulatory policies and procedures used by the Administrator to regulate pesticide chemical residues.

(B) Since the enactment of the Food Quality Protection Act of 1996, it has become clear that several of the new concepts embodied in that Act involve a high degree of complexity.

(C) Practical implementation of the concepts demands new scientific tools in addition to the tools that were available when the Food Quality Protection Act of 1996 was enacted.

(3)(A) To reach sound, suitably protective decisions on tolerance reviews under the new criteria, the Administrator also will need a great deal of new data, not only on the newly considered nondietary routes of exposure, but also, in some cases, on dietary exposure and toxicity, so that the Administrator can determine whether pesticide chemicals residues that were found safe under the former criteria satisfy the new criteria as well.

(B) Some data collection efforts are underway to obtain new data for tolerance reviews, but will not yield results for 1 or more years.

(C) In some areas, the need for new data depends on decisions not yet made by the Administrator about what kinds of tests should be conducted and which compounds should be tested, for tolerance reviews.

(4)(A) The Administrator has instituted public proceedings, relating to the regulations and tolerance reviews, on such topics as what new interpretations and policies are needed, what new kinds of data are needed, how the new data would be used, and how the needed regulatory transition can be achieved.

(B) These proceedings are not yet finished, and on some issues public notice and comment proceedings have been scheduled but have not yet begun.

(5)(A) The Food Quality Protection Act of 1996 amended the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) by adding several provisions that provide flexibility to the Administrator in making the transition to the new approach to regulating pesticide chemical residues.

(B) The Federal Food, Drug, and Cosmetic Act allows a continuing process of refinement and improvement in tolerance decisionmaking, as additional information is collected and as new policies and methods are developed and adopted for the practical implementation of the new requirements in that Act.

(C) The Federal Food, Drug, and Cosmetic Act provides that the data requirements for tolerances must be set out clearly in regulations and guidelines, so that the regulated community will know what types of information the Administrator requires and what

testing procedures should be used to develop the information.

(D) Amendments made by the Food Quality Protection Act of 1996 relating to risk assessments affecting tolerances allow only the use of reliable information regarding nondietary exposure routes, which were not previously considered in risk assessments affecting tolerances.

(E) Congress did not anticipate that a tolerance would be revoked because of reliance by the Administrator on estimates or assumptions stemming from absence of that information, without first providing notice of what information is needed and a reasonable opportunity to collect the information.

(F) When a tolerance is under review and the Administrator determines that additional information is needed to support the continuation of the tolerance, the Federal Food, Drug, and Cosmetic Act authorizes the Administrator to postpone the effective date of any tolerance rule resulting from the review, and this authority can be utilized as appropriate in cases in which additional information is pertinent to a tolerance review.

(G) The Federal Food, Drug, and Cosmetic Act permits the Administrator to conduct a tolerance review in stages, as allowed by the available, reliable information.

(6)(A) Although the authorities described in subparagraphs (F) and (G) of paragraph (5) already are provided by law, it appears that further congressional guidance is needed to ensure that decisions of the Administrator relating to tolerance reviews are reasonable, well supported, and balanced, and to avoid disruptions in agriculture, other sectors of the economy, and international trade.

(B) During the transition to revised standards, procedures, and requirements for the regulation of pesticide chemical residues, the Administrator must ensure that decisions are balanced, reasonable, and understandable, and are based on and supported by sound information, in order to avoid unnecessary disruptions in agriculture, the economy, and international trade, and to maintain the public trust in the food supply.

(7) Unless the Administrator implements section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) carefully and wisely, decisions made under that section could cause great harm to—

(A) the safe and affordable food supply of the United States;

(B) the agricultural system of the United States (including food, fiber, nursery, and forestry production, food storage, and transportation);

(C) related industries; and

(D) other private and public sector activities, such as—

(i) public health protection against bacteria and other microorganisms;

(ii) control of insects and diseases; and

(iii) residential and business pest control.

TITLE I—ISSUANCE AND CONTINUATION OF TOLERANCES

SEC. 101. TRANSITION ANALYSIS AND DESCRIPTION OF BASIS FOR DECISIONS RELATING TO TOLERANCE REVIEWS.

Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following:

''(t) TRANSITION ANALYSIS AND DESCRIPTIONS OF BASIS FOR DECISIONS RELATING TO TOLERANCE REVIEWS.—

''(1) APPLICATION OF REQUIREMENTS TO CERTAIN DOCUMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection applies to any proposed or final rule, order, notice, report, guidance document, or risk assessment (referred to in this subsection as a 'document') that is—

''(i) based on, or results from, any review (including a reassessment) by the Administrator of a tolerance or of the uses of a pesticide chemical for which a tolerance is in effect; and

''(ii) issued or disclosed as described in paragraph (2).

''(B) EXCEPTION.—This subsection does not apply to any document in which the Administrator determines or recommends that no revocation or denial of a tolerance, or other adverse action regarding a tolerance, is required.

''(2) PERIOD OF APPLICABILITY.—This subsection applies to a document that the Administrator issues or otherwise discloses to any member of the public during the period beginning on January 1, 1999, and ending on the date of completion of the process of reviewing tolerances under subsection (q).

''(3) TRANSITION ANALYSIS REPORT.—

''(A) TRANSITION ANALYSIS.—Before issuing any document to which this subsection applies, the Administrator shall conduct a transition analysis of the findings and regulatory steps recommended by or set forth in the document.

''(B) REPORT.—The Administrator shall prepare a report, to be issued with the document, that—

''(i) describes the results of the analysis;

''(ii) describes the extent to which the conclusions in the document are tentative, preliminary, or subject to possible modification because of policy reevaluation, correction of data deficiencies, or use of new data to replace assumptions; and

''(iii) contains the information described in subparagraphs (C) and (D).

''(C) CONTENTS OF REPORT RELATING TO BASIS FOR FINDINGS AND REGULATORY STEPS.—A transition analysis report prepared under this paragraph shall describe the extent to which any finding or regulatory step recommended by or set forth in the analyzed document is based in whole or in part on—

''(i) any assumption, if the Administrator is in possession of data that would make use of the assumption unnecessary;

''(ii) any information about possible exposure from drinking water, or another nonoccupational, nondietary exposure route, that is derived from use of—

''(I) a worst-case assumption;

''(II) a computation or modeling result that is—

''(aa) based on a high-end or upper-bound input; or

''(bb) designed to be a worst-case, high-end, or upper-bound estimate; or

''(III) information that otherwise is not reasonably representative of risks to consumers or to major identifiable subgroups of consumers, on a national or regional basis;

''(iii) any assumption about exposure from drinking water, or another nonoccupational, nondietary exposure route, if data that would make use of the assumption unnecessary, and would likely demonstrate a lower level of exposure than that used in the assumption—

''(I) are being developed and will be submitted to the Administrator within a reasonable period—

''(aa) in accordance with a request by the Administrator under subsection (f) or any of the authorities referred to in that subsection; or

''(bb) at the initiative of an interested person; or

''(II) could be obtained by the Administrator by an action taken in accordance with subsection (f);

''(iv) any assumption regarding the method for determining the aggregate exposure to a pesticide chemical or the cumulative effect of exposure to 2 or more pesticide chemicals having a common mechanism of toxicity, if the use of the assumption is based in whole or in part on the absence of data that could be obtained by the Administrator by an action taken in accordance with subsection (f), unless the data that would eliminate the need for use of the assumption have been identified and made known by the Administrator to interested persons and sufficient time has been provided to allow the data to be developed, submitted, and subsequently evaluated by the Administrator;

''(v) any calculation developed by use of the margin of safety described in subsection (b)(2)(C), if the use of the margin of safety is based in whole or in part on the absence of data that could be obtained by the Administrator by an action taken in accordance with subsection (f), unless the data that would eliminate the need for use of the margin of safety have been identified and made known by the Administrator to interested persons and sufficient time has been provided to allow the data to be developed, submitted, and subsequently evaluated by the Administrator; or

''(vi) any information about an alleged adverse effect relating to a pesticide chemical, if the information is anecdotal, unverified, or scientifically implausible, or comes from any study whose design and conduct has not been found by the Administrator to be scientifically sound with regard to design, conduct, reporting, and data availability.

''(D) ADDITIONAL CONTENTS OF REPORT.—A transition analysis report prepared under this paragraph shall contain information—

''(i) summarizing and responding briefly to comments received by the Administrator from any other person regarding the applicability of any provision of subparagraph (C) to the document analyzed under this subsection;

''(ii) describing briefly the availability and suitability of pesticidal and nonpesticidal alternatives to the pesticide chemical uses being reviewed, including a description of—

''(I) the extent to which (as determined by the Administrator, in consultation with the Secretary of Agriculture) an alternative to the use for which the tolerance under review has been approved that is effective and economical; and

''(II) whether revocation or modification of the tolerance will result in—

''(aa) a significant regional shift of production of food within the United States;

''(bb) an increase in imports of corresponding commodities;

''(cc) an increase in pest control costs;

''(dd) an increase in pest crop damage and yield loss, including quality degradation, due to the lack of an effective alternative; or

''(ee) a disruption of domestic production of an adequate, wholesome, and economical food supply;

''(iii) identifying the data that, if available, would make unnecessary any reliance on any information, assumption, or calculation that is described in clause (ii), (iii), (iv), or (v) of subparagraph (C) and identified in the report;

''(iv) describing the extent to which any finding or regulatory step recommended by or set forth in the document is based in whole or in part on any assumption about toxicity, dietary exposure, or risk from dietary exposure, if data that would make use of the assumption unnecessary—

''(I) are being developed and will be submitted to the Administrator within a reasonable period—

''(aa) in accordance with a request by the Administrator under subsection (f) or any of the authorities referred to in that subsection; or

''(bb) at the initiative of an interested person; or

''(II) could be obtained by the Administrator by an action taken in accordance with subsection (f); and

''(v) describing the extent to which any finding or regulatory step recommended by or set forth in the document is based in whole or in part on—

''(I) any use of data on the presence or absence of nonadverse effects, rather than data on the presence or absence of adverse effects, as the basis for calculation of allowable exposure levels; or

''(II) any policy that the Administrator may revise after completion of any reevaluation of that policy that is being conducted or is scheduled to be conducted.

''(4) DEFINITION.—In this subsection and subsection (u), the term 'tolerance' has the meaning given the term in section 201 of the Regulatory Openness and Fairness Act of 1999.''.

SEC. 102. INTERIM PROCEDURES FOR REVIEWS OF TOLERANCES.

Section 408 of the Federal Food, Drug, and Cosmetic Act, as amended by section 101, is further amended by adding at the end the following:

''(u) INTERIM PROCEDURES FOR REVIEWS OF TOLERANCES.—

''(1) APPLICATION OF REQUIREMENTS TO CERTAIN ACTIONS.—This subsection applies to—

''(A) any review (including a reassessment) by the Administrator of a tolerance, whether initiated by the Administrator or by petition by another person; and

''(B) any review (including a reassessment) by the Administrator of any registration of a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) that is associated with or results from such a tolerance review;

that the Administrator issues during the period described in paragraph (2).

''(2) PERIOD OF APPLICABILITY.—The period referred to in paragraph (1) is the period beginning on January 1, 1999, and ending on the date of completion of the process of reviewing tolerances under subsection (q).

''(3) LIMITATION.—Notwithstanding any other provision of law—

''(A) in any tolerance review (including a reassessment) to which this subsection applies, the Administrator may not base the revocation or denial of, or other adverse action regarding, a tolerance on any information, calculation, or assumption described in subsection (t)(3)(C); and

''(B) in any review (including a reassessment) to which this subsection applies of the registration of a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), the Administrator may not base any adverse action regarding a registration on any such information, calculation, or assumption.''.

SEC. 103. IMPLEMENTATION RULES AND GUIDANCE.

Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) is amended by adding at the end the following:

''(3) IMPLEMENTATION RULES AND GUIDANCE.—

''(A) IN GENERAL.—In establishing general procedures and requirements to implement this section in accordance with paragraph (1)(C), the Administrator shall issue rules and guidance, including guidance regarding the provisions of this Act regarding aggregate exposure to pesticide chemicals and cumulative effects of exposure to 2 or more pesticide chemicals having a common mechanism of toxicity. The Administrator shall include in such rules and guidance general procedures and requirements to implement the provisions of this Act that were added by amendments made by the Regulatory Openness and Fairness Act of 1999.

''(B) ISSUANCE.—The Administrator shall issue—

''(i) proposed rules and guidance described in subparagraph (A) not later than 180 days after the date of enactment of the Regulatory Openness and Fairness Act of 1999;

''(ii) final rules and guidance described in subparagraph (A) not later than 1 year after the date of enactment of the Regulatory Openness and Fairness Act of 1999; and

''(iii) such revisions to the rules and guidance as the Administrator determines to be necessary and appropriate.''.

SEC. 104. DATA IN SUPPORT OF TOLERANCES AND REGISTRATIONS.

(a) FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)) is amended by adding at the end the following:

''(3) ISSUANCE OF GUIDELINES.—

''(A) IN GENERAL.—The Administrator shall issue guidelines specifying the kinds of information that will be required to support the issuance or continuation of a tolerance for a pesticide chemical residue or the exemption from the requirement of such a tolerance, established under this section. The Administrator shall revise the guidelines from time to time. The guidelines shall specify the conditions under which data requirements will apply to particular types of pesticide chemical residues.

''(B) PROCEDURES.—In issuing the guidelines described in subparagraph (A), the Administrator shall provide notice and an opportunity for comment, except for those guidelines that already have been issued after notice and an opportunity for comment under section 3(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(2)(A)).''.

(b) FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.—The first sentence of section 3(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(2)(A)) is amended by striking the period and inserting '', after providing notice and an opportunity for comment on the guidelines or revisions by interested parties.''.

SEC. 105. EXPEDITED ACTION.

(a) EXPEDITED ACTION TO PROVIDE EFFECTIVE, ECONOMIC ALTERNATIVES.—Section 3(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(3)) is amended by adding at the end the following:

''(E) EXPEDITED ACTION TO PROVIDE EFFECTIVE, ECONOMIC ALTERNATIVES.—The Administrator shall expedite the review of any complete application for registration or amended registration of a pesticide under this section, for an experimental use permit under section 5, or for an emergency exemption under section 18, if the application seeks approval for the registration or use of a pesticide—

''(i) that, in the opinion of the Administrator, is likely to provide an effective and economic alternative to the use of a pesticide that has been or is likely to be removed from the market as a result of a review conducted under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a); and

''(ii) for which—

''(I) there is no registered effective and economical alternative (as of the date of submission of the application); or

''(II) the number of the alternatives is insufficient to avoid problems such as pest resistance.''.

(b) COORDINATION.—Section 408(d)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(4)(B)) is amended—

(1) by striking ''tolerance or exemption for'' and inserting ''tolerance or exemption—

''(i) for'';

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

(3) by adding at the end the following:

''(ii) that is needed in connection with an application under section 3(c)(3)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(3)(E)) for approval of an effective and economic alternative.''.

(c) TOLERANCES FOR EMERGENCY USES.—Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(l)(6)) is amended—

(1) by inserting before the first sentence the following:

''(A) IN GENERAL.—'';

(2) by inserting before the third sentence the following:

''(B) PROCEDURE.—'';

(3) by inserting before the fifth sentence the following:

''(C) SAFETY STANDARD.—'';

(4) in the fifth sentence, by striking the period and inserting '', except as described in subparagraph (D).''; and

(5) by adding at the end the following:

''(D) EMERGENCY EXEMPTIONS.—The Administrator may establish a tolerance for a pesticide chemical residue associated with an emergency exemption without regard to other tolerances for a pesticide chemical residue and before reviewing those other tolerances, if the Administrator determines that any incremental exposure that may result from the tolerance associated with the emergency exemption will not pose any significant risk to food consumers.''.

TITLE II—STUDIES AND REPORTS

SEC. 201. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) PESTICIDE CHEMICAL; PESTICIDE CHEMICAL RESIDUE.—The terms ''pesticide chemical'' and ''pesticide chemical residue'' have the meanings given the terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(4) TOLERANCE.—The term ''tolerance'' means a tolerance for a pesticide chemical residue or an exemption from the requirement of such a tolerance, established under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a).

SEC. 202. PRIORITIES AND RESOURCES.

(a) ENVIRONMENTAL PROTECTION AGENCY PROPOSAL.—The Administrator shall prepare a proposal for revising the priorities of and resources available to the Administrator that will allow the Administrator—

(1) to process promptly all—

(A) applications for registration of pesticide chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

(B) petitions for tolerances (including exemptions) under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a);

(C) requests for experimental use permits, for approval of new inert ingredients, and for emergency exemptions, relating to pesticide chemicals under an Act described in subparagraph (A) or (B); and

(D) requests for decisions on the merits of the applications, petitions, and requests described in subparagraphs (A) through (C); and

(2) to perform tolerance reviews (including reassessments) and other duties relating to pesticide chemicals, as required by the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) DEPARTMENT OF AGRICULTURE PROPOSAL.—The Secretary shall prepare a proposal for revising the priorities of and resources available to the Secretary that will allow the Secretary—

(1) to obtain and provide to the Administrator adequate and timely information on food consumption, pesticide chemical residues in or on food and drinking water, and pesticide chemical use;

(2) to review actions proposed by the Administrator under section 408 of the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act; and

(3) to perform other duties related to the regulation of pesticide chemicals (including pesticide chemical residues).

(c) REPORT.—The Administrator and the Secretary shall prepare and submit to Congress a report containing the proposals described in subsections (a) and (b) not later than 180 days after the date of enactment of this Act.

SEC. 203. INTERNATIONAL TRADE EFFECTS.

(a) ASSESSMENT.—

(1) ASSESSMENT PROGRAM.—The Secretary shall establish and administer a program to continuously assess the strength of major United States agricultural commodities and products in the international marketplace. The commodities and products assessed shall include fruits and vegetables, corn, wheat, cotton, rice, soybeans, and nursery and forest products.

(2) FACTORS.—In carrying out paragraph (1), the Secretary shall examine factors pertinent to assessing the sustainability and competitive strength of each commodity and product in the international marketplace and the relationship of the factors to regulatory actions taken under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The factors examined for each commodity and product shall include commodity changes, regional changes, prices, quality, input costs and availability, and the ratio of imports to exports.

(b) REPORT.—The Secretary shall prepare periodic reports describing the results obtained from the assessment program conducted under subsection (a). The Secretary shall submit the reports to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Secretary shall submit the reports not later than October 1, 2000, and October 1 of every second year thereafter through 2010.

SEC. 204. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established an advisory committee to be known as the Pesticide Advisory Committee (referred to in this section as the ''Advisory Committee'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Advisory Committee shall be composed of 20 members, appointed by the Administrator and the Secretary. The members of the Advisory Committee shall represent a wide variety of interests and viewpoints and shall be appointed from among individuals who are representatives of organizations who are interested in the regulation of pesticide chemicals, including representatives of—

(A) organizations that represent—

(i) food consumers;

(ii) persons with a special interest in environmental protection;

(iii) farmworkers;

(iv) agricultural producers (including persons engaged in crop production, livestock and poultry production, or nursery and forestry production);

(v) nonagricultural pesticide chemical users;

(vi) food manufacturers and processors;

(vii) food distributors and marketers; and

(viii) manufacturers of agricultural and nonagricultural pesticide chemicals; and

(B) Federal and State agencies.

(2) PUBLICATION.—The Administrator shall publish in the Federal Register the name, address, and professional affiliation of each member of the Advisory Committee.

(3) TERMS OF APPOINTMENT.—Each member of the Advisory Committee shall serve for a term of years determined by the Administrator and the Secretary, except that—

(A) the terms of service of the members initially appointed shall be (as specified by the Administrator and the Secretary) for such fewer number of years as will provide for the expiration of terms on a staggered basis;

(B) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of the term; and

(C) the Secretary and the Administrator may extend the term of a member of the Advisory Committee until a new member is appointed to fill the vacancy.

(4) VACANCIES.—Any vacancy occurring in the membership of the Advisory Committee shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Advisory Committee.

(c) DUTIES.—The Advisory Committee shall—

(1) provide advice to the Administrator and the Secretary on matters related to implementation of section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), including proposed and final rules, policies, procedures, and testing guidelines used to regulate tolerances and pesticide chemical registrations;

(2) foster communication between the Administrator, the Secretary, and the various organizations who represent persons having particular interest in the regulation of pesticide chemicals under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act; and

(3) carry out the functions performed by the Tolerance Reassessment Advisory Committee.

(d) MEETINGS.—

(1) FREQUENCY.—The Advisory Committee shall meet at least 2 times per year, at times determined jointly by the Administrator and the Secretary. Not later than 14 days before the date of each meeting, the Administrator shall publish a notice regarding the meeting in the Federal Register.

(2) OPEN MEETINGS.—The Advisory Committee shall conduct its principal business—

(A) in meetings that are—

(i) open to the public; and

(ii) in facilities that can accommodate the reasonably foreseeable number of persons attending; or

(B) by teleconference, with open access.

(3) FACILITIES.—The Secretary shall be responsible for providing or making arrangements for the meeting facilities or teleconferences.

(e) COMMUNICATIONS.—The Administrator or the Secretary shall ensure that written communications between the Administrator or Secretary, respectively, and the Advisory Committee, are recorded and made available to any person upon request.

(f) CHAIRPERSON.—The Advisory Committee shall select a Chairperson from among its members.

(g) POWERS OF THE ADVISORY COMMITTEE.—

(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Advisory Committee considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—Except as otherwise provided in Federal law, the Advisory Committee may secure directly from any Federal department or agency such information as the Advisory Committee considers necessary to carry out this section. Upon request of the Chairperson of the Advisory Committee, the head of the department or agency shall furnish the information to the Advisory Committee.

(3) POSTAL SERVICES.—The Advisory Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Advisory Committee may accept, use, and dispose of gifts or donations of services or property.

(h) ADVISORY COMMITTEE PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—

(A) IN GENERAL.—The members of the Advisory Committee shall not receive compensation for the performance of services for the Advisory Committee, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Advisory Committee.

(B) FUNDS.—Funds used to provide travel expenses under subparagraph (A) shall be paid by the Administrator from appropriations available for those purposes.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Department of Agriculture (and no other Federal employee) may be detailed to the Advisory Committee without reimbursement, and the detail shall be without interruption or loss of civil service status or privilege.

(i) PERMANENT COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

By Mr. THOMPSON (for himself and Mr. ASHCROFT):

S. 1466. A bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of rules establishing or increasing taxes; to the Committee on Governmental Affairs.

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

TAXPAYER'S DEFENSE ACT OF 1999

Mr. THOMPSON. Mr. President, today I rise to introduce the Taxpayer's Defense Act of 1999. I am pleased to be working with my good friend from Missouri, JOHN ASHCROFT, who has been a leader on this issue in the Senate. I also want to thank Chairman GEORGE GEKAS for all of his hard work and leadership in the House. Our objective is clear and simple: no federal agency should set or raise a tax without the approval of Congress.

America was founded on the principle that there should be no taxation without representation. In *The Second Treatise of Government,* John Locke said, ''[I]f any one shall claim a power to lay and levy taxes on the people * * * without * * * consent of the people, he thereby * * * subverts the end of government.'' Consent, according to Locke, could only be given by a majority of the people, ''either by themselves

or their representatives chosen by them.'' The Boston Tea Party celebrated Americans' opposition to taxation without representation. And the Declaration of Independence listed, among the despotic acts of King George, his ''imposing Taxes on us without our Consent.'' First among the powers that the Constitution gave to the Congress, our new government's representative branch, was the power to levy taxes.

The logic of allowing only Congress to establish federal taxes is clear: Congress considers and weighs the economic and social issues that rise to national importance. While any agency or government office may view its own priorities as paramount, only Congress can decide which goals of the people merit spending hard-earned taxpayer dollars. Only Congress can determine how many taxpayer dollars should be spent. Congress' decisions are made through an open political process that the public can see and participate in. And if the public is unhappy with a tax, they can hold Congress and the President responsible on election day.

The accountability of lawmakers is a core feature of our representative democracy. But over time, Congress has delegated more and more of its legislative authority to unaccountable federal agencies. The Taxpayer's Defense Act would help restore constitutional balance and authority by requiring congressional approval for a rule that sets or raises a tax before the rule could take effect. Unelected agency officials could not directly establish or raise a tax, but would still have a chance to advance their proposals through an open political process in Congress.

Few would publicly dispute the American principle of no taxation without representation. But increasingly, in ways often subtle or hidden, federal agencies are taking on—or receiving from Congress—the power to tax. Federal agency taxes pass the costs of government programs on to American consumers in the form of higher prices. These secret taxes often are regressive—hitting many who struggle to get by. They also put a drag on the economy. These taxes take money from everyone, and they are imposed without accountability.

One big example of agency taxation is the Federal Communications Commission's Universal Service Tax. ''Universal service'' is the idea that everyone should have access to affordable telecommunications services. It originated at the beginning of the century when the nation was still being strung with telephone wires. The Telecommunications Act of 1996 included provisions that allowed the FCC to extend universal service, ensuring that telecommunications are available to all areas of the country and to institutions that benefit the community, such as schools, libraries, and rural health care facilities.

Most importantly, the Act gave the FCC the power to decide the level of ''contributions''—taxes—that telecommunications providers would have to pay to support universal service. The FCC must determines how much can be collected in taxes to subsidize a variety of ''universal service'' spending programs. It charges telecommunications providers, who pass the costs on to consumers in the form of higher telephone bills. The FCC recently nearly doubled the tax to $2.5 billion per year, and Administration's budget have projected a rise to $10 billion per year. This agency tax is already out of control.

The FCC's provisions for universal service have many flaws. These include the three ''administrative corporations'' set by the FCC. The General Accounting Office determined that the establishment of these corporations was illegal, and the FCC has collapsed them into one, no less questionable corporation. The head of one of these corporations was originally paid $200,000 per year—as much as the President of the United States.

It seems that the more you look, the more you find that a number of federal agencies have been given, or discovered on their own, the power of tax. Congress has given taxing authority to the Nuclear Regulatory Commission and the U.S. Department of Agriculture. Because these taxes are within statutory parameters, we have less concern with them than others, but they are still taxes. And an important principle is at stake: no taxation within representation. The Constitution gives the taxing power only to Congress. In practice, we often see a direct correlation between an agency taxing and the agency overspending taxpayer dollars. Congress must retain the power and accountability of the purse.

More egregious examples are those where agencies have spontaneously discovered the power to tax. There's the FCC's telecommunications tax, and two new taxes, past and proposed, on Internet domain name registration. The first, sponsored by the National Science Foundation, collected more than $60 million before a federal judge put a stop to it. The second, under the aegis of the Commerce Department, proposes to charge $1 per Internet domain name per year. What Commerce Department official stands to be voted out of office if he or she sponsors an increase in this tax?

The burden of this activity falls, of course, on the American taxpayer, whose money is being taken, laundered through the Washington bureaucracy, and returned (in dramatically reduced amounts) for purposes set by unelected agency staffers. This is why we must require the FCC, and all agencies, to get the approval of Congress before setting future tax rates.

Some of my colleagues may question why Congress should shoulder the responsibility for taxes. Let me just note that in a recent fee-dispute case, the FCC argued, amazingly, that it had the unreviewable power to raise taxes. As the Court of Appeals put it:

> [A]ccording to counsel, the Commission could impose a tax on an unregulated railroad or a tax on an individual for eating ice cream . . . . This is a preposterous position, one that we will not countenance. As this court [has] said . . . ''it goes without saying that the bald assertion of power by [an] agency cannot legitimize it. Unable to link its assertion of authority to any statutory provision, the [FCC's] position in this case amounts to be bare suggestion that it possesses plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area. We categorically reject that suggestion.''—*Comsat Corporation* v. *FCC*, 114 F. 3d 223, 227 (D.C. Cir. 1997) (citations omitted).

Should tax dollars be used for federal programs? In what amounts? Or should Americans spend what they earn on their own, locally determined priorities? Requiring Congress to review agency taxes would answer this question.

This legislation would create a new subchapter within the Congressional Review Act for mandatory review of certain rules. The portion of any agency rule that establishes or raises a tax would have to be submitted to Congress and receive the approval of Congress and the President before the agency could put it into effect. The Act would allow the agencies to formulate tax proposals for Congress to consider under existing rulemaking procedures. It is a version of a bill introduced last Congress by Chairman GEKAS in the House and JOHN ASHCROFT in the Senate.

Once submitted to Congress, a bill noting the taxing portion of a regulation would be introduced (by request) in each House of Congress by the Majority Leader. The bill would then be subject to expedited procedures, allowing a prompt decision on whether or not the agency may put the rule into effect. The rule could take effect once a bill approving it was passed by both Houses of Congress and signed by the President. If the rule were approved, the agency would retain power to reverse the regulation, lower the amount of the tax, or take any otherwise legal actions with respect to the rule.

Mr. President, the rallying cry of ''no taxation without representation'' has been heard in America before, and now we are hearing it again. Congress must not allow unelected bureaucrats determine the amount of taxes hardworking Americans must pay. While preserving needed flexibility, the Taxpayer's Defense Act will allow elected officials alone to decide whether to raise taxes, and where to direct precious tax dollars.

I ask unanimous consent that a copy of the Taxpayer's Defense Act be printed in the RECORD.

S. 1466

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 ''Taxpayer's Defense Act''.

SEC. 2. MANDATORY CONGRESSIONAL REVIEW.

Chapter 8 of title 5, United States Code, is amended by inserting after section 808 the following:

''SUBCHAPTER II—MANDATORY REVIEW OF CERTAIN RULES

''§ 815. Rules subject to mandatory congressional review

''(a) In this section, the term 'tax' means a non-penal, mandatory payment of money or its equivalent to the extent such payment does not compensate the Federal Government or other payee for a specific benefit conferred directly on the payer.

''(b) A rule that establishes or increases a tax, however denominated, shall not take effect before the date of the enactment of a bill described in section 816 and is not subject to review under subchapter I. This section does not apply to a rule promulgated under the Internal Revenue Code of 1986.

''§ 816. Agency submission

''Whenever an agency promulgates a rule subject to section 815, the agency shall submit to each House of Congress a report containing the text of only the part of the rule that causes the rule to be subject to section 815 and an explanation of that part. An agency shall submit such a report separately for each such rule the agency promulgates. The explanation shall consist of the concise general statement of the rule's basis and purpose required under section 553 and such explanatory documents as are mandated by other statutory requirements.

''§ 817. Approval bill

''(a)(1) Not later than 3 legislative days after the date on which an agency submits a report under section 816, the Majority Leader of each House of Congress shall introduce (by request) a bill the matter after the enacting clause of which is as follows: ''The following agency rule may take effect:''. The text submitted under section 816 shall be set forth after the colon. If such a bill is not introduced in a House of Congress as provided in the first sentence of this subsection, any Member of that House may introduce such a bill not later than 7 legislative days after the period for introduction by the Majority Leader.

''(2) A bill introduced under paragraph (1) shall be referred to the Committees in each House of Congress with jurisdiction over the subject matter of the rule involved.

''(b)(1)(A) Any committee of the House of Representatives to which a bill is referred shall report the bill without amendment, and with or without recommendation, not later than the 30th calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill. A motion to discharge may be made only by a Member favoring the bill (but only at a time designated by the Speaker on the legislative day after the calendar day on which the Member offering the motion announces to the House that Member's intention to do so and the form of the motion). The motion is highly privileged. Debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between the proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

''(B) After a bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least 1 calendar day, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed 1 hour equally divided and controlled by a proponent and an opponent of the bill. After general debate, the bill shall be considered as read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill, the Committee shall rise and report the bill to the House without intervening motion. The previous question shall be considered as ordered on the bill to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

''(C) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a bill shall be decided without debate.

''(2)(A) Any bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a bill has been referred shall report the bill without amendment not later than the 30th day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the calendar.

''(B) When the Senate receives from the House of Representatives a bill, such bill shall not be referred to committee and shall be placed on the calendar.

''(C) A motion to proceed to consideration of a bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

''(D)(i) After no more than 10 hours of consideration of a bill, the Senate shall proceed, without intervening action or debate (except as permitted under subparagraph (F)), to vote on the final disposition thereof to the exclusion of all motions, except a motion to reconsider or to table.

''(ii) A single motion to extend the time for consideration under clause (i) for no more than an additional 5 hours is in order before the expiration of such time and shall be decided without debate.

''(iii) The time for debate on the disapproval bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.

''(E) A motion to recommit a bill shall not be in order.

''(F) If the Senate has read for the third time a bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of a bill for the same special message received from the House of Representatives and placed on the calendar under subparagraph (B), strike all after the enacting clause, substitute the text of the Senate bill, agree to the Senate amendment, and vote on final disposition of the House bill, all without any intervening action or debate.

''(G) Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a bill shall be limited to not more than 4 hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.''.

SEC. 3. TECHNICAL AMENDMENTS.

(a) SUBCHAPTER HEADING.—Chapter 8 of title 5, United States Code, is amended by inserting before section 801 the following:

''SUBCHAPTER I—DISCRETIONARY CONGRESSIONAL REVIEW''.

(b) TABLE OF SECTIONS.—The table of sections for chapter 8 of title 5, United States Code, is amended by inserting before the reference to section 801 the following:

''SUBCHAPTER I—DISCRETIONARY CONGRESSIONAL REVIEW'';

and by inserting after the reference to section 808 the following:

''SUBCHAPTER II—MANDATORY REVIEW OF CERTAIN RULES

''815. Rules subject to mandatory congressional review.
''816. Agency submission.
''817. Approval bill.''.

(c) REFERENCE.—Section 804 of title 5, United States Code, is amended by striking ''this chapter'' and inserting ''this subchapter''.

ADDITIONAL COSPONSORS

S. 311

At the request of Mr. MCCAIN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 311, a bill to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs, and for other purposes.

S. 429

At the request of Mr. DURBIN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 429, a bill to designate the legal public holiday of ''Washington's Birthday'' as ''Presidents' Day'' in honor of George Washington, Abraham Lincoln, and Franklin Roosevelt and in recognition of the importance of the institution of the Presidency and the contributions that Presidents have made to the development of our Nation and the principles of freedom and democracy.

S. 469

At the request of Mr. BREAUX, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 469, a bill to encourage the timely development of a more cost effective United States commercial space transportation industry, and for other purposes.

S. 635

At the request of Mr. MACK, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 635, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of printed wiring board and printed wiring assembly equipment.

S. 727

At the request of Mr. CAMPBELL, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 727, a bill to exempt