S. 2411

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2411, a bill to amend the Federal Fire Prevention and Control Act of 1974 to provide financial assistance for the improvement of the health and safety of firefighters, promote the use of life saving technologies, achieve greater equity for departments serving large jurisdictions, and for other purposes.

S. 2425

At the request of Mr. COCHRAN, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 2425, a bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews.

S. 2449

At the request of Mr. BAUCUS, the names of the Senator from New Hampshire (Mr. SUNUNU) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 2449, a bill to require congressional renewal of trade and travel restrictions with respect to Cuba.

S. CON. RES. 81

At the request of Mr. STEVENS, his name was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

At the request of Mrs. FEINSTEIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. Con. Res. 81, supra.

S. CON. RES. 90

At the request of Mr. LEVIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. RES. 221

At the request of Mr. SARBANES, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 221, a resolution recognizing National Historically Black Colleges and Universities and the importance and accomplishments of historically Black colleges and universities.

S. RES. 357

At the request of Mr. CAMPBELL, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Res. 357, a resolution designating the week of August 8 through August 14, 2004, as ''National Health Center Week''.

AMENDMENT NO. 3170

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of amendment No. 3170 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3171

At the request of Ms. LANDRIEU, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 3171 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3196

At the request of Mr. DURBIN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of amendment No. 3196 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3204

At the request of Mrs. CLINTON, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of amendment No. 3204 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for himself, Mr. JOHNSON, Mr. CONRAD, Mr. WYDEN, and Mr. GRAHAM of Florida):

S. 2451. A bill to amend the agricultural Marketing Act of 1946 to restore the application date for country of origin labeling; read the first time.

Mr. DASCHLE. Mr. President, today the Washington Post reported that the United States Department of Agriculture secretly allowed American meatpackers to resume imports of ground and processed beef from Canada last September, just weeks after Secretary Veneman publicly reaffirmed the Department's ban on such importation as a result of mad cow disease being found in Canadian-born cattle.

The article states that a total of 33 million pounds of Canadian processed beef came into the United States and went straight to American consumers under a series of undisclosed permits USDA issued to the meatpackers.

This is how today's article describes Secretary Veneman's public position last August:

> She and her top deputies said ground beef imports would resume only after the agency completed a formal rulemaking process, with public debate.

There was no public debate. Instead, there were undisclosed permits allowing banned Canadian beef in the United States.

Not only am I extremely concerned that the Department of Agriculture deceived American consumers by allowing the import of Canadian beef that was previously banned, but I am also disappointed that the Bush administration is actually working to prevent American consumers from knowing where the food they buy comes from.

That is why I am introducing a bill today that will require USDA to implement country-of-origin labeling on schedule this September. That was the date agreed upon in the Farm Bill which the President signed into law in 2002.

Unfortunately, at the urging of the Bush administration and the large meatpackers—most likely the same people who urged USDA to issue permits to allow the importation of banned Canadian meat products—Republican leaders in Congress inserted language into last year's omnibus appropriations bill in the dead of night delaying implementation of country-of-origin labeling for 2 years until September 2006.

The bill I am introducing today is what the Senate has voted to do several times: Inform consumers about the origin of their food.

Over 80 percent of American consumers have said they want to know the country of origin of their food, and over 170 groups representing over 50 million Americans support mandatory food labeling.

We must not allow anyone who may represent special interests, anyone who now abrogates the spirit as well as the letter of the law to choose big business interests over the interests of the average American family. We must ensure consumer confidence, particularly now in light of recent developments. We would have not had the situation of 33 million pounds of banned beef entering the United States if it couldn't have been properly labeled.

This legislation is long overdue. It is time that it become the law of the land.

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. 2451

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

SECTION 1. COUNTRY OF ORIGIN LABELING.

Section 285 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638d) is amended by striking ''2006'' and all that follows through ''2004'' and inserting ''2004''.

By Mr. FEINGOLD:

S. 2452. A bill to require labeling of raw agricultural of ginseng, including the country of harvest, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. FEINGOLD. Mr. President, I would like to discuss legislation I am introducing that would protect ginseng farmers and consumers by ensuring that ginseng sold at retail discloses where the root was harvested. The ''Ginseng Harvest Labeling Act of 2004'' is similar to a bill that I introduced in the last Congress, but it has been further strengthened based on suggestions I received from ginseng growers and the Ginseng Board of Wisconsin.

I would like to take the opportunity to discuss American ginseng and the problems facing Wisconsin's ginseng growers so that my colleagues recognize the need for this legislation. Chinese and Native American cultures have used ginseng for thousands of years for herbal and medicinal purposes. As a dietary supplement, American ginseng is widely touted for its ability to improve energy and vitality, particularly in fighting fatigue or stress.

In the U.S., ginseng is experiencing increasing popularity as a dietary supplement, and I am proud to say that my home State of Wisconsin is playing a central role in ginseng's resurgence. Wisconsin produces 97 percent of the ginseng grown in the United States, and 85 percent of the country's ginseng is grown in just one Wisconsin county, Marathon County. Ginseng is also grown in a number of other States such as Maine, Maryland, New York, North Carolina, Oregon, South Carolina, and West Virginia.

For Wisconsin, ginseng has been an economic boon. Wisconsin ginseng commands a premium price in world markets because it is of the highest quality and because it has a low pesticide and chemical content. In 2002, U.S. exports of ginseng totaled nearly $45 million, much of which was grown in Wisconsin. With a huge market for this high-quality ginseng overseas, and growing popularity for the ancient root here at home, Wisconsin's ginseng industry should have a prosperous future ahead.

Unfortunately, the outlook for ginseng farmers is marred by a serious problem—smuggled and mislabeled ginseng. Wisconsin ginseng is considered so superior to ginseng grown abroad that smugglers will go to great lengths to label ginseng grown in Canada or Asia as ''Wisconsin-grown.''

Here's how the switch takes place: Wisconsin ginseng is shipped to China to be sorted into various grades. While the sorting process is itself a legitimate part of distributing ginseng, smugglers often use it as a ruse to switch Wisconsin ginseng with Asian- or Canadian-grown ginseng considered inferior by consumers. The lower quality ginseng is then shipped back to the U.S. for sale to American consumers who think they are buying the Wisconsin-grown product.

For consumers concerned with purchasing ginseng grown in the U.S., there is no accurate way of testing ginseng to determine where it was grown, other than testing for pesticides that are banned in the United States. The Ginseng Board of Wisconsin has been testing some ginseng found on store shelves, and in many of the products, residues of chemicals such as DDT, lead, arsenic, and quintozine (PCNB) have been detected. Since the majority of ginseng sold in the U.S. originates from countries with less stringent pesticide standards, it is vitally important that consumers know which ginseng is really grown in the U.S.

To capitalize on their product's preeminence, the Ginseng Board of Wisconsin has developed a voluntary labeling program, stating that the ginseng is ''Grown in Wisconsin, U.S.A.'' However, Wisconsin ginseng is so valuable that counterfeit labels and ginseng smuggling have become widespread around the world. As a result, consumers have no way of knowing the most basic information about the ginseng they purchase—where it was grown, what quality or grade it is, or whether it contains dangerous pesticides.

My legislation, the Ginseng Harvest Labeling Act of 2004, proposes some common sense steps to address some of the challenges facing the ginseng industry. My legislation requires that ginseng, as a raw agricultural commodity, be sold at retail with a label clearly indicating the country that the ginseng was harvested in. 'Harvest' is important because some Canadian and Chinese growers have ginseng plants that originated in the U.S., but because these plants were cultivated in the foreign country, they may have been treated with chemicals not allowed for use in the U.S. This label would also allow buyers of ginseng to more easily prevent foreign companies from mixing foreign-produced ginseng with ginseng harvested in the U.S. The country of harvest labeling is a simple but effective way to enable consumers to make an informed decision.

We must give ginseng growers the support they deserve by implementing these commonsense reforms that also help consumers make informed choices about the ginseng that they consume. We must ensure that when ginseng consumers reach for a high-quality ginseng product—such as Wisconsin-grown ginseng—they are getting the real thing, not a knock-off.

I ask unanimous consent that the full text of my bill, the Ginseng Harvest Labeling Act of 2004, be printed in the RECORD.

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

S. 2452

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 ''Ginseng Harvest Labeling Act of 2004''.

SEC. 2. DISCLOSURE OF COUNTRY OF HARVEST.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

"Subtitle E—Ginseng

"SEC. 291. DISCLOSURE OF COUNTRY OF HARVEST.

''(a) DEFINITION OF GINSENG.—In this section, the term 'ginseng' means an herb or herbal ingredient that—

''(1) is derived from a plant classified within the genus Panax; and

''(2) is offered for sale as a raw agricultural commodity in any form intended to be used in or as a food or dietary supplement under the name of 'ginseng'.

''(b) DISCLOSURE.—

''(1) IN GENERAL.—A person that offers ginseng for sale as a raw agricultural commodity shall disclose to potential purchasers the country of harvest of the ginseng.

''(2) IMPORTATION.—A person that imports ginseng into the United States shall disclose the country of harvest of the ginseng at the point of entry of the United States, in accordance with section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).

''(c) MANNER OF DISCLOSURE.—

''(1) IN GENERAL.—The disclosure required by subsection (b) shall be provided to potential purchasers by means of a label, stamp, mark, placard, or other clear and visible sign on the ginseng or on the package, display, holding unit, or bin containing the ginseng.

''(2) RETAILERS.—A retailer of ginseng shall—

''(A) retain disclosure provided under subsection (b); and

''(B) provide disclosure to a retail purchaser of the raw agricultural commodity.

''(3) REGULATIONS.—The Secretary of Agriculture shall by regulation prescribe with specificity the manner in which disclosure shall be made in transactions at wholesale or retail (including transactions by mail, telephone, or Internet or in retail stores).

''(d) FAILURE TO DISCLOSE.—The Secretary of Agriculture may impose on a person that fails to comply with subsection (b) a civil penalty of not more than—

''(1) $1,000 for the first day on which the failure to disclose occurs; and

''(2) $250 for each day on which the failure to disclose continues.''.

SEC. 3. EFFECTIVE DATE.

This Act and the amendment made by this Act take effect on the date that is 180 days after the date of enactment of this Act.

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

S. 2454. A bill to amend the Peace Corps Act to establish an Ombudsman of the Peace Corps and an Office of Safety and Security of the Peace Corps, to establish an independent Inspector General of the Peace Corps, and for other purposes; to the Committee on Foreign Relations.

Mr. DEWINE. Mr. President, I ask unanimous consent that the Peace Corps Volunteers Health, Safety, and Security Act of 2004 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD.

S. 2454

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 ''Peace Corps Volunteers Health, Safety, and Security Act of 2004''.

SEC. 2. OMBUDSMAN OF THE PEACE CORPS.

The Peace Corps Act (22 U.S.C. 2501 et seq.) is amended by inserting after section 4 the following new section:

''SEC. 4A. OMBUDSMAN OF THE PEACE CORPS.

''(a) ESTABLISHMENT.—There is established in the Peace Corps the Office of the Ombudsman of the Peace Corps (in this section referred to as the 'Office'). The Office shall be headed by the Ombudsman of the Peace Corps (in this section referred to as the 'Ombudsman'), who shall be appointed by and report directly to the Director of the Peace Corps.

''(b) VOLUNTEER COMPLAINTS AND OTHER MATTERS.—The Ombudsman shall receive and, as appropriate, inquire into complaints, questions, or concerns submitted by current or former volunteers regarding services or support provided by the Peace Corps to its volunteers, including matters pertaining to—

''(1) the safety and security of volunteers;

''(2) due process, including processes relating to separation from the Peace Corps;

''(3) benefits and assistance that may be due to current or former volunteers;

''(4) medical or other health-related assistance; and

''(5) access to files and records of current or former volunteers.

''(c) EMPLOYEE COMPLAINTS AND OTHER MATTERS.—The Ombudsman shall receive and, as appropriate, inquire into complaints, questions, or concerns submitted by current or former employees of the Peace Corps on any matters of grievance.

''(d) ADDITIONAL DUTIES.—The Ombudsman shall—

''(1) recommend responses to individual matters received under subsections (b) and (c);

''(2) make recommendations for legislative, administrative, or regulatory adjustments to address recurring problems or other difficulties of the Peace Corps;

''(3) identify systemic issues relating to the practices, policies, and administrative procedures of the Peace Corps that affect volunteers and employees; and

''(4) call attention to problems not yet adequately considered by the Peace Corps.

''(e) STANDARDS OF OPERATION.—The Ombudsman shall carry out the duties under this section in a manner that is—

''(1) independent, impartial in the conduct of inquiries, and confidential; and

''(2) consistent with the revised Standards for the Establishment and Operation of Ombudsman Offices (August 2003) as endorsed by the American Bar Association.

''(f) INVOLVEMENT IN MATTERS SUBJECT TO ONGOING ADJUDICATION, LITIGATION, OR INVESTIGATION.—The Ombudsman shall refrain from any involvement in the merits of individual matters that are the subject of ongoing adjudication or litigation, or investigations related to such adjudication or litigation.

''(g) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, and semiannually thereafter, the Ombudsman shall submit to the Director of the Peace Corps, the Chair of the Peace Corps National Advisory Council, and Congress a report containing a summary of—

''(A) the complaints, questions, and concerns considered by the Ombudsman;

''(B) the inquiries completed by the Ombudsman;

''(C) recommendations for action with respect to such complaints, questions, concerns, or inquiries; and

''(D) any other matters that the Ombudsman considers relevant.

''(2) CONFIDENTIALITY.—Each report submitted under paragraph (1) shall maintain confidentiality on any matter that the Ombudsman considers appropriate in accordance with subsection (e).

''(h) EMPLOYEE DEFINED.—In this section, the term 'employee' means an employee of the Peace Corps, an employee of the Office of Inspector General of the Peace Corps, an individual appointed or assigned under the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.) to carry out functions under this Act, or an individual subject to a personal services contract with the Peace Corps.''.

SEC. 3. OFFICE OF SAFETY AND SECURITY OF THE PEACE CORPS.

The Peace Corps Act (22 U.S.C. 2501 et seq.), as amended by section 2 of this Act, is further amended by inserting after section 4A the following new section:

''SEC. 4B. OFFICE OF SAFETY AND SECURITY OF THE PEACE CORPS.

''(a) ESTABLISHMENT.—There is established in the Peace Corps the Office of Safety and Security of the Peace Corps (in this section referred to as the 'Office'). The Office shall be headed by the Associate Director of the Peace Corps for Safety and Security, who shall be appointed by and report directly to the Director of the Peace Corps.

''(b) RESPONSIBILITIES.—The Office established under subsection (a) shall be responsible for all safety and security activities of the Peace Corps, including background checks of volunteers and staff, the safety and security of volunteers and staff (including training), the safety and security of facilities, the security of information technology, and other responsibilities as required by the Director.

''(c) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Associate Director of Safety and Security of the Peace Corps, as appointed pursuant to subsection (a) of this section, should assign a Peace Corps country security coordinator for each country where the Peace Corps has a program of volunteer service for the purposes of carrying out the field responsibilities of the Office; and

''(2) each country security coordinator—

''(A) should be a United States citizen;

''(B) should be under the supervision of the Peace Corps country director in such country;

''(C) should report directly to the Associate Director of the Peace Corps for Safety and Security on all matters of importance that the country security coordinator considers necessary;

''(D) should be responsible for coordinating security activities with the regional security officer of the Peace Corps responsible for the country to which such country security officer is assigned; and

''(E) should have access to information, including classified information, relating to possible threats against Peace Corps volunteers.''.

SEC. 4. INSPECTOR GENERAL OF THE PEACE CORPS.

(a) ESTABLISHMENT OF INDEPENDENT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in section 8G(a)(2), by striking '', the Peace Corps'';

(B) in section 9(a)(1), by adding at the end the following new subparagraph:

''(X) of the Peace Corps, the office of that agency referred to as the 'Office of Inspector General'; and''; and

(C) in section 11—

(i) in paragraph (1), by striking ''or the Office of Personnel Management'' and inserting ''the Office of Personnel Management, or the Peace Corps''; and

(ii) in paragraph (2), by inserting '', the Peace Corps'' after ''the Office of Personnel Management''.

(2) TECHNICAL AMENDMENT.—Section 9(a)(1)(U) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''and'' at the end.

(b) TEMPORARY APPOINTMENT.—The Director of the Peace Corps may appoint an individual to assume the powers and duties of the Inspector General of the Peace Corps under the Inspector General Act of 1978 (5 U.S.C. App.) on an interim basis until such time as a person is appointed by the President, by and with the advice and consent of the Senate, pursuant to the amendments made in this section.

(c) EXEMPTION FROM EMPLOYMENT TERM LIMITS UNDER THE PEACE CORPS ACT.—

(1) IN GENERAL.—Section 7 of the Peace Corps Act (22 U.S.C. 2506) is amended—

(A) by redesignating subsection (c) as subsection (b); and

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

''(c) The provisions of this section that limit the duration of service, appointment, or assignment of individuals shall not apply to—

''(1) the Inspector General of the Peace Corps;

''(2) officers of the Office of the Inspector General of the Peace Corps;

''(3) any individual whose official duties primarily include the safety and security of Peace Corps volunteers or employees;

''(4) the head of the office responsible for medical services of the Peace Corps; or

''(5) any health care professional within the office responsible for medical services of the Peace Corps.''.

(2) CONFORMING AMENDMENT.—The first proviso of section 15(d)(4) of the Peace Corps Act (22 U.S.C. 2514(d)(4)) is amended by striking ''7(c)'' and inserting ''7(b)''.

(d) COMPENSATION.—Section 7 of the Peace Corps Act (22 U.S.C. 2506), as amended by subsection (c) of this section, is further amended by adding at the end the following new subsection:

''(d) The Inspector General of the Peace Corps shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.''.

SEC. 5. OFFICE OF MEDICAL SERVICES OF THE PEACE CORPS.

(a) REPORT ON MEDICAL SCREENING AND PLACEMENT COORDINATION.—Not later than 120 days after the date of the enactment of this Act, the Director of the Peace Corps shall submit to the appropriate congressional committees a report that—

(1) describes the medical screening procedures and guidelines used by the office responsible for medical services of the Peace Corps to determine whether an applicant for Peace Corps service has worldwide clearance, limited clearance, a deferral period, or is not medically, including psychologically, qualified to serve in the Peace Corps as a volunteer;

(2) describes the procedures and guidelines used by the Peace Corps to ensure that applicants for Peace Corps service are matched with a host country where the applicant can, with reasonable accommodations, complete at least two years of volunteer service without interruption due to foreseeable medical conditions; and

(3) with respect to each of fiscal years 2000 through 2003 and the first six months of fiscal year 2004, states the number of—

(A) medical screenings of applicants conducted;

(B) applicants who have received worldwide clearance, limited clearance, deferral periods, and medical disqualifications to serve;

(C) appeals to the Medical Screening Review Board of the Peace Corps and the number of times that an initial screening decision was upheld;

(D) requests that have been made to the head of the office responsible for medical services of the Peace Corps for reconsideration of a decision of the Medical Screening Review Board and the number of times that such decisions were upheld by the head of such office;

(E) Peace Corps volunteers who became medically qualified to serve because of a decision of the Medical Screening Review Board and who were later evacuated or terminated their service early due to medical reasons;

(F) Peace Corps volunteers who became medically qualified to serve because of a decision of the head of the office responsible for medical services of the Peace Corps and who were later evacuated or terminated their service early due to medical reasons;

(G) Peace Corps volunteers who the agency has had to separate from service due to the discovery of undisclosed medical information; and

(H) Peace Corps volunteers who have terminated their service early due to medical, including psychological, reasons.

(b) FULL TIME DIRECTOR OF MEDICAL SERVICES.—Section 4(c) of the Peace Corps Act (22 U.S.C. 2503(c)) is amended by adding at the end the following new paragraph:

''(5) The Director of the Peace Corps shall ensure that the head of the office responsible for medical services of the Peace Corps does not occupy any other position in the Peace Corps.''.

SEC. 6. REPORTS ON THE "FIVE YEAR RULE" AND ON WORK ASSIGNMENTS OF VOLUNTEERS OF THE PEACE CORPS.

(a) REPORT BY THE COMPTROLLER GENERAL.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to the appropriate congressional committees a report on the effects on the ability of the Peace Corps to effectively manage Peace Corps operations of the limitations on the duration of employment, appointment, or assignment of officers and employees of the Peace Corps under section 7 of the Peace Corps Act (22 U.S.C. 2506).

(2) CONTENTS.—The report described in paragraph (1) shall include—

(A) a description of such limitations;

(B) a description of the history of such limitations and the purposes for which it was enacted and amended;

(C) an analysis of the impact of such limitations on the ability of the Peace Corps to recruit capable volunteers, establish productive and worthwhile assignments for volunteers, provide for the health, safety, and security of volunteers, and, as declared in section 2(a) of the Peace Corps Act (22 U.S.C. 2501(a)), ''promote a better understanding of the American people on the part of the peoples served and a better understanding of other peoples on the part of the American people'';

(D) an assessment of whether the application of such limitations have accomplished the objectives for which they were intended; and

(E) recommendations, if any, for legislation to amend provisions of the Peace Corps Act that relate to such limitations.

(b) REPORT ON WORK ASSIGNMENTS OF VOLUNTEERS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Peace Corps shall submit to the appropriate congressional committees a report on the extent to which the work assignments of Peace Corps volunteers fulfill the commitment of the Peace Corps to ensuring that—

(A) such assignments are well developed, with clear roles and expectations; and

(B) volunteers are well-suited for their assignments.

(2) CONTENTS.—The report described in paragraph (1) shall include—

(A) an assessment of the extent to which agreements between the Peace Corps and host countries delineate clear roles for volunteers in assisting host governments to advance their national development strategies;

(B) an assessment of the extent to which the Peace Corps—

(i) recruits volunteers who have skills that correlate with the expectations cited in the country agreements; and

(ii) assigns such volunteers to such posts;

(C) a description of the procedures in place for determining volunteer work assignments and minimum standards for such assignments;

(D) the results of a survey of volunteers on health, safety, and security issues and of satisfaction surveys, which are to be conducted after the date of the enactment of this Act; and

(E) an assessment of the plan of the Peace Corps to increase the number of volunteers who are assigned to projects in sub-Saharan Africa, Asia, and the Western Hemisphere, particularly among communities of African descent within countries in the Western Hemisphere, that help combat HIV/AIDS and other global infectious diseases.

SEC. 7. DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.

In this Act, the term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

By Mrs. HUTCHISON:

S. 2455. A bill to amend title II of the Social security Act to repeal the windfall elimination provision and protect the retirement of public servants; to the Committee on Finance.

Mrs. HUTCHISON. 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. 2455

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 ''Public Servant Retirement Protection Act''.

SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION PROVISION.

Paragraph (7) of section 215(a) of the Social Security Act (42 U.S.C. 415(a)(7)) is repealed.

SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION PROVISION WITH A FORMULA EQUALIZING BENEFITS FOR CERTAIN INDIVIDUALS WITH NONCOVERED EMPLOYMENT.

(a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR FORMULA BASED ON COVERED PORTION OF PERIODIC BENEFIT.—

(1) IN GENERAL.—Section 215(a) of the Social Security Act (as amended by section 2 of this Act) is amended further by inserting after paragraph (6) the following new paragraph:

''(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

''(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

''(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (E), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 233, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 210(m)) which is based in whole or in part upon his or her earnings for service which did not constitute 'employment' as defined in section 210 for purposes of this title (hereafter in this paragraph and in subsection (d)(3) referred to as 'noncovered service'), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B) or subparagraph (D) (as applicable).

''(B) In the case of an individual who first performs service described in subparagraph (A) after the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act, if paragraph (1) of this subsection would apply to such individual (except for subparagraph (A) of this paragraph), the individual's primary insurance amount shall be the product derived by multiplying—

''(i) the individual's primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (C)(i) of this paragraph, by

''(ii) a fraction—

''(I) the numerator of which is the individual's average indexed monthly earnings (determined without regard to subparagraph (C)(i)), and

''(II) the denominator of which is an amount equal to the individual's average indexed monthly earnings (as determined under subparagraph (C)(i)),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.

''(C)(i) For purposes of determining an individual's primary insurance amount pursuant to subparagraph (B)(i), the individual's average indexed monthly earnings shall be determined by treating all service performed after 1950 on which the individual's monthly periodic payment referred to in subparagraph (A) is based (other than noncovered service as a member of a uniformed service (as defined in section 210(m))) as 'employment' as defined in section 210 for purposes of this title (together with all other service performed by such individual consisting of 'employment' as so defined).

''(ii) For purposes of determining average indexed monthly earnings as described in clause (i), the Commissioner of Social Security shall provide by regulation for a method for determining the amount of wages derived from service performed after 1950 on which the individual's periodic benefit is based and which is to be treated as 'employment' solely for purposes of clause (i). Such method shall provide for reliance on employment records which are provided to the Commissioner and which constitute a reasonable basis for treatment of service as 'employment' for

such purposes, together with such other information received by the Commissioner as the Commissioner may consider appropriate as a reasonable basis for treatment of service as 'employment' for such purposes.

''(D)(i) In the case of an individual who has performed service described in subparagraph (A) during or before the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act, if paragraph (1) of this subsection would apply to such individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. There shall then be computed (without regard to this paragraph) a third amount, which shall be equal to the individual's primary insurance amount determined under subparagraph (B) as if subparagraph (B) applied in the case of such individual. The individual's primary insurance amount shall be the largest of the three amounts computed under this subparagraph (before the application of subsection (i)).

''(ii) For purposes of clause (i), the percent specified in this clause is—

''(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

''(II) 70.0 percent with respect to individuals who so become eligible in 1987;

''(III) 60.0 percent with respect to individuals who so become eligible in 1988;

''(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

''(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

''(E)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

''(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3) by the amount of such reduction.

''(iii) For purposes of this paragraph, the term 'periodic payment' includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

''(F)(i) Subparagraph (D) shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (D)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

''If the number of such individual's years of coverage (as so defined) is:	**The applicable percent is:**
29	85 percent
28	80 percent
27	75 percent
26	70 percent
25	65 percent
24	60 percent
23	55 percent
22	50 percent
21	45 percent

''(ii) For purposes of clause (i), the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.

''(G) An individual's primary insurance amount determined under this paragraph shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this title.

''(H) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 233 or an individual who on January 1, 1984—

''(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

''(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.''.

(2) CONFORMING AMENDMENTS.——

(A) Section 215(d)(3) of such Act (42 U.S.C. 415(d)(3)) is amended—

(i) by striking ''subsection (a)(7)(C)'' each place it appears and inserting ''subsection (a)(7)(E)'';

(ii) by striking ''subparagraph (E)'' and inserting ''subparagraph (H)''; and

(iii) by striking ''subparagraph (D)'' and inserting ''subparagraph (F)(i)''.

(B) Section 215(f)(9)(A) of such Act (42 U.S.C. 415(f)(9)(A)) is amended by striking ''(a)(7)(C)'' and inserting ''(a)(7)(E)''.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to monthly insurance benefits for months commencing with or after the 12th calendar month following the date of the enactment of this Act. Notwithstanding section 215(f) of the Social Security Act, the Commissioner of Social Security shall recompute primary insurance amounts to the extent necessary to carry out the amendments made by this Act.

By Mr. REID (for himself and Mr. ENSIGN):

S. 2458. A bill to provide for the conveyance of certain public lands in and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today on behalf of myself and Senator ENSIGN to introduce the Nevada Mining Townsite Conveyance Act, which will address an important public land issue in rural Nevada. As you may know, the Federal Government controls over 87 percent of the State of Nevada. That's more than 61 million acres of land. This fact makes it necessary for our State and our communities to pursue Federal remedies for problems that in other States can be handled in a much more expeditious manner. With this in mind, Senator ENSIGN and I look forward to working with our colleagues to pass this common-sense legislation in a bipartisan and timely fashion.

Two rural counties in Nevada have asked for our help in settling longstanding trespass issues that hurt 2 historic mining communities. The towns of Ione and Gold Point have been continuously occupied for over 100 years. Many residents live on land that their families have ostensibly owned for many decades. These citizens have paid their property taxes and made improvements to their properties, rehabilitated historic structures and built new ones.

The documents by which many of these people claim possession of the properties date back many years. In fact, some of the deeds are historic documents themselves. Yet because many of these documents do not satisfy modern requirements for demonstrating land title, they have been deemed invalid. In other words, the Bureau of Land Management has determined that some of the residents of Ione and Gold Point are trespassing on Federal land. This unfortunate situation puts the BLM at odds with the local residents and county governments.

Nye County, Esmeralda County, and the BLM have worked together for almost 10 years to come up with a solution to this problem. All of these parties support the legislation that we offer today as a solution to these land ownerships conflicts, and as a means of promoting responsible resource management. All of the land included in our bill has been identified by the BLM for disposal.

Our legislation represents the first of a two-part solution. Under this bill, specified lands within the historic mining townsites of Ione and Gold Point would be conveyed to the respective counties. Under the provisions of a State law passed several years ago in Nevada, the counties will then re-convey the land to these people or entities who can demonstrate ownership or longstanding occupancy of specific land parcels.

The sum of our bill is that it conveys for no consideration approximately 760 acres in Ione and Gold Point to the counties of Nye and Esmeralda. As a condition of the conveyance, all historic and cultural resources contained in the townsites shall be preserved and protected under applicable Federal and State law. These conveyances will benefit the agencies that manage Nevada's

vast Federal lands as well as the proud citizens of our rural communities. We sincerely hope that our colleagues will support this legislation. It is a practical solution that deserves swift passage. We salute the Bureau of Land Management, the counties, and the local residents for their cooperation and hard work in crafting this excellent compromise.

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:

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 ''Nevada Mining Townsite Conveyance Act''.

SEC. 2. DISPOSAL OF PUBLIC LANDS IN MINING TOWNSITES, ESMERALDA AND NYE COUNTIES, NEVADA.

(a) FINDINGS.— Congress finds the following:

(1) The Federal Government owns real property in and around historic mining townsites in the counties of Esmeralda and Nye in the State of Nevada.

(2) While the real property is under the jurisdiction of the Secretary of the Interior, acting through the Bureau of Land Management, some of the real property land has been occupied for decades by persons who took possession by purchase or other documented and putatively legal transactions, but whose continued occupation of the real property constitutes a ''trespass'' upon the title held by the Federal Government.

(3) As a result of the confused and conflicting ownership claims, the real property is difficult to manage under multiple use policies and creates a continuing source of friction and unease between the Federal Government and local residents.

(4) All of the real property is appropriate for disposal for the purpose of promoting administrative efficiency and effectiveness, and the Bureau of Land Management has already identified certain parcels of the real property for disposal.

(5) Some of the real property contains historic and cultural values that must be protected.

(6) To promote responsible resource management of the real property, certain parcels should be conveyed to the county in which the property is situated in accordance with land use management plans of the Bureau of Land Management so that the county can, among other things, dispose of the property to persons residing on or otherwise occupying the property.

(b) MINING TOWNSITE DEFINED.—In this section, the term ''mining townsite'' means real property in the counties of Esmeralda and Nye, Nevada, that is owned by the Federal Government, but upon which improvements were constructed because of a mining operation on or near the property and based upon the belief that—

(1) the property had been or would be acquired from the Federal Government by the entity that operated the mine; or

(2) the person who made the improvement had a valid claim for acquiring the property from the Federal Government.

(c) CONVEYANCE AUTHORITY.—

(1) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), the Secretary of the Interior, acting through the Bureau of Land Management, shall convey, without consideration, all right, title, and interest of the United States in and to mining townsites (including improvements thereon) identified for conveyance on the maps entitled ''Original Mining Townsite Ione Land Disposal Map Nye County'' and ''Original Mining Townsite Gold Point Land Disposal Map Esmeralda County'' dated October 29, 2003.

(2) AVAILABILITY OF MAPS.—The maps referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Secretary of the Interior, including the office of the Bureau of Land Management located in the State of Nevada.

(d) RECIPIENTS.—

(1) ORIGINAL RECIPIENT.—Subject to paragraph (2), the conveyance of a mining townsite under subsection (c) shall be made to the county in which the mining townsite is situated.

(2) RECONVEYANCE TO OCCUPANTS.—In the case of a mining townsite conveyed under subsection (c) for which a valid interest is proven by one or more persons, under the provisions of Nevada Revised Statutes Chapter 244, the county that received the mining townsite under paragraph (1) shall reconvey the property to that person or persons by appropriate deed or other legal conveyance as provided in that State law. For purposes of proving a valid interest, the person making the claim must have occupied the mining townsite for at least 15 years immediately before the date of the enactment of this Act. The county is not required to recognize a claim under this paragraph submitted more than 10 years after the date of the enactment of this Act.

(e) PROTECTION OF HISTORIC AND CULTURAL RESOURCES.—As a condition on the conveyance or reconveyance of a mining townsite under subsection (c), all historic and cultural resources (including improvements) on the mining townsite shall be preserved and protected in accordance with applicable Federal and State law.

(f) VALID EXISTING RIGHTS.—The conveyance of a mining townsite under this section shall be subject to valid existing rights, including any easement or other right-of-way or lease in existence as of the date of the conveyance. All valid existing rights and interests of mining claimants shall be maintained, unless those rights or interests are deemed abandoned and void or null and void under—

(1) section 2320 of the Revised Statutes (30 U.S.C. 21 et seq);

(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq); or

(3) subtitle B of title X of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28(f)–(k)), including regulations promulgated under section 3833.1 of title 43, Code of Federal Regulations or any successor regulation.

(g) SURVEY.—A mining townsite to be conveyed by the United States under this section shall be sufficiently surveyed to legally describe the land for patent conveyance.

(h) RELEASE.—On completion of the conveyance of a mining townsite under subsection (c), the United States shall be relieved from liability for, and shall be held harmless from, any and all claims arising from the presence of improvements and materials on the conveyed property.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior such amounts as may be necessary to carry out the conveyances required by this section, including funds to cover the costs of cadastral and mineral surveys, mineral potential reports, hazardous materials, biological, cultural and archaeological clearances, validity examinations and other expenses incidental to the conveyances.

By Mr. ROCKEFELLER:

S. 2459. A bill to authorize the Secretary of Homeland Security to award research and equipment grants, to provide a tax credit for employers who hire temporary workers to replace employees receiving first responder training, to provide school-based mental health training, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I am proud today to introduce the Community Security Act of 2004. This bill is intended to help prepare our Nation to cope with future disasters, as well as help the daily work of our first responders, by adequately training and equipping them, and by increasing Federal investments in relevant research and development. While much of the bill applies generally to all first responders, this legislation gives special emphasis to the role of volunteer first responders.

As my colleagues surely know, volunteers make up a very significant portion of our Nation's fire service, as well as emergency medical personnel and, to a somewhat lesser degree, law enforcement. The role of volunteers is especially prominent in rural areas, such as in my State of West Virginia. Making certain that local governments can recruit and retain first responders, and that once serving, these dedicated men and women have the necessary tools, are essential factors in protecting our communities.

Inspiration for much of this bill came from the West Virginia Summit on Homeland Security, which I hosted in November of last year, and from the numerous roundtable discussions I have had with my State's first responders since the terrorist attacks on our country on September 11, 2001. During the Summit and in the discussions that preceded it, first responders, educators, health officials, and local elected officials from around West Virginia provided me with thoughtful analysis of what works in Federal assistance programs, what doesn't, and what has been completely lacking.

Although the President and Congress have made great strides in improving our homeland security, there are still gaping holes in our level of preparedness that must be filled. For the most part, the Federal Government is the only source of funding for this work; work that must be done. This legislation is based on what first responders have told me they need and is intended to address these needs.

What was reiterated in meeting after meeting was that the gaps were many, and that additional State funding was unlikely. As almost every State in the Union faces budget shortfalls, I expect my colleagues have heard much the same thing. First responders and local politicians need to recruit and train volunteers; they need the Federal Government to help them supply these men and women with basic lifesaving and interoperable communication equipment; and they need help in fostering cooperation among not only the

different professions within the first responder community, but between first responders and the education and social service communities.

Many areas of concern were discussed and it became clear to me that no one program could address all of them. Instead of introducing a number of small bills, I've put together a package of legislation that contains several arguably unrelated provisions that have one thing in common—each is designed to improve homeland security at the local level.

In West Virginia and across the Nation, the numbers of volunteer first responders have been dwindling due to a number of factors—National Guard and Reserve call-ups and changing American lifestyles that leave little time for the serious commitment necessary to be a first responder. It is believed that many more people would volunteer, or would continue in their service as volunteers, if there were a way to carve out more time for the training involved. In addition to basic training, West Virginia and other states require additional training for first responders who choose to serve in units specializing in Weapons of Mass Destruction (WMD) response, or mitigation of biohazards and chemical releases. In fact, Secretary Ridge has cited West Virginia's homeland security plan, including development of highly trained Regional Response Teams, as an example for other States to follow.

The problem is, earning the right to be part of one of these teams—made up of the best of the best in their respective disciplines—requires training that most volunteers, who are holding down full-time jobs in addition to their public service and family responsibilities, cannot find the time for, or in some cases, afford. For example, West Virginia's Regional Response Team members are required, within the first two years, to complete 200 hours of specialized training over and above what is already required in their roles as firefighters or EMTs. For many volunteer first responders, this time commitment is difficult to meet but, for those whose jurisdictions do not pay training costs, it is impossible to justify.

To remedy this situation, this bill creates two tax incentives: a business credit to encourage small businesses to allow their volunteer first responder employees to take time off for training, and a personal deduction for the first responders themselves, when training and related expenses are not reimbursed by their State or local government.

My conversations with West Virginia first responders and local officials have also taught me that even when a State is well prepared or, in the case of West Virginia, exceptionally prepared, gaps can still exist at the local level which put citizens at risk. Some local first responder units, especially those in rural areas, do not feel as prepared as they know they should be. For example, a recent report found that most fire departments across the country had only enough radios for one-half of the firefighters on a shift and breathing apparatuses for only one-third. Without these basics, these brave men and women are not adequately equipped to respond to a house fire and are at a serious disadvantage when responding to a critical incident.

Similarly, some firehouses and police stations lack basic telecommunications equipment. I have been concerned for some time that many of our police departments in rural areas were operating without the crime-fighting tools at their disposal that computers and high-speed Internet connections offer. So, while I was not necessarily surprised, I was a little troubled that the lack of modern telecommunications equipment—computer hardware, Internet service and e-mail, and multiple phone and fax lines—was hampering the ability of fire departments and EMS units to serve their communities. Given the wealth of information available and the greater amounts of first responder work conducted over the Internet, these basic office tools are essential to guarantee the safety and protection of our citizens. For instance, where this equipment is available, some first responder training is now being done over the Internet, saving departments time and money. Rural firehouses are probably the ones least likely to have an Internet-accessible computer and are also the least likely to be able to fund a longer trip to a fire school.

So, this legislation requires the Secretary of Homeland Security to assess the critical needs of a first responder unit, from personal safety equipment to office machines, and establishes a grant program to provide the basic equipment essential for carrying out the constantly expanding responsibilities of local first responders. The Secretary is to give emphasis to those departments most in need. These departments will often, but not always, be rural departments.

The other areas I cover in this bill are a bit of a departure from standard measures to increase funding and provide better equipment for first responders. They are, I believe, no less important to the goal of improving the safety and security of our towns and cities. Again, my conversations with people on the front lines—in this instance teachers and academic experts on homeland security and mental health—inspired these provisions.

Our communities have had to adjust to some new realities. Our schools find themselves thrust into a role in disaster preparedness and response that most educators never before considered. When I asked school personnel what was needed to improve the circumstance of schools in homeland security preparation, response, and mitigation efforts, I was surprised to hear their answer—mental health professionals in the schools and training for school staff in mental health issues. This bill works to address these community needs in two ways. First, in the unfortunate event that a school is the scene of a disaster, or is called upon to assist a community in response to a disaster elsewhere, this bill provides that community with a reimbursement mechanism for related expenses. Second, the bill creates a sustainable program to provide school-based mental health services to all students. I am convinced that having mental health professionals in schools to train students and faculty about disaster avoidance and preparation makes for safer, healthier schools and more stable communities.

Our institutions of higher learning are already contributing to homeland security. The Department of Homeland Security has a program of university-based research, and this legislation proposes to expand it with a new research grant program to supplement the surprising dearth of research that has been conducted on human factors in homeland security, including first responder group dynamics, citizens' response to disasters, and the human factors behind preparation efforts. We know that a primary goal of terrorists is to disrupt social systems, and this social disruption is often more devastating to a community then the attack itself. I have actively supported both basic and applied scientific research throughout my Senate career, and I believe science should guide policy. This research grant program will fund research on how terrorism and the threat of terrorism impacts the average citizen, how the inevitable societal disruption can be mitigated, and will help guide disaster planning and optimize the performance of first responder units and the systems designed to assist them.

Historically, some States have benefited more than others under traditional grant systems and in response to that situation, our leading science funding organizations have developed special programs to encourage the growth of research in under represented states. For example, the National Science Foundation designed the Experimental Program to Stimulate Competitive Research to support academic research and development across the nation and to counteract the trend that concentrated research expertise in a few states. This bill allows for a similar program to be developed within the Department of Homeland Security. Homeland security is regional and research and personnel expertise must be distributed around the country. Unfortunately, terrorist threats against the United States are not restricted to a single geographic area, terrorist group, or method of threat. Terrorism is possible in many parts of our country that have never had to prepare for, or respond to, such attacks. Addressing these threats requires regional and local expertise; thus the homeland security- related scientific and technological workforce and training must not be overly centralized.

Our country has worked extraordinarily hard to prepare for disaster. The Local Preparation Act is designed to assist these preparation efforts by guaranteeing adequate numbers of first responders, providing them with the training and protection they need, and improving the safety and security of our communities. Local preparation is the bedrock of our state-wide and national efforts. I firmly believe these goals will be achieved through the innovative programs contained in this bill. I want to thank Summit participants as well as the men and women who have taken time out of their busy schedules to help work through the best way to design these new programs. Also, I want to thank first responders, both volunteer and career. After all, they are the original inspiration for this bill.

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. 2459

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Community Security Act''.

SEC. 2. TAX INCENTIVES TO FACILITATE TRAINING OR DISASTER RESPONSE BY INDIVIDUALS SERVING AS VOLUNTEER FIRST RESPONDERS.

(a) FINDINGS.—Congress makes the following findings:

(1) Seventy percent of our Nation's firefighters are volunteers, as are many emergency medical service and police personnel.

(2) States rely heavily on the services of these volunteer first responders.

(3) Many career first responders begin as volunteers.

(4) Volunteer first responders need the same preparation and training as career first responders. Advanced training is frequently required before volunteer first responders can be fully integrated in a State homeland security plan.

(5) The training and duties of volunteer first responders sometimes conflict with their regular employment for significant periods of time, such as in cases of out-of-State training and disaster response. In these cases employers may need to hire temporary replacement workers or incur other related costs while the volunteer responders are away from work. The burden of temporarily replacing these employees is particularly great for small and single-employer businesses.

(b) VOLUNTEER FIRST RESPONDER CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

''SEC. 45G. CREDIT TO EMPLOYERS OF VOLUNTEER FIRST RESPONDERS.

''(a) GENERAL RULE.—For purposes of section 38, the volunteer first responder employee credit is an amount equal to 50 percent of the sum of—

''(1) the employment credit with respect to all qualified volunteer first responder employees of the taxpayer,

''(2) in the case of a small business employer, the replacement credit with respect to all qualified volunteer first responder employees of the taxpayer, plus

''(3) the self-employment credit of a qualified volunteer first responder self-employed taxpayer.

''(b) EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The employment credit with respect to any qualified volunteer first responder employee of the taxpayer is an amount equal to the lesser of—

''(A) the actual compensation amount with respect to such employee for such taxable year, or

''(B) $30,000.

''(2) ACTUAL COMPENSATION AMOUNT.—

''(A) IN GENERAL.—The term 'actual compensation amount' means the amount of compensation paid or incurred by the taxpayer with respect to a qualified volunteer first responder employee on any day when such employee was absent from employment for the purpose of participating in a qualified activity.

''(B) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(3) LIMITATION.—No credit shall be allowed under this subsection with respect to any day that a qualified volunteer first responder employee who takes part in a qualified activity was not scheduled to work (for reason other than to participate in a qualified activity).

''(c) REPLACEMENT CREDIT.—For purposes of this section.—

''(1) IN GENERAL.—The replacement credit with respect to any qualified volunteer first responder employee of the taxpayer is an amount equal to the sum of—

''(A) the qualified compensation with respect to each qualified replacement employee of the taxpayer paid by the taxpayer during the taxable year, and

''(B) the qualified overtime wages paid by the taxpayer during the taxable year.

''(2) LIMITATION.—The amount of the credit allowed by reason of this subsection shall not exceed $12,000 for any taxable year.

''(3) QUALIFIED COMPENSATION.—The term 'qualified compensation' means—

''(A) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(B) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(C) group health plan costs (if any) with respect to the qualified replacement employee.

''(4) QUALIFIED REPLACEMENT EMPLOYEE.—The term 'qualified replacement employee' means an individual who is hired to replace a qualified volunteer first responder employee, but only with respect to the period during which such employee participates in a qualified activity, including time spent in travel status.

''(5) QUALIFIED OVERTIME WAGES.—For purposes of this section, the term 'qualified overtime wages' means overtime wages paid to an employee of the taxpayer (other than a qualified replacement employee) for duties normally performed by a qualified volunteer first responder employee, but only with respect to the period during which such qualified volunteer first responder employee participates in a qualified activity, including time spent in travel status.

''(6) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by reason of paragraph (1)(A) with respect to such employee.

''(d) SELF-EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The self-employment credit with respect to a qualified volunteer first responder self-employed taxpayer is an amount equal to the amount paid or incurred by such taxpayer with respect to a qualified self-employment replacement employee.

''(2) QUALIFIED VOLUNTEER FIRST RESPONDER SELF-EMPLOYED TAXPAYER.—The term 'qualified volunteer first responder self-employed taxpayer' means a taxpayer who—

''(A) has self-employment income (as defined in section 1402) for the taxable year, and

''(B) holds a volunteer position as a firefighter, law enforcement official, or emergency medical service provider.

''(3) QUALIFIED SELF-EMPLOYMENT REPLACEMENT EMPLOYEE.—The term 'qualified self-employment replacement employee' means an individual who is hired to replace the qualified volunteer first responder self-employed taxpayer, but only with respect to the period during which such taxpayer participates in a qualified activity, including time spent in travel status.

''(e) DEFINITIONS AND OTHER RULES.—For purposes of this section—

''(1) QUALIFIED VOLUNTEER FIRST RESPONDER EMPLOYEE.—The term 'qualified volunteer first responder employee' means an individual who—

''(A) has been an employee of the taxpayer for the 91-day period immediately preceding the period during which the employee participates in a qualified activity, and

''(B) holds a volunteer position as a firefighter, law enforcement official, or emergency medical service provider.

''(2) QUALIFIED ACTIVITY.—The term 'qualified activity' means—

''(A) training with respect to duties performed in connection with the volunteer position of the qualified volunteer first responder employee or qualified volunteer first responder self-employed taxpayer, and

''(B) the performance of duties in connection with the volunteer position of the qualified volunteer first responder employee or qualified volunteer first responder self-employed taxpayer, but only to the extent that such duties take not less than 1 day to perform.

''(3) SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 200 or fewer employees on business days during such taxable year.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.''.

(2) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the volunteer first responder employee credit determined under section 45G.''.

(3) TRANSITION RULE.—Section 39(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF VOLUNTEER FIRST RESPONDER EMPLOYEE CREDIT BEFORE ENACTMENT.—No portion of the unused business

credit for any taxable year which is attributable to the volunteer first responder employee credit determined under section 45G may be carried back to a taxable year beginning before January 1, 2004.''.

(4) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended__

(A) by inserting ''or compensation'' after ''salaries'', and

(B) by inserting ''45G,'', after ''45A(a),''.

(5) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45G. Credit to employers of volunteer first responders.''.

(6) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

(c) DEDUCTION FOR CERTAIN EXPENSES OF VOLUNTEER FIRST RESPONDERS.—

(1) DEDUCTION FOR TRAVEL EXPENSES.—

(A) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (q) as subsection (r) and inserting after subsection (p) the following new subsection:

''(q) TREATMENT OF EXPENSES OF VOLUNTEER FIRST RESPONDERS.—For purposes of subsection (a)(2), in the case of an individual who participates in a qualified activity (within the meaning of section 45G(e)(2)) as a volunteer first responder (within the meaning of section 224) at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such participation.''.

(B) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

''(F) CERTAIN EXPENSES OF VOLUNTEER FIRST RESPONDERS.—The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with participation in qualified activities (as defined in section 45G(e)(2)) as a volunteer first responder for any period during which such individual is more than 100 miles away from home in connection with such qualified activities.''.

(2) DEDUCTION FOR TRAINING EXPENSES.—

(A) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deduction for individuals) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

''SEC. 224. CERTAIN EXPENSES OF VOLUNTEER FIRST RESPONDERS.

''(a) IN GENERAL.—In the case of a volunteer first responder, there shall be allowed as a deduction an amount equal to the expenses paid or incurred by the volunteer first responder necessary for training with respect to duties performed in connection with the volunteer position of such volunteer first responder.

''(b) VOLUNTEER FIRST RESPONDER.—For purposes of this section, the term 'volunteer first responder' means an individual who holds a volunteer position as a firefighter, law enforcement official, or emergency medical service provider.''.

(B) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a) of such Code (relating to adjusted gross income) is amended by adding at the end the following new section:

''(20) VOLUNTEER FIRST RESPONDER TRAINING EXPENSES.—The deduction allowed by section 224.''.

(C) CONFORMING AMENDMENT.—The table of section for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 224 and inserting the following:

''Sec. 224. Certain expenses of volunteer first responders.

''Sec. 225. Cross reference.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

SEC. 3. CRITICAL NEED GRANTS FOR FIRST RESPONDERS.

(a) FINDINGS.—Congress finds the following:

(1) According to a report by the Council on Foreign Relations Independent Task Force, first responders in the United States are underfunded and unprepared for future natural, technological, and human-caused disasters.

(2) Local firefighters, police officers, and emergency medical personnel are responsible for disaster prevention, mitigation, and response.

(3) It is essential that first responders have basic safety equipment that is in good working order and customized, if appropriate, to do their jobs as safely and effectively as possible.

(4) All first responder operation centers need basic communications equipment, including—

(A) multiple touch-tone phone lines;

(B) a fax machine with a dedicated phone line;

(C) a computer with a high-speed connection to the Internet; and

(D) personal communication devices for shift supervisors, their commanders, and all first responders in a work unit.

(b) PURPOSE.—The purpose of this section is to establish a competitive grant program within the Department of Homeland Security to provide first responders with the basic equipment needed to accomplish their homeland security goals.

(c) LOCAL CRITICAL NEED HOMELAND SECURITY GRANTS FOR FIRST RESPONDERS.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

''SEC. 510. LOCAL CRITICAL NEED HOMELAND SECURITY GRANTS FOR FIRST RESPONDERS.

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) BASIC PERSONAL EQUIPMENT.—The term 'basic personal equipment' means equipment necessary to achieve the standard of basic preparedness established by the Under Secretary for Emergency Preparedness and Response under subsection (d), including—

''(A) personal breathing apparatus;

''(B) protective equipment; and

''(C) bulletproof vests.

''(2) COMMUNICATIONS ENHANCEMENT.—The term 'communications enhancement' means improvements to local first responder communications systems that are necessary to achieve the standard of basic preparedness established by the Under Secretary for Emergency Preparedness and Response under subsection (d), including the development or enhancement of—

''(A) emergency operations centers;

''(B) processes and facilities for information sharing among different levels and first responder units; and

''(C) communications capabilities within individual firehouses, police precincts, or other centers of emergency operation.

''(b) STANDARD OF BASIC PREPAREDNESS.—Not later than September 30, 2005, the Under Secretary for Emergency Preparedness and Response shall establish a standard of basic preparedness for local first responders, which shall provide for maximum State flexibility.

''(c) GRANTS AUTHORIZED.—The Secretary may award need-based, competitive grants to States and units of local government to be used for basic personal equipment and communications enhancement needed to perform their disaster response, mitigation, and recovery missions.

''(d) APPLICATION.—

''(1) IN GENERAL.—Each eligible entity desiring a grant under this section shall submit an application to the Under Secretary for Emergency Preparedness and Response at such time, in such manner, and containing such information, including the safety and communications equipment to be purchased with grant funds, as the Under Secretary may reasonably require.

''(2) PRIORITY.—

''(A) IN GENERAL.—The Under Secretary shall give the highest priority to applicants demonstrating the greatest need for basic personal equipment and communication enhancements when compared to the standard of basic preparedness established under subsection (d).

''(B) INTERIM PRIORITY.—Until a standard of basic preparedness is established under subsection (d), the Secretary shall give highest priority to applicants that demonstrate the greatest need for basic personal equipment and communication enhancements when compared to the standard under consideration.

''(3) EVALUATION PLANS.—The Secretary shall use evaluation plans under consideration to help determine which applicants will receive grants under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of fiscal years 2005 through 2007, such sums as may be necessary to carry out this section, which shall remain available until expended.''.

SEC. 4. SAFE SCHOOLS THROUGH MENTAL HEALTH PROGRAM.

(a) GRANTS AUTHORIZED.—Subpart 2 of part A of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7131 et seq.) is amended by adding at the end the following:

''SEC. 4131. MENTAL HEALTH PROGRAMS.

''(a) PURPOSE.—The purpose of this section is to provide grants to States and local educational agencies—

''(1) to prepare for and respond to disasters or terrorism in or impacting schools;

''(2) to prevent avoidable disasters, such as in-school or school-related violence;

''(3) to establish community-sustainable mental health programs in schools; and

''(4) to train school personnel on mental health issues, including disaster and terrorism prevention, response, and mitigation.

''(b) FINDINGS.—Congress makes the following findings:

''(1) Schools occupy a unique place in the community. In addition to their main mission of educating children, they serve a public education role and a role in community organization.

''(2) Schools have new responsibilities in the homeland security era and in terms of disaster response. Schools often serve as community meeting places, centers of operation for disaster response, and shelters, and have a place in preventing some disasters from happening. Schools may also be called upon to fill novel roles in the case of a disaster, such as keeping children safe after normal school hours.

''(3) Some disasters, such as in-school violence, are largely preventable. Mental health professionals in schools may be able to anticipate and prevent school-related disasters and are better positioned to mitigate disaster effects.

''(4) After any disaster, people benefit from returning to their normal routine to whatever extent possible. Schools may be in the position to mitigate disaster–related stress.

''(c) DEFINITION.—In this section, the term 'eligible entity' means a public school or a local educational agency.

''(d) SAFE SCHOOLS THROUGH MENTAL HEALTH PROGRAM.—

''(1) GRANTS AUTHORIZED.—From funds made available to carry out this subpart under section 4003(2), the Secretary shall award grants to eligible entities to pay the Federal share of the cost of carrying out the activities described in paragraph (3).

''(2) APPLICATION.—An eligible entity that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require, including a certification that the eligible entity will provide the necessary State or local funding to continue the activities initiated with the grant during the 5-year period beginning on the date on which such grant is awarded.

''(3) USES OF FUNDS.—An eligible entity that receives a grant under this subsection may use the grant funds to—

''(A) train elementary school and secondary school teachers, administrators, and other professionals to—

''(i) identify and prevent avoidable disasters; and

''(ii) assist children in dealing with the aftermath of terrorism and disasters or other mental health issues;

''(B) provide for school-based mental health professionals to offer services in elementary and secondary schools;

''(C) provide mental health services to elementary and secondary school students who face, or have faced, disciplinary action, including students who have been suspended or expelled from school.

''(4) FEDERAL SHARE.—The Federal share of the cost of carrying out the activities under paragraph (3) shall be not more than—

''(A) 80 percent of the total cost of such activities, in the first year of the grant award;

''(B) 60 percent of the total cost of such activities, in the second year of the grant award;

''(C) 40 percent of the total cost of such activities, in the third year of the grant award;

''(D) 20 percent of the total cost of such activities, in the fourth year of the grant award; and

''(E) 0 percent of the total cost of such activities, in the fifth year of the grant award.

''(5) STATE AND LOCAL FUNDING.—If an eligible entity receiving a grant under this subsection fails to provide sufficient State or local funding, in accordance with paragraph (4), the eligible entity shall be subject to a penalty up to the amount received under this subsection, as determined by the Secretary, which shall be payable to the United States Treasury.

''(e) SCHOOL-BASED DISASTER MITIGATION REFUND PROGRAM.—

''(1) GRANTS AUTHORIZED.—From funds made available to carry out this subpart under section 4003(2), the Secretary, in an emergency declared by the President under title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 501 et seq.), shall award grants to eligible entities to pay the Federal share of the cost of carrying out the activities described in paragraph (3).

''(2) APPLICATION.—An eligible entity that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

''(3) USE OF FUNDS.—An eligible entity that receives a grant under this subsection shall use the grant funds to reimburse elementary and secondary schools for costs incurred by such schools—

''(A) during a disaster response; and

''(B) for in–school mental health counseling for a period of 13 months beginning on the date of the disaster.''.

(b) FEDERAL EMERGENCY ASSISTANCE.—Section 502(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5192(a)) is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(8) provide financial assistance to affected State and local governments for school-based community mental health counseling.''.

SEC. 5. HOMELAND SECURITY RESEARCH AND DEVELOPMENT GRANT PROGRAM.

(a) FINDINGS.—Congress finds the following:

(1) The Department of Homeland Security is responsible for funding the intramural and extramural research and development to address the Department's scientific and technological needs and requirements.

(2) Funding has been appropriated to the Department of Homeland Security to carry out significant levels of scientific development, and this funding will likely increase in the future.

(3) Terrorist threats against the United States are not restricted to a single geographic area, terrorist group, or method of threat. Undefended borders make terrorist attacks possible in places that have never had to prepare for, or respond to, terrorism.

(4) Every State must be prepared for disasters and will incur costs associated with homeland security.

(5) States experience varying levels of potential homeland security threats and homeland security concerns vary geographically. Addressing these threats requires regional and local expertise, thus the scientific and technological workforce and training should not be overly centralized.

(6) Academic research and development funding has not been distributed equitably in the past. Congress has taken steps to resolve this problem. Correcting this inequity will provide beneficial results for science and technology training and research.

(b) PURPOSE.—The purpose of this section is to establish a competitive grant program for homeland security research and development.

(c) HOMELAND SECURITY RESEARCH AND DEVELOPMENT GRANT PROGRAM.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.) is amended by adding at the end the following:

''SEC. 314. COMPETITIVE RESEARCH GRANT PROGRAM.

''(a) ESTABLISHMENT.—The Secretary, in consultation with the Under Secretary for Science and Technology, shall establish a Homeland Security Competitive Research Grant Program (referred to in this section as the 'Program') to more equitably distribute Federal research and development funds by awarding competitive grants to universities and colleges in eligible States to conduct research projects relating to homeland security.

''(b) ELIGIBLE STATES.—During fiscal years 2005 and 2006, colleges and universities located in States and territories that qualify for the National Science Foundation's EPSCoR program or the National Institutes of Health IDeA program shall be eligible for funding under the Program.

''(c) RESPONSIBILITIES.—The Under Secretary for Science and Technology shall—

''(1) ensure that not less than 15 percent of the Department's overall academic research funding is allocated to universities and colleges in eligible States;

''(2) establish a cofunding mechanism for States with academic facilities that have not fully developed security-related science and technology to support burgeoning research efforts by the faculty or link them to established investigators;

''(3) provide for conferences, workshops, outreach, and technical assistance to researchers and academic institutions in eligible States on topics related to developing science and technology expertise in areas of high interest and relevance to the Department;

''(4) monitor the efforts of States to develop programs that support the Department's mission;

''(5) implement a merit review program, consistent with program objectives, to ensure the quality of research conducted with Program funding; and

''(6) provide annual reports on the progress and achievements of the Program to the Secretary.

''(d) ANNUAL REPORT.—Not later than March 15 of each year, the Under Secretary for Science and Technology shall submit a report to Congress on the implementation of the Program.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

''(1) $5,000,000 for fiscal year 2005 to carry out subsection (c)(3); and

''(2) such sums as may be necessary for fiscal year 2006 to carry out this section.''.

SEC. 6. HOMELAND SECURITY RESEARCH EXPANSION GRANT PROGRAM.

(a) FINDINGS.—Congress finds the following:

(1) The Department of Homeland Security should fund research, which explores the innovative human dimensions of homeland security.

(2) Infrastructure and transportation systems, and the systems designed to protect them, are only as effective as their operators and users.

(3) Because communication before, during, and after disasters is critical, the understanding of behavioral, psychological, and social sciences in promoting effective communications with homeland security goals in mind is vital to the department's mission.

(4) Several areas of social science are relevant to homeland security, including—

(A) theories and data regarding threat communication and the psychological impacts of such threats;

(B) citizen response to disaster;

(C) group behavior in response to a threat or actual disaster;

(D) theories and data about the impact of sustained attention and vigilance on reasoning; and

(E) risk analysis and decision-making and their application to homeland security.

(5) Since the primary goal of terrorism is to disrupt social systems, the Department of Homeland Security should support research on how attitudes and beliefs about terrorism impact—

(A) consumer confidence;

(B) population mobility;

(C) decisions about childcare;

(D) job behaviors; and

(E) attitudes toward immigrants, political institutions, and leaders.

(6) Homeland security efforts would benefit from research on—

(A) the selection, management, and training of security personnel and first responders;

(B) the impact of stereotyping and marginalization of groups;

(C) hate crimes;

(D) the emergence and maintenance of fundamentalist, extremist, and antigovernment groups within the United States; and

(E) protection against the acts inspired by the groups described in subparagraph (D).

(b) PURPOSE.—The purpose of this section is to establish a program to award research grants to examine the social dimensions of terrorism.

(c) RESEARCH EXPANSION GRANTS.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), as amended by section 5, is further amended by adding at the end the following:

"SEC. 315. RESEARCH EXPANSION GRANTS.

''(a) IN GENERAL.—The Secretary shall award research grants to colleges and universities to—

''(1) analyze group dynamics during periods of extreme stress, including how first responders—

''(A) react during such periods;

''(B) can be inoculated to stress; and

''(C) can help mitigate the stress and social disruption that often accompanies emergency situations;

''(2) analyze the social and cultural factors that may affect the performance of first responder groups;

''(3) expand human factors research to all other modes of transportation including the use of infrastructure and transportation systems under evacuation circumstances;

''(4) develop and demonstrate compliance with operability standards for new technologies designed by human factors experts in conjunction with users;

''(5) examine the decision making of voluntary first responders under extended periods of disaster, including whether volunteer first responders would report to their primary jobs or their first responder positions if simultaneously called to both; and

''(6) understand how the Homeland Security Advisory System operates as a useful communication tool for citizens.

''(b) APPLICATION.—Each college and university desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

''(c) ANNUAL REPORTS.—

''(1) REPORT TO SECRETARY.—Grant recipients shall submit an annual report to the Secretary containing specific research findings that may be used to improve emergency preparedness and response efforts.

''(2) REPORT TO CONGRESS.—The Secretary shall submit an annual report to Congress on the grant program authorized by this section.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $40,000,000 for each of the fiscal years 2005 through 2007.''.

By Mr. DOMENICI:

S. 2460. A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, water is the life's blood for New Mexico. When the water dries up in New Mexico, so will many of its communities. As such, the scarcity of water in New Mexico is a dire situation. Unfortunately, the New Mexico Office of the State Engineer (NM OSE) lacks the tools necessary to undertake the Herculean task of effectively managing New Mexico's water resources.

Today, I introduce legislation that would allow New Mexico to make informed decisions about its limited water resources.

In order to effectively perform water rights administration, as well as comply with New Mexico's compact deliveries, the State Engineer is statutorily required to perform assessments and investigations of the numerous stream systems and ground water basins located within New Mexico. However, the NM OSE is ill equipped to vigorously and comprehensively undertake the daunting but critically important task of water resource planning. At present, the NM OSE lacks adequate resources to perform necessary hydrographic surveys and data collection. As such, ensuring a future water supply for my home state requires that Congress provide the NM OSE with the resources necessary to fulfill its statutory mandate.

The bill I introduce today would create a standing authority for the State of New Mexico to seek and receive technical assistance from the Bureau of Reclamation and the United States Geological Survey. It would also provide the NM OSE the sum of $12.5 million in federal assistance to perform hydrologic models of New Mexico's most important water systems. This bill would provide the NM OSE with the best resources available when making crucial decisions about how best preserve our limited water stores.

Ever decreasing water supplies in New Mexico have reached critical levels and require immediate action. The Congress cannot sit idly by as water shortages cause death to New Mexico's communities. I hope the Senate will give this legislation its every consideration.

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. 2460

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 ''New Mexico Water Planning Assistance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Bureau of Reclamation and the United States Geological Survey.

(2) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. COMPREHENSIVE WATER PLAN ASSISTANCE.

(a) IN GENERAL.— On the request of the Governor of the State and subject to subsections (b) through (e), the Secretary shall—

(1) provide to the State technical assistance and grants for the development of comprehensive State water plans;

(2) conduct water resources mapping in the State; and

(3) conduct a comprehensive study of groundwater resources (including potable, brackish, and saline water resources) in the State to assess the quantity, quality, and interaction of groundwater and surface water resources.

(b) TECHNICAL ASSISTANCE.—Technical assistance provided under subsection (a) may include—

(1) acquisition of hydrologic data, groundwater characterization, database development, and data distribution;

(2) expansion of climate, surface water, and groundwater monitoring networks;

(3) assessment of existing water resources, surface water storage, and groundwater storage potential;

(4) numerical analysis and modeling necessary to provide an integrated understanding of water resources and water management options;

(5) participation in State planning forums and planning groups;

(6) coordination of Federal water management planning efforts;

(7) technical review of data, models, planning scenarios, and water plans developed by the State; and

(8) provision of scientific and technical specialists to support State and local activities.

(c) ALLOCATION.—In providing grants under subsection (a), the Secretary shall, subject to the availability of appropriations, allocate—

(1) $5,000,000 to develop hydrologic models and acquire associated equipment for the New Mexico Rio Grande main stem sections and Rio Taos and Hondo, Rios Nambe, Pojoaque and Teseque, Rio Chama, and Lower Rio Grande tributaries;

(2) $1,500,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for the San Juan River and tributaries;

(3) $1,000,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for Southwest New Mexico, including the Animas Basin, the Gila River, and tributaries;

(4) $4,500,000 for statewide digital orthophotography mapping; and

(5) such sums as are necessary to carry out additional projects consistent with subsection (b).

(d) NON-REIMBURSABLE AND NO COST-SHARING.—Any assistance or grants provided to the State under this Act shall be made on a non-reimbursable basis and without a cost-sharing requirement.

(e) AUTHORIZED TRANSFERS.—On request of the State, the Secretary shall directly transfer to 1 or more Federal agencies any amounts made available to the State to carry out this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $2,500,000 for each of fiscal years 2005 through 2009.

By Mr. DEWINE (for himself and Mr. KENNEDY):

S. 2461. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, today I join our colleague from Massachusetts, Senator KENNEDY, to introduce a bill

designed to help protect consumers—especially children—from the dangers of tobacco. Simply, our bill would finally give the Food and Drug Administration (FDA) the authority it needs to effectively regulate the manufacture and sale of tobacco products.

I say finally, because there are some tobacco proponents who would have you believe that the Master Settlement Agreement, which was signed in 1998 by 46 States, resolved the issue of youth tobacco use by imposing advertising restrictions.

I say finally, because my colleagues—first Senator MCCAIN, then Senator FRIST, then Senator GREGG, and then Senator KENNEDY and I—have been seeking FDA regulation of tobacco products since the mid to late 1990's.

And, I say finally, because the bill that we are introducing today is the product of long and hard discussions and negotiations that I have had with Senator KENNEDY and public interest groups and industry. Our bill has the support of Campaign for Tobacco Free Kids. Our bill has the support of Philip Morris. Our bill has the support of the American Heart Association, the American Lung Association, and the American Cancer Association. It is a bill that I am proud of, that is worthy of the Senate's consideration, and that will provide the FDA—finally—with strong and effective authority over the regulation of tobacco products.

I realize full well that tobacco users and non-users, alike, recognize and understand that tobacco products are hazardous to their health. We all know that smoking is not a healthy habit. But, that's an obvious point in comparison to the fact that right now, many consumers, including smokers, are surprised to learn that no Federal agency has the authority to require tobacco companies to list the ingredients that are in their products—things like trace amounts of arsenic, formaldehyde, and ammonia. And, no Federal agency has the authority to inspect tobacco manufacturers—how the cigarette and smokeless tobacco products are made, whether the manufacturers' machines and equipment are clean, etc.

While simply listing the ingredients, toxic as they may be, might not seem like much to some, think of it this way: Current law makes sure we know what's in products designed to help people quit smoking, like ''the patch'' or Nicorette gum, but not the very products that get people addicted in the first place—the cigarettes. That is absolutely absurd!

Think about this: Right now, the Food and Drug Administration (FDA) requires Philip Morris/Altria to print the ingredients in its Kraft ''Macaroni and Cheese,'' but not the ingredients in its cigarettes—a product that contributes to the deaths of more than 440,000 people a year.

Right now, the FDA requires Philip Morris-owned Nabisco to print the ingredients contained in ''Oreo Cookies'' and ''Ritz Crackers,'' but not the ingredients in its cigarettes—even though cigarettes cause one-third of all cancer deaths and 90 percent of lung cancer deaths. It is unfathomable to me that we would require the listing of ingredients on these products, yet not require the listing of ingredients for one of the leading causes of death and disease.

Right now, the FDA requires the printed ingredients for chewing gum, lipstick, bottled water, and ice cream, but not for cigarettes—a product that causes 20% of all heart disease deaths and is the leading cause of preventable death in the United States.

Think about this: If a company wants to market a food product as ''fat-free'' or ''reduced-fat'' or ''lite,'' that company is required to meet certain standards regarding the number of calories or the amount of fat grams in that product. Yet, cigarette companies can call a cigarette a ''light'' or ''mild'' and not reveal a thing about the amount of tar or nicotine or arsenic in that supposedly ''light'' cigarette.

Not having access to all the information about this deadly product just makes no sense, and it is something that needs to change. By introducing this bill, we are finally saying that we are not going to let tobacco manufacturers have free reign over their markets and consumers any more.

Today, we are taking a step toward making sure the public gets adequate information about whether to continue to smoke or even to start smoking in the first place. With this bill, we are not just saying ''buyer beware.'' We are saying ''tobacco companies be honest.'' We are saying ''tobacco companies stop marketing to innocent children.'' We are saying ''tobacco companies tell consumers about what they are really buying.''

The legislation that Senator KENNEDY and I are introducing would do just that.

One of the most dramatic changes our bill makes is that tobacco products will now have to be approved before they reach consumer hands. It just makes sense that tobacco products should not be able to imply that they may be safer or less harmful to consumers because they use descriptors such as ''light'' or ''mild'' or ''low'' to characterize the level of a substance in a product. The National Cancer Institute has found that many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. Our bill would require specific approval by the FDA to use those words, so that consumers could be informed.

For the first time ever, all new tobacco products entering the market would have to be approved by the FDA. Obviously, we already know that smoking is a health risk. But, what we don't know about is the harm caused by or what adverse health effects are created by the other ingredients in tobacco products or by how the tobacco is burned. There are tobacco products on the market that are not conventional cigarettes. They have carbon filters running down the center of them. They are sophisticated products that burn tobacco differently, that affect the body differently, and that may cause people to smoke them differently.

According to the Department of Health and Human Services, in an October article of the Journal of the National Cancer Institute, ''the only proven method to reduce tobacco-related cancer risk is to stop smoking.'' Yet, often times, people cannot quit. It is very difficult to quit ingesting an addictive product. People are addicted to the nicotine in the tobacco product and are just simply unable to quit using it. So, tobacco companies have responded by developing and marketing tobacco products that purport to be ''reduced-risk'' or ''safer.''

Take, for example, a person who smokes Marlboro cigarettes—just plain Marlboro cigarettes, the ones in the red package. Let's say that person would like to quit smoking, has tried to quit smoking a number of times, but just hasn't been successful. So instead of quitting outright, that person figures they will switch the type of cigarette they smoke to a cigarette that has the implied claim of being ''safer''—like a ''light'' cigarette or a ''mild'' cigarette or a ''low tar'' cigarette. Those cigarettes have not been found to be any safer? In fact, just the opposite has been discovered.

In a 2001 National Cancer Institute publication, they wrote the following:

> The tobacco companies set out to develop cigarette designs that markedly lowered the tar and nicotine yield results as measured by the Federal Trade Commission (FTC) testing method. Yet, these cigarettes can be manipulated by the smoker to increase the intake of tar and nicotine. The use of these ''decreased risk'' cigarettes have not significantly decreased the disease risk. In fact, the use of these cigarettes may be partly responsible for the increase in lung cancer for long-term smokers who have switched to the low-tar/low-nicotine brands. Finally, switching to these cigarettes may provide smokers with a false sense of reduced risk, when the actual amount of tar and nicotine consumed may be the same as, or more than, the previously used higher yield brand.

So the products that tobacco companies develop and market as being ''safer'' are not safer. Rather than people quitting smoking entirely, they are often misled into thinking that the ''light'' or ''mild'' cigarettes that they switch to are better for them. In addition, people may begin to start smoking because they think some of these products aren't so bad for them—that the products have been made safer or better for them somehow and are okay to smoke.

Tobacco companies are able to make these implied health claims about their products because they are not regulated. Consumers have no choice but to trust the tobacco companies to reveal the ingredients and marketing claims about their products. That is just absurd to me. These are all things that should be examined, reviewed, and commented on by the Food and Drug

Administration to determine whether it is appropriate for these products to be marketed as ''reduced-risk'' products, so the public knows what they are choosing to consume.

Tobacco advertising is in magazines and on billboards along the highway. Tobacco advertising is in convenience stores, along the aisles and at the checkout counter right beside the candy where children are likely to see it. Tobacco advertising is at sporting events, part of promotional items, where consumers can ''buy 1 get 1 free.'' Tobacco advertising is on the Internet and in the daily delivery of mail.

Our bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco industry marketing—consistent with the First Amendment—that targets our children. Our bill would require advertisements to be in black and white text only and would define adult publication in terms of readership.

An issue that is related to advertising and marketing of tobacco products has to do with the flavored tobacco products, which clearly target our children. We have probably all seen the flavored cigarettes—flavors like strawberry, chocolate, and wild rum. The scent of strawberry filters through the unopened pack of cigarettes. And guess what, the cigarettes smell like candy. A recent New York Times article described the scent of chocolate flavored cigarettes as if ''someone had lifted the lid on a Whitman Sampler.''

I can't speak for every parent, but I know my 8 grandchildren like candy, and they like the smell of chocolate, and they would be curious to try something that smells or tastes like candy. Cigarettes shouldn't be flavored and marketed in such a way to attract children and to encourage children to smoke. Our bill bans the use of flavors such as strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, coffee and other flavorings that would attract children to the product.

Despite the fact that 40 million Americans use tobacco products, many of them do not know what is inside the cigarette or the tobacco product they ingest. They do not know the ingredients or the constituents, like tar or nicotine, that are in the products they use. Consumers do not know what additives are included in the product. Additives like ammonia or urea, both of which may make the tobacco product more addictive because they increase the delivery of nicotine. Tobacco companies do not disclose the specific ingredients in their products because they don't have to. Tobacco products are unregulated.

Our legislation would give consumers more information about what's in tobacco products. Specifically, the bill would provide the FDA with the ability to publish the ingredients of tobacco products.

It would require a listing of all ingredients, substances, and compounds added by the manufacturer to the tobacco, paper, or filter.

It would require a description of the content, delivery, and form of nicotine in each tobacco product.

It would require information on the health, behavioral, or physiologic effects of the tobacco products.

I think it is equally important that I mention what our bill does not do. Here are some of the areas where authority is not conferred to FDA: Our bill does not allow FDA to ban tobacco products or to eliminate nicotine from a tobacco product. The bill ensures that FDA will not have the power to use its ''performance standard'' authority to ban cigarettes, smokeless tobacco or any other category of tobacco products, or to reduce their nicotine yields to zero.

Our bill does not allow FDA to establish a minimum smoking age higher than 18. The bill explicitly forbids FDA from establishing a minimum age higher than 18 years of age to purchase tobacco products.

Our bill treats all tobacco retailers equally. Our bill specifically provides that FDA can't prohibit the sale of tobacco products in any particular category of retail outlet. Our bill forbids FDA from creating a more permissive set of advertising rules for adult-only establishments. This provision protects retailers and convenience store owners.

Finally, I would like to make a comment about the tobacco farmers. There has been a lot of talk recently about the need for a buyout for our Nation's tobacco farmers. My colleagues, Senator MCCONNELL and Senator DOLE, have been working tirelessly to craft a buyout bill for tobacco farmers. They need a buyout—and the Congress should give them one. The Senate needs to pass the buyout, but the buyout needs to be passed along with this FDA bill. I look forward to working with my colleagues from the tobacco-growing states to make this happen.

The bill that Senator KENNEDY and I introduce today gives the FDA the authority to regulate a product that has gone unregulated for far too long—a product that for the past century has not revealed its ingredients to the consumer—a product whose manufacturing facilities are not inspected or accountable for following good manufacturing practices—a product that is never reviewed or approved before reaching the hands of 40 million consumers, many of whom are just children. Congress needs to put an end to this. Congress should put an end to the marketing of tobacco products to our children. Congress should put an end to the ability of tobacco companies to make claims, whether they are implied claims or direct claims, about their products. Congress should put an end to tobacco companies putting any ingredient they want into their products without disclosing it to the consumer. It is time Congress give the FDA authority to it needs to fix these problems.

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. 2461

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 ''Family Smoking Prevention and Tobacco Control Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purpose.
Sec. 4. Scope and effect.
Sec. 5. Severability.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

Sec. 101. Amendment of Federal food, drug, and cosmetic act.
Sec. 102. Construction of current regulations.
Sec. 103. Conforming and other amendments to general provisions.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

Sec. 201. Cigarette label and advertising warnings.
Sec. 202. Authority to revise cigarette warning label Statements.
Sec. 203. State regulation of cigarette advertising and promotion.
Sec. 204. Smokeless tobacco labels and advertising warnings.
Sec. 205. Authority to revise smokeless tobacco product warning label Statements.
Sec. 206. Tar, nicotine, and other smoke constituent disclosure to the public.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

Sec. 301. Labeling, record keeping, records inspection.
Sec. 302. Study and report.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the

public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2001, the tobacco industry spent more than $11,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price-sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the First Amendment to the United States Constitution and with the standards set forth in the amendments made by this Act for the regulation of tobacco products by the Food and Drug Administration and the restriction on the sale and distribution, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion plays a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in insuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be approved in advance of marketing, and to require that the evidence relied on to

support approval of these products is rigorous.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or Tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(nn)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetics, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring, coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

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

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(11) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(12) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(13) RETAILER.—The term 'retailer' means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(15) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(16) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''(18) TOBACCO PRODUCT MANUFACTURER.—Term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

''(19) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef,

Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect;

''(B) it is in violation of the order approving such an application; or

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is in violation of section 911.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 921(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55).

"SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(a)(4) of the Federal Cigarette Labeling and Advertising Act.

''(3) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to

research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS SHALL REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2003, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product authorized for sale under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products shall be considered as adult written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult written publications.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—The Secretary may, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Good manufacturing practices may include the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

"SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULE FOR CIGARETTES.—A cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this paragraph.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll your own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

Congress expressly reserves to itself such power.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to the Tobacco Products Scientific Advisory Committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

"SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

"SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of June 1, 2003; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 15-month period, until the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the terms 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant, refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the

evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an approval of an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless approval of an application filed pursuant to subsection (d) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(A) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to an advisory committee any application submitted under this subsection.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

''(g) APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall approve an application for a modified risk tobacco product filed under this section only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) the approval of the application would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke.

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is anticipated in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) approval of the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF APPROVAL.—

''(i) IN GENERAL.—Applications approved under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such post-market surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the approval of an application under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of post-market surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the approval of the application is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception; and

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—No distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act.

''SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco related disease.

''(c) AUTHORITY.—The Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in paragraph (1) and subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 554(b)(4) of title 5, United States Code, shall be treated as trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''SEC. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C.
App.) does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

''SEC. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''The Secretary shall consider—

''(1) at the request of the applicant, designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) direct the Commissioner to consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence;

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention; and

''(4) consider—

''(A) relieving companies of premarket burdens under section 505 if the requirement is redundant considering other nicotine replacement therapies already on the market; and

''(B) time and extent applications for nicotine replacement therapies that have been approved by a regulatory body in a foreign country and have marketing experience in such country.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2004, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2004 shall be $85,000,000;

''(B) for fiscal year 2005 shall be $175,000,000;

''(C) for fiscal year 2006 shall be $$300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required

under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.''.

SEC. 102. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg., 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with the Administrative Procedures Act.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) in paragraph (4) as so redesignated—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: '', (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

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

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the Executive Branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(2) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet and an expedited procedure for the administrative appeal of an alleged violation;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer's date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(A) adopting and enforcing a written policy against sales to minors;

(B) informing its employees of all applicable laws;

(C) establishing disciplinary sanctions for employee noncompliance; and

(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

'WARNING: Cigarettes are addictive'.

'WARNING: Tobacco smoke can harm your children'.

'WARNING: Cigarettes cause fatal lung disease'.

'WARNING: Cigarettes cause cancer'.

'WARNING: Cigarettes cause strokes and heart disease'.

'WARNING: Smoking during pregnancy can harm your baby'.

'WARNING: Smoking can kill you'.

'WARNING: Tobacco smoke causes fatal lung disease in non-smokers'.

'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(5) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(6) APPLICABILITY TO RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.''.

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding a the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

'WARNING: This product can cause mouth cancer'.

'WARNING: This product can cause gum disease and tooth loss'.

'WARNING: This product is not a safe alternative to cigarettes'.

'WARNING: Smokeless tobacco is addictive'.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word 'WARNING' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 203, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 201, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements required under this section, except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

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

''SEC. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

Mr. KENNEDY. Mr. President, today, Senator DEWINE and I are introducing legislation to give the Food and Drug Administration broad authority to regulate tobacco products for the protection of the public health. We cannot in good conscience allow the Federal agency most responsible for protecting the public health to remain powerless to deal with the enormous risks of tobacco, the most deadly of all consumer products.

This legislation is a fair and balanced approach to FDA regulation. It creates a new section in FDA jurisdiction for the regulation of tobacco products, with standards that allow for consideration of the unique issues raised by tobacco use. It is sensitive to the concerns of tobacco farmers, small businesses, and nicotine-dependent smokers. But, it clearly gives FDA the authority it needs in order to prevent youth smoking and to reduce addiction to this highly lethal product.

The stakes are vast. Five thousand children have their first cigarette every day, and two thousand of them become daily smokers. Nearly a thousand of them will die prematurely from tobacco-induced diseases. Smoking is the number one preventable cause of death in the Nation today. Cigarettes kill well over 400,000 Americans each year. That is more lives lost than from automobile accidents, alcohol abuse, illegal drugs, AIDS, murder, suicide, and fires combined. Our response to a public health problem of this magnitude must consist of more than half-way measures.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over $9 billion a year to promote its products. Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that more than 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products.

If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising

designed to appeal to children wherever it will be seen by children. This legislation will give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children. It grants FDA full authority to regulate tobacco advertising ''consistent with and to the full extent permitted by the First Amendment.''

FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public health. Over forty million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as ''reduced risk'' cigarettes. This legislation will require manufacturers to submit such ''reduced risk'' products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Smoking is the number one preventable cause of death in America. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

This legislation will give the FDA the legal authority it needs—to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading the public about the dangers of smoking.

We believe that there is an excellent chance of enacting this bill this year. The interest of tobacco-state members in passing a tobacco farmers' quota buyout provides a golden opportunity. By joining a strong FDA bill with relief for tobacco farmers, we can assemble a broad, bipartisan coalition to accomplish both of these goals during this session. This approach is supported by the public health community and by farmers' organizations. Most importantly, it is the right thing to do for America's children.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, and Mr. ALLEN):

S. 2462. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages; to the Committee on Health, Education, Labor and Pensions.

Mr. WARNER. Mr. President, I rise today to introduce an important bill related to education and our national, homeland, and economic security. I am pleased to be joined in this bipartisan effort with Senators LIEBERMAN, ROBERTS, and ALLEN, and I am grateful to each of them for working closely with me in crafting this legislation.

Some 50 plus years ago, I was a high school drop-out. I left school at the age of 17 to enlist in the Navy to serve this country in World War II. In the military, I earned the rank of Petty Officer 3rd Class, electronic technician's mate. And, it was in this role that I earned my first bit of technical education.

In return for my service, I was lucky enough to earn a GI Bill that helped me go to college at Washington & Lee University where I earned a degree in engineering. Subsequently, I joined the Marines and earned a second GI Bill that allowed me to attend the University of Virginia where I earned my law degree.

Without the GI bill, I certainly might not have earned the education that I was fortunate enough to receive, and I certainly would not be standing here today in the United States Senate. That is why I feel so very strongly that we must support education in this country. Today's generation of students should have at least the same opportunity to earn their education that I had, if not more.

We are fortunate in America that we have several important Federal programs to help make education more affordable for today's generation. Whether it is the GI Bill, the Americorp stipend, subsidized and unsubsidized Stafford loans, or any number of other Federal education programs, many Americans today who wish to obtain higher education have access to a variety of educational programs. I support strengthening these programs to increase access to higher education.

Of all the educational grant programs, the Pell Grant program is the largest source of grant aid to help students pay for the costs associated with higher education. Eligibility for Pell Grants is based on financial need, and this year alone, Pell Grants helped 5.3 million undergraduate students attain higher education.

Now, I am a strong supporter of the Pell Grant program. The $13.1 billion

that is being spent by the Federal Government on Pell Grants in fiscal year 2004 gives students access to higher education that otherwise might not have such access. But, I also recognize that the Pell Grant program was created in 1972 when the world was entirely different.

Our world today is much more dangerous than it was back then, and much more dangerous than when I served this country with brief tours of duty in World War II and the Korean War.

Today, while we're sleeping, people in other parts of the world are contriving of every possible way to take our business, our economy, our security, and our freedoms away from us. September 11, 2001, should remind us of this.

Once, great oceans protected this Nation. But now, with the advent of the Internet and other modern technologies, the world is more connected than ever, and America is more vulnerable than ever in a lot of ways. Computer hackers all over the world try on a daily basis to hack into government computers. If successful, this could wreak havoc. Furthermore, each day, for whatever reason, people create computer viruses, and even the smallest virus can cost our economy billions of dollars.

Simply put, in today's day and age, our country faces new challenges like never before. I ask—are we prepared to meet these challenges?

Unfortunately, our institutions of higher learning are not producing enough American graduates with certain majors to meet our new challenges. In engineering, math, computer sciences, hard sciences, and certain foreign languages—America is coming up short.

The statistics are alarming: the Third International Math and Science Study reports that U.S. 12th graders scored in only the 7th percentile in math worldwide, and only the 3rd percentile in science. This is near the bottom among major industrialized nations. The National Science Foundation reports that the fraction of U.S. Bachelor degrees in science and engineering have been declining for nearly 2 decades when compared to the rest of the world. While nearly two-thirds of Bachelor degrees in China and Singapore are science or engineering, they account for only about 17 percent in the United States. In fact, we currently rank 61st out of the 63 countries surveyed. Similarly, the National Science Board reports that the fraction of foreign born scientists and engineers in the U.S. workforce rose to an all time high by 2000. Amazingly, 38 percent of all people working in the United States with doctorate degrees in science or engineering are now foreign born.

The effects of these educational trends are already being felt in various important ways. For example: the American Physical Society reports that the proportion of articles by American authors in the Physical Review, one of the most important research journals in the world, has hit an all time low of 29 percent, down from 61 percent in 1983. And the U.S. production of patents, probably the most direct link between research and economic benefit, has declined steadily relative to the rest of the world for decades, and now stands at only 52 percent of the total.

Despite these statistics, up to now, this country has been able to meet its new challenges by importing brain power from foreign countries. We are fortunate to have so many smart minds from other countries willing to come to the United States to fill critical science and engineering positions. However, the need for home-grown talent is becoming more and more apparent.

First, international competition for this foreign brain power has become intense. As the National Science Board notes, ''Governments throughout the world recognize that a high-skill S&E workforce is essential for economic strength. Countries beyond the United States have been taking action to . . . attract foreign students and workers, and raise the attractiveness to their own citizenry of staying home or returning from abroad to serve growing national economies and research enterprises.'' This increased global competition for science and engineering workers ''comes at a time when demand for their skills is projected to rise significantly—both in the United States and throughout the global economy.''

Without action on our part, though, America will lose out in the competition for these technically talented workers. According to the National Science Board, by 2010, if current trends continue, significantly less than 10 percent of all physical scientists and engineers in the world will be working in America.

Increased global competition is not the only reason, though, that we have to promote a home-grown S&E workforce in America. In the post 9/11 era, it is more important than ever from a security perspective to have American citizens performing certain tasks.

The National Science Board put it best when they said, ''The ready availability of outstanding science and engineering talent from other countries is no longer assured, as international competition for the science and engineering workforce grows. Threats to world peace and domestic security create additional constraints on employment of foreign nationals in the United States.''

I think the message is clear: Our S&E workforce is in crisis. If we do not act to encourage more American citizens to enter the high shortage areas in engineering, math, and science, then America may lose its historical advantage as the world's innovator.

The consequences of this trend are also significant from a national security perspective. The defense-related research that goes into giving our men and women in the Armed Forces the best technology and equipment requires the special skills of engineers, scientists and computer scientists. Our military has always recognized these facts, and historically has been a tremendous supporter of science and engineering on a broad scale, from applied research to the most pure and esoteric of pursuits.

Let me quote some numbers which make clear what a huge investment our defense community makes in science and engineering: According to the National Science Foundation, the Defense Department is by far the largest single supporter of science and technology in the Federal Government, accounting for about half of the total research dollars spent; the proportion of defense funding for University research in critical disciplines is very significant. For example, 90 percent of basic astronautical research is defense-funded. And, as you all must realize, University research is vastly important for training subsequent generations of high-quality researchers; and in terms of technical manpower, defense-related scientists and engineers make up nearly 46 percent of the total Federal workforce. And, this includes 28 percent of all physical scientists, 48 percent of computer scientists and mathematicians, and 67 percent of all engineers.

For well over a century these investments have given us advantages in technological fields that have provided our men and women of our Armed Forces the most advanced and powerful tools in existence, from submarines and airplanes to unmanned vehicles and the Internet. These technologies not only give our military an overwhelming advantage on the battlefield, they also save many lives.

Yet, alarmingly, it is in the precise disciplines that produce these technologies and equipment where we see some of the greatest potential shortages in our science and engineering workforce. Numerous studies show that the number of domestic students in these critical fields has been falling steadily for years. And, without major investments to encourage more Americans to enter these critical fields, America is going to lose its status as the world's innovator and be placed in the precarious situation of having to rely on foreign countries to sell us the best equipment and the best technology for our troops. That is why it is paramount for America, from within, to produce the home-grown technical talent it needs.

The consequences of inaction are enormous. And, while America's challenge is substantial, it is not insurmountable. Fortunately, we already have an existing Federal program up and running that, if modified, can help.

Under current law, the $13.1 billion a year Pell Grant program awards recipients grants regardless of the course of study that the recipient chooses to pursue. So, under current law, 2 people

from the same financial background are eligible for the same grant even though one chooses to major in the liberal arts while the other majors in engineering or science.

While I believe studying the liberal arts is an important component to having an enlightened citizenry, I also believe that given the unique challenges we are facing in this country, it is appropriate for us to add an incentive to the Pell Grant program to encourage individuals to pursue courses of study where graduates are needed to meet our national security, homeland security, and economic security needs.

That is why today I am introducing this legislation. The legislation is simple. It provides that at least every 2 years, our Secretary of Education, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and others, should provide a list of courses of study where America needs home-grown talent to meet our national, homeland, and economic security needs. Those students who pursue courses of study in these programs will be rewarded through a doubling of their Pell Grant to help them with the costs associated with obtaining their education.

We in the Congress have an obligation when expending taxpayer money, to do so in a manner that meets our Nation's needs. Our Nation desperately needs more highly trained domestic workers. That is an indisputable fact. And, in the Pell Grant program, we have over $13 billion that is readily available to help meet this demand.

In closing, our world is vastly different today than it was when the Pell Grant program was created in 1972. My legislation is a commonsense modification of the Pell Grant program that will help America meet its new challenges. I hope my colleagues will join me in this endeavor.

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. 2462

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 ''21st Century Federal Pell Grant Plus Act''.

SEC. 2. RECIPIENTS OF FEDERAL PELL GRANTS WHO ARE PURSUING PROGRAMS OF STUDY IN ENGINEERING, MATHEMATICS, SCIENCE, OR FOREIGN LANGUAGES.

Section 401(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(2)) is amended by adding at the end the following:

''(C)(i) Notwithstanding subparagraph (A) and subject to clause (iii), in the case of a student who is eligible under this part and who is pursuing a degree with a major in, or a certificate or program of study relating to, engineering, mathematics, science (such as physics, chemistry, or computer science), or a foreign language, described in a list developed or updated under clause (ii), the amount of the Federal Pell Grant shall be the amount calculated for the student under subparagraph (A) for the academic year involved, multiplied by 2.

''(ii)(I) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Director of the National Science Foundation, shall develop, update not less than once every 2 years, and publish in the Federal Register, a list of engineering, mathematics, and science degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries and Director shall consider the following:

''(aa) The current engineering, mathematics, and science needs of the United States with respect to national security, homeland security, and economic security.

''(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

''(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

''(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

''(II) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Secretary of State, shall develop, update not less than once every 2 years, and publish in the Federal Register, a list of foreign language degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries shall consider the following:

''(aa) The foreign language needs of the United States with respect to national security, homeland security, and economic security.

''(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

''(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

''(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

''(iii) Each student who received an increased Federal Pell Grant amount under clause (i) to pursue a degree, major, certificate, or program described in a list published under subclause (I) or (II) of clause (ii) shall continue to be eligible for the increased Federal Pell Grant amount in subsequent academic years if the degree, major, certificate, or program, respectively, is subsequently removed from the list.

''(iv)(I) If a student who received an increased Federal Pell Grant amount under clause (i) changes the student's course of study to a degree, major, certificate, or program that is not included in a list described in clause (ii), then the Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive under this section for subsequent academic years by an amount equal to the difference between the total amount the student received under this subparagraph and the total amount the student would have received under this section if this subparagraph had not been applied.

''(II) The Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive in subsequent academic years by dividing the total amount to be reduced under subclause (I) for the student by the number of years the student received an increased Federal Pell Grant amount under clause (i), and deducting the result from the amount of Federal Pell Grant assistance the student is eligible to receive under this section for a number of subsequent academic years equal to the number of academic years the student received an increased Federal Pell Grant amount under clause (i).''.

Mr. LIEBERMAN. Mr. President, I rise today to join my esteemed colleague from the State of Virginia, Senator WARNER, in introducing The 21st Century Pell Grant Plus Act. This bill is intended to provide an immediate and direct response to the urgent need in this country to encourage greater numbers of graduates in the critical areas of math and science and foreign language. Specifically, our bill would provide financial incentives to American college students, via enhanced Pell grants, to pursue degrees in science, engineering, mathematics, and key foreign languages. These subject areas are critical for meeting our nation's economic and homeland security needs.

Although the number of jobs requiring scientific and technical skills is projected to grow over the next decade, the last ten years have witnessed a significant decline in the number of relevant baccalaureate degrees awarded by U.S. institutions of higher education. Recent reports have highlighted the decline in science and engineering graduates in our country, which has threatened the United States' worldwide dominance in science and innovation. Foreign advances in basic science now often exceed those in the United States. To exacerbate the matter, future demographics signal that many of the presently employed engineers and scientists who entered the workforce in the 1960s and 1970s will retire during the next decade. Unfortunately, their children are not following them into the same professions.

Many of our competitors in the world market are not experiencing these same problems. The universities in some European and Asian countries are attracting science and engineering majors at much higher rates than the universities in the United States. For example, China graduated three times as many engineering graduates than the United States did in 1999. In 2000, there were 24 nations who awarded a higher percentage of science and engineering degrees than the United States did. In that same year, the percentage of students earning science degrees in Finland was 2.5 times higher than in the United States. Graduate education trends are no better. According to National Science Foundation indicators,

between 1986 and 1999, China produced science and engineering doctorates at an average annual growth rate of 36.5 percent. By comparison, the United States had an average annual growth rate of just 2.2 percent during the same period. We must also keep in mind that of all the science and engineering doctoral degrees earned in the United States in 1999, 48.6 percent of them were earned by non-U.S. citizens.

I noted in my recent offshore outsourcing study, now posted on my website, that as global competition for technical talent intensifies, our economic security depends on producing U.S.-born science and engineering graduates. Not being able to fill the jobs in this country with U.S. citizens is also a threat to our national security. Thus, it is imperative that our higher education system, which is the best in the world, train more individuals in science and technology.

Our bill provides a simple and efficient solution to this problem. Under our proposal, any student who qualifies for a Pell Grant and majors in science, engineering, mathematics, or certain foreign languages would be eligible to receive a grant that is double the size of the original award. Every two years the Secretary of Education, in consultation with the Secretaries of Defense and Homeland Security, and the director of the National Science Foundation will develop a list of engineering, mathematics, science, and foreign language majors, degrees, certificates, or programs that if pursued by a student, may enable that student to receive the increased Federal Pell Grant amount.

Science, engineering, technology, and innovation are key to our economic growth, prosperity, and security. The 21st Century Federal Pell Grant Plus Act aims to strengthen our technical workforce, and thus our economic and homeland security, by encouraging more of our college students to study science, engineering, mathematics, and foreign languages. I urge my colleagues to act favorably on this measure.

I would also like to take this opportunity to pay tribute to a man who some have appropriately described as a true gentleman as well as an outstanding leader in engineering and science. Dr. John H. Hopps died on May 14, 2004 at 65 years of age. He has advised my office on our nation's science talent issues for the past three years, and I want to dedicate today's new bill to him. At the time of his death, he was serving as Deputy Under Secretary of Defense for Research and National Laboratories, and Deputy Director of Defense Research and Engineering. He accepted this dual position out of a strong sense of national service after the September 11 attack. The science community has lost a member who has served as an inspiration to many, including members of my staff, for his commitment to his profession and his unique approaches to developing our technical workforce. Among his many achievements, including many in University education and at NSF, I would note that Dr. Hopps was the author of numerous scholarly and scientific papers, and was recognized as one of the top African Americans in Technology in 2004. I might also mention that in addition to his intellectual prowess, he was passionate about athletics—a winning combination. As we introduce this bill to highlight the importance of this profession, I thought it was appropriate to recognize Dr. Hopps, and thank my colleagues for this opportunity.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN)

S. 2464. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 2465. A bill to amend the Controlled Substances Act with respect to the seizure of shipments of controlled substances, and for other purposes; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I rise to introduce two bills that expand Federal authority to prevent controlled substances from flooding into the U.S., authorizing states to shut down illegitimate virtual pharmacies, and bar Internet drug stores from dispensing drugs to customers referred to on-line doctors for a prescription.

Americans are increasingly turning to the Internet for access to affordable drugs. In 2003, consumer spending on drugs procured over the Internet exceeded $3.2 billion. Unfortunately, rogue Internet sites have proliferated and rake in millions of dollars by selling unproven, counterfeit, defective or otherwise inappropriate medications to unsuspecting consumers. Even more dangerously, these sites are profiting by selling addictive and potentially deadly controlled substances to consumers without a prescription or any physician oversight. This must stop before more individuals die or become addicted to easily obtainable narcotic drugs.

The first bill I am introducing was developed in close consultation with Senator FEINSTEIN, who is an original cosponsor. In appreciation for her role in helping write this legislation it is named after a young man from her state who died from an overdose of drugs purchased over the Internet.

17-year old Ryan Haight of La Mesa, CA was an honor roll student, and avid baseball card collector about to enter college. As his mom says, ''he was a good kid.'' But in May of 2000 Ryan started hanging out with a different crowd of friends. He joined an online chat forum, which advocates the safe use of drugs, and he began buying prescription drugs from the Internet.

He used the family computer late at night and a debit card his parents gave him to buy baseball cards on Ebay. You might ask, how did a healthy 17-year old obtain prescriptions for painkillers without a medical exam. He got them from Dr. Robert Ogle an ''online'' physician based out of Texas. With the prescriptions from Dr. Ogle, Ryan was able to order hydrocodone, morphine, Valium and Oxazepam and have them shipped via US mail right to his front door.

In February 2001, Ryan overdosed on a combination of these prescription drugs. His mother found him dead on his bedroom floor.

The Ryan Haight Internet Pharmacy Consumer Protection Act counters the growing sale of prescription drugs over the Internet without a valid prescription by 1. providing new disclosure standards for Internet pharmacies; 2. barring Internet sites from selling or dispensing prescription drugs to consumers who are provided a prescription solely on the basis of an online questionnaire; and 3. allowing State Attorneys General to go to Federal court to shut down rogue sites.

The bill is geared to counter domestic Internet pharmacies that sell drugs without a valid prescription, not international pharmacies that sell drugs at a low cost to individuals who have a valid prescription from their U.S. doctors.

Under current law, purchasing drugs online without a valid prescription can be simple: a consumer just types the name of the drug into a search engine, quickly identifies a site selling the medication, fills in a brief questionnaire, and then clicks to purchase. The risks of self-medicating, however, can include potential adverse reactions from inappropriately prescribed medications, dangerous drug interactions, use of counterfeit or tainted products, and addiction to habit-forming substances. Several of these illegitimate sites fail to provide information about contraindications, potential adverse effects, and efficacy.

Regulating these Internet pharmacies is difficult for Federal and State authorities. State medical and pharmacy boards have expressed the concern that they do not have adequate enforcement tools to regulate practice over the Internet. It can be virtually impossible for States to identify, investigate, and prosecute these illegal pharmacies because the consumer, prescriber, and seller of a drug may be located in different States.

The Internet Pharmacy Consumer Protection Act amends the Federal Food, Drug, and Cosmetic Act to address this problem in three steps. First, it requires Internet pharmacy websites to display information identifying the business, pharmacist, and physician associated with the website.

Second, the bill bars the selling or dispensing of a prescription drug via the Internet when the website has referred the customer to a doctor who then writes a prescription without ever seeing the patient.

Third, the bill provides States with new enforcement authority modeled on the Federal Telemarketing Sales Act that will allow a state attorney general to shut down a rogue site across the country, rather than only bar sales to consumers of his or her state.

I am proud to say that the Ryan Haight Internet Pharmacy Consumer Protection Act is supported by the Federation of State Medical Boards, the National Community Pharmacists Association, and the American Pharmacists Association.

The second bill I am introducing enables Customs and Border Protection to immediately seize and destroy any package containing a controlled substance that is illegally imported into the U.S. without having to fill out duplicative forms and other unnecessary administrative paperwork. The Act will allow Customs to focus on interdicting and destroying potentially addictive and deadly controlled substances. The Act is dedicated to Todd Rode, a young man who died after overdosing on imported drugs.

Todd Rode had the heart and soul of a musician. He graduated from college magna cum laude with a major in psychology and a minor in music. The faculty named him the outstanding senior in the Psychology Department. He worked in this field for a number of years, but he constantly fought bouts of depression and anxiety.

Unfortunately Todd ordered controlled drugs from a pharmacy and doctor in another country. These drugs included Venlafaxine, Propoxyphene, and Codeine. All were controlled substances and all were obtained from overseas pharmacies without any safeguards. To obtain these controlled substances all Todd had to do was to fill out an online questionnaire and with the click of a mouse they were shipped directly to his front door.

In October of 1999, Todd's family found him dead in his apartment.

A six-month investigation by the Permanent Subcommittee on Investigations has revealed that tens of thousands of dangerous and addictive controlled substances are streaming into the U.S. on a daily basis from overseas Internet pharmacies. For example, on March 15 and 17, 2004, at JFK airport, home to the largest International Mail Branch in the U.S., at least 3,000 boxes from a single vendor in the Netherlands containing hydrocodone and Diazepam (Valium) were seized by Customs and Border Protection (Customs).

In fact, senior Customs inspectors at JFK estimate that 40,000 parcels containing drugs are imported on a daily basis. During last summer's FDA/Customs blitz, 28 percent of the drugs tested were controlled substances. Extrapolating these figures, 11,200 drug parcels containing controlled substances are imported through JFK daily, 78,400 weekly, 313,600 monthly and 3,763,200 annually. top countries of origin include Brazil, India, Pakistan, Netherlands, Spain, Portugal, Canada, Mexico, and Romania.

Likewise, as of March 2003, senior Customs officials at the Miami International Airport indicated that as much as 30,000 packages containing drugs were being imported on a daily basis. A large percentage of these are controlled substances as well. Customs is simply overwhelmed. At Mail facilities across the U.S., Customs regularly seizes shipments of oxycodone, hydroquinone, tranquilizers, steroids, codeine laced products, GHB, date rape drug, and morphine.

In order to comply with paperwork requirements, Customs is forced to devote investigators solely to opening, counting, and analyzing drug packages, filling out duplicative forms, and logging into a computer all of the seized controlled substances. It takes Customs at least one hour to process a single shipment of a controlled substance. This minimizes the availability of inspectors to screen incoming drug packages. In fact, currently at JFK, there are 20,000 packages of seized controlled substances waiting processing. Customs acknowledges that, because of the sheer volume of product, bureaucratic regulations, and lack of manpower, the vast majority of controlled substances that are illegally imported are simply missed and allowed into the U.S. stream of commerce.

The Act to Prevent the Illegal Importation of Controlled Substances is a simple bill to address this burgeoning and potentially lethal problem.

I am confident that, if enacted as stand-alone measures, each of these bills will make on-line drug purchasing safer. However, I am working with Senator GREGG to ensure these safety features are included in his comprehensive reimportation bill and urge my colleagues to help make sure that this important piece of legislation becomes law this year.

Mrs. FEINSTEIN. Mr. President, I rise today along with my colleague Senator COLEMAN to introduce the Internet Pharmacy Consumer Protection Act also called the ''Ryan Haight Act'', a bill which is vital to protect the safety of Americans who choose to purchase their prescription drugs legally over the Internet.

This legislation is necessary because of a growing problem of illegal prescription drug diversion and abuse of prescription drugs. Coupled with the ease of access to the Internet, it has led to an environment where illegitimate pharmacy websites can bypass traditional regulations and established safeguards for the sale of prescription drugs. Internet websites that allow consumers to obtain prescription drugs without the existence of a bona fide physician-patient relationship pose an immediate threat to public health and safety.

To address this problem, the Internet Pharmacy Consumer Protection Act makes several critical steps to ensure safety and to assist regulatory authorities in shutting down ''rogue'' Internet pharmacies.

First, this bill establishes disclosure standards for Internet pharmacies.

Second, this bill prohibits the dispensing or sale of a prescription drug based solely on communications via the Internet such as the completion of an online medical questionnaire.

Third, it allows a State Attorney General to bring a civil action in a federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of this law.

Under this bill, for a domestic website to sell prescription drugs legally, the website would have to display identifying information such as the names, addresses, and medical licensing information for pharmacists and physicians associated with the website.

In addition, if a person wants to use the Internet to purchase their prescription drugs he or she will not be prohibited from doing so under this bill but, in order to do so, must already have a prescription for the drug that is valid in the United States prior to making the Internet purchase.

Reliance on the Internet for public health purposes and the expansion of telemedicine, particularly in rural areas, make it essential that there be at the very least a minimum standard for what qualifies as an acceptable medical relationship between patients and their physicians.

According to the American Medical Association, a health care practitioner who offers a prescription for a patient he or she has never seen before, based solely on an online questionnaire, generally does not meet the appropriate medical standard of care.

Let me illustrate the situation facing our country today. If a physician's office prescribed and dispensed prescription drugs the same way Internet pharmacies currently can and do, it would look something like this: A physician opens a physical office, asks a patient to fill out a medical history questionnaire in the lobby and give his or her credit card information to the office manager. There is no nurse, and therefore no one to take the patients' height, weight, blood pressure, verify his or her medical history, and so forth and no one to answer the patient's questions regarding their health.

The questionnaire is then slipped through a hole in the window; the office manager takes it to the physician, or person acting as the physician, who then writes the prescription and hands it to the pharmacist, or person acting as the pharmacist, in the next room. Once the patient signs his credit card, he is on his way out the door, drugs in hand.

No examination is performed, no questions asked, and no verification or clarification of the answers provided on the medical history questionnaire.

This illustration is not an exaggeration. It occurs every day all across the United States. The National Association of Boards of Pharmacy estimates

that there are around 500 identifiable rogue pharmacy websites operating on the Internet.

According to the Federation of State Medical Boards, approximately 29 states and the District of Columbia either have laws or medical board initiatives addressing Internet medical practice. Of the other 21 States, 13 have medical or osteopathic medical boards that have taken disciplinary action against a physician for prescribing medication online.

Many States have already enacted laws defining acceptable practices for qualifying medical relationships between doctors and patients and this bill would not affect any existing State laws.

For example, California law was changed in 2000 to say:

> No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished dangerous drugs or dangerous devices [defined as any drug or device unsafe for self-use] on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication . . .

I believe California's law is a perfect example of why this legislation is needed. The law only applies to persons living in California. As we all know, however, the Internet is not bound by State or even country borders.

This legislation makes a critical step forward by providing additional authority for State Attorneys General to file an injunction in Federal court to shut down an Internet site operating in another State that violates the provisions in the bill.

Under current law, in order to close down an Internet website selling prescription drugs prosecutors must take enforcement actions in every State where the Internet pharmacy operates, requiring a tremendous amount of resources in an environment where the location of the website is difficult, if not impossible, to determine or keep track of.

This bill will allow a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of the law in every jurisdiction where the pharmacy is operating.

While this legislation pertains to domestic Internet pharmacies, the practice of international pharmacies selling low-cost drugs to U.S. consumers who have valid prescriptions from their doctors deserves to be discussed and debated on the Senate floor. It is my hope that the Senate will act this year on prescription drug importation legislation.

In closing, I want to share with you the story of Ryan T. Haight of La Mesa, CA in whose memory this bill is named.

Ryan was an 18-year old honor student from La Mesa, CA, when he died in his home on February 12, 2001. His parents found a bottle of Vicodin in his room with a label from an out-of-state pharmacy.

It turns out that Ryan had been ordering addictive drugs online and paying with a debit card his parents gave him to buy baseball cards on eBay.

Without a physical exam or his parents' consent, Ryan had been obtaining controlled substances, some from an Internet site in Oklahoma. It only took a few months before Ryan's life was ended by an overdose on a cocktail of painkillers.

Ryan's story and others like it force us to ask why anyone in the U.S. would be able to access such highly addictive and dangerous drugs over the Internet with such ease?

Why was there no physician or pharmacist on the other end of this teenager's computer verifying his age, his medical history and that there was a valid prescription?

That is why I support this legislation. It makes sensible requirements of Internet pharmacy websites that will not impact access to convenient, oftentimes cost-saving drugs.

With simple disclosure requirements for Internet sites such as names, addresses and medical or pharmacy licensing information, patients will be better off and state medical and pharmacy boards can ensure that pharmacists and doctors are properly licensed.

Lastly, this bill will give State Attorneys General the authority they need to shut down rogue Internet pharmacies operating in other States. I urge my colleagues to support this bill.

By Mr. BROWNBACK (for himself, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. COLEMAN, Mr. CRAPO, Mr. DEWINE, Mr. ENSIGN, Mr. ENZI, Mr. FITZGERALD, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. MILLER, Mr. NICKLES, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. TALENT, Mr. CHAMBLISS, and Mr. INHOFE):

S. 2466. A bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child; to the Committee on Health, Education, Labor, and Pensions.

Mr. BROWNBACK. Mr. President, I rise today to introduce the bipartisan Unborn Child Pain Awareness Act, and I am joined by 22 original cosponsors.

Unborn children can experience pain, and they can certainly respond to touch from outside the womb. Any woman who has been blessed with carrying a baby in the second trimester can tell you this.

I remember my own children kicking and squirming inside of my wife's womb. And my wife certainly remembers feeling their kicks. That unborn child is very much alive. All along, women have been able to feel the child inside of them, but now, science is telling us what the child inside of his or her mother can feel.

Many among us are unaware of the scientific, medical fact that unborn children can feel, but it is true. Not only can they feel, but their ability to experience pain is heightened. The highest density of pain receptors per square inch of skin in human development occurs in utero from 20 to 30 weeks gestation.

An expert report on fetal development, prepared for the Partial Birth Abortion Ban trials, notes that while unborn children are obviously incapable of verbal expressions, we know that they can experience pain based upon anatomical, functional, physiological and behavioral indicators that are correlated with pain in children and adults.

Unborn children can experience pain. This is why unborn children are often administered anesthesia during in utero surgeries.

Think about the pain that unborn children can experience, and then think about the more gruesome abortion procedures. Of course, we have heard about Partial Birth Abortion, but also consider the D&E abortion. During this procedure, commonly performed after 20-weeks—when there is medical evidence that the child can experience severe pain—the child is torn apart limb from limb. Think about how that must feel to a young human.

We would never allow a dog to be treated this way. Yet, the creature we are talking about is a young, unborn child.

Fortunately, the issue of pain experienced by unborn children has been covered by the news media during the ongoing Partial Birth Abortion Ban trials. Take for instance an April 7, 2004 Associated Press news article covering the trials. And I quote: ''A type of abortion banned under a new federal law would cause 'severe and excruciating' pain to 20-week-old fetuses, a medical expert testified yesterday . . . 'I believe the fetus is conscious,' said Dr. Kanwaljeet 'Sonny' Anand, a pediatrician at the University of Arkansas for Medical Sciences . . . said yesterday that fetuses show increased heart rate, blood flow, and hormone levels in response to pain. 'The physiological responses have been very clearly studied,' he said. 'The fetus cannot talk . . . so this is the best evidence we can get.''

Today I introduce a bill that would require those who perform abortions on unborn children 20 weeks after fertilization to inform the woman seeking an abortion of the medical evidence that the unborn child feels pain: (a.) Through a verbal statement given by the abortion provider, and also (b.) by providing a brochure—developed by the Department of Health and Human Services—that goes into more detail than the verbal statement on the medical evidence of pain experienced by an unborn child 20 weeks after fertilization.

The bill would also ensure that the woman, if she chooses to continue with

the abortion procedure after being given the medical information, has the option of choosing anesthesia for the child, so that the unborn child's pain is less severe.

Women should not be kept in the dark; women have the right to know what their unborn child experiences during an abortion. After being presented with the medical and scientific information on the development of the unborn child 20 weeks after fertilization, the woman is more aware of the pain experienced by the child during an abortion procedure, and able—at the very least—to make an informed decision. It is simply not fair to keep women in the dark.

Unborn children do not have a voice, but they are young members of the human family. It is time to look at the unborn child, and recognize that it is really a young human, who can feel pain and should be treated with care.

I urge my colleagues to support and pass this important piece of legislation.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. STEVENS, Mr. VOINOVICH, Mr. SUNUNU, Mr. LIEBERMAN, Mr. AKAKA, and Mr. DURBIN):

S. 2468. A bill to reform the postal laws of the United States; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today with my friend and colleague, Senator CARPER, to introduce the Postal Accountability and Enhancement Act of 2004, a bill designed to help the 225-year-old Postal Service meet the challenges of the 21st Century. This legislation represents the culmination of a process that began in the summer of 2002 when I introduced a bill to establish a Presidential Commission charged with examining the problems the Postal Service faces, and developing specific recommendations and legislative proposals that Congress and the Postal Service could implement.

It has long been acknowledged that the financial and operational problems confronting the Postal Service are serious. At present, the Postal Service has more than $90 billion in unfunded liabilities and obligations, which include $6.5 billion in debt to the U.S. Treasury, nearly $7 billion for Workers' Compensation claims, $5 billion for retirement costs, and as much as $45 billion to cover retiree health care costs. The General Accounting Office's Comptroller General, David Walker, has pointed to the urgent need for ''fundamental reforms to minimize the risk of a significant taxpayer bailout or dramatic postal rate increases.'' The Postal Service has been on GAO's ''High-Risk'' List since April of 2001. The Postal Service is at risk of a ''death spiral'' of decreasing volume and increasing rates that lead to further decreases in volume.

In December of 2003, President Bush announced the creation of a bipartisan commission charged with identifying the operational, structural, and financial challenges facing the U.S. Postal Service. The President charged this commission with examining all significant aspects of the Postal Service with the goal of recommending legislative and administrative reforms to ensure its long-term viability.

The President's Commission conducted seven public hearings across the country at which they heard from numerous witnesses. On July 31, 2003, the Commission released its final report, making 35 legislative and administrative recommendations for the reform of the Postal Service.

As I read through the Commission's report, I was struck by what I considered the Commission's wake up call to Congress: its statement that ''an incremental approach to Postal Service reform will yield too little, too late given the enterprise's bleak fiscal outlook, the depth of current debt and unfunded obligations, the downward trend in First-Class mail volumes and the limited potential of its legacy postal network that was built for a bygone era.'' That is a very strong statement, and one that challenged both the Postal Service and Congress to embrace far-reaching reforms.

To the relief of many, including myself, the Commission did not recommend privatization of the Postal Service. Instead, the Commission sought to find a way for the Postal Service to do, as Co-Chair Jim Johnson described to me, ''an overwhelmingly better job under the same general structure.''

The Postal Service plays a vital role in our economy. The Service itself employs more than 750,000 career employees. Less well known is the fact that it is also the linchpin of a $900-billion mailing industry that employs 9 million Americans in fields as diverse as direct mailing, printing, catalog production, paper manufacturing, and financial services. The health of the Postal Service is essential to the vitality of thousands of companies and the millions that they employ.

One of the greatest challenges for the Postal Service is the decrease in mail volume as business communications, bills and payments move more and more to the Internet. The Postal Service has experienced declining volumes of First-Class mail for the past four years. This is highly significant, given that First-Class mail accounts for 48 percent of total mail volume, and the revenue it generates pays for more than two-thirds of the Postal Service's institutional costs.

The Postal Service also faces the difficult task of trying to cut costs from its nationwide infrastructure and transportation network. These costs are difficult to cut. Even though volumes may be decreasing, carriers must still deliver six days a week to more than 139 million addresses.

As Chairman of the Committee on Governmental Affairs, I held a series of eight hearings, including a joint hearing with the House, during which we reviewed the recommendations of the President's Commission. The bill Senator CARPER and I introduce today is the culmination of everything the Committee learned from dozens of witnesses over the past eight months.

First and foremost, the Collins-Carper bill preserves the basic features of universal service-affordable rates, frequent delivery, and convenient community access to retail postal services. As a Senator representing a large, rural State, I want to ensure that my constituents living in the northern woods, or on the islands, or in our many rural small towns have the same access to postal services as the people of our cities. If the Postal Service were no longer to provide universal service and deliver mail to every customer, the affordable communication link upon which many Americans rely would be jeopardized. Most commercial enterprises would find it uneconomical, if not impossible, to deliver mail and packages to rural Americans at rates charged by the Postal Service.

The Collins-Carper bill allows the Postal Service to maintain its current mail monopoly, and retain its sole access to customer mailboxes. It grants the Postal Service Board of Governors the authority to set rates for competitive products like Express Mail and Parcel Post, as long as these prices do not result in cross subsidy from market-dominant products. As a safeguard, our bill establishes a 30 day prior review period during which the proposed rate changes shall be reviewed by the Postal Regulatory Commission.

It replaces the current lengthy and litigious rate-setting process with a rate cap-based structure for market-dominant products such as First-Class Mail, periodicals and library mail. This would allow the Postal Service to react more quickly to changes in the mailing industry. The rate caps would be linked to an inflation indicator selected by the Postal Regulatory Commission. The goal would be to make rate increases more predictable and less frequent and to provide incentives for the Postal Service to operate efficiently. Price changes for market-dominant products would be subject to a 45-day prior review period by the Postal Regulatory Commission.

Our bill would introduce new safeguards against unfair competition by the Postal Service in competitive markets. Subsidization of competitive products by market-dominant products would be expressly forbidden, and an equitable allocation of institutional costs to competitive products would be required.

The President's Commission recommended that the regulator be granted the authority to make changes to the Postal Service's universal service obligation and monopoly. The vast majority of the postal community, however, shared my belief that these are important policy determinations that should be retained by Congress. The

Collins-Carper bill keeps those public policy decisions in congressional hands.

The existing Postal Rate Commission would be transformed into the Postal Regulatory Commission with greatly enhanced authority. Under current law, the Rate Commission has very narrow authority. We wanted to ensure that the Postal Service management has both greater latitude and stronger oversight. Among other things, the Postal Regulatory Commission will have the authority to regulate rates for non-competitive products and services; ensure financial transparency; establish limits on the accumulation of retained earnings by the Postal Service; obtain information from the Postal Service, if need be, through the use of new subpoena power; and review and act on complaints filed by those who believe the Postal Service has exceeded its authority. Members of the Postal Regulatory Board will be selected solely on the basis of their demonstrated experience and professional standing. Senate confirmation of all Board Members will be required.

The Governmental Affairs Committee dedicated two hearings to the examination of the Commission's workforce-related recommendations. The Postal Service is a highly labor intensive organization, using $3 out of every $4 to pay the wages and benefits of its employees. Their workforce is comprised of more than 700,000 dedicated letter carriers, clerks, mail handlers, postmasters, and others, who place great value on their right to collectively bargain. Our bill reaffirms that right. This bill only makes changes to the bargaining process that have been agreed to by both the Postal Service and the four major unions. We replace the rarely used fact-finding process with mediation, and shorten statutory deadlines for certain phases of the bargaining process.

Additionally, the Collins-Carper bill corrects what I believe to be an anomaly in the Federal workers' compensation law that results in high costs for the Postal Service. Under the Federal Employees Compensation Act (FECA), Federal employees with dependents are eligible for 75 percent of their take-home pay, tax free, plus cost of living allowances. In addition, there is no maximum dollar cap on FECA payments. As a result, employees often opt not to retire, staying on the more generous workers' compensation program permanently.

According to a March 2003 audit issued by the Postal Service's Office of Inspector General, the Postal Service's workers' compensation rolls include 81 cases that originated 40 to 50 years ago, with the oldest recipient being 102 years old. The IG's office found 778 cases that originated 30 to 40 years ago; and 1,189 cases that originated 20 to 29 years ago.

The Collins-Carper bill works to protect the financial resources of the Postal Service by converting workers' compensation benefits for total or partial disability to a retirement annuity when the affected employee reaches 65 years of age. This change would reflect the fact that disabled postal employees would likely retire at some point were they not receiving workers' compensation. I would like to note that the average postal employee retires far earlier than age 65, so this is still a generous program. It is important to point out that the Postal Service has reduced their workplace injury rate by twenty-eight percent over the past three years.

The Collins—Carper bill also puts into place a three-day waiting period before an employee is eligible to receive 45 days of continuation of pay. This is consistent with every state's workers' compensation program that requires a three- to seven-day waiting period before benefits are paid.

Our bill has reached an important compromise on the issue of workshare discounts. Some have raised concerns that the Postal Service has set rates so that mailers get a discount greater than the cost avoided by the Postal Service. While this may have occurred in a handful of instances, those mailers are still covering their attributable costs, as well as making a healthy contribution to overhead. The language in our bill sets a policy that the Postal Service shall not create new discounts greater than the cost avoided by the Postal Service. The only exception is in those cases where the Postal Regulatory Commission believes those rates are necessary.

The bill has also, for the first time, explicitly created the authority for the Postal Service to enter into negotiated service agreements with individual customers. This will allow the Postal Service to create agreements with customers to increase its revenue. I would point out that these agreements must cover all attributable costs, and will likely result in greater contribution to overhead. In addition, our bill requires that other similarly situated mailers will be able to enter into such agreements with the Postal Service.

Finally, our bill would repeal a provision of Public Law 108–18 which requires that money owed to the Postal Service due to an overpayment into the Civil Service Retirement System Fund be held in an escrow account. Repealing this provision would essentially "free up" $78 billion over a period of 60 years. These savings would be used to not only pay off debt to the U.S. Treasury and to fund health care liabilities, but to mitigate rate increases as well. In fact, failure to release these escrow funds would mean, for mailers, a double-digit rate increase in 2006—an expense most American businesses and many consumers are ill-equipped to afford.

The bill would also return to the Department of Treasury the responsibility for funding CSRS pension benefits relating to the military service of postal retirees. No other agency is required to make this payment. Ratepayers should not be held responsible for this $27 billion obligation.

The Postal Service has reached a critical juncture. If we are to save and strengthen this vital service upon which so many Americans rely for communication and their livelihoods, the time to act is now.

Our bill has the strong endorsements of the National Rural Letter Carriers Association, the National Association of Letter Carriers, the National Association of Postmasters of the United States, and the Coalition for a 21st Century Postal Service—which represents thousands of the major mailers, employee groups, small businesses, and other users of the mail. I am also very pleased to add Senators TED STEVENS, GEORGE VOINOVICH and JOHN SUNUNU as originated cosponsors of this bill.

I look forward to working with all of my colleagues in the Senate, and House Government Reform and Oversight Committee Chairman Tom Davis, who just last week passed a postal reform bill out of his committee by a vote of 40–0.

I ask unanimous consent that the text of the bill be printed in the RECORD, along with a letter sent to me from David Walker, Comptroller General of the General Accounting Office, addressing the need for comprehensive postal reform.

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

S. 2468

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 "Postal Accountability and Enhancement Act".

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

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.
Sec. 102. Postal services.

TITLE II—MODERN RATE REGULATION

Sec. 201. Provisions relating to market-dominant products.
Sec. 202. Provisions relating to competitive products.
Sec. 203. Provisions relating to experimental and new products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.
Sec. 206. Clerical amendment.

TITLE III—MODERN SERVICE STANDARDS

Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.

TITLE V—GENERAL PROVISIONS

Sec. 501. Qualification and term requirements for Governors.

Sec. 502. Obligations.
Sec. 503. Private carriage of letters.
Sec. 504. Rulemaking authority.
Sec. 505. Noninterference with collective bargaining agreements.

TITLE VI—ENHANCED REGULATORY COMMISSION

Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Appropriations for the Postal Regulatory Commission.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.

TITLE VII—EVALUATIONS

Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Repeal of disposition of savings provision.
Sec. 805. Effective dates.

TITLE IX—COMPENSATION FOR WORK INJURIES

Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS.

Section 102 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

''(5) 'postal service' refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other services ancillary thereto;

''(6) 'product' means a postal service with a distinct cost or market characteristic for which a rate is applied;

''(7) 'rates', as used with respect to products, includes fees for postal services;

''(8) 'market-dominant product' or 'product in the market-dominant category of mail' means a product subject to subchapter I of chapter 36; and

''(9) 'competitive product' or 'product in the competitive category of mail' means a product subject to subchapter II of chapter 36; and

''(10) 'year', as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.''.

SEC. 102. POSTAL SERVICES.

(a) IN GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

''(c) Nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking ''404(a)(8)'' and inserting ''404(a)(7)''.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking ''and nonpostal''.

TITLE II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621, 3622, and 3623 and inserting the following:

''§ 3621. Applicability; definitions

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) first-class mail letters;
''(2) first-class mail cards;
''(3) periodicals;
''(4) standard mail;
''(5) single-piece parcel post;
''(6) media mail;
''(7) bound printed matter;
''(8) library mail;
''(9) special services; and
''(10) single-piece international mail,

subject to any changes the Postal Regulatory Commission may make under section 3642.

''(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''§ 3622. Modern rate regulation

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

''(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

''(1) To reduce the administrative burden and increase the transparency of the ratemaking process.

''(2) To create predictability and stability in rates.

''(3) To maximize incentives to reduce costs and increase efficiency.

''(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

''(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

''(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

''(7) To allocate the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

''(c) FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

''(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

''(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

''(3) the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

''(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

''(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

''(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

''(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

''(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

''(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

''(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

''(11) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

''(12) the policies of this title as well as such other factors as the Commission deems appropriate.

''(d) REQUIREMENTS.—The system for regulating rates and classes for market-dominant products shall—

''(1) require the Postal Rate Commission to set annual limitations on the percentage changes in rates based on inflation using indices, such as the Consumer Price Index, the Employment Cost Index, the Gross Domestic Product Price Index, or any similar measure as the Postal Rate Commission may prescribe;

''(2) establish a schedule whereby rates, when necessary and appropriate, would increase at regular intervals by predictable amounts;

''(3) not later than 45 days before the implementation of any adjustment in rates under this section—

''(A) require the Postal Service to provide public notice of the adjustment;

''(B) provide an opportunity for review by the Postal Rate Commission;

''(C) provide for the Postal Rate Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under paragraph (1); and

''(D) require the Postal Service to respond to the notice provided under subparagraph (C) and describe the actions to be taken to comply with the limitation under paragraph (1).

''(4) notwithstanding any limitation set under paragraphs (1) and (3), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

''(e) WORKSHARE DISCOUNTS.—

''(1) DEFINITION.—In this subsection, the term 'workshare discount' refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

''(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

''(A) the discount is—

''(i) associated with a new postal service or with a change to an existing postal service; and

''(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service;

''(B) a reduction in the discount would—

''(i) lead to a loss of volume in the affected category of mail and reduce the aggregate contribution to institutional costs of the Postal Service from the mail matter subject to the discount below what it otherwise would have been if the discount had not been reduced to costs avoided;

''(ii) result in a further increase in the rates paid by mailers not able to take advantage of the discount; or

''(iii) impede the efficient operation of the Postal Service;

''(C) the amount of the discount above costs avoided—

''(i) is necessary to mitigate rate shock; and

''(ii) will be phased out over time;

''(D) the workshare discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, or scientific value; or

''(E) the Postal Regulatory Commission determines that such discounts are reasonable and equitable and consistent with the objectives and factors taken into account under subsections (b) and (c).

''(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report and explanation of the Postal Service's reasons for establishing or maintaining the rate, setting forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate.

''(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of the enactment of this section.

''§ 3623. Service agreements for market-dominant products

''(a) IN GENERAL.—

''(1) AUTHORITY.—The Postal Service may enter into service agreements with a customer or group of customers that provide for the provision of postal services under terms, conditions, or service standards that differ from those that would apply under the otherwise applicable classification of market-dominant mail.

''(2) AGREEMENTS.—An agreement under this section may involve—

''(A) performance by the contracting mail user of mail preparation, processing, transportation, or other functions;

''(B) performance by the Postal Service of additional mail preparation, processing, transportation, or other functions; or

''(C) other terms and conditions that meet the requirements of subsections (b) and (c).

''(b) REQUIREMENTS.—A service agreement under this section may be entered into only if each of the following conditions is met:

''(1) The total revenue generated under the agreement—

''(A) will cover all Postal Service costs attributable to the postal services covered by the agreement; and

''(B) will result in no less contribution to the institutional costs of the Postal Service than would have been generated had the agreement not been entered into.

''(2) Rates or fees for other mailers will not increase as a result of the agreement.

''(3) The agreement pertains exclusively to products in the market-dominant category of mail.

''(4) The agreement will not preclude or materially hinder similarly situated mail users from entering into agreements with the Postal Service on the same, or substantially the same terms or conditions, and the Postal Service remains willing and able to enter into such.

''(c) LIMITATIONS.—A service agreement under this section shall—

''(1) be for a term not to exceed 3 years; and

''(2) provide that such agreement shall be subject to the cancellation authority of the Commission under section 3662.

''(d) NOTICE REQUIREMENTS.—

''(1) IN GENERAL.—At least 30 days before a service agreement under this section is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following information with respect to such agreement:

''(A) A description of the postal services the agreement involves.

''(B) A description of the functions the customer is to perform under the agreement.

''(C) A description of the functions the Postal Service is to perform under the agreement.

''(D) The rates and fees payable by the customer during the term of the agreement.

''(E) With respect to each condition under subsection (b), information sufficient to demonstrate the bases for the view of the Postal Service that such condition would be met.

''(2) AGREEMENTS LESS THAN NATIONAL IN SCOPE.—In the case of a service agreement under this section that is less than national in scope, the information described under paragraph (1) shall also be published by the Postal Service in a manner designed to afford reasonable notice to persons within any geographic area to which such agreement (or any amendment to that agreement) pertains.

''(e) EQUAL TREATMENT REQUIRED.—If the Postal Service enters into a service agreement with a mailer under this section, the Postal Service shall make such agreement available to similarly situated mailers on functionally equivalent terms and conditions consistent with the regulatory system established under section 3622 without unreasonable distinctions based on mailer profiles, provided that such distinctions, if ignored, would not render any subsequent agreement uneconomic or impractical.

''(f) COMPLAINTS.—Any person who believes that a service agreement under this section is not in conformance with the requirements of this section, or who is aggrieved by a decision of the Postal Service not to enter into an agreement under this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

''(g) POSTAL REGULATORY COMMISSION ROLE.—

''(1) REGULATIONS.—The Postal Regulatory Commission may promulgate such regulations regarding service agreements as the Commission determines necessary to implement the requirements of this section.

''(2) REVIEW.—The Postal Regulatory Commission may review any agreement or proposed agreement under this section and may suspend, cancel, or prevent such agreement if the Commission finds that the agreement does not meet the requirements of this section.

''(h) INTERPRETATION.—The determination of whether the revenue generated under the agreement meets the requirements of subsection (b)(1)(B) shall be based, to the extent practicable, on the actual contribution of the mail involved, not on the average contribution made by the mail classification most similar to the services performed under the agreement. If mailer-specific data is not available, the bases for the determination used shall be provided and shall include a discussion of the suitability of the data used, in accordance with regulations established by the Postal Regulatory Commission.''.

(b) REPEALED SECTIONS.—Sections 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS''.

SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''§ 3631. Applicability; definitions and updates

''(a) APPLICABILITY.—This subchapter shall apply with respect to—

''(1) priority mail;

''(2) expedited mail;

''(3) bulk parcel post;

''(4) bulk international mail; and

''(5) mailgrams;

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

''(b) DEFINITION.—For purposes of this subchapter, the term 'costs attributable', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

''(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

''(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply with respect to any product then currently in the market-dominant category of mail.

''§ 3632. Action of the Governors

''(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

''(b) PROCEDURES.—

''(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

''(2) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

''(A) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission;

''(B) the Postal Rate Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and

''(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

''(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of the enactment of this section.

"§ 3633. Provisions applicable to rates for competitive products

''The Postal Regulatory Commission shall, within 180 days after the date of the enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

''(1) prohibit the subsidization of competitive products by market-dominant products;

''(2) ensure that each competitive product covers its costs attributable; and

''(3) ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.''.

SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

"§ 3641. Market tests of experimental products

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

''(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

''(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

''(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

''(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

''(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3) (relating to provisions applicable to competitive products collectively). Any test that solely affects products currently classified as competitive, or which provides services ancillary to only competitive products, shall be presumed to be in the competitive product category without regard to whether a similar ancillary product exists for market-dominant products.

''(c) NOTICE.—

''(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

''(A) setting out the basis for the Postal Service's determination that the market test is covered by this section; and

''(B) describing the nature and scope of the market test.

''(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

''(d) DURATION.—

''(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

''(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

''(e) DOLLAR-AMOUNT LIMITATION.—

''(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $10,000,000 in any year, subject to paragraph (2) and subsection (g).

''(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed $50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

''(A) the product is likely to benefit the public and meet an expected demand;

''(B) the product is likely to contribute to the financial stability of the Postal Service; and

''(C) the product is not likely to result in unfair or otherwise inappropriate competition.

''(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails to meet 1 or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

''(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a), each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

''(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

''(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a).

"§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail

''(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

''(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

''(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing substantial business to other firms offering similar products. The competitive category of products shall consist of all other products.

''(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term 'product covered by the postal monopoly' means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

''(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

''(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

''(B) the views of those who use the product involved on the appropriateness of the proposed action; and

''(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

''(c) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

''(d) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

''(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission under section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

''(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

''(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

''(1) under this subchapter; or

''(2) by or under any other provision of law.''.

SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW''; and

(2) by striking the heading for subchapter V and inserting the following:

''SUBCHAPTER VI—GENERAL''.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''§ 3651. Annual reports by the Commission

''(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

''(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

''§ 3652. Annual reports to the Commission

''(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

''(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

''(2) which shall, for each market-dominant product provided in such year, provide—

''(A) product information, including mail volumes; and

''(B) measures of the service afforded by the Postal Service in connection with such product, including—

''(i) the level of service (described in terms of speed of delivery and reliability) provided; and

''(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

''(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

''(1) The per-item cost avoided by the Postal Service by virtue of such discount.

''(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

''(3) The per-item contribution made to institutional costs.

''(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements (including service agreements entered into under section 3623) and experimental products offered through market tests under section 3641 in a year, the Postal Service—

''(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

''(2) shall report such data as the Postal Regulatory Commission requires.

''(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

''(e) CONTENT AND FORM OF REPORTS.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

''(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

''(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

''(C) protecting the confidentiality of commercially sensitive information.

''(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

''(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

''(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

''(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(f) CONFIDENTIAL INFORMATION.—

''(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

''(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

''(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

''(1) comprehensive statement under section 2401(e);

''(2) strategic plan under section 2802;

''(3) performance plan under section 2803; and

''(4) program performance reports under section 2804.

''§ 3653. Annual determination of compliance

''(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

''(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

''(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

''(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

''(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3662(c).

''(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described in paragraphs (1) through (3) of subsection (b)) during the year to which such determination relates.''.

SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

''§ 3662. Rate and service complaints

''(a) IN GENERAL.—Interested persons (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believe the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

''(b) PROMPT RESPONSE REQUIRED.—

''(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

''(A) begin proceedings on such complaint; or

''(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

''(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

''(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service

take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

''(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

''§ 3663. Appellate review

''A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

''§ 3664. Enforcement of orders

''The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.''.

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

''CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

''SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

''Sec.
''3621. Applicability; definitions.
''3622. Modern rate regulation.
''3623. Service agreements for market-dominant products.
''[3624. Repealed.]
''[3625. Repealed.]
''3626. Reduced Rates.
''3627. Adjusting free rates.
''[3628. Repealed.]
''3629. Reduced rates for voter registration purposes.

''SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

''3631. Applicability; definitions and updates.
''3632. Action of the Governors.
''3633. Provisions applicable to rates for competitive products.
''3634. Assumed Federal income tax on competitive products.

''SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

''3641. Market tests of experimental products.
''3642. New products and transfers of products between the market-dominant and competitive categories of mail.

''SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

''3651. Annual reports by the Commission.
''3652. Annual reports to the Commission.
''3653. Annual determination of compliance.

''SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

''3661. Postal Services.
''3662. Rate and service complaints.
''3663. Appellate review.
''3664. Enforcement of orders.

''SUBCHAPTER VI—GENERAL

''3681. Reimbursement.
''3682. Size and weight limits.
''3683. Uniform rates for books; films, other materials.
''3684. Limitations.
''3685. Filing of information relating to periodical publications.
''3686. Bonus authority.

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''3691. Establishment of modern service standards.''.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

''SUBCHAPTER VII—MODERN SERVICE STANDARDS

''§ 3691. Establishment of modern service standards

''(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with sections 101 (a) and (b) and 403.

''(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

''(1) To enhance and preserve the value of postal services to both senders and recipients.

''(2) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

''(3) To guarantee Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

''(c) FACTORS.—In establishing or revising such standards, the Postal Regulatory Commission shall take into account—

''(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

''(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

''(3) mail volume and revenues projected for future years;

''(4) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

''(5) the current and projected future cost of serving Postal Service customers;

''(6) the effect of changes in technology, demographics and population distribution on the efficient and reliable operation of the postal delivery system; and

''(7) the policies of this title as well as such other factors as the Commission determines appropriate.''.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENT.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service's processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals; and

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals.

(c) POSTAL FACILITIES.—The Postal Service plan shall include a description of its long-term vision for rationalizing its infrastructure and workforce and how it intends to implement that vision, including—

(1) a strategy for how it intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(2) an update on how postal decisions related to mail changes, security, automation initiatives, worksharing, information technology systems, and other areas will impact network rationalization plans;

(3) a discussion of what impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(4) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternatives discussed in the plan.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) Postal Service employees on delivery routes; and

(4) retail facilities in which overhead costs are shared with private businesses and other government agencies.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation or privatization of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under this section to Congress, the Postal Service shall submit the plan to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan—

(A) is consistent with the continuing obligations of the Postal Service under title 39, United States Code; and

(B) provides for the Postal Service to meet the service standards established under section 3691.

(3) SUBMISSION OF REPORT.—The Postal Service shall submit the report of the Inspector General under this subsection with the plan submitted to Congress under subsection (a).

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

"§ 2011. Provisions relating to competitive products

''(a) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

''(1) costs attributable to competitive products; and

''(2) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

For purposes of this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

''(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

''(1) revenues from competitive products;

''(2) amounts received from obligations issued by the Postal Service under subsection (e);

''(3) interest and dividends earned on investments of the Competitive Products Fund; and

''(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

''(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may invest such amounts as it considers appropriate in accordance with regulations which the Secretary of the Treasury shall prescribe within 12 months after the date of enactment of the Postal Accountability and Enhancement Act.

''(d) The Postal Service may, in its sole discretion, provide that moneys of the Competitive Products Fund be deposited in a Federal Reserve bank or a depository for public funds.

''(e)(1) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of competitive products (as determined under subsection (h) or, for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)), and the revenues and receipts from such products, for the payment of the principal of or interest on such obligations, for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as the Postal Service determines necessary or desirable.

''(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to—

''(A) the establishment of reserve, sinking, and other funds;

''(B) application and use of revenues and receipts of the Competitive Products Fund;

''(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

''(D) such other matters as the Postal Service considers necessary or desirable to enhance the marketability of such obligations.

''(3) Obligations issued by the Postal Service under this subsection—

''(A) may not be purchased by the Secretary of the Treasury;

''(B) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority;

''(C) shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state; and

''(D) notwithstanding the provisions of the Federal Financing Bank Act of 1973 or any other provision of law (except as specifically provided by reference to this subparagraph in a law enacted after this subparagraph takes effect), shall not be eligible for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

''(4)(A) This paragraph applies with respect to the period beginning on the date of the enactment of this paragraph and ending at the close of the 5-year period which begins on the date on which the Postal Service makes its submission under subsection (h)(1).

''(B) During the period described in subparagraph (A), nothing in subparagraph (A) or (D) of paragraph (3) or the last sentence of section 2006(b) shall, with respect to any obligations sought to be issued by the Postal Service under this subsection, be considered to affect such obligations' eligibility for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

''(C) The Federal Financing Bank may elect to purchase such obligations under such terms, including rates of interest, as the Bank and the Postal Service may agree, but at a rate of yield no less than the prevailing yield on outstanding marketable securities of comparable maturity issued by entities with the same credit rating as the rating then most recently obtained by the Postal Service under subparagraph (D), as determined by the Bank.

''(D) In order to be eligible to borrow under this paragraph, the Postal Service shall first obtain a credit rating from a nationally recognized credit rating organization. Such rating—

''(i) shall be determined taking into account only those assets and activities of the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service's assumed taxable income from competitive products); and

''(ii) may, before final rules of the Postal Regulatory Commission under subsection (h) are issued (or deemed to have been issued), be based on the best information available from the Postal Service, including the audited statements required by section 2008(e).

''(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

''(g) A judgment against the Postal Service or the Government of the United States (or settlement of a claim) shall, to the extent that it arises out of activities of the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

''(h)(1) The Postal Service, in consultation with an independent, certified public accounting firm and such other advisors as it considers appropriate, shall develop recommendations regarding—

''(A) the accounting practices and principles that should be followed by the Postal Service with the objectives of identifying the capital and operating costs incurred by the Postal Service in providing competitive products, and preventing the cross-subsidization of such products by market-dominant products; and

''(B) the substantive and procedural rules that should be followed in determining the Postal Service's assumed Federal income tax on competitive products income for any year (within the meaning of section 3634).

Such recommendations shall be submitted to the Postal Regulatory Commission no later than 12 months after the effective date of this section.

''(2)(A) Upon receiving the recommendations of the Postal Service under paragraph (1), the Commission shall give interested parties, including the Postal Service, enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

''(B) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

''(i) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

''(ii) provide for the establishment and application of the substantive and procedural rules described in paragraph (1)(B); and

''(iii) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

Final rules under this subparagraph shall be issued not later than 12 months after the date on which the Postal Service makes its submission to the Commission under paragraph (1) (or by such later date as the Commission and the Postal Service may agree to). If final rules are not issued by the Commission by the deadline under the preceding sentence, the recommendations submitted by the Postal Service under paragraph (1) shall be treated as the final rules. The Commission is authorized to promulgate regulations revising such rules.

''(C) Reports described in subparagraph (B)(iii) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires. The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

''(i) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

''(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

''(D) A copy of each report described in subparagraph (B)(iii) shall also be transmitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

''(i) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses. A copy of its then most recent report under this subsection shall be included with any other submission that it is required to make to the Postal Regulatory Commission under section 3652(g).''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

''2011. Provisions relating to competitive products.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

''(2) 'Competitive Products Fund' means the Postal Service Competitive Products Fund established by section 2011; and''.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking ''Fund,'' and inserting ''Fund and the balance in the Competitive Products Fund,''.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).''.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking ''There'' and inserting ''Except as otherwise provided in section 2011, there''.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (b), by adding at the end the following: ''Nothing in this chapter shall be considered to permit or require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005.''; and

(B) in subsection (c), by inserting ''under section 2005'' before ''shall be obligations''.

SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

''§ 3634. Assumed Federal income tax on competitive products income

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

''(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

''(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

''(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

''(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service's first report to the Postal Regulatory Commission under section 3652(a)—

''(1) compute its assumed Federal income tax on competitive products income for such year; and

''(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

''(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.''.

SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

''§ 404a. Specific limitations

''(a) Except as specifically authorized by law, the Postal Service may not:

''(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

''(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

''(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

''(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

''(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.''.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking ''The'' and inserting ''Subject to the provisions of section 404a, the''.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking ''Without'' and inserting ''Subject to the provisions of section 404a, but otherwise without''.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

''404a. Specific limitations.''.

SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

''(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

''(A) shall be considered to be a 'person', as used in the provisions of law involved; and

''(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

''(2) This subsection applies with respect to—

''(A) the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946' (15 U.S.C. 1051 and following)); and

''(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

''(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

''(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

''(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

''(i) the antitrust laws (as defined in such subsection); and

''(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

''(2) No damages, interest on damages, costs or attorney's fees may be recovered under the antitrust laws (as so defined) from the Postal Service or any officer or employee thereof acting in an official capacity for any conduct with respect to a product in the market-dominant category of mail.

''(3) This subsection shall not apply with respect to conduct occurring before the date of the enactment of this subsection.

''(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

''(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with 1 of the nationally recognized model building codes and with other applicable nationally recognized codes.

''(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

''(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

''(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

''(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

''(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

''(i) a copy of such schedule before construction of the building is begun; and

''(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

''(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

''(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

''(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

''(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

''(A) Subsection (d) or (e) of this section.

''(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

''(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

''(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

''(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

''(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

''(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).''.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking ''Except as provided in section 3628 of this title,'' and inserting ''Except as otherwise provided in this title,''.

TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS FOR GOVERNORS.

(a) QUALIFICATIONS.—

(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking ''(a)'' and inserting ''(a)(1)'' and by striking the fourth sentence and inserting the following: ''The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.''.

(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of the enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of the enactment of this Act.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

''(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.''.

(c) 5-YEAR TERMS.—

(1) IN GENERAL.—Section 202(b) of title 39, United States code, is amended in the first sentence by striking ''9 years'' and inserting ''5 years''.

(2) APPLICABILITY.—

(A) CONTINUATION BY INCUMBENTS.—The amendment made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act and such person may continue to serve the remainder of the applicable term.

(B) VACANCY BY INCUMBENT BEFORE 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served less than 5 years of that term, the resulting vacancy in office shall be treated as a vacancy in a 5-year term.

(C) VACANCY BY INCUMBENT AFTER 5 YEARS OF SERVICE.—If a person who is serving as a Governor of the United States Postal Service on the date of enactment of this Act resigns, is removed, or dies before the expiration of the 9-year term of that Governor, and that Governor has served 5 years or more of that term, that term shall be deemed to have been a 5-year term beginning on its commencement date for purposes of determining vacancies in office. Any appointment to the vacant office shall be for a 5-year term beginning at the end of the original 9-year term determined without regard to the deeming under the preceding sentence. Nothing in this subparagraph shall be construed to affect any action or authority of any Governor or the Board of Governors during any portion of a 9-year term deemed to be 5-year term under this subparagraph.

(d) TERM LIMITATION.—

(1) IN GENERAL.—Section 202(b) of title 39, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)''; and

(B) by adding at the end the following:

''(2) No person may serve more than 3 terms as a Governor.''.

(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving on that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking ''title.'' and inserting ''title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.''.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

(c) AMOUNTS WHICH MAY BE PLEDGED.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking ''such obligations,'' and inserting ''obligations issued by the Postal Service under this section,''.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking ''(b)'' and inserting ''(b)(1)'', and by adding at the end the following:

''(2) Notwithstanding any other provision of this section—

''(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

''(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.''.

SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A letter may also be carried out of the mails when—

''(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

''(2) the letter weighs at least 12½ ounces; or

''(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that purport to permit private carriage by suspension of the operation of this section (as then in effect).

''(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of

title 39, United States Code (as amended by section 202) take effect.

SEC. 504. RULEMAKING AUTHORITY.

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

''(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title;''.

SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.

(a) LABOR DISPUTES.—Section 1207 of title 39, United States Code, is amended to read as follows:

''§ 1207. Labor disputes

''(a) If there is a collective-bargaining agreement in effect, no party to such agreement shall terminate or modify such agreement unless the party desiring such termination or modification serves written notice upon the other party to the agreement of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the time it is proposed to make such termination or modification. The party serving such notice shall notify the Federal Mediation and Conciliation Service of the existence of a dispute within 45 days of such notice, if no agreement has been reached by that time.

''(b) If the parties fail to reach agreement or to adopt a procedure providing for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification, the Director of the Federal Mediation and Conciliation Service shall within 10 days appoint a mediator of nationwide reputation and professional stature, and who is also a member of the National Academy of Arbitrators. The parties shall cooperate with the mediator in an effort to reach an agreement and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

''(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under subsection (a) of this section, or if the parties decide upon arbitration but do not agree upon the procedures therefore, an arbitration board shall be established consisting of 3 members, 1 of whom shall be selected by the Postal Service, 1 by the bargaining representative of the employees, and the third by the 2 thus selected. If either of the parties fails to select a member, or if the members chosen by the parties fail to agree on the third person within 5 days after their first meeting, the selection shall be made from a list of names provided by the Director. This list shall consist of not less then 9 names of arbitrators of nationwide reputation and professional nature, who are also members of the National Academy of Arbitrators, and whom the Director has determined are available and willing to serve.

''(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

''(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and the bargaining representative.

''(d) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach the agreement within 90 days of the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days of the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.''.

(b) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Except as otherwise provided by the amendment made by subsection (a), nothing in this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, or any collective bargaining agreement.

(c) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

TITLE VI—ENHANCED REGULATORY COMMISSION

SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

''CHAPTER 5—POSTAL REGULATORY COMMISSION

''Sec.
''501. Establishment.
''502. Commissioners.
''503. Rules; regulations; procedures.
''504. Administration.

''§ 501. Establishment

''The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

''§ 502. Commissioners

''(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

''(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

''(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

''(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

''(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

''(f) The Commissioners shall serve for terms of 6 years.'';

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602; and

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)).

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of the enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

''5. Postal Regulatory Commission .. 501''

SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

''(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

''(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title—

''(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

''(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

''(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

''(4) For purposes of this subsection, the term 'covered person' means an officer, employee, agent, or contractor of the Postal Service.

''(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f),

or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

''(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

''(A) use such information for purposes other than the purposes for which it is supplied; or

''(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

''(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

''(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.''.

SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

''(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.''.

(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: ''The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.''.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is amended by striking the first sentence and inserting the following: ''The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503 and 504 (as so redesignated by section 601), 1001 and 1002, by striking ''Postal Rate Commission'' each place it appears and inserting ''Postal Regulatory Commission'';

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking ''Postal Rate Office'' and inserting ''Postal Regulatory Commission''.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Postal Rate Commission'' and inserting ''Postal Regulatory Commission''.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

SEC. 605. FINANCIAL TRANSPARENCY.

Section 101 of title 39, United States Code, is amended—

(1) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d) As an independent establishment of the executive branch of the Government of the United States, the Postal Service shall be subject to a high degree of transparency to ensure fair treatment of customers of the Postal Service's market-dominant products and companies competing with the Postal Service's competitive products.''.

TITLE VII—EVALUATIONS

SEC. 701. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 3 years, submit a report to the President and Congress concerning—

(1) the operation of the amendments made by this Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review the report and to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL SERVICE.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress on universal postal service and the postal monopoly in the United States (in this section referred to as ''universal service and the postal monopoly''), including the monopoly on the delivery of mail and on access to mailboxes.

(2) CONTENTS.—The report under this subsection shall include—

(A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;

(B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;

(C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and

(D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

(1) any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service;

(2) with respect to each recommended change described under paragraph (1)—

(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

(B) an analysis of the likely benefit of the current postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, including estimates of the financial benefit of the postal monopoly to the extent practicable, under current law; and

(3) such additional topics and recommendations as the Commission considers appropriate, with estimated effects of the recommendations on the service, financial condition, rates, and the security of mail provided by the Postal Service.

SEC. 703. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, and to the Postal Regulatory Commission, within 1 year after the date of the enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to the United States Postal Service with respect to the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end, and in the interim, to account under section 3633 of title 39, United States Code (as added by this Act), for the net economic advantages provided by those laws.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

(d) COMPETITIVE PRODUCT REGULATION.—The Postal Regulatory Commission shall take into account the recommendations of the Federal Trade Commission in promulgating or revising the regulations required under section 3633 of title 39, United States Code.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

SEC. 801. SHORT TITLE.

This title may be cited as the ''Postal Civil Service Retirement and Health Benefits Funding Amendments of 2004''.

SEC. 802. CIVIL SERVICE RETIREMENT SYSTEM.

(a) IN GENERAL.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334(a)(1)(B), by striking clause (ii) and inserting the following:

''(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.''; and

(2) by amending section 8348(h) to read as follows:

''(h)(1) In this subsection, the term 'Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—

''(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

''(B) the sum of—

''(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

''(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(2)(A) Not later than June 30, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(b) CREDIT ALLOWED FOR MILITARY SERVICE.—In the application of section 8348(g)(2) of title 5, United States Code, for the fiscal year 2006, the Office of Personnel Management shall include, in addition to the amount otherwise computed under that paragraph, the amounts that would have been included for the fiscal years 2003 through 2005 with respect to credit for military service of former employees of the United States Postal Service as though the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) had not been enacted, and the Secretary of the Treasury shall make the required transfer to the Civil Service Retirement and Disability Fund based on that amount.

SEC. 803. HEALTH INSURANCE.

(a) IN GENERAL.—Chapter 89 of title 5, United States Code, is amended—

(1) in section 8906(g)(2)(A), by striking ''shall be paid by the United States Postal Service.'' and inserting ''shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.''; and

(2) by inserting after section 8909 the following:

''§ 8909a. Postal Service Retiree Health Benefit Fund

''(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

''(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

''(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

''(d)(1) Not later than December 31, 2006, and by December 31 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

''(2)(A) Not later than December 31, 2006, the Office shall compute, and by December 31 of each succeeding year, the Office shall recompute the difference between—

''(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

''(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

''(II) the net present value computed under paragraph (1).

''(B) Not later than December 31, 2006, the Office shall compute, and by December 31 of each succeeding year shall recompute, an amortization schedule including a series of annual installments which provide for the liquidation by January 31, 2046, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

''(3) Not later than January 31, 2007, and by January 31 of each succeeding year, the United States Postal Service shall pay into such Fund—

''(A) the net present value computed under paragraph (1); and

''(B) the annual installment computed under paragraph (2)(B).

''(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

''(5) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8909 the following:

''8909a. Postal Service Retiree Health Benefits Fund.''.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Civil Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) shall take effect on the

first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking ''An employee'' and inserting ''(a) An employee other than a Postal Service employee''; and

(2) by adding at the end the following:

''(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability. A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

''(1) without a break in time, except as provided under section 8117;''.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8105 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of the Postal Accountability and Enhancement Act, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for total disability is converted to 50 percent of the monthly pay of the employee on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''This section applies to a Postal Service employee, except as provided under subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In this subsection, the term 'retirement age' has the meaning given under section 216(*l*)(1) of the Social Security Act (42 U.S.C. 416(*l*)(1)).

''(2) Notwithstanding any other provision of law, for any injury occurring on or after the date of enactment of this subsection, and for any new claim for a period of disability commencing on or after that date, the compensation entitlement for partial disability is converted to 50 percent of the difference between the monthly pay of an employee and the monthly wage earning capacity of the employee after the beginning of partial disability on the later of—

''(A) the date on which the injured employee reaches retirement age; or

''(B) 1 year after the employee begins receiving compensation.''.

UNITED STATES GENERAL ACCOUNTING OFFICE,
Washington, DC, February 6, 2004.

Hon. SUSAN M. COLLINS,
Chairman, Committee on Governmental Affairs, United States Senate.

Need for Comprehensive Postal Reform

DEAR CHAIRMAN COLLINS: This letter responds to your request for our views on the need for postal reform and is based upon our prior testimonies related to this issue. In summary, we believe that comprehensive postal reform is urgently needed. The ability of the Service to remain financially viable is at risk because its current business model—which relies on mail volume growth to cover the costs of its expanding delivery network—is not well aligned with 21st century realities. Since we placed the Postal Service's transformation efforts and financial outlook on our High-Risk List in April 2001, I have testified on several occasions about the governance, financial, operational, and human capital challenges that threaten the Service's ability to carry out its mission. If not effectively addressed in a timely manner, these challenges serve to threaten the Service's ability to remain self-supporting while providing affordable, high-quality and universal postal services to all Americans.

The following key trends serve to reinforce our view that enactment of postal reform legislation is needed:

Declining mail volume: Total mail volume declined in fiscal year 2003 for the third year in a row—a historical first for the Service, which has depended on rising mail volume to help cover rising costs and mitigate rate increases. First-Class Mail volume declined by a record 3.2 percent in fiscal year 2003 and is projected to decline annually for the foreseeable future. Some of this decline is due to technology advances (e.g. E-mail, digital phones, faxes, and electronic bill payments) that are likely to increase in the future. This trend is particularly significant because First-Class Mail covers more than two-thirds of the Service's institutional costs.

Changes in the mail mix: The Service's mail mix is changing with declining volume for high-margin products, such as First-Class Mail, and increasing volume of lower-margin products, such as some types of Standard Mail. These changes reduce revenues available to cover the Service's institutional costs.

Increased competition from private delivery companies: Private delivery companies dominate the market for parcels greater than 2 pounds and appear to be making inroads into the market for small parcels. Priority Mail volume fell 13.9 percent in fiscal year 2003 and over the last 3 years has declined nearly 30 percent. Once a highly profitable growth product for the Service, Priority Mail volume is declining as the highly competitive parcel market turns to lower-priced ground shipment alternatives. Express Mail volume is declining for the same reason. In addition, United Parcel Service (UPS) and FedEx have established national retail networks through UPS's acquisition of MailBoxes Etc., now called UPS Stores, and FedEx's recent acquisition of Kinko's.

Subpar revenue growth: The Service's revenues are budgeted for zero growth in fiscal year 2004, which would be the first year since postal reorganization that postal revenues have failed to increase. However, as the Service has recognized, even the zero-growth target will be challenging. In the absence of revenue growth generated by increasing volume, the Service must rely more heavily on rate increases to cover rising costs and help finance capital investment needs.

Declining capital investment: The Service's capital cash outlays declined from $3.3 billion in fiscal year 2000 to $1.3 billion in fiscal year 2003, which was the lowest level since fiscal year 1986, and far below the level of the late 1990s, when the Service spent more than $3 billion annually. Capital cash outlays are budgeted to increase to $2.4 billion in fiscal year 2004, but this level may not be sufficient to enable the Service to fully fund its capital investment needs. In the longer term, it is unclear what the Service's needs will be to maintain and modernize its physical infrastructure, as well as how these needs will be funded.

Renewed difficulties in substantially improving postal productivity: The Service's productivity increased by 1.8 percent in fiscal year 2003 but is estimated to increase by only 0.4 percent in fiscal year 2004. In the absence of mail volume growth, substantial productivity increases will be required to help cover cost increases generated by rising wages and benefit costs and to mitigate rate increases.

Significant financial liabilities and obligations: Despite the passage of legislation that reduced the Service's pension obligations, the Service has about $88 billion to $98 billion in liabilities and obligations that include $47 billion to $57 billion in unfunded retiree health benefits. Under the current pay-as-you-go system, the Service may have difficulty financing its retiree health benefits obligation in the future if mail volume trends continue to impact revenues while costs in this area continue to rise. The Service has recently proposed two options to Congress, so the Service could prefund this obligation to the extent that it is financially able.

Uncertain funding for emergency preparedness: The Service requested $350 million for emergency preparedness for fiscal year 2004, which it did not receive, and $779 million for fiscal year 2005. If the money is not appropriated, funding for this purpose may have to be built into postal rates.

Challenges to achieve sufficient cost cutting: The Service achieved additional cost cutting to compensate for below-budget revenues in fiscal year 2003. Despite this progress, in the longer term it is unclear whether continued cost-cutting efforts can offset declines in First-Class Mail volume without impacting the quality of service.

Although we have discussed numerous actions that the Postal Service can take within its existing authority to improve its overall efficiency and effectiveness, we do not believe that incremental steps toward postal transformation can resolve the fundamental and systemic issues associated with the Service's current business model. To avoid the risk of a significant taxpayer bailout or dramatic postal rate increases, we believe that Congress should enact comprehensive postal reform legislation that includes the Service's overall statutory framework, resolution of issues regarding the Service's pension and retiree health benefits obligations, and whether there is a continued need for an escrow account.

The key areas of the Service's statutory framework that need to be addressed include:

Clarifying the Service's mission and role by defining the scope of universal service and the postal monopoly and by clarifying the role of the Service in regard to competition and its regulatory functions.

Enhancing governance, transparency, and accountability by delineating public policy, operational, and regulatory responsibilities; by ensuring managerial accountability through a strong, well-qualified corporate-style board that holds its officers responsible and accountable for achieving real results; and by defining appropriate reporting mechanisms to enhance the Service's transparency and accountability for financial and performance results.

Improving flexibilities and oversight by balancing increased flexibility for the Service—through streamlining the rate-setting process and allowing a certain amount of retained earnings—with appropriate oversight by a independent regulatory body to protect postal customers against undue discrimination, to restrict cross-subsidies, and to ensure due process. In addition, the Service

needs additional flexibility to rationalize its infrastructure and reshape its workforce. Any such additional flexibility should be accompanied by appropriate safeguards to prevent abuse along with enhanced transparency and accountability mechanisms.

Making needed human capital reforms such as (1) determining the Service's responsibility for pension costs related to military service, funding retiree health benefits, and determining what action to take on the escrow account established in recent pension legislation; (2) deciding whether postal workers' compensation benefits should be on par with those in the private sector; and (3) clarifying pay comparability standards.

We believe that Congress now has a rare opportunity to assure the Service's long-term financial viability through comprehensive postal reform legislation that addresses the Service's key structural and systemic deficiencies, its unfunded obligations, including its retiree health benefits obligation, and the escrow requirement. Key legislative and administrative actions in connection with transforming the Postal Service can also serve as positive examples for other key government transformation efforts.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. At that time, we will provide copies to interested congressional committees. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

For additional information about this report, please contact Mark L. Goldstein, Director, Physical Infrastructure Issues at (202) 512–2834 or at goldsteinm@gao.gov. Please contact me if I can be of any further assistance to help make comprehensive postal reform a reality.

Sincerely yours,

DAVID M. WALKER,
Comptroller General of the United States.

Mr. CARPER. Mr. President, I rise today to join Senator COLLINS in introducing the Postal Accountability and Enhancement Act of 2004, legislation that makes the reforms necessary for the Postal Service to thrive in the 21st Century and to better serve the American people.

This bill is based in part on S. 1285, the comprehensive postal reform legislation I introduced nearly a year ago. S. 1285 was itself based on ten years of work on postal reform in the House of Representatives, led by Congressman, JOHN MCHUGH from New York. It is also inspired by the work of the postal commission formed by President Bush last year, called the President's Commission on the United States Postal Service, which studied all aspects of the Postal Service and made recommendations on how it could be modernized.

When I rose to introduce S. 1285 last June, the House Government Reform Committee had only recently failed to report out the latest version of the McHugh reform bill and the President's Commission was only weeks away from issuing its final recommendations. Along with a number of other observers, I feared that the McHugh bill's fate might have spelled the end of postal reform for some time. I also feared that the Commission's recommendations would focus on some of the more extreme reform proposals floated in the past, such as postal privatization. While the Commission did make a handful of recommendations that I believe go too far, I was pleased to see that its work largely mirrored the provisions in S. 1285 and the various House reform bills we have seen in recent years.

I'd like to begin, then, by thanking Congressman MCHUGH and his colleagues on the House Government Reform Committee for its visionary leadership on postal reform over the years. I'd also like to thank the members of the President's Commission, especially co-chairs James A. Johnson and Harry J. Pearce, for their service. Postal reform is a difficult issue. It is also a vitally important issue for every American who depends on the Postal Service every day. Their willingness to listen to all sides of the debate and to craft what is, for the most part, a set of balanced reform recommendations is admired and appreciated. The work they have done has brought to light a number of the key issues facing the Postal Service and has made it possible to get a bipartisan postal reform bill signed into law this year.

Senator COLLINS also deserves our thanks and applause for her hard work on this issue. Under her leadership, the Governmental Affairs Committee held a series of eight excellent hearings on postal reform over the past few months. She and I and our staffs have also held countless meetings with the various stakeholders for more than a year now. Everyone with an interest in the Postal Service was given an opportunity to have their say, and I think that's reflected in the balanced bill we're introducing today.

It's always a pleasure working with Senator COLLINS. We've worked together on a number of issues over the years—from welfare reform to homeland security and the future of passenger rail in our country. Her dedication to bipartisanship, and simply doing the right thing, is rare these days. It's a honor to be introducing this historic bill with her today.

Let me also express to Senator LIEBERMAN, our Committee's Ranking Member, my appreciation for giving me the opportunity as a freshman Senator to work so closely on one of the most important issues to come before Governmental Affairs. The support he and his staff have offered us throughout this process has been invaluable.

Some of our colleagues may wonder why we need postal reform. They probably receive few complaints about the service their constituents get from the Postal Service and its employees. In fact, a survey conducted by the President's Commission indicated that the American people like the Postal Service just the way it is. We must keep in mind, however, that, despite the fact that the mailing industry, and the economy as a whole, have changed radically over the years, the Postal Service has, for the most part, remained unchanged for more than three decades now.

In the early 1970s, Senator STEVENS and others led the effort in the Senate to create the Postal Service out of the failing Post Office Department. At the time, the Post Office Department received about 20 percent of its revenue from taxpayer subsidies. Service was suffering and there was little money available to expand.

By all accounts, the product of Senator STEVENS' labors, the Postal Reorganization Act signed into law by President Nixon in 1971, has been a phenomenal success. The Postal Service today receives virtually no taxpayer support and the service its hundreds of thousands of employees provide to every American, every day is second to none. More than thirty years after its birth, the Postal Service now delivers to 141 million addresses each day and is the anchor of a $900 billion per year mailing industry.

As we celebrate the Postal Service's successes, however, we need to be thinking about what needs to be done to make them just as successful in the years to come. When the Postal Service started out in 1971, no one had access to fax machines, cell phones and pagers. No one imagined that we would ever enjoy conveniences like e-mail and electronic bill payment. Most of the mail I receive from my constituents these days arrives via fax and e-mail instead of hard copy mail, a marked change from my days in the House and even from my more recent days as Governor of Delaware.

This continuing electronic diversion of mail, coupled with economic recession and terrorism, has made for some rough going at the Postal Service in recent years. In 2001, as Postmaster General Potter came onboard, the Postal Service was projecting its third consecutive year of deficits. They lost $199 million in fiscal year 2000 and $1.68 billion in fiscal year 2001. They were projecting losses of up to $4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend $4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives. The Postal Service was also perilously close to its $15 billion debt ceiling and had been forced to raise rates three times in less than two years in order to pay for its operations, further eroding mail volume.

Good things have happened since 2001, though. First, General Potter has led a commendable effort to make the Postal Service more efficient. Billions of dollars in costs and have been taken out of the system. Thousands of positions have been eliminated through attrition. Successful automation programs have yielded great benefits. Perhaps more dramatically, the Postal Service also learned that an unfunded pension liability they once believed was an high as $32 billion was actually

$5 billion. Senator COLLINS and I responded with legislation, the Postal Civil Service Retirement System Funding Reform Act, signed into law by President Bush last year, which cuts the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly $3 billion. This has freed up money for debt reduction and prevented the need for another rate increase until at least 2006.

Aggressive cost cutting and a lower pension payment, then, have put off the emergency that would have come if the Postal Service had reached its debt limit. But cost cutting can only go so far and will not solve the Postal Service's long-term challenges. These long-term challenges were laid out in stark detail earlier this year when Postmaster General Potter and Postal Board of Governors Chairman David Fineman testified before the House Government Reform Committee's Special Panel on Postal Reform. Chairman Fineman pointed out then that the total volume of mail delivered by the Postal Service has declined by more than 5 billion pieces since 2000. Over the same period, the number of homes and businesses the Postal Service delivers to have increased by more than 5 million. First Class mail, the largest contributor to the Postal Service's bottom line, is leading the decline in volume. Some of those disappearing First Class letters are being replaced by advertising mail, which earns significantly less. Many First Class letters have likely been lost for good to the fax machine, e-mail and electronic bill pay.

Despite electronic diversion, the Postal Service continues to add about 1.7 million new delivery points each year, creating the need for thousands of new routes and thousands of new letter carriers to work them. In addition, faster-growing parts of the country will need new or expanded postal facilities in the coming years. As more and more customers turn to electronic forms of communication, letter carriers are bringing fewer and fewer pieces of mail to each address they serve. The rate increases that will be needed to maintain the Postal Service's current infrastructure, finance retirement obligations to its current employees, pay for new letter carriers and build facilities in growing part of the country will only further erode mail volume.

As I've mentioned, the Postal Service has been trying to improve on its own. They are making progress, but there is only so much they can do. Even if the economy begins to recover more quickly and the Postal Service begins to see volume and revenues improve, we will still need to make fundamental changes in the way the Postal Service operates in order to make them as successful in the 21st Century as they were in the 20th Century.

This is where the Postal Accountability and Enhancement Act comes in. First, our bill begins the process of developing a modern rate system for pricing Postal Service products. The new system, to be developed by a strengthened Postal Rate Commission, renamed the Postal Regulatory Commission, would allow retained earnings, provide the Postal Service significantly more flexibility in setting prices and streamline today's burdensome ratemaking process. To provide stability, predictability and fairness for the Postal Service's customers, rates would remain within an inflation-based cap to be developed by the Commission.

In addition, the new rate system will allow the Postal Service to negotiate service agreements with individual mailers. The Postal Rate Commission in recent years did approve a service agreement the Postal Service negotiated with Capital One, but the process for considering the agreement took almost a year and the Postal Service's authority to enter into such agreements is not clearly spelled out in law. The Postal Accountability and Enhancement Act allows the Postal Service to enter into agreements if the revenue generated from them covers all costs attributable to the Postal Service and will result in no less contribution to the institutional costs of the Postal Service than would have been generated had the agreement not been entered into. No agreement would be permitted if it resulted in higher rates for any other mailer or prohibited any similarly situated mailer from negotiating a similar agreement.

The new rate system also includes some important safeguards meant to prohibit worksharing discounts that exceed costs avoided by the Postal Service. Now, worksharing on the part of mailers has been an important part of the productivity improvements at the Postal Service in recent years. Mailers should get credit in the form of a discount for work they do to their mail, such as presorting and barcoding or transporting mail deeper into the postal system. The discounts they receive, however, should have some rational relation to the benefit the Postal Service gets from the worksharing. The Postal Service should continue to be free to use discounts to incent mailers to be more efficient. They also should not be forced to impose large rate increases on workshared mail in order to comply with a strict prohibition on discounts in excess of costs avoided. Discounts in excess of costs avoided, however, should be temporary and reasonable. Our worksharing language strikes a good balance in that it prohibits the Postal Service from outsourcing work that could be performed cheaper in house while maintaining pricing flexibility.

The second major provision in the Postal Accountability and Enhancement Act requires the Postal Regulatory Commission to set strong service standards for the Postal Service's Market Dominant products, a category made up mostly of those products, like First Class mail, that are part of the postal monopoly. The Postal Service currently sets its own service standards, which allows them to pursue efforts like the elimination of Saturday delivery, a proposal floated three years ago. The new standards set by the Commission will aim to improve service and will be used by the Postal Service to establish performance goals, rationalize its physical infrastructure and streamline its workforce.

In a rate system featuring rate caps, as any system established under the Postal Accountability and Enhancement Act must, I believe it is especially important that the Regulatory Commission, not the Postal Service, be charged with determining the appropriate level of service postal customers should receive. This will prevent the Postal Service form cutting service as a way to keep rates below the cap. The Postal Service should be forced to look to productivity enhancements, not poorer quality service, to find savings.

Third, the Postal Accountability and Enhancement Act ensures that the Postal Service competes fairly. The bill prohibits the Postal Service from issuing anti-competitive regulations. It also subjects the Postal Service to state zoning, planning and land use laws, requires them to pay an assumed Federal income tax on products like packages and Express Mail that private firms also offer and requires that these products as a whole pay their share of the Postal Service's institutional costs. The Federal Trade Commission will further study any additional legal benefits the Postal Service enjoys that its private sector competitors do not. The Regulatory Commission will then find a way to use the rate system to level the playing field.

Fourth, the Postal Accountability and Enhancement Act improves Postal Service accountability, mostly by strengthening oversight. Qualifications for membership on the Regulatory Commission would be stronger than those for the Rate Commission so that Commissioners would have a background in finance or economics. Commissioners would also have the power to demand information from the Postal Service, including by subpoena, and have the power to punish them for violating rate and service regulations. In addition, the Commission will make an annual determination as to whether the Postal Service is in compliance with rate law and meeting service standards and will have the power to punish them for any transgressions.

Fifth, the Postal Accountability and Enhancement Act revises two provisions from the Postal Civil Service Retirement System Funding Reform Act in an effort to shore up the Postal Service's finances in the years to come. As our colleagues may be aware, that bill requires the Postal Service, beginning in 2006, to deposit any savings it enjoys by virtue of lower pension payments into an escrow account. In this bill, we eliminate that requirement in

order to allow the Postal Service to spend the money that would have gone into escrow according to the plan submitted by the Postal Service in September of last year, which called for using most of the savings to begin paying down the Postal Service's $50 billion retiree health obligation. The bill Senator COLLINS and I are introducing today also reverses the provision in the Postal Civil Service Retirement System Funding Reform Act that made the Postal Service the only Federal agency shouldered with the burden of paying the additional pension benefits owed to their employees by virtue of past military service.

Finally, and most importantly, the bill preserves universal service and the postal monopoly and forces the Postal Service to concentrate solely on what it does best—processing and delivering the mail to all Americans. Our bill limits the Postal Service, for the first time, to providing ''postal services,'' meaning they would be prohibited from engaging in other lines of business, such as e-commerce, that draw time and resources away from letter and package delivery. It also explicitly preserves the requirement that the Postal Service ''bind the Nation together through the mail'' and serve all parts of the country, urban, suburban and rural, in a non-discriminatory fashion. Any service standards established by the Postal Regulatory Commission will continue to ensure delivery to every address, every day. In addition, the bill maintains the prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and urban customers continue to enjoy full access to retail postal services.

The President's Commission, while calling for the preservation of universal service and the postal monopoly, opened the door for future changes by recommending that the Regulatory Commission be given the authority to make them themselves. While I believe that Congress will find it difficult to roll back universal service or limit the postal monopoly in the future if it is deemed necessary to do so, I believe the recommendation from the President's Commission would give too much power to a relatively small, political body. In order to keep Congress focused on the Postal Service's future, however, our bill asks the Regulatory Commission to report every three years on the state of universal service and the postal monopoly. When necessary, they would also make recommendations to Congress when they feel like one is necessary.

We have a once-in-a-generation opportunity this year to enact meaningful postal reform legislation. The House Government Reform Committee marked up its version of the Postal Accountability and Enhancement Act last week by a unanimous 40–0 vote. The President has indicated his support for a bill, releasing a set of postal reform principles at the end of last year calling on Congress to make some key changes to the way the Postal Service operates. We now have everyone from the National Association of Letter Carriers to former opponents of reform like UPS supporting our efforts, as well as those in the House. I know there are still some concerns about certain provisions in our bill, but I look forward to working with Senator COLLINS and each of our colleagues in the coming weeks to continue this momentum and get a bill through Congress that can be signed into law this year.

It's amazing to me to think that the Postal Service, something Senator STEVENS was able to put together at the beginning of his career, could have lasted so long and had such an impact on every American. I'm hopeful that the model Senator COLLINS and I have set out in this bill today can last at least that long and have just as positive an impact on our nation and our economy as the Postal Service did so many years ago.

Mr. STEVENS. Mr. President, I am pleased to join Chairman COLLINS and Senator CARPER as an original cosponsor of S. 2468, the Postal Accountability and Enhancement Act. In 2002, the President formed a Commission to evaluate the operations of the United States Postal Service. Earlier this year, the President's Commission issued a comprehensive report filled with suggestions on how to improve the Postal Service. Senator COLLINS became actively engaged on the issue of postal reform and held a series of hearing this year on postal reform. This bill is the product of the postal reform hearings held before the Government Affairs Committee.

I expect I will have suggestions on this legislation as the bill moves through the legislative process. However, I support Senator COLLINS's commitment to postal reform. I look forward to working with her and Senator CARPER in Committee and on the Senate floor to ensure the success of this legislation.

Mr. AKAKA. Mr. President, I am pleased to join with Senator COLLINS and Senator CARPER, who today have introduced the Postal Accountability and Enhancement Act. I commend both of my Governmental Affairs Committee colleagues for their leadership in crafting a postal reform bill.

For some time, the General Accounting Office has warned that the long-term financial outlook for the U.S. Postal Service was at risk without significant changes. At the request of the Governmental Affairs Committee, the U.S. Postal Service developed a transformation plan that offered its vision for the future. Late in 2002, a Presidential Postal Commission was convened, which issued a number of recommendations in 2003.

Over the past 6 months, I have participated in a series of hearings chaired by Senator COLLINS which examined the recommendations of the Postal Commission. I commend Senator COLLINS for guaranteeing that the divergent views were seriously considered throughout our eight hearings. I also wish to commend my colleague from Delaware, Senator CARPER, for his strong and early commitment to postal reform.

I support modernizing the U.S. Postal Service to ensure that its mission of providing 6 days a week universal service at an affordable rate is preserved. Although the legislation introduced today responds to many of the recommendations and concerns we heard in our hearings, it wisely rejects others. However, like most bills, there are provisions that trouble me. I am particularly concerned with the sections relating to worksharing and changes to the Federal Employees' Compensation Act (FECA). I will continue to work with the bill's sponsors to address these provisions, which I believe do not promote cost savings for the Postal Service or fairness for postal workers.

I look forward to working with my colleagues on this legislation to guarantee that the U.S. Postal Service will be in position to best serve the public in the 21st century, be a model employer, and protect the retirement future of its employees.

By Mr. BOND (for himself, Mr. HARKIN, Mr. DURBIN, Mr. TALENT, Mr. GRASSLEY, Mr. COLEMAN, Mr. FITZGERALD, and Mr. PRYOR):

S. 2470. A bill to enhance navigation capacity improvements and the ecosystem restoration plan for the Upper Mississippi River and Illinois Waterway System; to the Committee on Environment and Public Works.

Mr. BOND. Mr. President, today, I join my colleagues, Senators HARKIN, DURBIN, TALENT, GRASSLEY, COLEMAN, FITZGERALD and PRYOR to introduce bipartisan legislation to provide transportation efficiency and environmental sustainability on the Mississippi and Illinois Rivers.

As the world becomes more competitive, we must also. In the heartland, the efficiency, reliability, capacity, and safety of our transportation options are critical—often make-or-break. As we look 50 years into the future, and as we anticipate and try to promote commercial and economic growth, we have to ask ourselves a fundamental question: should we have a system that permits and promotes growth, or should we be satisfied to restrict our growth to the confines of a transportation straight jacket designed not for 2050, but for 1980?

Further, we must ask ourselves if dramatic investments should be made to address environmental problems and opportunities that exist on these great waterways.

In both cases, the answer is, ''Of course we should modernize and improve.''

We have a system which is in environmental and economic decline. Jobs and markets and the availability of habitat for fish and wildlife are at stake.

We cannot be for increased trade, commercial growth, and job creation without supporting the basic transportation infrastructure necessary to move goods from buyers to sellers. New efficiency helps give our producers an edge that can make or break opportunities in the international marketplace.

Seventy years ago, some argued that a transportation system on the Mississippi River was not justified. Congress decided that its role was not to try to predict the future but to shape the future and decided to invest in a system despite the naysayers. Over 80 million tons per year later, it is clear that the decision was wise.

Now, that system that was designed for paddlewheel boats and to last 50 years is nearly 70 years old and we must make decisions that will shape the next 50–70 years. As we look ahead, we must promote growth policies that help Americans who produce and employ.

We must work for policies that promote economic growth, job creation, and environmental sustainability. We know that trade and economic growth can be fostered or it can be discouraged by policies and other realities which include the quality of our transportation infrastructure.

So in 20 and 30 and 40 and 50 years, where will the growth in transportation occur to accommodate the growth in demand for commercial shipping? The Department of Transportation suggests that congestion on our roads and rails will double in the next quarter century. The fact of the matter is that the great untapped capacity is on our water.

This is good news because water transportation is efficient, it is safe, it conserves fuel, and it protects the air and the environment. One medium-sized barge tow can carry the freight of 870 trucks. That fact alone speaks volumes to the benefits of water. If we can, would we rather have 870 diesel engines on the roads of downtown St. Louis, or two diesel engines on the water watching the traffic buildup and smog glide by?

The veteran Chief Economist at USDA testified that transportation efficiency and the ability of farmers to win markets at higher prices are ''fundamentally related.'' He predicts that corn exports over the next 10 years will rise 45 percent, 70 percent of which will travel down the Mississippi.

Over the past 35 years, waterborne commerce on the Upper Mississippi River has more than tripled. The system currently carries 60 percent of our Nation's corn exports and 45 percent of our Nation's soybean exports and it does so at two-thirds the cost of rail—when rail is available.

Over the previous 11 years, the U.S. Army Corps of Engineers have spent $70 million doing a six year study. During that period, there have been 35 meetings of the Governors Liaison Committee, 28 meetings on the Economic Coordinating Committee, among the States along the Upper Mississippi and Illinois waterways, and there have been 44 meetings of the Navigation and Environmental Coordination Committee. Additionally, there have been 130 briefings for special interest groups, 24 newsletters. There have been six sets of public meetings in 46 locations with over 4,000 people in attendance. To say the least, this has been a very long, very transparent, and very representative process.

However, while we have been studying, our competitors have been building. Given the extraordinary delay so far, and given the reality that large scale construction takes not weeks or months, but decades, further delay is no longer an option.

This is why I am leased to be joined by a bipartisan group of Senators who agree that we must improve the efficiency and the environmental sustainability of our great resources. Today, we introduce legislation to adopt the initial recommendations of the Corps of Engineers and their public and private partners to increase the lock capacity on the Upper Mississippi and Illinois Rivers and the begin an ambitious program of ecosystem restoration.

This plan gets the Corps back in the business of building the future, rather than just haggling about predicting the future. More will need to be done later on ecosystem and lock expansions further upstream, but this begins the improvement schedule underway.

In this legislation, we authorize $1.46 billion for ecosystem restoration—two times the federal share of lock capacity expansion which we authorize on locks 20–25 on the Mississippi River and Peoria and LaGrange on the Illinois. The new 1,200 foot locks on the Mississippi River will provide equal capacity in the bottleneck region below the 1,200 foot lock 19 at Keokuk above locks 26 and 27 near St. Louis. Half the cost of the new locks will be paid for by private users who pay into the Inland Waterways Trust fund. Additional funds will be provided for mitigation and small scale and nonstructural measures to improve efficiency.

As we look ahead, the locks at 14–18 will have to be addressed as will further investments to ecosystem restoration efforts.

This effort is supported by a broad-based group of the States, farm groups, shippers, labor, and those who pay taxes into the Trust Fund for improvements.

I thank my colleagues for their work together on this bipartisan effort.

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. 2470

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

SECTION 1. FINDINGS.

Congress finds that—

(1) in section 1103(a)(2) of the Water Resources Development Act of 1986 (100 Stat. 4225), Congress recognized the Upper Mississippi River System as ''a nationally significant ecosystem and a nationally significant commercial navigation system'' and declared that the system ''shall be administered and regulated in recognition of its several purposes'';

(2) inaction on construction of new locks will lead to economic decline, and inaction on implementation of an enhanced ecosystem restoration program will lead to further environmental decline;

(3) the Upper Mississippi River and Illinois Waterway carry approximately 60 percent of the corn exports of the United States and 45 percent of the soybean exports of the United States, providing a significant positive balance of trade benefit for the Nation;

(4) the movement of more than 100,000,000 tons of product supports 400,000 full- and part-time jobs in the United States, generating over $4,000,000,000 in income and $12,000,000,000 to $15,000,000,000 in economic activity;

(5) Midwestern utilities use coal, the second largest category of cargo shipped on the Upper Mississippi River System, to produce cost-efficient energy;

(6) keeping the cost of transportation lower through competition between transportation modes is the United States farmer's competitive advantage in capturing future global growth in agricultural exports;

(7) United States farm and trade policies work to open world markets and promote United States exports, and water resource policy has provided a low-cost transportation alternative to other modes;

(8) the Department of Agriculture projects that corn exports will grow 44 percent over the next decade, with a ⅓ increase in growth exported through the Gulf of Mexico;

(9) those transportation savings—

(A) provide higher income to farmers and rural communities; and

(B) generate Federal and State taxes to support community activities, quality of life, and national benefits;

(10) the construction of new 1,200-foot locks and lock extensions will provide more than 48,000,000 man-hours of employment over 10 to 15 years;

(11) foreign competitors have worked over the last 10 years to improve foreign transportation infrastructure to compete more effectively with United States production;

(12) the inland waterway transportation system moves 16 percent of the freight in the United States for 2 percent of the cost, including more than 100,000,000 tons on the Upper Mississippi River System;

(13) the Department of Transportation projects that freight congestion on the roads and rails in the United States will double in the next 25 years and that water transportation will need to play an increasing role in moving freight;

(14) the movement of 100,000,000 tons on the river system in 4,400 15-barge tows out of harms way would require an equivalent of 4,000,000 trucks or 1,000,000 rail cars moving directly through our communities;

(15) econometric models are useful analytic tools to provide valuable information, but are unable to account for every market trend, development, and public policy impact;

(16) the current capacity of the Upper Mississippi River System is—

(A) declining by 10 percent annually because of unplanned closures of a 70-year old infrastructure; and

(B) reducing the potential for sustained growth;

(17) the current 600-foot lock system was designed for steamboats, at a time when 4,000,000 tons moved on the Mississippi River and a total of 2,000,000,000 bushels of corn were produced nationally, compared to today, when 100,000,000 to 120,000,000 tons are shipped and the national production of corn exceeds 10,000,000,000 bushels;

(18) the 600-foot locks at Locks and Dam Nos. 20, 21, 22, 24, and 25 on the Upper Mississippi River and LaGrange and Peoria on the Illinois Waterway are operating at 80 percent utilization and are unable to provide for or process effectively the volatile growth of traditional export grain markets;

(19) based on the current construction schedule of new locks and dams on the inland system, lock modernization will need to take place over 30 years, starting immediately, as an imperative to avoid lost export grain sales and diminished national competitiveness;

(20) the Corps of Engineers has been studying the needs for national investments on the Upper Mississippi River System for the last 15 years and has based initial recommendations on the best available information and science;

(21) the Upper Mississippi and Illinois Rivers ecosystem consists of hundreds of thousands of acres of bottomland forests, islands, backwaters, side channels, and wetlands;

(22) the river ecosystem is home to 270 species of birds, 57 species of mammals, 45 species of amphibians and reptiles, 113 species of fish, and nearly 50 species of mussels;

(23) more than 40 percent of migratory waterfowl and shorebirds in North America depend on the river for food, shelter, and habitat during migration;

(24) the annual operation of the Upper Mississippi River Basin needs to take into consideration opportunities for ecosystem restoration;

(25) development since the 1930's has altered and reduced the biological diversity of the large flood plain river systems of the Upper Mississippi and Illinois Rivers;

(26) Congress recognizes the need for significant Federal investment in the restoration of the Upper Mississippi and Illinois River ecosystems;

(27) the Upper Mississippi River System provides important economic benefits from recreational and tourist uses, resulting in the basin's receiving more visitors annually than most National Parks, with the ecosystems and wildlife being the main attractions; and

(28) the Upper Mississippi River System—

(A) includes 284,688 acres of National Wildlife Refuge land that is managed as habitat for migratory birds, fish, threatened and endangered species, and a diverse assortment of other species and related habitats; and

(B) provides many recreational opportunities.

SEC. 2. ENHANCED NAVIGATION CAPACITY IMPROVEMENTS AND ECOSYSTEM RESTORATION PLAN FOR THE UPPER MISSISSIPPI RIVER AND ILLINOIS WATERWAY SYSTEM.

(a) DEFINITIONS.— In this section:

(1) PLAN.—The term ''Plan'' means the preferred integrated plan contained in the document entitled ''Integrated Feasibility Report and Programmatic Environmental Impact Statement for the UMR–IWW System Navigation Feasibility System'' and dated April 29, 2004.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Army.

(3) UPPER MISSISSIPPI RIVER AND ILLINOIS WATERWAY SYSTEM.—The term ''Upper Mississippi River and Illinois Waterway System'' means the projects for navigation and ecosystem restoration authorized by Congress for—

(A) the segment of the Mississippi River from the confluence with the Ohio River, River Mile 0.0, to Upper St. Anthony Falls Lock in Minneapolis-St. Paul, Minnesota, River Mile 854.0; and

(B) the Illinois Waterway from its confluence with the Mississippi River at Grafton, Illinois, River Mile 0.0, to T.J. O'Brien Lock in Chicago, Illinois, River Mile 327.0.

(b) AUTHORIZATION OF CONSTRUCTION OF NAVIGATION IMPROVEMENTS.—

(1) SMALL SCALE AND NONSTRUCTURAL MEASURES.—At a cost of $24,000,000 in funds from the general fund of the Treasury, to be matched in an equal amount from the Inland Waterways Trust Fund (which is paid by private users), the Secretary shall—

(A) construct mooring facilities at Locks 12, 14, 18, 20, 22, 24, and LaGrange Lock;

(B) provide switchboats at Locks 20 through 25 over 5 years for project operation; and

(C) conduct development and testing of an appointment scheduling system.

(2) NEW LOCKS.—At a cost of $730,000,000 in funds from the general fund of the Treasury, with an equal matching amount provided from the Inland Waterways Trust Fund (which is paid by the private users), the Secretary shall construct new 1,200-foot locks at Locks 20, 21, 22, 24, and 25 on the Upper Mississippi River and at LaGrange Lock and Peoria Lock on the Illinois Waterway.

(3) MITIGATION.—At a cost of $100,000,000 in funds from the general fund of the Treasury, with an equal matching amount provided from the Inland Waterway Trust Fund (which is paid by private users), the Secretary shall conduct mitigation for new locks and small scale and nonstructural measures authorized under paragraphs (1) and (2).

(c) ECOSYSTEM RESTORATION AUTHORIZATION.—

(1) OPERATION.—To ensure the environmental sustainability of the existing Upper Mississippi River and Illinois Waterway System, the Secretary shall, consistent with requirements to avoid any adverse effects on navigation, modify the operation of the Upper Mississippi River and Illinois Waterway System to address the cumulative environmental impacts of operation of the system and improve the ecological integrity of the Upper Mississippi River and Illinois River.

(2) ECOSYSTEM RESTORATION PROJECTS.—

(A) IN GENERAL.—The Secretary shall, consistent with requirements to avoid any adverse effects on navigation, carry out ecosystem restoration projects to attain and maintain the sustainability of the ecosystem of the Upper Mississippi River and Illinois River in accordance with the general framework outlined in the Plan.

(B) PROJECTS INCLUDED.—Ecosystem restoration projects may include—

(i) island building;

(ii) construction of fish passages;

(iii) floodplain restoration;

(iv) water level management (including water drawdown);

(v) backwater restoration;

(vi) side channel restoration;

(vii) wing dam and dike restoration and modification;

(viii) island and shoreline protection;

(ix) topographical diversity;

(x) dam point control;

(xi) use of dredged material for environmental purposes;

(xii) tributary confluence restoration;

(xiii) spillway modification to benefit the environment;

(xiv) land easement authority; and

(xv) land acquisition.

(C) COST SHARING.—

(i) IN GENERAL.—Except as provided in clause (ii), the Federal share of the cost of carrying out an ecosystem restoration project under this paragraph shall be 65 percent.

(ii) EXCEPTION FOR CERTAIN RESTORATION PROJECTS.—In the case of a project under this paragraph for ecosystem restoration, the Federal share of the cost of carrying out the project shall be 100 percent if the project—

(I) is located below the ordinary high water mark or in a connected backwater;

(II) modifies the operation or structures for navigation; or

(III) is located on federally owned land.

(iii) NONGOVERNMENTAL ORGANIZATIONS.—Nongovernmental organizations shall be eligible to contribute the non-Federal cost-sharing requirements applicable to projects under this paragraph.

(D) LAND ACQUISITION.—The Secretary may acquire land or an interest in land for an ecosystem restoration project from a willing owner through conveyance of—

(i) fee title to the land; or

(ii) a flood plain conservation easement.

(3) SPECIFIC PROJECTS AUTHORIZATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the ecosystem restoration projects described in paragraph (2) shall be carried out at a total construction cost of $1,460,000,000.

(B) LIMITATION ON AVAILABLE FUNDS.—Of the amounts made available under subparagraph (A), not more than $35,000,000 for each fiscal year shall be available for land acquisition under paragraph (2)(D).

(4) IMPLEMENTATION REPORTS.—

(A) IN GENERAL.—Not later than June 30, 2005, and every 4 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an implementation report that—

(i) includes baselines, benchmarks, goals, and priorities for ecosystem restoration projects; and

(ii) measures the progress in meeting the goals.

(B) ADVISORY PANEL.—

(i) IN GENERAL.—The Secretary shall appoint and convene an advisory panel to provide independent guidance in the development of each implementation report under subparagraph (A).

(ii) PANELISTS.—Panelists shall include—

(I) 1 representative of each of the State resource agencies (or a designee of the Governor of the State) from each of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;

(II) 1 representative of the Department of Agriculture;

(III) 1 representative of the Department of Transportation;

(IV) 1 representative of the United States Geological Survey;

(V) 1 representative of the United States Fish and Wildlife Service;

(VI) 1 representative of the Environmental Protection Agency;

(VII) 1 representative of affected landowners;

(VIII) 2 representatives of conservation and environmental advocacy groups; and

(IX) 2 representatives of agriculture and industry advocacy groups.

(iii) CO-CHAIRPERSONS.—The Secretary and the Secretary of the Interior shall serve as co-chairpersons of the advisory panel.

(d) AUTHORIZATION OF APPROPRIATIONS.—Except as otherwise provided in this section—

(1) there are authorized to be appropriated such sums as are necessary to carry out this section for fiscal years 2006 through 2020; and

(2) after fiscal year 2020—

(A) funds that have been made available under this section, but have not been expended, may be expended; and

(B) funds that have been authorized to be appropriated under this section, but have not been made available, may be made available.

Mr. HARKIN. Mr. President, I rise to discuss a bipartisan measure on which I have worked closely with my colleague from Missouri, Senator BOND. The purpose of this bill is to expand the transportation infrastructure and improve the ecosystem of the upper Mississippi River.

I have been deeply involved with Mississippi navigation issues because of their enormous importance to farmers in Iowa. Efficient river transportation is critical to keeping Iowa commodity costs competitive with foreign and domestic alternatives. When shipping on the river is constrained, costs rise. That, in turn, leads to price increases for moving bulk farm commodities by alternative means, mainly rail. These price differentials seem relatively small compared to the total price, but they make a huge difference in farm income.

Clearly, river traffic on the Mississippi is incredibly important to producers in my State. As a result of traffic congestion on the Mississippi, producers in the upper Midwest face longer shipping times, higher costs, and lost revenue. In the short run, enhanced traffic management can improve the situation. And it is important to have helper boats to push long barges through crowded locks. This bill addresses these two matters. But we need a longer-term solution, too. It is incredibly important that we modernize a number of the locks on the upper Mississippi—and we need to get started as soon as possible.

Existing law requires exhaustive analysis of river-use levels looking decades into the future. The studies required for such predictions are, by their very nature, highly speculative at best. There is no shortage of critics of the U.S. Army Corps of Engineers and its methods. But we can all agree that, to remain competitive, America needs to keep the arteries and veins of America's river transportation system in smooth running order. Last year, I visited Brazil and saw first-hand their remarkable efforts to modernize and improve their river transportation system. We need to keep up with countries like Brazil, if we are going to remain competitive. We simply cannot wait any longer to authorize construction of 1,200-foot locks so barge tows can move through the upper Mississippi and Illinois without being split.

However, this is not an easy issue. Over the years, I have heard time and time again from constituents and national leaders who are concerned about the environment, as I am. People correctly insist that we maintain a balance between navigation, flood control, and environmental protection. Habitat for many species, and the Mississippi river ecosystem as a whole, has deteriorated since the construction of the original lock system in the 1930's.

The Mississippi River is home to a wide variety of fish and birds, as well as other wildlife. All of this wildlife, and the abundant plant life, too, are important to the character and life of the Mississippi River. Approximately 40 percent of North America's waterfowl and shorebirds use the Mississippi Flyway. Parts of the Upper Mississippi River serve could well be the most important area for migrating diving ducks in the United States. The Mississippi River also serves as habitat for breeding and wintering birds, including the bald eagle.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species. The legislation we are proposing accomplishes this.

We understand that this bill is going to be a challenge in these difficult budget times. But to not act would be penny wise and pound foolish. We need to be thinking of the long-term economic health of our agricultural producers and shippers, hand in hand with the long-term health of the diverse ecosystems in the river. I believe the legislation we are proposing strikes a careful balance. I look forward to working closely with my colleagues to achieve those goals.

Mr. TALENT. Mr. President, I rise today to as a cosponsor of legislation to modernize our aging waterways infrastructure on the Upper Mississippi River and the Illinois River.

I am glad to join my colleague from Missouri, Senator BOND as well as Senators HARKIN and GRASSLEY in introducing a bill to upgrade and modernize the failing infrastructure on the Upper Mississippi and Illinois Rivers.

This $2.9 billion authorization will also bring great benefits to the fish habitat along the river through construction of fish passages, floodplain restoration and side channel restoration. I commend Senators BOND and HARKIN for working to find some balance in this important issue. I have always said, navigation and habitat restoration do not have to be mutually exclusive.

The locks and dams that are in place today are vital to our national economy. These national waterways serve as our competitive advantage to our overseas competitors, and this a clean and efficient way to move goods and commodities for export. The Upper Mississippi River and Illinois Waterway carry approximately 60 percent of the country's corn exports and 45 percent of our soybean exports, providing a significant positive balance of trade benefit for the Nation. Over half of the Soybeans produced in Missiouri head down the Mississippi River to the Gulf where they are shipped to markets overseas.

To me, this issue is a question of common sense. Water transportation is safe, clean and efficient. One medium barge tow can carry the same freight as 870 tractor trailer trucks. This relieves highway congestion, reduces shipping costs, and reduces fuels consumption and air emissions. Despite this, we'll still have opponents to this bill saying that it isn't good for the environment.

This bill is a win-win. It will take steps to reduce some of the burdens on our transportation systems, as well as providing more opportunities for our agricultural producers to export their products.

These locks are old and outdated. The current 600-foot lock system was designed for streamboats, at a time when 4 million tons moved on the Mississippi River and a total of 2 billion bushels of corn were produced nationally, compared to today, when 100 million to 120 million tons are shipped and the national production of corn exceeds 10 million bushels. We need to bring these locks into the 21st Century.

If we don't fix this aging infrastructure now, it will only become more costly. If I get a hole in the roof of my house, my wife and I may discuss how to fix it, but we know we will make the repair. If you don't make the repairs and upgrades, the problem only gets worse. That is what we have done to the locks and dams on the Mississippi River. I don't want this to be a situation where the roof actually falls in—we must modernize the system.

I commend my colleague from Missouri and his leadership on this issue. This is a good bill and I am happy to join him as a cosponsor. I look forward to continuing to work with him on this important issue.

Mr. GRASSLEY. Mr. President, I am pleased to be an original cosponsor of bipartisan legislation to authorize the modernization of the lock and dam infrastructure and enhanced environmental restoration on the Upper Mississippi and Illinois Rivers.

Modernizing the inland waterway transportation system remains a high priority for the Upper Mississippi River basin and for agricultural, commercial, and labor interests that rely on the river to transport their products. In addition to strong grassroots support for this endeavor, the State legislatures have passed resolutions endorsing lock and dam modernization, ecosystem restoration, and Congressional action.

Agriculture and related industries in Iowa and the other States on the Upper Mississippi remain competitive in world markets, despite higher production costs, because of the efficiencies inherent in river transport. More than 60 percent of all grain exports move from the Upper Mississippi, making

this competitive advantage vital to their ability to operate their business. Over 400,000 full and part-time jobs in our basin are connected to the river. Without modernization, Midwest producers will not be able to compete in anticipated world grain export growth.

Furthermore, a recent study estimates the loss of 30,000 jobs nationwide, $562 million annually in lost farm income and $185 million annually in lost State and local tax receipts if the lock and dam system is not upgraded. Providing U.S. agricultural producers every opportunity to export their products to world markets is essential for their financial well-being and future viability.

While it is important to consider economic benefits, we must also protect the ecosystem of the river. A cooperative solution can meet the needs of farmers and waterway users while at the same time improve the environment and stem the decline of the Rivers' ecosystems through enhanced authorities. Restoring the ecosystem is not mutually exclusive to lock modernization.

After 12 years and $70 million of study, we firmly believe that the time has come to take action. I urge my colleagues to support this legislation providing initial authorization to begin the modernization process and enhance the authorities to address broader ecosystem restoration. Without immediate action, the health of both the agriculture economy and river ecosystem will continue to decline.

Mr. COLEMAN. Mr. President, the Mississippi River is a national treasure and this legislation authorizes programs that will help restore water quality and rehabilitate wildlife and wildlife habitat on the river.

The annual operation of the Upper Mississippi River Basin needs to take into consideration opportunities for ecosystem restoration. The Upper Mississippi River ecosystem consists of hundreds of thousands of acres of bottomland forests, islands, backwaters, side channels and wetlands. The Upper Mississippi River system includes 284,688 acres of National Wildlife Refuge land that is managed as habitat for migratory birds, fish, threatened and endangered species and a diverse assortment of other species and related habitats.

I am very pleased that this bill gives ecosystem restoration the attention that it deserves.

The Department of Transportation projects that water transportation will play an increasing role in moving freight due to congestion on roads and railways. More efficient use of river transportation will help the environment reducing traffic congestion and emissions on our Nation's highways. For example, a 15 barge tow can carry as much as 870 semi-tractor trailer trucks. Fuel efficiency for barge transportation is 2.5 times that of rail transport and nearly 10 times that of truck transport.

Improving navigation efficiency on the upper Mississippi and Illinois Rivers has been a high priority issue for Midwest farmers for years. Our agricultural competitive position in accessing world markets is greatly impacted by the efficiency of our transportation system. Farmers depend on the lock system to move grain efficiently to market. They also depend on the locks for the movement of crop production inputs up the Mississippi River.

Our entire region benefits as commercial barge traffic moves not only agricultural products, but also aggregate, cement, salt, and other important items efficiently, safely and in an environmentally sound manner.

The Upper Mississippi River Ecosystem Restoration and navigation bill also represents a landmark opportunity to address environmental and economic ramifications of the entire lock and dam system, rather than the previous piecemeal approaches. The Corps of Engineers has responded to critics who called for a comprehensive evaluation, coupling an assessment of the economic need for navigation improvements and the ecosystem restoration components necessary to protect our region in the process. As outlined in this legislation, the $1.46 billion ecosystem restoration package includes the construction of fish passages, floodplain restoration on thousands of acres and side channel restoration, along with other measures.

This is indeed a new approach to improving our economy, by providing construction jobs and boosting our farm economy, and protecting our environment, by increasing the efficiency of barge traffic while initiating important water quality measures.

I am proud to be a coauthor of this important legislation.

Mr. FITZGERALD. Mr. President, I rise today with Senator BOND in support of a bill to put into place recommendations by the Army Corps of Engineers for navigation capacity improvements and ecosystem restoration for the Upper Mississippi and Illinois Rivers Waterway System.

Modernizing the inland waterway transportation system is a high priority for the Upper Mississippi River basin and for agricultural, commercial, and labor interests that rely on the river to transport their products. Without modernization, Midwest producers will not be able to fully participate in growing world markets.

On April 29, 2004, the Army Corps of Engineers released its proposal to upgrade the locks and to provide for ecosystem restoration on these two waterways. I have consistently fought for funding to revitalize these locks to help Illinois producers more easily transport their products to market. I have joined Senator BOND as a cosponsor to this bill because our country's agriculture and business interests have waited far too long for these improvements.

The Mississippi River plays a vital role in our economy. The Mississippi and Illinois Rivers are two of the major routes by which Illinois agricultural commodities are distributed to the world. In fact, roughly 70 percent of U.S. agricultural products are transported through the Mississippi River system. More than 60 million tons of commodities are transported on the Illinois River alone, including more than half of Illinois' annual corn crop.

By controlling the water's flow, locks and dams help facilitate the transportation of commodities along rivers. The outdated and deteriorating 600-foot locks on the Mississippi and Illinois Rivers create unnecessary delays because the locks are too small to accommodate modern size barge tows. This causes transportation costs to rise and results in lost market share for Illinois agriculture producers.

Along with modernizing this river system's locks, we must not allow the deterioration of its ecosystem. A cooperative solution can meet the needs of waterway users and, at the same time, improve the environment and stem the decline of the Mississippi and Illinois Rivers' ecosystems. This legislation strikes a good balance by upgrading the lock system while protecting the ecosystem of these rivers.

I commend Senator BOND for introducing this important legislation and am pleased to join him in cosponsoring this bill. Illinois farmers and other producers have waited far too long for these improvements. This bill brings the Upper Mississippi and Illinois Rivers Waterway System into the 21st century.

By Mr. NELSON of Florida:

S. 2472. A bill to require that notices to consumers of health and financial services include information on the outsourcing of sensitive personal information abroad, to require relevant Federal agencies to prescribe regulations to ensure the privacy and security of sensitive personal information outsourced abroad, to establish requirements for foreign call centers, and for other purposes; to the Committee on the Judiciary.

Mr. NELSON of Florida. Mr. President, I rise today to express my deep concern about an issue that illustrates the continuing erosion of Americans' privacy rights. My concern is related to the practice of outsourcing. When U.S. companies outsource sensitive customer information for processing overseas, they may be outsourcing our privacy rights along with it.

We all know that recently it has become popular for American companies to send internal paperwork to be done in other countries, by foreign companies.

When a U.S. company allows a foreign company to process customer data, the foreign company may be given access to the most sensitive types of customer information. Our health records, bank account numbers, social security numbers, tax forms, and credit card numbers are now being

shipped abroad—without the knowledge of the customer and beyond the reach of U.S. privacy laws.

This phenomenon means that consumers are almost powerless to stop foreign scam artists from misusing their sensitive information. What types of abuses can occur under this scenario?

In one recent shocking example, a U.S. hospital hired a medical transcriber in Pakistan through a subcontractor to work with sensitive patient health information. Later, the foreign worker claimed that she had not been paid for her work.

So, you know what she did? She threatened to post patients' medical records online unless she was paid. Luckily, she got her paycheck and doesn't seem to have posted anything online.

But this situation shows us the potential for gross violations of consumer privacy. The U.S. hospital said that it never even knew that the foreign transcriber had been hired through a subcontractor and it therefore had never bound her contractually to follow any privacy or security standards.

Another potential abuse of offshoring sensitive customer data is identity theft. The illegal theft of someone's identity is a profoundly disturbing and costly problem in this information age.

Moreover, illegal misuse of sensitive information also can have national security implications. For example, data about some of our Nation's power grids allegedly has been outsourced to companies overseas. Imagine the harm that terrorists might do if they got hold of that type of confidential information.

As our global economy expands at such a rapid pace, we simply cannot tolerate the outsourcing of American's privacy rights overseas. We need to be proactive on this potentially explosive issue. Make no mistake, the Pakistani transcriber incident is not the first or the last time that sensitive customer information becomes endangered in a foreign country. The time to act is now, instead of reacting only after our privacy rights are further eroded.

In light of these circumstances, today I am introducing a bill—along with Senator FEINSTEIN—that begins to address these privacy and security concerns. The bill is called the INFO Act, which is short for The Increasing Notice of Foreign Outsourcing Act.

The INFO Act is designed to help ensure that sensitive consumer information is protected and that U.S. companies can be held accountable for breakdowns in the security of customer information.

Specifically, the INFO Act that we are introducing today would require the following things: First, U.S. companies in the health care industry and the financial industry must tell their customers that their sensitive health information and financial information is being processed by companies in foreign nations, where privacy safeguards may be less stringent.

Second, U.S. companies in the health care industry and the financial industry must promise their customers that they are complying with U.S. privacy laws, which are designed to keep sensitive customer information secure even when it is outsourced.

Third, U.S. companies in the health care industry and financial industry must make sure that each foreign company that is handling sensitive customer information has agreed by contract to meet U.S. privacy standards and to keep sensitive customer information secure.

Fourth, U.S. companies may examine the business operations of the foreign company to make sure the foreign company is meeting privacy standards and is keeping sensitive customer information secure.

Fifth, a foreign company must notify the U.S company of any data security breach. The U.S. company must then notify the U.S. regulatory agency, which can then hold the U.S. company accountable for the actions of the foreign company.

Finally, an employee of a foreign call center must tell a U.S. customer where the employee is located, if the U.S. customer asks for this information.

I strongly believe that we need to act now, before the privacy issues raised by offshoring begin to explode.

Let me emphasize that I see this bill as both pro-consumer and pro-business. Consumers will be informed about how their sensitive information is handled and they can learn when security breaches occur. Additionally, foreign companies that handle customer data will be held accountable to the U.S. company that gives them their work. And U.S. companies will be upfront in informing their customers about offshoring sensitive data before customer backlash occurs.

With this sort of system in place, we hopefully can reduce the chances of customer data being misused, and allow U.S. companies to play on a level playing field where all interested parties know the rules of the game.

I have a history of trying to solve consumer issues in ways that are not needlessly burdensome to U.S. businesses. That is why my office, as well as Senator FEINSTEIN's office, has met several times with industry representatives during the development of this bill.

I was interested to find ways for businesses to protect consumer privacy rights without having to sharply raise prices or limit products and services. I believe that the INFO Act has achieved those goals.

Consumer privacy has always been one of my top priorities. Now, as always, I look forward to working with all interested parties to resolve this consumer privacy issue in a timely and effective manner.

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. 2472

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 ''Increasing Notice of Foreign Outsourcing Act''.

SEC. 2. HEALTH PRIVACY.

(a) FOREIGN-BASED BUSINESS ASSOCIATE.—In this section, the term ''foreign-based business associate'' means a business associate, as defined under the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), whose operation is based outside the United States and that receives protected health information and processes such information outside the United States.

(b) NOTICES.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall revise the regulations prescribed pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) to require a covered entity (as defined under such regulations and referred to in this section as a ''covered entity''), that outsources protected health information (as defined under such regulations and referred to in this section as ''protected health information''), outside the United States to include in such entity's notice of privacy protections the following:

(A) The following information in simple language:

(i) Notification that the covered entity outsources protected health information to foreign-based business associates.

(ii) Any risks and consequences to the privacy and security of protected health information that arise as a result of the processing of such information outside the United States.

(iii) Additional measures the covered entity is taking to protect the protected health information outsourced for processing outside the United States.

(B) A certification that the covered entity has taken reasonable steps to ensure that the handling of protected health information will be done in compliance with applicable laws in all instances where protected health information is processed outside the United States, including the reasons for the certification.

(2) EFFECTIVE DATE.—A covered entity shall be required to include in such entity's notice of privacy protections the information and certification described in paragraph (1) for notices issued on or after the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection shall be construed to require a covered entity to reissue notices issued before the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such notices the information and certification described in paragraph (1).

(c) RULEMAKING.—

(1) IN GENERAL.—

(A) REGULATORY AUTHORITY.—The Secretary shall—

(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this section with respect to foreign outsourcing; and

(ii) determine the appropriate penalties to impose upon a covered entity for a violation of a provision of this subsection or subsection (b).

(B) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this Act.

(2) NECESSARY REGULATIONS.—The Secretary shall prescribe regulations—

(A) requiring that a contract between a covered entity and such entity's foreign-based business associate contain a provision that provides such entity with the right to audit such associate, as needed, to monitor performance under the contract; and

(B) requiring that foreign-based business associates and subcontractors of covered entities be contractually bound by Federal privacy standards and security safeguards.

(d) BREACH OF SECURITY.—

(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term ''breach of security of the system''—

(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to protected health information maintained by the covered entity, foreign-based business associate, or subcontractor; and

(B) does not include good faith acquisition of protected health information by an employee or agent of the covered entity, foreign-based business associate, or subcontractor for the purposes of the entity, associate, or subcontractor, if the protected health information is not used or subject to further unauthorized disclosure.

(2) DATABASE SECURITY.—

(A) COVERED ENTITY.—A covered entity—

(i) that owns or licenses electronic data containing protected health information shall, following the discovery of a breach of security of the system containing such data, notify the Secretary of such breach; or

(ii) that receives a notification under subparagraph (B) of a breach, shall notify the Secretary of such breach.

(B) OTHER PARTIES.—

(i) THIRD PARTY.—The Secretary shall require that a contract between a covered entity and such entity's foreign-based business associate contain a provision that if the foreign-based business associate (or any subcontractor of such associate) owns or licenses electronic data containing protected health information that was provided to the associate through the covered entity, the associate (or subcontractor) shall, following the discovery of a breach of security of the system containing such data—

(I) notify the entity from which it received the protected health information of such breach; and

(II) provide a description to the entity from which it received the protected health information of any corrective actions taken to guard against future security breaches.

(ii) NOTIFICATION PROCESS.—Each entity that receives a notification under clause (i) shall notify the entity from which it received the protected health information of such breach until the notification reaches the foreign-based business associate who shall, in turn, notify the covered entity of such breach.

(C) TIMELINESS OF NOTIFICATION.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

(i) the discovery of a breach of security of the system; and

(ii) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

(3) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.

SEC. 3. FINANCIAL PRIVACY.

(a) FOREIGN-BASED BUSINESS.—Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

''(12) FOREIGN-BASED BUSINESS.—The term 'foreign-based business' means a non-affiliated third party whose operation is based outside the United States and that receives nonpublic personal information and processes such information outside the United States.''.

(b) FINANCIAL NOTICES.—

(1) IN GENERAL.—Section 503(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(b)) is amended—

(A) in paragraph (3), by striking ''and'' after the semicolon;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) if the financial institution outsources nonpublic personal information outside the United States—

''(A) information informing the consumer in simple language—

''(i) that the financial institution outsources nonpublic personal information to foreign-based businesses;

''(ii) of any risks and consequences to the privacy and security of an individual's nonpublic personal information that arise as a result of the processing of such information outside the United States; and

''(iii) of the additional measures the financial institution is taking to protect the nonpublic personal information outsourced for processing outside the United States; and

''(B) a certification that the financial institution has taken reasonable steps to ensure that the handling of nonpublic personal information will be done in compliance with applicable laws in all instances where nonpublic personal information is processed outside the United States, including the reasons for the certification.''.

(2) EFFECTIVE DATE.—A financial institution shall include in such institution's disclosure the information and certification described in the amendment made by paragraph (1)(C) for disclosures provided on or after the date on which the regulatory agency that has jurisdiction over such institution pursuant to section 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6805) prescribes regulations pursuant to the amendments made by this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection, or the amendments made by this subsection, shall be construed to require a financial institution to reissue disclosures provided before the date on which the regulatory agency that has jurisdiction over such institution pursuant to section 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6805) prescribes regulations pursuant to the amendments made by this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such disclosures the information and certification described in the amendment made by paragraph (1)(C).

(c) RULEMAKING.—Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804) is amended by adding at the end the following:

''(c) RULEMAKING ON FOREIGN OUTSOURCING.—

''(1) IN GENERAL.—

''(A) REGULATORY AUTHORITY.—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission (referred to in this subsection as the 'regulatory agencies') shall—

''(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this subtitle with respect to foreign outsourcing, with respect to the financial institutions subject to their jurisdiction under section 505; and

''(ii) determine the appropriate penalties to impose upon financial institutions for a violation of a provision of this subsection.

''(B) COORDINATION, CONSISTENCY, AND COMPARABILITY.—The regulatory agencies shall consult and coordinate with each other for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

''(C) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this subsection.

''(2) NECESSARY REGULATIONS.—The regulatory agencies shall prescribe regulations—

''(A) requiring that a contract between a financial institution and such institution's foreign-based business contain a provision that provides such institution with the right to audit such business, as needed, to monitor performance under the contract; and

''(B) requiring that foreign-based businesses and subcontractors of financial institutions be contractually bound by Federal privacy standards and security safeguards.''.

(d) BREACH OF SECURITY.—Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802) is amended by adding at the end the following:

''(f) BREACH OF SECURITY.—

''(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term 'breach of security of the system'—

''(A) means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to nonpublic personal information maintained by the financial institution, foreign-based business, or subcontractor; and

''(B) does not include good faith acquisition of nonpublic personal information by an employee or agent of the financial institution, foreign-based business, or subcontractor for the purposes of the institution, business, or subcontractor, if the nonpublic personal information is not used or subject to further unauthorized disclosure.

''(2) DATABASE SECURITY.—

''(A) FINANCIAL INSTITUTION.—A financial institution—

''(i) that owns or licenses electronic data containing nonpublic personal information shall, following the discovery of a breach of security of the system containing such data, notify the entity under which the institution is subject to jurisdiction under section 505 of such breach; or

''(ii) that receives a notification under subparagraph (B) of a breach, shall notify the entity under which the institution is subject to jurisdiction under section 505 of such breach.

''(B) OTHER PARTIES.—

''(i) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission shall require, with respect to the financial institutions subject to their jurisdiction under section 505, that a contract between a financial institution and such institution's foreign-based business contain a provision that if the foreign-based business (or any subcontractor

of such business) owns or licenses electronic data containing nonpublic personal information that was provided to the business through the financial institution, the business (or subcontractor) shall, following the discovery of a breach of security of the system containing such data—

''(I) notify the entity from which it received the nonpublic personal information of such breach; and

''(II) provide a description to the entity from which it received the nonpublic personal information of any corrective actions taken to guard against future security breaches.

''(ii) NOTIFICATION PROCESS.—Each entity that receives a notification under clause (i) shall notify the entity from which it received the nonpublic personal information of such breach until the notification reaches the foreign-based business who shall, in turn, notify the financial institution of such breach.

''(C) TIMELINESS OF NOTIFICATION.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

''(i) the discovery of a breach of security of the system; and

''(ii) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

''(3) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.''.

SEC. 4. FOREIGN CALL CENTERS.

(a) FOREIGN CALL CENTER DEFINED.—In this section, the term ''foreign call center'' means a foreign-based service provider or a foreign-based subcontractor of such provider that—

(1) is unaffiliated with the entity that utilizes such provider or subcontractor; and

(2) provides customer-based service and sales or technical assistance and expertise to individuals located in the United States via the telephone, the Internet, or other telecommunications and information technology.

(b) REQUIREMENT.—A contract between a foreign call center and an entity that utilizes such foreign call center to initiate telephone calls to, or receive telephone calls from, individuals shall include a requirement that each employee of the foreign call center disclose the physical location of such employee upon the request of such individual.

(c) CERTIFICATION REQUIREMENT.—An entity described in subsection (b) shall submit an annual certification to the Federal Trade Commission on whether or not the entity and its subsidiaries, and the foreign call center employees and its subsidiaries, have complied with subsection (b). Such annual certifications shall be made available to the public.

(d) NONCOMPLIANCE.—An entity described in subsection (b) or its subsidiaries that violates subsection (b) shall be subject to such civil penalties as the Federal Trade Commission prescribes under subsection (e).

(e) REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Federal Trade Commission shall prescribe such regulations as are necessary for effective monitoring and compliance with this section. Such regulations shall include appropriate civil penalties for noncompliance with this section.

Mrs. FEINSTEIN. Mr. President, I rise to introduce, along with my colleague, Senator BILL NELSON, the Increasing Notice of Foreign Outsourcing Act, or the INFO Act. This legislation will help safeguard Americans' most important and sensitive personal information when it is sent abroad for processing to countries that may have lax security and privacy standards.

The bill will ensure that American companies notify consumers of a business's outsourcing practices. It will require American companies to certify the adequacy of their outsourcing protections. And it will require American companies to hold their foreign business partners accountable for protecting Americans' data.

In order to protect the information of Americans that is now vulnerable abroad, this bill calls for the following key safeguards:

First, the bill requires American health and financial companies to notify consumers when sending their information abroad, and to certify the safety of the overseas processing. We drafted provisions carefully to minimize the burden on businesses, so they will expand on privacy disclosures that companies already make under Federal law.

Second, American companies processing health or financial data must include clauses in contracts with their foreign partners to allow audits of their foreign information processors and to enforce American privacy standards.

Third, the bill creates a system to inform American companies and Federal regulators of any security breaches involving American health or financial information at facilities operated outside the United States.

And fourth, the bill gives Americans the right to have workers at foreign call centers disclose where they are calling from.

The bill also gives Federal agencies the power to enforce these provisions. It is important to emphasize that this bill is drafted to minimize the burdens on businesses, by expanding on existing privacy data and security laws.

While many are concerned about how outsourcing abroad hurts American workers, outsourcing also poses risks to the security and privacy of American consumers' personal data. The recent wave of international outsourcing means that we are flooding the entire world with our most sensitive information.

Once sent abroad, the information is at risk because our Federal laws do not apply to foreign companies operating overseas. Another reason is because many foreign countries have far weaker security laws than our own. For instance, India still has no laws to protect personal and private data. And still another reason is because it is extremely difficult for Americans to use foreign courts to sue foreign companies that misuse American data.

These factors leave the most intimate details of the lives of uncountable Americans vulnerable to lax security and to malicious identity thieves.

And there is even more at stake. Information outsourcing poses a direct risk to national security. We are painfully aware that some people want to steal the identity of individual Americans in order to evade our homeland defenses and harm us all.

International information outsourcing has skyrocketed in recent years. Consider the following:

Tax returns for about 200,000 Americans were prepared in India this year. To put this number in context, India workers processed only about 1,000 U.S. tax returns 2 years ago. Tax returns have Americans' names, Social Security numbers, income, employers, addresses, and other details.

The American Association of Medical Transcription estimates that 10 percent of all medical transcription of doctors' notes is being done abroad.

An executive from Trans Union, one of the major credit agencies in the United States, told The San Francisco Chronicle that:

> A hundred percent of our mail regarding customer disputes is going to go to India at some point.

If anyone doubts the risk that international outsourcing poses to Americans, consider these incidents:

Recently, a low-paid transcriber in Pakistan was working as a subcontractor to the University of California Medical Center in San Francisco. That foreign worker threatened to post confidential patient information on the Internet unless the university coaxed her boss into paying some of her bills.

Three weeks later, a strikingly similar incident occurred with a worker in Bangalore, India.

In another incident, in Noida, India, an employee working at a call center used an American's credit card information to buy electronics equipment from Sony.

Also in India, there is a burgeoning black market in personal identity information. According to one report, stolen names, addresses, phone numbers, the bank a person has an account with, and even bank account numbers are sold on the streets for mere pennies.

These are just a few incidents. No one knows how many other times workers have done similar things. And that is a big part of the problem. It is not merely that Americans' identities are vulnerable when sent abroad. The problem is that American companies obscure how much outsourcing they do, and when they are doing it.

For example, according to the San Jose Mercury News, a worker at a call center dealing with State benefits refused to identify his location. The supervisor, when she picked up the call, refused to say anything more than that she worked for Citicorp.

In essence, the problem of obscurity is so bad that we can list only a few incidents reported by the media. How many security breaches have taken place? Have consumers been informed when their information is abroad and at risk? How much money has this cost consumers? We don't know.

And so far, American regulatory agencies have been unable to say despite their oversight of these industries. And American companies have stayed mum. We need to break the silence.

The fact is, our Government is simply not doing enough to protect consumers. Earlier this month I received a letter from John D. Hawke, Jr., who is the U.S. Comptroller of the Currency. He heads one of the agencies that regulates U.S. financial institutions and banks.

Mr. Hawke wrote to me that the Office of the Comptroller of the Currency, known as the OCC, does not directly regulate foreign contractors that work for U.S. banks. Specifically, he wrote:

> [T]he OCC focuses its supervisory reviews regarding foreign servicing relationships on whether the serviced banks have adequate procedures in place. . . .

That means the OCC is focusing on the American companies, not the foreign ones.

I also learned from the OCC that it already suggests certain safeguards for American banks to use when they hire foreign information processors. The OCC asks U.S. banks to use contract provisions to make sure that foreign companies use secure methods to process data, and to let the U.S. companies audit the foreign companies.

But the OCC only suggests that companies adopt these safeguards. The legislation we are introducing today would take safeguards like the OCC's a step further, and make them mandatory.

Now is the time to act. We know that there are criminal syndicates, such as in Nigeria, that have fraudulently obtained bank information to steal untold fortunes. We can hardly imagine the damage such organizations can do with a vast new source of sensitive financial data from international information outsourcing.

In short, this bill accomplishes four goals crucial to protecting Americans' sensitive data sent abroad. It requires companies to give notice that they send consumers' sensitive data abroad. It ensures that U.S. companies can audit their foreign partners, and impose U.S. privacy standards on them. It establishes a system to ensure that foreign and U.S. companies will report security breaches to the U.S. Government. And it allows American consumers to demand to know where foreign call centers are located.

This bill helps to protect outsourced information while minimizing burdens on American businesses. I urge my colleagues to join us in this effort.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 366—SUPPORTING MAY 2004 AS NATIONAL BETTER HEARING AND SPEECH MONTH AND COMMENDING THOSE STATES THAT HAVE IMPLEMENTED ROUTINE HEARING SCREENINGS FOR EVERY NEWBORN BEFORE THE NEWBORN LEAVES THE HOSPITAL

Mr. COLEMAN submitted the following resolution; which was considered and agreed to:

S. RES. 366

Whereas the National Institute on Deafness and Other Communication Disorders reports that approximately 28,000,000 people in the United States experience hearing loss or have a hearing impairment;

Whereas 1 out of every 3 people in the United States over the age of 65 have hearing loss;

Whereas the overwhelming majority of people in the United States with hearing loss would benefit from the use of a hearing aid and fewer than 7,000,000 people in the United States use a hearing aid;

Whereas 30 percent of people in the United States suffering from hearing loss cite financial constraints as an impediment to hearing aid use;

Whereas hearing loss is among the most common congenital birth defects;

Whereas a delay in diagnosing the hearing loss of a newborn can affect the social, emotional, and academic development of the child;

Whereas the average age at which newborns with hearing loss are diagnosed is between the ages of 12 to 25 months; and

Whereas May 2004 is National Better Hearing and Speech Month, providing Federal, State, and local governments, members of the private and nonprofit sectors, hearing and speech professionals, and all people in the United States an opportunity to focus on preventing, mitigating, and treating hearing impairments: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of May 2004 as National Better Hearing and Speech Month;

(2) commends those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital; and

(3) encourages all people in the United States to have their hearing checked regularly.

SENATE RESOLUTION 367—HONORING THE LIFE OF MILDRED MCWILLIAMS ''MILLIE'' JEFFREY (1910–2004) AND HER CONTRIBUTIONS TO HER COMMUNITY AND TO THE UNITED STATES

Ms. STABENOW (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 367

Whereas Mildred McWilliams ''Millie'' Jeffrey, a social justice activist, a retired UAW Director of the Consumer Affairs Department, and a Governor Emerita of Wayne State University, died peacefully surrounded by her family on March 24, 2004, in the Metro Detroit, Michigan area at the age of 93;

Whereas in 2000, President Clinton awarded Millie the Medal of Freedom, the highest civilian award bestowed by the United States Government;

Whereas in seeking world peace by ensuring equality for all, Millie spent a lifetime working on labor, civil rights, education, health care, youth employment, and recreation issues;

Whereas Millie brought inspiration and humor to the many people she touched and did so with optimism and undaunted spirit;

Whereas Millie, a woman of influence and of great moral character, was always a voice of conscience and reason;

Whereas Millie provided a voice for those that could not be heard and hope for those that no longer believed, and because of this her legacy will continue to live on for generations to come;

Whereas Millie's list of accomplishments and awards is long but what she is most remembered for is her zest for organizing, including mentoring legions of women and men in the labor, civil rights, women's rights, and peace movements;

Whereas President Clinton stated that ''her impact will be felt for generations, and her example never forgotten'';

Whereas Millie was born in Alton, Iowa on December 29, 1910, and was the oldest of 7 children;

Whereas in 1932 Millie graduated from the University of Minnesota with a bachelor's degree in psychology and in 1934 Millie received a master's degree in social economy and social research from Bryn Mawr College;

Whereas Millie became an organizer for the Amalgamated Clothing Workers of America in Philadelphia, Pennsylvania, and later became Educational Director of the Pennsylvania Joint Board of Shirt Workers;

Whereas in 1936, Millie married fellow Amalgamated Clothing Workers of America organizer Homer Newman Jeffrey, and they traveled throughout the South and East organizing textile workers;

Whereas during World War II, the Jeffreys worked in Washington, D.C., as consultants to the War Labor Board, where they became close friends with Walter, Victor, and Roy Reuther;

Whereas the Jeffreys moved to Detroit, Michigan in 1944 when Victor Reuther offered Millie a job as director of the newly formed UAW Women's Bureau;

Whereas Millie's commitment to equal rights fueled her career at the UAW;

Whereas Millie organized the first UAW women's conference in response to the massive postwar layoffs of women production workers, who were replaced by returning veterans;

Whereas from 1949 until 1954, Millie ran the UAW's radio station;

Whereas Millie moved on to direct the Community Relations Department of the UAW;

Whereas Millie served as Director of the Consumer Affairs Department of the UAW from 1968 until her retirement in 1976;

Whereas Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King, Jr. in the 1960s;

Whereas Former Executive Secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that ''in the civil rights movement, she knew how to fight without being disagreeable'';

Whereas Millie ran for public office in 1974 and was elected by the people of Michigan to the Wayne State University Board of Governors, an office she held for 16 years (1974–1990);

Whereas Millie served 3 terms as chair of the Wayne State University Board of Governors;

Whereas Millie loved Wayne State University and was a long-time resident on campus;

Whereas Millie never tired of showing visitors around her ''neighborhood''—the Adamany Undergraduate Library, the